

NORTH CAROLINA REGISTER

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January 3, 2022

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For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address but are not inclusive.

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

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NORTH CAROLINA REGISTER
Publication Schedule for January 2022 – December 2022

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
36:13	01/03/22	12/08/21	01/18/22	03/04/22	03/21/22	04/21/2022	05/01/22	09/30/22
36:14	01/18/22	12/22/21	02/02/22	03/21/22	04/20/22	05/19/2022	06/01/22	10/15/22
36:15	02/01/22	01/10/22	02/16/22	04/04/22	04/20/22	05/19/2022	06/01/22	10/29/22
36:16	02/15/22	01/25/22	03/02/22	04/18/22	04/20/22	05/19/2022	06/01/22	11/12/22
36:17	03/01/22	02/08/22	03/16/22	05/02/22	05/20/22	06/16/2022	07/01/22	11/26/22
36:18	03/15/22	02/22/22	03/30/22	05/16/22	05/20/22	06/16/2022	07/01/22	12/10/22
36:19	04/01/22	03/11/22	04/16/22	05/31/22	06/20/22	07/21/2022	08/01/22	12/27/22
36:20	04/18/22	03/25/22	05/03/22	06/17/22	06/20/22	07/21/2022	08/01/22	01/13/23
36:21	05/02/22	04/08/22	05/17/22	07/01/22	07/20/22	08/18/2022	09/01/22	01/27/23
36:22	05/16/22	04/25/22	05/31/22	07/15/22	07/20/22	08/18/2022	09/01/22	02/10/23
36:23	06/01/22	05/10/22	06/16/22	08/01/22	08/22/22	09/15/2022	10/01/22	02/26/23
36:24	06/15/22	05/24/22	06/30/22	08/15/22	08/22/22	09/15/2022	10/01/22	03/12/23
37:01	07/01/22	06/10/22	07/16/22	08/30/22	09/20/22	10/20/2022	11/01/22	03/28/23
37:02	07/15/22	06/23/22	07/30/22	09/13/22	09/20/22	10/20/2022	11/01/22	04/11/23
37:03	08/01/22	07/11/22	08/16/22	09/30/22	10/20/22	11/17/2022	12/01/22	04/28/23
37:04	08/15/22	07/25/22	08/30/22	10/14/22	10/20/22	11/17/2022	12/01/22	05/12/23
37:05	09/01/22	08/11/22	09/16/22	10/31/22	11/21/22	12/15/2022	01/01/23	05/29/23
37:06	09/15/22	08/24/22	09/30/22	11/14/22	11/21/22	12/15/2022	01/01/23	06/12/23
37:07	10/03/22	09/12/22	10/18/22	12/02/22	12/20/22	01/19/2023	02/01/23	06/30/23
37:08	10/17/22	09/26/22	11/01/22	12/16/22	12/20/22	01/19/2023	02/01/23	07/14/23
37:09	11/01/22	10/11/22	11/16/22	01/03/23	01/20/23	02/16/2023	03/01/23	07/29/23
37:10	11/15/22	10/24/22	11/30/22	01/17/23	01/20/23	02/16/2023	03/01/23	08/12/23
37:11	12/01/22	11/07/22	12/16/22	01/30/23	02/20/23	03/16/2023	04/01/23	08/28/23
37:12	12/15/22	11/22/22	12/30/22	02/13/23	02/20/23	03/16/2023	04/01/23	09/11/23

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

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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



State of North Carolina

ROY COOPER
GOVERNOR

November 15, 2021

EXECUTIVE ORDER NO. 237

DECLARATION OF A STATE OF EMERGENCY BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA

WHEREAS, on November 7, 2021, a strong coastal storm brought high winds, heavy rain, and significant flooding to the Outer Banks in Dare and Hyde Counties; and

WHEREAS, portions of North Carolina Highway 12 (N.C. 12) in Dare County, North Carolina were closed between the Marc Basnight Bridge and Rodanthe, as the coastal storm made travel unsafe on a section of the highway in the northern part of the Outer Banks; and

WHEREAS, portions of N.C. 12 in the northern part of the Outer Banks in Dare County, North Carolina were damaged by ocean over wash which destroyed some dunes protecting N.C. 12, forcing the road to be closed from November 7, 2021 through November 9, 2021; and

WHEREAS, the storm caused severe damage to N.C. 12, a federal-aid highway, and required immediate repairs to preserve the well-being and health of North Carolinians; and

WHEREAS, ferry services were suspended in Dare and Hyde counties, due to the impacts from the same coastal storm system from November 7, 2021, to November 10, 2021; and

WHEREAS, the existence of and the related damages from the coastal storm constituted a state of emergency as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19); and

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

WHEREAS, the State has requested aid from the Federal Highway Administration ("FHWA") Emergency Relief program as allowed under 23 U.S.C. § 125 and implemented in 23 C.F.R. § 668 to address the damages from the event; and

WHEREAS, the immediate repair and reconstruction of the damaged highway and surrounding infrastructure is vital to the security, well-being, and health of the residents of the State of North Carolina; and

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

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

Section 1.

Pursuant to N.C. Gen. Stat. § 166A-19.20, I hereby declare that a state of emergency, as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19), exists and I have determined that the emergency response requirement exceeded the capabilities of the State to effectively respond to the event. The emergency area as defined in N.C. Gen. Stat. §§ 166A-19.3(7) and 166A-19.20(b) is Dare and Hyde Counties.

Section 2.

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

Section 3.

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

Section 4.

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

Section 5.

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

Section 6.

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

Section 7.

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

Section 8.

This declaration will not trigger the prohibitions against excessive pricing in the emergency area, notwithstanding the provisions of N.C.G.S. § 166A-19.23.

Section 9.

This declaration is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency, whichever is less.

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 15th day of November 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

November 29, 2021

EXECUTIVE ORDER NO. 238

FURTHER EXTENDING MEASURES TO FACILITATE VACCINE ADMINISTRATION, COVID-19 TESTING, AND THE VACCINE VERIFICATION POLICY FOR CABINET AGENCIES

WHEREAS, on March 10, 2020, the undersigned issued Executive 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, 215-217, 219-221, 224-225, 228-232, 234, and 236; and

WHEREAS, more than one million five hundred thirty-two thousand two hundred (1,532,200) people in North Carolina have had COVID-19, and over eighteen thousand seven hundred (18,700) people in North Carolina have died from the disease; and

WHEREAS, COVID-19 continues to infect thousands of North Carolinians every day, and a State of Emergency remains in place for the purpose of maintaining the state's ability to meet challenges presented by COVID-19; and

WHEREAS, the State of Emergency allows North Carolina to, among other flexibilities afforded to the state, address the COVID-19 pandemic, provide increased regulatory flexibility to the North Carolina Department of Health and Human Services ("NCDHHS") and health care facilities, which allows health care providers to expand their capacity to treat patients and assist with vaccination efforts; and to respond to any spikes in spread of the disease; 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

Current Metrics

WHEREAS, as COVID-19 has continued to be spread from person to person across the United States and world, variants (genetically distinct strains) of COVID-19 have developed; and

WHEREAS, the Delta variant of COVID-19 is more transmissible than the original COVID-19 virus; and

WHEREAS, because the Delta variant is more contagious than the original virus or other current COVID-19 variants, it quickly became the most common kind of COVID-19 in North Carolina during summer 2021, and now, the Delta variant makes up more than ninety-five percent (95%) of all new COVID-19 cases in North Carolina; and

WHEREAS, the Delta variant's growing dominance, coupled with its increased transmissibility, led to a significant increase in the number of COVID-19 cases and hospitalizations in summer and early fall 2021, particularly among the unvaccinated; and

WHEREAS, new variants of the virus continue to develop, including, most recently, the Omicron variant, which has been labeled a "variant of concern" by the World Health Organization, and which has a greater risk of transmissibility than the original COVID-19 variant, according to preliminary evidence; and

WHEREAS, the state's COVID-19 metrics, including cases and hospitalizations, experienced a period of prolonged decline in fall 2021, due in part to the increasing percentage of North Carolinians who have become fully vaccinated and the availability of booster vaccines to certain adult populations; however, the decline in COVID-19 metrics has plateaued, with instances of recent increase; and

WHEREAS, the state's public health experts have expressed concerns that the state could see an increase in COVID-19 cases and associated hospitalizations over the winter as is seen with other respiratory viruses; and

WHEREAS, although the Delta variant represents a severe threat to the unvaccinated, being vaccinated greatly reduces the chance of being infected by the Delta variant, and being vaccinated greatly reduces the risk that anyone who does contract the Delta variant becomes severely ill, requires hospitalization, or dies; and

Extension of Certain Provisions of Executive Order No. 224

WHEREAS, Executive Order No. 224 promotes COVID-19 testing and vaccine administration by preempting local regulations that may prevent such activity; and

WHEREAS, in light of the need to continue testing and vaccination efforts, the undersigned, at the recommendation of NCDHHS, has determined that the above-referenced measures of Executive Order No. 224 should be extended through January 5, 2022; and

WHEREAS, in Executive Order No. 224, the undersigned determined that Cabinet agency workers should be required to show either that they are fully vaccinated or that they have recently tested for COVID-19, and directed the Office of State Human Resources ("OSHR") to issue a policy to implement the proof-of-vaccination and testing requirements; and

WHEREAS, on August 13, 2021, OSHR issued the Requirements for COVID-19 Testing and Face Coverings as an Alternative to Proof of Full Vaccination policy, and this policy, as updated on August 27, 2021, took effect on September 1, 2021; and

WHEREAS, as of the date of this Executive Order, seventy-six percent (76%) of Cabinet agency employees have been vaccinated, which reflects an increase in the vaccination percentage of this population of eleven percent (11%) since the implementation of the OSHR policy; and

WHEREAS, to protect the health and safety of state employees and the general public, Cabinet agencies should continue to implement this policy for the effective period of this Executive Order; and

WHEREAS, the undersigned continues to encourage all state and local government agencies, school systems, and private businesses and organizations, at a minimum, to adopt the same protections for state employees and the public as those directed under Executive Order No. 224; 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-19.30(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

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

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

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

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

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

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

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

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

WHEREAS, pursuant to Article III of the Constitution of North Carolina and N.C. Gen. Stat. §§ 143A-4 and 143B-4, the Governor is the chief executive officer of the state and is responsible for formulating and administering the policies of the executive branch of state government; and

WHEREAS, pursuant to N.C. Gen. Stat. § 143B-10(j)(3), the head of each principal state department and the Director of the Office of State Human Resources may adopt policies, consistent with law and with rules established by the Governor and with rules of the State Human Resources Commission ("Commission"), which reflect internal management procedures within each department, including policies governing the conduct of employees of the department; and

WHEREAS, pursuant to N.C. Gen. Stat. § 126-4, the Commission shall establish state human resources policies and rules subject to approval of the Governor, and pursuant to this statute, the Commission has issued a Communicable Disease Emergency Policy and rules that require social distancing policies, including administrative and engineering controls, that shall be implemented immediately upon orders from the Governor.

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. 224 and 229, **IT IS ORDERED**:

Section 1. Further Extension of Certain Provisions of Executive Order No. 224.

Sections 2.3, 2.4, 3, and 8 of Executive Order No. 224 are hereby extended through January 5, 2022, unless repealed, replaced, or rescinded by another applicable Executive Order.

Section 2. Continuation of Policies Established under Executive Order No. 224.

Throughout the effective period of this Executive Order, Cabinet agencies are directed to continue to implement the policy issued under Sections 4.1 and 4.2 of Executive Order No. 224, requiring workers to either be fully vaccinated or be tested for COVID-19 each week. Workers will be required to directly or indirectly provide proof of vaccination or test results, as applicable, to the Cabinet agency where they work.

Section 3. No Private Right of Action.

This Executive Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable 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 4. 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 to ensure proper implementation of this Executive Order.

Section 5. Savings Clause.

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

Section 6. Effective Date.

This Executive Order is effective November 29, 2021, at 5:00 p.m. This Executive Order shall remain in effect through January 5, 2022, unless repealed, rescinded, or replaced 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 29th day of November 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

November 29, 2021

EXECUTIVE ORDER NO. 239

EXTENDING TRANSPORTATION-RELATED PROVISIONS IN PREVIOUS EXECUTIVE ORDERS

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 to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

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

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

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

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

WHEREAS, in responding to the COVID-19 pandemic, and for the purposes of protecting the health, safety and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, 146-153, 155-157, 161-165, 169-173, 176-177, 180-181, 183-185, 188-193, 195, 197-198, 200, 204-207, 209-212, 215-217, 219-221, 224-225, 228-232, 234, and 236; and

WHEREAS, more than one million five hundred thirty-two thousand two hundred (1,532,200) people in North Carolina have had COVID-19, and over eighteen thousand seven hundred (18,700) people in North Carolina have died from the disease; and

WHEREAS, COVID-19 continues to infect thousands of North Carolinians every day, and a State of Emergency remains in place for the purpose of maintaining the state's ability to meet challenges presented by COVID-19; and

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

WHEREAS, as COVID-19 has continued to be spread from person to person across the United States and world, variants (genetically distinct strains) of COVID-19 have developed; and

WHEREAS, the Delta variant of COVID-19 is more transmissible than the original COVID-19 virus; and

WHEREAS, because the Delta variant is more contagious than the original virus or other current COVID-19 variants, it quickly became the most common kind of COVID-19 in North Carolina during summer 2021, and now, the Delta variant makes up more than ninety-five percent (95%) of all new COVID-19 cases in North Carolina; and

WHEREAS, the Delta variant's growing dominance, coupled with its increased transmissibility, led to a significant increase in the number of COVID-19 cases and hospitalizations in summer and early fall 2021, particularly among the unvaccinated; and

WHEREAS, new variants of the virus continue to develop, including, most recently, the Omicron variant, which has been labeled a "variant of concern" by the World Health Organization, and which has a greater risk of transmissibility than the original COVID-19 variant, according to preliminary evidence; and

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

WHEREAS, Executive Order No. 116 included certain suspensions of Federal Motor Carrier Safety Regulations; and

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

WHEREAS, on November 29, 2021, the Federal Motor Carrier Safety Administration ("FMCSA") issued Extension and Amendment of Emergency Declaration No. 2020-002 to provide regulatory relief for commercial motor vehicle operations that provide direct assistance in support of emergency relief efforts related to COVID-19; and

WHEREAS, the undersigned has determined that provisions in Executive Order Nos. 116 and 119 need to remain in place to allow for the continued expedited movement of vehicles in the state; and

WHEREAS, Executive Order No. 230, issued on August 31, 2021, extended the transportation-related provisions in Executive Order Nos. 116, 119, 133, 140, 146, 150, 157, 164, 192, 197 and 217; and

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

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

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

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

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

Section 1. Extensions

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

A. Executive Order Nos. 116 and 119.

1. Sections 5 and 5.5 of Executive Order No. 119 (which were extended by Executive Order Nos. 133, 140, 146, 150, 157, 164, 197, 217, 230 and reissued in Executive Order No. 192) are hereby extended through the end of the calendar day on February 28, 2022.
2. Section 5 of Executive Order No. 116 (which was amended by Section 6 of Executive Order No. 119, Section 1 of Executive Order No. 146, Section 1 of Executive Order No. 150, Section 1 of Executive Order No. 157, and Section 1 of Executive Order No. 192, and extended by Executive Order Nos. 133, 140, 146, 150, 157, 164, 197, 217, and 230, and reissued in Executive Order No. 192) is extended pursuant to N.C. Gen. Stat. § 166A-19.70(b) through the end of the calendar day on February 28, 2022

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

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

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

“This Executive Order is effective immediately and shall remain in effect until the end of the calendar day on February 28, 2022, or until rescinded or superseded by another applicable Executive Order.”

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

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

Section 2. Distribution

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

Section 3. Effective Date

This Executive Order is effective immediately. This Executive Order shall remain in effect through the end of the calendar day on February 28, 2022, unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 29th day of November 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

November 30, 2021

EXECUTIVE ORDER NO. 240

**FLEXIBILITY REGARDING CERTAIN LAW ENFORCEMENT TRAINING
COURSES**

WHEREAS, on March 10, 2020, the undersigned issued Executive 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, on February 24, 2021, the President issued notice that the national emergency relating to COVID-19 must remain in effect because the pandemic "continues to cause significant risk to the public health and safety of the Nation"; 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, 209-212, 215-217, 219-221, 224-225, 228, 232, 234, 236, and 238-239; and

WHEREAS, more than one million five hundred thirty-four thousand (1,534,000) people in North Carolina have had COVID-19, and over eighteen thousand seven hundred (18,700) people in North Carolina have died from the disease; and

WHEREAS, COVID-19 continues to infect thousands of North Carolinians every day, and a State of Emergency remains in place for the purpose of maintaining the state's ability to meet challenges presented by COVID-19; and

WHEREAS, the State of Emergency allows North Carolina to, among other flexibilities afforded to the state to address the COVID-19 pandemic, provide increased regulatory flexibility to the North Carolina Department of Health and Human Services (“NCDHHS”) and health care facilities, which allows health care providers to expand their capacity to treat patients and assist with vaccination efforts; and to respond to any spikes in spread of the disease; and

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

WHEREAS, as COVID-19 has continued to be spread from person to person across the United States and world, variants (genetically distinct strains) of COVID-19 have developed; and

WHEREAS, the Delta variant of COVID-19 is more transmissible than the original COVID-19 virus; and

WHEREAS, because the Delta variant is more contagious than the original virus or other current COVID-19 variants, it quickly became the most common kind of COVID-19 in North Carolina during summer 2021, and now, the Delta variant makes up more than ninety-five percent (95%) of all new COVID-19 cases in North Carolina; and

WHEREAS, the Delta variant’s growing dominance, coupled with its increased transmissibility, led to a significant increase in the number of COVID-19 cases and hospitalizations in summer and early fall 2021, particularly among the unvaccinated; and

WHEREAS, new variants of the virus continue to develop, including, most recently, the Omicron variant, which has been labeled a “variant of concern” by the World Health Organization, and which has a greater risk of transmissibility than the original COVID-19 variant, according to preliminary evidence; and

WHEREAS, in this State of Emergency, it is critical that law enforcement officers be able to protect the public, perform or facilitate emergency services, and fulfill emergency directives from the government; and

WHEREAS, many law enforcement training courses have had to be suspended or postponed to slow the spread of COVID-19 and to protect instructors and trainees; and

WHEREAS, in the event of a suspension or postponement, current administrative rules would cause progress to be lost in courses governed by the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs’ Education and Training Standards Commission; and

WHEREAS, this loss of progress could jeopardize law enforcement officers’ certification and reduce the number of law enforcement officers available at a time of great need; and

WHEREAS, the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs’ Education and Training Standards Commission have requested the flexibility to waive or modify the requirements that would cause progress to be lost; and

WHEREAS, Executive Order No. 228, issued with the concurrence of the Council of State, previously extended flexibility to the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs’ Education and Training Standards Commission to waive or modify certain requirements, but this flexibility has since lapsed; and

WHEREAS, for the reasons set forth herein, the undersigned has determined that the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs’ Education and Training Standards Commission should continue to have flexibility,

through the effective period of this Executive Order, to waive or modify the requirements that would cause progress to be lost; 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 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)(7), the officers and personnel of the departments, offices, and agencies of the state and its political subdivisions are required to cooperate with the undersigned and extend their services to the undersigned so that they can be utilized upon request; 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(b)(4), the undersigned, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a state agency which restricts the immediate relief of human suffering; and

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

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

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 set forth herein, **IT IS ORDERED**:

Section 1. Extending Time to Complete Criminal Justice Training Courses

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

- A. **Basic Law Enforcement Training courses.** The North Carolina Criminal Justice Education and Training Standards Commission may, in its discretion, waive or modify the requirement under 12 N.C. Admin. Code 09B .0202(b)(2) that the Basic Law Enforcement Training ("BLET") course be delivered "during consecutive calendar weeks, except that there may be as many as three (3) one-week breaks until course requirements are completed." This authorization applies to any BLET course that was in progress or commenced after November 1, 2021.
- B. **Detention Officer Certification courses.** The North Carolina Sheriffs' Education and Training Standards Commission may, in its discretion, waive or modify the requirement under 12 N.C. Admin. Code 10B .0704(a)(1)(A) that the Detention Officer Certification course be delivered "during consecutive calendar weeks." This authorization applies to any course that was in progress or commenced after November 1, 2021.

- C. **Other courses and individual trainees.** The North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission may, in their discretion, waive or modify all other requirements in Title 12, Chapters 9 and 10 of the North Carolina Administrative Code related to the "consecutive" week requirement for courses, or the excused absence limit for individual trainees. This authorization applies to any course that was in progress or commenced after November 1, 2021.

Section 2. 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 3. 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 4. Distribution

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

Section 5. Effective Date

This Executive Order is effective immediately. This Executive Order shall remain in effect through February 28, 2022, 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, provided, however, that waivers and modifications issued pursuant to Section 1 of this Executive Order for courses that commenced during the State of Emergency shall remain in effect for the duration of that course, unless explicitly rescinded or superseded by another applicable Executive Order, regardless of whether this Executive Order remains in effect or the State of Emergency is rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 30th day of November in the year of our Lord two thousand and twenty-one.


Roy Cooper
Governor

ATTEST:


Elaine F. Marshall
Secretary of State



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

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

Carbamazepine: all oral dosage forms

Cyclosporine: all oral dosage forms

Digoxin: all oral dosage forms

Ethosuximide

Levothyroxine sodium tablets

Lithium (including all salts): all oral dosage forms

Phenytoin (including all salts): all oral dosage forms

Procainamide

Theophylline (including all salts): all oral dosage forms

Warfarin sodium tablets

Tacrolimus: all oral dosage forms

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

TITLE 13 – DEPARTMENT OF LABOR

CHAPTER 01 - DEPARTMENTAL RULES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Labor intends to amend the rules cited as 13 NCAC 01B .0101, .0102 and repeal the rule cited as 13 NCAC 01B .0103.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.labor.nc.gov/rules-and-regulations>

Proposed Effective Date: May 1, 2022

Public Hearing:

Date: January 18, 2022

Time: 10:30 a.m.

Location: Virtual: <https://call.lifesizecloud.com/12571003> or +1 (312) 584-2401, 12571003#

Reason for Proposed Action: To modernize the rule and make it concurrent with the Administrative Procedures Act, NC General Statutes Chapter 150B.

Comments may be submitted to: Jill F. Cramer, 1101 Mail Service Center, Raleigh, NC 27699-1101; email jill.cramer@labor.nc.gov

Comment period ends: March 4, 2022

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 984-236-1850.

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

SUBCHAPTER 01B - RULE-MAKING AND ADMINISTRATIVE HEARING PROCEDURES

SECTION .0100 - PETITIONS FOR RULES

13 NCAC 01B .0101 INSTRUCTIONS FOR FILING A PETITION FOR RULE-MAKING HEARINGS

~~Any person wishing to submit a petition requesting the adoption, amendment or repeal of a rule by the Commissioner of Labor shall submit the petition in writing to: Rule making Coordinator, N.C. Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101. The exterior of the envelope or container of the petition shall clearly bear the notation: RULE MAKING PETITION.~~

(a) Any person may petition the Department to adopt a new permanent rule, or amend or repeal an existing permanent rule by submitting a rule-making petition to the Department at 1101 Mail Service Center, Raleigh, NC 27699-1101. The petition shall be titled "Petition for Rule-making" and shall include the following information:

- (1) the name and address of the person submitting the petition;
- (2) a citation to any rule for which an amendment or repeal is requested;
- (3) the text of any proposed rule or amended rule;
- (4) an explanation of why the new rule or amendment or repeal of an existing rule is requested and the effect of the new rule, amendment, or repeal on the Department;
- (5) the statutory authority for the agency to promulgate the rule(s);
- (6) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including cost factors for persons affected by the proposed rule(s);
- (7) a statement explaining the computation of the cost factors;
- (8) a description, including the entities, if known, of those most likely to be affected by the proposed rule(s);
- (9) documents and data supporting the proposed rule(s); and
- (10) any other information the person submitting the petition considers relevant.

(b) The Department shall decide whether to grant or deny a petition for rule-making within 120 days of receiving the petition. In making the decision, the Department shall consider the information submitted with the petition and any other relevant information.

(c) In its review of the proposed permanent rule, the Department shall consider whether it has authority to adopt the rule; the effect of the proposed rule on existing rules, programs, and practices; probable costs and cost factors of the proposed rule; and the impact of the rule on the public and regulated entities.

(d) When the Department denies a petition for rule-making, a written notice of the denial shall be sent to the person who submitted the request. The notice shall state the reason for the denial.

(e) When the Department grants a rulemaking petition, the Department shall initiate permanent rule-making proceedings and send written notice of the proceedings to the person who submitted the request.

(f) Filings that do not contain the information required by this Rule shall not be accepted and shall be returned by the Department to the person making the filing.

Authority G.S. 95-4(2).

13 NCAC 01B .0102 CONTENTS OF PETITION MAILING LIST

The petition shall include the following:

- (1) an indication of the subject area to which the petition is directed and, if known, the number of the North Carolina Administrative Code provision for which an amendment is proposed or the section of the North Carolina Administrative Code to which the new proposed rule is proposed to be added;
- (2) a printed copy of the text of the proposed amendment or rule and a computer disk containing the proposed text in WordPerfect7 or MSWORD7 or other word processing program convertible to WordPerfect or MSWORD. The requirement for a computer disk shall be waived upon a showing of lack of access to such a word processing program;
- (3) reasons for the proposal;
- (4) the effect of the proposed amendment or rule including:
 - (a) the effect on existing rules;
 - (b) the effect on local government, if any, as described in G.S. 150B-21(c) and 150B-21.4(b);
 - (c) whether the proposed amendment or rule would have a substantial economic impact as defined in G.S. 150B-21.4(b1) and an estimation of such impact and how the estimate was derived; and
 - (d) the primary types of employees, businesses or other entities on which there would be an effect;
- (5) any supporting data or other materials such as examples and research; and
- (6) names, telephone and facsimile numbers and address(es) including e-mail address(es) of the petitioner(s). If petitioner(s) represent organizations or entities, the name(s) and

addresses of the represented organizations shall also be provided.

(a) Any person or agency desiring to be placed on the mailing list for the Department's rule-making notices issued pursuant to G.S. 150B-21.2 may file a request in writing to the Commissioner of the Department at 1101 Mail Service Center Raleigh, NC 27699-1101.

(b) The request shall:

- (1) include the person's name and address;
- (2) specify the subject areas within the authority of the Department for which notice is requested; and
- (3) state the calendar year(s) for which the notice is desired.

Authority G.S. 95-4(2); 150B-16.

13 NCAC 01B .0103 DISPOSITION OF PETITIONS

(a) The rule making coordinator designated under G.S. 150B-21 or the commissioner's designee shall review the request. If the requirements of 13 NCAC 01B .0102 regarding the contents of the petition are not met, the petition shall not be accepted and shall be returned to the petitioner(s) with the deficiencies noted. Additional information may be requested from the petitioner(s).

(b) Complete petition(s) and accompanying materials shall be reviewed to determine whether the petition(s) will be granted or denied. Review of a petition may include additional information gathered by the department. Petitioner(s) shall be notified of the decision of the department in accordance with G.S. 150B-20.

Authority G.S. 95-4(2); 150B-16.

TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Alcoholic Beverage Control Commission intends to amend the rule cited as 14B NCAC 15C .0307.

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

Proposed Effective Date: May 1, 2022

Public Hearing:

Date: February 9, 2022

Time: 10:00 a.m.

Location: ABC Commission Hearing Room, 400 East Tryon Road, Raleigh, NC 27610

Reason for Proposed Action: To amend a permanent rule to expand the maximum allowable growler size for malt beverages and unfortified wine from 2 liters to 4 liters, as directed by the General Assembly in S.L. 2021-150, Sec. 7.

Comments may be submitted to: Walker Reagan, 400 East Tryon Road, Raleigh, NC 27610; phone (919) 984-7947; fax (919) 661-6165; email walker.reagan@abc.nc.gov

Comment period ends: *March 4, 2022*

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 984-236-1850.

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 15 - ALCOHOLIC BEVERAGE CONTROL
COMMISSION**

**SUBCHAPTER 15C - INDUSTRY MEMBERS:
RETAIL/INDUSTRY MEMBER RELATIONSHIPS: SHIP
CHANDLERS: AIR CARRIERS: FUEL ALCOHOL**

**SECTION .0300 - PACKAGING AND LABELING OF
MALT BEVERAGES AND WINE**

14B NCAC 15C .0307 GROWLERS

(a) As used in this Section, a "growler" is a rigid glass, ceramic, plastic, aluminum, or stainless steel container with a closure or cap with a secure sealing that is no larger than ~~2 liters (0.5283 gallons)~~ 4 liters (1.0567 gallons) into which a malt beverage or unfortified wine is prefilled, filled, or refilled for off-premises consumption.

(b) Malt beverages may be sold in growlers as follows:

- (1) Holders of only a brewery permit may sell, deliver, and ship growlers prefilled with the brewery's malt beverage for off-premises consumption provided a label is affixed to the growler that provides the information as required by Rules .0303(a) and .0305 of this Section.
- (2) Holders of retail permits pursuant to G.S. 18B-1001(1), (2), or (16) who do not hold a brewery permit shall not prefill growlers with malt beverage.
- (3) Holders of a brewery permit who also have retail permits pursuant to G.S. 18B-1001(1) may fill or refill growlers on demand with the

brewery's malt beverage for off-premises consumption, provided the label as required by Rules .0303(b) and (c) and .0305 of this Section is affixed to the growler.

- (4) Holders of retail permits pursuant to G.S. 18B-1001(1), (2), or (16) may fill or refill growlers on demand with draft malt beverage for off-premises consumption, provided the label as required by Rules .0303(b) and (c) and .0305 of this Section is affixed to the growler.
- (c) Unfortified wine may be sold in growlers as follows:
 - (1) Holders of only an unfortified winery permit may sell, deliver, and ship growlers prefilled with the winery's unfortified wine for off-premises consumption provided a label is affixed to the growler that provides the information as required by Rules .0304(a), (b), and (c), and .0305 of this Section.
 - (2) Holders of retail permits pursuant to G.S. 18B-1001(3), (4), or (16) who do not hold an unfortified winery permit shall not prefill growlers with unfortified wine.
 - (3) Holders of an unfortified winery permit who also have retail permits pursuant to G.S. 18B-1001(3) may fill or refill growlers on demand with the winery's unfortified wine for off-premises consumption, provided the label as required by Rules .0304(d) and (e) and .0305 of this Section is affixed to the growler.
 - (4) Holders of retail permits pursuant to G.S. 18B-1001(3), (4), or (16) may fill or refill growlers on demand with unfortified wine for off-premises consumption, provided the label as required by Rules .0304(d) and (e) and .0305 of this Section is affixed to the growler.
- (d) Holders of retail permits pursuant to G.S. 18B-1001(1), (2), (3), (4), or (16) shall affix a label as required by Rules .0303(b) and (c), .0304(d) and (e), and .0305 of this Section to the growler when filling or refilling a growler.
- (e) Holders of retail permits pursuant to G.S. 18B-1001(1), (2), (3), (4), or (16), may, in their discretion, refuse to fill or refill a growler, except in matters of discrimination pursuant to G.S. 18B-305(c).

Authority G.S. 18B-100; 18B-206(a); 18B-207; 18B-305; 18B-1001.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to adopt the rule cited as 15A NCAC 07M .0310, amend the rules cited as 15A NCAC 07H .0208, .0306, .0308, .1205, .1801, .1805; 07J .0403, .0404; 07K .0208; 07M .0302, .0307, and repeal the rules cited as 15A NCAC 07M .0301, .0303, .0306 and .0308.

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

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

Proposed Effective Date: July 1, 2022

Public Hearing:

Date: February 10, 2022

Time: 1:30 p.m.

Location: Beaufort Hotel, 2440 Lennoxville Road, Beaufort, NC 28516

Reason for Proposed Action:

15A NCAC 07H .0208 and .1205: The CRC is proposing amendments to allow the permitting of structural boat covers.

15A NCAC 07H .0306 and 07K .0208: The CRC is proposing amendments to clarify when a permit is needed for the elevation of structures.

15A NCAC 07J .0403 and .0404: The CRC is proposing amendments to lengthen the initial expiration date of most Major Permits.

15A NCAC 07H .0308, .1801, and .1805: The CRC is proposing amendments to extend the use of a beach bulldozing General Permit or Emergency Permit to oceanfront areas inside an inlet hazard area.

15A NCAC 07M .0300: The CRC is proposing amendments to address implementation aspects of the CAMA Public Beach and Coastal Waterfront Access Program as well as reorganize some of the rules based on grant administration, local government requirements, and project selection.

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

Comment period ends: March 4, 2022

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 984-236-1850.

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 07 - COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0200 – THE ESTUARINE AND OCEAN SYSTEMS

15A NCAC 07H .0208 USE STANDARDS

(a) General Use Standards

- (1) Uses that are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and public trust areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads, factories, and parking lots are examples of uses that are not water dependent. Uses that are water dependent include: utility crossings, wind energy facilities, docks, wharves, boat ramps, dredging, bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring pilings, navigational channels, access channels and drainage ditches;
- (2) Before being granted a permit, the CRC or local permitting authority shall find that the applicant has complied with the following standards:
 - (A) The location, design, and need for development, as well as the construction activities involved shall be consistent with the management objective of the Estuarine and Ocean System AEC (Rule .0203 of this subchapter) and shall be sited and designed to avoid significant adverse impacts upon the productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation as defined by the Marine Fisheries Commission, and spawning and nursery areas;
 - (B) Development shall comply with State and federal water and air quality rules, statutes and regulations;
 - (C) Development shall not cause irreversible damage to documented archaeological or historic resources as identified by the N.C. Department of Cultural resources;
 - (D) Development shall not increase siltation;

- (E) Development shall not create stagnant water bodies;
 - (F) Development shall be timed to avoid significant adverse impacts on life cycles of estuarine and ocean resources; and
 - (G) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters.
- (3) When the proposed development is in conflict with the general or specific use standards set forth in this Rule, the CRC may approve the development if the applicant can demonstrate that the activity associated with the proposed project will have public benefits as identified in the findings and goals of the Coastal Area Management Act, that the public benefits outweigh the long range adverse effects of the project, that there is no reasonable alternate site available for the project, and that all reasonable means and measures to mitigate adverse impacts of the project have been incorporated into the project design and shall be implemented at the applicant's expense. Measures taken to mitigate or minimize adverse impacts shall include actions that:
- (A) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
 - (B) restore the affected environment; or
 - (C) compensate for the adverse impacts by replacing or providing substitute resources.
- (4) "Primary nursery areas" are defined as those areas in the estuarine and ocean system where initial post larval development of finfish and crustaceans takes place. They are usually located in the uppermost sections of a system where populations are uniformly early juvenile stages. Primary nursery areas are designated and described by the N.C. Marine Fisheries Commission (MFC) and by the N.C. Wildlife Resources Commission (WRC);
- (5) "Outstanding Resource Waters" (ORW) are defined as those estuarine waters and public trust areas classified by the N.C. Environmental Management Commission (EMC). In those estuarine waters and public trust areas classified as ORW by the EMC no permit required by the Coastal Area Management Act shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC, or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site specific information, degrade the water quality or outstanding resource values; and
- (6) Beds of "submerged aquatic vegetation" (SAV) are defined as those habitats in public trust and estuarine waters vegetated with one or more species of submergent vegetation. These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the Marine Fisheries Commission. Any rules relating to SAVs shall not apply to non-development control activities authorized by the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et seq.).
- (b) Specific Use Standards
- (1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of submerged aquatic vegetation as defined by the MFC, or areas of coastal wetlands except as otherwise allowed within this Subchapter. Navigation channels, canals and boat basins shall also comply with the following standards:
 - (A) Navigation channels and canals may be allowed through fringes of regularly and irregularly flooded coastal wetlands if the loss of wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands, and if there is no reasonable alternative that would avoid the wetland losses;
 - (B) All dredged material shall be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or coastal wetlands;
 - (C) Dredged material from maintenance of channels and canals through irregularly flooded wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method having no significant, long-term wetland impacts. Under no circumstances shall dredged material be placed on regularly flooded wetlands. New dredged material disposal areas shall not be located in the buffer area as outlined in 15A NCAC 07H .0209(d)(10);
 - (D) Widths of excavated canals and channels shall be the minimum required to meet the applicant's needs but not impair water circulation;
 - (E) Boat basin design shall maximize water exchange by having the widest possible opening and the shortest practical entrance canal. Depths of

- boat basins shall decrease from the waterward end inland;
 - (F) Any canal or boat basin shall be excavated no deeper than the depth of the connecting waters;
 - (G) Construction of finger canal systems are not allowed. Canals shall be either straight or meandering with no right angle corners;
 - (H) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may include shoreline stabilization, vegetative stabilization, or setbacks based on soil characteristics; and
 - (I) Maintenance excavation in canals, channels and boat basins within primary nursery areas and areas of submerged aquatic vegetation as defined by the MFC shall be avoided. However, when essential to maintain a traditional and established use, maintenance excavation may be approved if the applicant meets all of the following criteria:
 - (i) The applicant demonstrates and documents that a water-dependent need exists for the excavation;
 - (ii) There exists a previously permitted channel that was constructed or maintained under permits issued by the State or Federal government. If a natural channel was in use, or if a human-made channel was constructed before permitting was necessary, there shall be evidence that the channel was continuously used for a specific purpose;
 - (iii) Excavated material can be removed and placed in a disposal area in accordance with Part (b)(1)(B) of this Rule without impacting adjacent nursery areas and submerged aquatic vegetation as defined by the MFC; and
 - (iv) The original depth and width of a human-made or natural channel shall not be increased to allow a new or expanded use of the channel.
- (2) Hydraulic Dredging
- (A) The terminal end of the dredge pipeline shall be positioned at a distance sufficient to preclude erosion of the containment dike and a maximum distance from spillways to allow settlement of suspended solids;
 - (B) Dredged material shall be either confined on high ground by retaining structures or deposited on beaches for purposes of renourishment if the material is suitable in accordance with the rules in this Subchapter, except as provided in Part (G) of this Subparagraph;
 - (C) Confinement of excavated materials shall be landward of all coastal wetlands and shall employ soil stabilization measures to prevent entry of sediments into the adjacent water bodies or coastal wetlands;
 - (D) Effluent from diked areas receiving disposal from hydraulic dredging operations shall be contained by pipe, trough, or similar device to a point waterward of emergent vegetation or, where local conditions require, below normal low water or normal water level.
 - (E) When possible, effluent from diked disposal areas shall be returned to the area being dredged;
 - (F) A water control structure shall be installed at the intake end of the effluent pipe.
 - (G) Publicly funded projects shall be considered by review agencies on a case-by-case basis with respect to dredging methods and dredged material disposal in accordance with Subparagraph (a)(3) of this Rule; and
 - (H) Dredged material from closed shellfish waters and effluent from diked disposal areas used when dredging in closed shellfish waters shall be returned to the closed shellfish waters.
- (3) Drainage Ditches
- (A) Drainage ditches located through any coastal wetland shall not exceed six feet wide by four feet deep (from ground surface) unless the applicant shows that larger ditches are necessary;
 - (B) Dredged material derived from the construction or maintenance of drainage ditches through regularly flooded marsh shall be placed landward of these marsh areas in a manner that will insure that entry of sediment into the water or marsh will not occur. Dredged material derived

- from the construction or maintenance of drainage ditches through irregularly flooded marshes shall be placed on non-wetlands wherever feasible. Non-wetland areas include relic disposal sites;
 - (C) Excavation of new ditches through high ground shall take place landward of an earthen plug or other methods to minimize siltation to adjacent water bodies; and
 - (D) Drainage ditches shall not have a significant adverse impact on primary nursery areas, productive shellfish beds, submerged aquatic vegetation as defined by the MFC, or other estuarine habitat. Drainage ditches shall be designed so as to minimize the effects of freshwater inflows, sediment, and the introduction of nutrients to receiving waters. Settling basins, water gates and retention structures are examples of design alternatives that may be used to minimize sediment introduction.
- (4) Nonagricultural Drainage
 - (A) Drainage ditches shall be designed so that restrictions in the volume or diversions of flow are minimized to both surface and ground water;
 - (B) Drainage ditches shall provide for the passage of migratory organisms by allowing free passage of water of sufficient depth; and
 - (C) Drainage ditches shall not create stagnant water pools or changes in the velocity of flow.
- (5) Marinas. "Marinas" are defined as any publicly or privately owned dock, basin or wet boat storage facility constructed to accommodate more than 10 boats and providing any of the following services: permanent or transient docking spaces, dry storage, fueling facilities, haulout facilities and repair service. Excluded from this definition are boat ramp facilities allowing access only, temporary docking and none of the preceding services. Expansion of existing facilities shall comply with the standards of this Subparagraph for all development other than maintenance and repair necessary to maintain previous service levels. Marinas shall comply with the following standards:
 - (A) Marinas shall be sited in non-wetland areas or in deep waters (areas not requiring dredging) and shall not disturb shellfish resources, submerged aquatic vegetation as defined by the MFC, or wetland habitats, except for dredging necessary for access to high-ground sites. The following four alternatives for siting marinas are listed in order of preference for the least damaging alternative; marina projects shall be designed to have the highest of these four priorities that is deemed feasible by the permit letting agency:
 - (i) an upland basin site requiring no alteration of wetland or estuarine habitat and providing flushing by tidal or wind generated water circulation or basin design characteristics;
 - (ii) an upland basin site requiring dredging for access when the necessary dredging and operation of the marina will not result in significant adverse impacts to existing fishery, shellfish, or wetland resources and the basin design shall provide flushing by tidal or wind generated water circulation;
 - (iii) an open water site located outside a primary nursery area which utilizes piers or docks rather than channels or canals to reach deeper water; and
 - (iv) an open water marina requiring excavation of no intertidal habitat, and no dredging greater than the depth of the connecting channel.
 - (B) Marinas that require dredging shall not be located in primary nursery areas nor in areas which require dredging through primary nursery areas for access. Maintenance dredging in primary nursery areas for existing marinas shall comply with the standards set out in Part (b)(1)(I) of this Rule;
 - (C) To minimize coverage of public trust areas by docks and moored vessels, dry storage marinas shall be used where feasible;
 - (D) Marinas to be developed in waters subject to public trust rights (other than those created by dredging upland basins or canals) for the purpose of providing docking for residential developments shall be allowed no more than 27 square feet of public

- trust areas for every one linear foot of shoreline adjacent to these public trust areas for construction of docks and mooring facilities. The 27 square feet allocation does not apply to fairway areas between parallel piers or any portion of the pier used only for access from land to the docking spaces;
- (E) To protect water quality in shellfishing areas, marinas shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the marina. In compliance with 33 U.S. Code Section 101(a)(2) of the Clean Water Act and North Carolina Water Quality Standards (15A NCAC 02B .0200) adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Coastal Management shall consult with the Division of Marine Fisheries regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development;
- (F) Marinas shall not be located without written consent from the leaseholders or owners of submerged lands that have been leased from the state or deeded by the State;
- (G) Marina basins shall be designed to promote flushing through the following design criteria:
- (i) the basin and channel depths shall gradually increase toward open water and shall never be deeper than the waters to which they connect; and
 - (ii) when possible, an opening shall be provided at opposite ends of the basin to establish flow-through circulation;
- (H) Marinas shall be designed so that the capability of the waters to be used for navigation or for other public trust rights in estuarine or public trust waters are not jeopardized while allowing the applicant access to deep waters;
- (I) Marinas shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels and their boundaries as designated by the US Army Corps of Engineers. This includes mooring sites (permanent or temporary); speed or traffic reductions; or any other device, either physical or regulatory, that may cause a federally maintained channel to be restricted;
- (J) Open water marinas shall not be enclosed within breakwaters that preclude circulation sufficient to maintain water quality;
- (K) Marinas that require dredging shall provide areas in accordance with Part (b)(1)(B) of this Rule to accommodate disposal needs for future maintenance dredging, including the ability to remove the dredged material from the marina site;
- (L) Marina design shall comply with all applicable EMC requirements (15A NCAC 02B .0200) for management of stormwater runoff. Stormwater management systems shall not be located within the 30-foot buffer area outlined in 15A NCAC 07H .0209(d);
- (M) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and listing the availability of local pump-out services;
- (N) Boat maintenance areas shall be designed so that all scraping, sandblasting, and painting will be done over dry land with collection and containment devices that prevent entry of waste materials into adjacent waters;
- (O) All marinas shall comply with all applicable standards for docks and piers, shoreline stabilization, dredging and dredged material disposal of this Rule;
- (P) All applications for marinas shall be reviewed by the Division of Coastal Management to determine their potential impact to coastal resources and compliance with applicable standards of this Rule. Such review

- shall also consider the cumulative impacts of marina development in accordance with G.S. 113A-120(a)(10); and
- (Q) Replacement of existing marinas to maintain previous service levels shall be allowed provided that the development complies with the standards for marina development within this Section.
- (6) Piers and Docking Facilities.
- (A) Piers shall not exceed six feet in width. Piers greater than six feet in width shall be permitted only if the greater width is necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur;
- (B) The total square footage of shaded impact for docks and mooring facilities (excluding the pier) allowed shall be eight square feet per linear foot of shoreline with a maximum of 2,000 square feet. In calculating the shaded impact, uncovered open water slips shall not be counted in the total. Projects requiring dimensions greater than those stated in this Rule shall be permitted only if the greater dimensions are necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur. Size restrictions shall not apply to marinas;
- (C) Piers and docking facilities over coastal wetlands shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking;
- (D) A boathouse shall not exceed 400 square feet except to accommodate a documented need for a larger boathouse and shall have sides extending no farther than one-half the height of the walls as measured from the Normal Water Level or Normal High Water and covering only the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of ~~shoreline~~. Shoreline, except that structural boat covers utilizing a frame-supported fabric covering can be permitted on properties with less than 75 linear feet of shoreline when using screened fabric for side walls.
- (E) Size restrictions do not apply to marinas;
- (E) The total area enclosed by an individual boat lift shall not exceed 400 square feet except to accommodate a documented need for a larger boat lift;
- (F) Piers and docking facilities shall be single story. They may be roofed but shall not be designed to allow second story use;
- (G) Pier and docking facility length shall be limited by:
- (i) not extending beyond the established pier or docking facility length along the same shoreline for similar use. This restriction does not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public;
- (ii) not extending into the channel portion of the water body; and
- (iii) not extending more than one-fourth the width of a natural water body, or human-made canal or basin. Measurements to determine widths of the water body, canals or basins shall be made from the waterward edge of any coastal wetland vegetation that borders the water body. The one-fourth length limitation does not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line. The one-fourth length limitation shall not apply when the proposed pier is located between longer piers or docking facilities within 200 feet of the applicant's property. However, the proposed pier or docking facility shall not be longer than the pier head line established by the adjacent piers or docking facilities, nor longer than one-third the width of the water body.

- (H) Piers or docking facilities longer than 400 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least 1 foot each 100 foot increment of length longer than 400 feet, or, if the additional length is necessary to span some obstruction to navigation. Measurements to determine lengths shall be made from the waterward edge of any coastal wetland vegetation that borders the water body;
- (I) Piers and docking facilities shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier or docking facility and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. If the adjacent property is sold before construction of the pier or docking facility commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the pier. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 07H .1205(t) illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable as determined by the Director of the Division of Coastal Management; and
- (J) Applicants for authorization to construct a pier or docking facility shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed dock or pier would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.
- (7) Bulkheads
- (A) Bulkhead alignment, for the purpose of shoreline stabilization, shall approximate the location of normal high water or normal water level;
- (B) Bulkheads shall be constructed landward of coastal wetlands in order to avoid significant adverse impacts to the resources;
- (C) Bulkhead backfill material shall be obtained from an upland source approved by the Division of Coastal Management pursuant to this Section, or if the bulkhead is a part of a permitted project involving excavation from a non-upland source, the material so obtained may be contained behind the bulkhead;
- (D) Bulkheads shall be permitted below normal high water or normal water level only when the following standards are met:
- (i) the property to be bulkheaded has an identifiable erosion problem, whether it results from natural causes or adjacent bulkheads, or it has unusual geographic or geologic features, e.g. steep grade bank, which will cause the applicant unreasonable hardship under the other provisions of this Rule;
- (ii) the bulkhead alignment extends no further below normal high water or normal water level than necessary to allow recovery of the area eroded in the year prior to the date of application, to align with adjacent bulkheads, or to mitigate the unreasonable hardship resulting from the unusual geographic or geologic features;
- (iii) the bulkhead alignment will not adversely impact public trust rights or the property of adjacent riparian owners;
- (iv) the need for a bulkhead below normal high water or normal water level is documented by the Division of Coastal Management; and

- (v) the property to be bulkheaded is in a non-oceanfront area.
- (E) Where possible, sloping rip-rap, gabions, or vegetation shall be used rather than bulkheads.
- (8) Beach Nourishment
 - (A) Beach creation or maintenance may be allowed to enhance water related recreational facilities for public, commercial, and private use consistent with the following:
 - (i) Beaches may be created or maintained in areas where they have historically been found due to natural processes;
 - (ii) Material placed in the water and along the shoreline shall be clean sand and free from pollutants. Grain size shall be equal to that found naturally at the site;
 - (iii) Beach creation shall not be allowed in primary nursery areas, nor in any areas where siltation from the site would pose a threat to shellfish beds;
 - (iv) Material shall not be placed on any coastal wetlands or submerged aquatic vegetation as defined by MFC;
 - (v) Material shall not be placed on any submerged bottom with significant shellfish resources as identified by the Division of Marine Fisheries during the permit review; and
 - (vi) Beach construction shall not create the potential for filling adjacent navigation channels, canals or boat basins.
 - (B) Placing unconfined sand material in the water and along the shoreline shall not be allowed as a method of shoreline erosion control;
 - (C) Material from dredging projects may be used for beach nourishment if:
 - (i) it is first handled in a manner consistent with dredged material disposal as set forth in this Rule;
 - (ii) it is allowed to dry prior to being placed on the beach; and
 - (iii) only that material of acceptable grain size as set forth in Subpart (b)(8)(A)(ii) of this Rule is removed from the disposal site for placement on the beach. Material shall not be placed directly on the beach by dredge or dragline during maintenance excavation.
- (D) Beach construction shall comply with State and federal water quality standards;
- (E) The renewal of permits for beach nourishment projects shall require an evaluation by the Division of Coastal Management of any adverse impacts of the original work; and
- (F) Permits issued for beach nourishment shall be limited to authorizing beach nourishment only one time.
- (9) Groins
 - (A) Groins shall not extend more than 25 feet waterward of the normal high water or normal water level unless a longer structure is justified by site specific conditions and by an individual who meets any North Carolina occupational licensing requirements for the type of structure being proposed and approved during the application process;
 - (B) Groins shall be set back a minimum of 15 feet from the adjoining riparian lines. The setback for rock groins shall be measured from the toe of the structure. This setback may be waived by written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the groin;
 - (C) Groins shall pose no threat to navigation;
 - (D) The height of groins shall not exceed one foot above normal high water or normal water level;
 - (E) No more than two structures shall be allowed per 100 feet of shoreline unless the applicant provides evidence that more structures are needed for shoreline stabilization.
 - (F) "L" and "T" sections shall not be allowed at the end of groins; and
 - (G) Riprap material used for groin construction shall be free from loose

- dirt or any other pollutant and of a size sufficient to prevent its movement from the site by wave and current action.
- (10) "Freestanding Moorings".
- (A) A "freestanding mooring" is any means to attach a ship, boat, vessel, floating structure or other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling as long as the piling is not associated with an existing or proposed pier, dock, or boathouse;
- (B) Freestanding moorings shall be permitted only:
- (i) to riparian property owners within their riparian corridors; or
- (ii) to any applicant proposing to locate a mooring buoy consistent with a water use plan that is included in either the local zoning or land use plan.
- (C) All mooring fields shall provide an area for access to any mooring(s) and other land based operations that shall include wastewater pumpout, trash disposal and vehicle parking;
- (D) To protect water quality of shellfishing areas, mooring fields shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the mooring field. In compliance with Section 101(a)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 (a)(2), and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Marine Fisheries shall be consulted regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area
- where harvest will be affected by the development;
- (E) Moorings shall not be located without written consent from the leaseholders or owners of submerged lands that have been leased from the state or deeded by the State;
- (F) Moorings shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels. This includes mooring sites (permanent or temporary), speed or traffic reductions, or any other device, either physical or regulatory, which may cause a federally maintained channel to be restricted;
- (G) Open water moorings shall not be enclosed within breakwaters that preclude circulation and degrade water quality in violation of EMC standards;
- (H) Moorings and the associated land based operation design shall comply with all applicable EMC requirements for management of stormwater runoff;
- (I) Mooring fields shall have posted in view of patrons a notice prohibiting the discharge of any waste from boat toilets or any other discharge and listing the availability of local pump-out services and waste disposal;
- (J) Freestanding moorings associated with commercial shipping, public service or temporary construction or salvage operations may be permitted without a public sponsor;
- (K) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing including the length of the vessel to be moored. Moorings and the attached vessel shall not interfere with the access of any riparian owner nor shall it block riparian access to channels or deep water, which allows riparian access. Freestanding moorings shall not interfere with the ability of any riparian owner to place a pier for access;
- (L) Freestanding moorings shall not be established in submerged cable or pipe crossing areas or in a manner that interferes with the operations of an access through any bridge;
- (M) Freestanding moorings shall be marked or colored in compliance with U.S. Coast Guard and the WRC requirements and the required marking maintained for the life of the mooring(s); and

- (N) The type of material used to create a mooring must be free of pollutants and of a design and type of material so as to not present a hazard to navigation or public safety.
- (11) Filling of Canals, Basins and Ditches - Notwithstanding the general use standards for estuarine systems as set out in Paragraph (a) of this Rule, filling canals, basins and ditches shall be allowed if all of the following conditions are met:
- (A) the area to be filled was not created by excavating lands which were below the normal high water or normal water level;
 - (B) if the area was created from wetlands, the elevation of the proposed filling does not exceed the elevation of said wetlands so that wetland function will be restored;
 - (C) the filling will not adversely impact any designated primary nursery area, shellfish bed, submerged aquatic vegetation as defined by the MFC, coastal wetlands, public trust right or public trust usage; and
 - (D) the filling will not adversely affect the value and enjoyment of property of any riparian owner.
- (12) "Submerged Lands Mining"
- (A) Development Standards. Mining of submerged lands shall meet all the following standards:
 - (i) The biological productivity and biological significance of mine sites, or borrow sites used for sediment extraction, shall be evaluated for significant adverse impacts and a protection strategy for these natural functions and values provided with the State approval request or permit application;
 - (ii) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant benthic communities identified by the Division of Marine Fisheries or the WRC shall be avoided;
 - (iii) Mining shall avoid significant archaeological resources as defined in Rule .0509 of this Subchapter; shipwrecks identified by the Department of Cultural Resources; and unique geological features that
- require protection from uncontrolled or incompatible development as identified by the Division of Energy, Mineral, and Land Resources pursuant to G.S. 113A-113(b)(4)(g);
- (iv) Mining activities shall not be conducted on or within 500 meters of significant biological communities identified by the Division of Marine Fisheries or the WRC, such as high relief hard bottom areas. "High relief" is defined for this Part as relief greater than or equal to one-half meter per five meters of horizontal distance;
 - (v) Mining activities shall be timed to minimize impacts on the life cycles of estuarine or ocean resources; and
 - (vi) Mining activities shall not affect potable groundwater supplies, wildlife, freshwater, estuarine, or marine fisheries.
- (B) Permit Conditions. Permits for submerged lands mining may be conditioned on the applicant amending the mining proposal to include measures necessary to ensure compliance with the provisions of the Mining Act and the rules for development set out in this Subchapter. Permit conditions shall also include:
- (i) Monitoring by the applicant to ensure compliance with all applicable development standards; and
 - (ii) A determination of the necessity and feasibility of restoration shall be made by the Division of Coastal Management as part of the permit or consistency review process. Restoration shall be necessary where it will facilitate recovery of the pre-development ecosystem. Restoration shall be considered feasible unless, after consideration of all practicable restoration alternatives, the Division of Coastal Management determines that the adverse

- effects of restoration outweigh the benefits of the restoration on estuarine or ocean resources. If restoration is determined to be necessary and feasible, then the applicant shall submit a restoration plan to the Division of Coastal Management prior to the issuance of the permit.
- (C) Dredging activities for the purposes of mining natural resources shall be consistent with the development standards set out in this Rule;
- (D) Mitigation. Where mining cannot be conducted consistent with the development standards set out in this Rule, the applicant may request mitigation approval under 15A NCAC 07M .0700; and
- (E) Public Benefits Exception. Projects that conflict with the standards in this Subparagraph, but provide a public benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this Rule.
- (13) "Wind Energy Facilities"
- (A) An applicant for the development and operation of a wind energy facility shall provide:
- (i) an evaluation of the proposed noise impacts of the turbines to be associated with the proposed facility;
 - (ii) an evaluation of shadow flicker impacts for the turbines to be associated with the proposed facility;
 - (iii) an evaluation of avian and bat impacts of the proposed facility;
 - (iv) an evaluation of viewshed impacts of the proposed facility;
 - (v) an evaluation of potential user conflicts associated with development in the proposed project area; and
 - (vi) a plan regarding the action to be taken upon decommissioning and removal of the wind energy facility. The plan shall include estimates of monetary costs, time frame of removal and the proposed site condition after decommissioning.
- (B) Development Standards. Development of wind energy facilities shall meet the following standards in addition to adhering to the requirements outlined in Part (a)(13)(A) of this Rule:
- (i) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant benthic communities identified by the Division of Marine Fisheries or the WRC shall be avoided;
 - (ii) Development shall not be sited on or within 500 meters of significant biological communities identified by the Division of Marine Fisheries or the WRC, such as high relief hard bottom areas. High relief is defined for this standard as relief greater than or equal to one-half meter per five meters of horizontal distance;
 - (iii) Development shall not cause irreversible damage to documented archeological resources including shipwrecks identified by the Department of Cultural Resources and unique geological features that require protection from uncontrolled or incompatible development as identified by the Division of Energy, Mineral, and Land Resources pursuant to G.S. 113A-113(b)(4)(g);
 - (iv) Development activities shall be timed to avoid significant adverse impacts on the life cycles of estuarine or ocean resources, or wildlife;
 - (v) Development or operation of a wind energy facility shall not jeopardize the use of the surrounding waters for navigation or for other public trust rights in public trust areas or estuarine waters; and
 - (vi) Development or operation of a wind energy facility shall not interfere with air navigation routes, air traffic control areas, military training routes or special use airspace and shall comply

with standards adopted by the
Federal Aviation
Administration and codified
under 14 CFR Part 77.13.

- (C) Permit Conditions. Permits for wind energy facilities may be conditioned on the applicant amending the proposal to include measures necessary to ensure compliance with the standards for development set out in this Rule. Permit conditions may include monitoring to ensure compliance with all applicable development standards; and
- (D) Public Benefits Exception. Projects that conflict with these standards, but provide a public benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this Rule.

Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124.

SECTION .0300 - OCEAN HAZARD AREAS

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

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

- (1) The ocean hazard setback for development shall be measured in a landward direction from the vegetation line, the static vegetation line, or the measurement line, whichever is applicable.
- (2) In areas with a development line, the ocean hazard setback shall be set in accordance with Subparagraphs (a)(3) through (9) of this Rule. With the exception of those types of development defined in 15A NCAC 07J .1301(d), in no case shall new development be sited seaward of the development line. In areas with a Static Line Exception approved in accordance with 15A NCAC 07J .1200 and a Development Line approved in accordance with 15A NCAC 07J .1300, the petitioner shall notify the Division of Coastal Management which one of the two approaches will be utilized and applied to the entire large-scale project area as defined in 15A NCAC 07H .0305(a)(7).
- (3) In no case shall a development line be created or established on State-owned lands or oceanward of the mean high water line or perpetual property easement line, whichever is more restrictive.
- (4) The ocean hazard setback shall be determined by both the size of development and the shoreline long term erosion rate as defined in

Rule .0304 of this Section. "Development size" is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:

- (A) The total square footage of heated or air-conditioned living space;
- (B) The total square footage of parking elevated above ground level; and
- (C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing.

Decks, roof-covered porches, and walkways shall not be included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.

- (5) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback shall be established based on the following criteria:

- (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
- (B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
- (C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate, whichever is greater;
- (D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;
- (E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75

- times the shoreline erosion rate, whichever is greater;
 - (F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;
 - (G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;
 - (H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
 - (I) Infrastructure that is linear in nature, such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water, and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
 - (J) Parking lots greater than or equal to 5,000 square feet require a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
 - (K) Notwithstanding any other setback requirement of this Subparagraph, a building or other structure greater than or equal to 5,000 square feet in a community with a static line exception in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either the static vegetation line, the vegetation line, or measurement line, whichever is farthest landward; and
 - (L) Notwithstanding any other setback requirement of this Subparagraph, replacement of single-family or duplex residential structures with a total floor area greater than 5,000 square feet, and commercial and multi-family residential structures with a total floor area no greater than 10,000 square feet, shall be allowed provided that the structure meets the following criteria:
 - (i) the structure was originally constructed prior to August 11, 2009;
 - (ii) the structure as replaced does not exceed the original footprint or square footage;
 - (iii) it is not possible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under Subparagraph (a)(5) of this Rule;
 - (iv) the structure as replaced meets the minimum setback required under Part (a)(5)(A) of this Rule; and
 - (v) the structure is rebuilt as far landward on the lot as feasible.
- (6) If a primary dune exists in the AEC on or landward of the lot where the development is proposed, the development shall be landward of the crest of the primary dune, the ocean hazard setback, or development line, whichever is farthest from vegetation line, static vegetation line, or measurement line, whichever is applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback, but shall not be located on or oceanward of a frontal dune or the development line. The words "existing lots" in this Rule shall mean a lot or tract of land that, as of June 1, 1979, is specifically described in a recorded plat and cannot be enlarged by combining the lot or tract of land with a contiguous lot or tract of land under the same ownership.
 - (7) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot where the development is proposed, the development shall be set landward of the frontal dune, ocean hazard setback, or development line, whichever is farthest from the vegetation line, static vegetation line, or measurement line, whichever is applicable.
 - (8) If neither a primary nor frontal dune exists in the AEC on or landward of the lot where development is proposed, the structure shall be landward of the ocean hazard setback or development line, whichever is more restrictive.
 - (9) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established

- in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.
- (10) Established common law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.
- (11) Development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the static vegetation line as defined in this Section, unless a development line has been approved by the Coastal Resources Commission in accordance with 15A NCAC 07J .1300.
- (12) In order to allow for development landward of the large-scale beach fill project that cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Subparagraphs (a)(1) and (a)(5) of this Rule, a local government, group of local governments involved in a regional beach fill project, or qualified "owners' association" as defined in G.S. 47F-1-103(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association and has jurisdiction over at least one mile of ocean shoreline, may petition the Coastal Resources Commission for a "static line exception" in accordance with 15A NCAC 07J .1200. The static line exception shall apply to development of property that lies both within the jurisdictional boundary of the petitioner and the boundaries of the large-scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to use the setback provisions defined in Part (a)(5)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner, and the boundaries of the large-scale beach fill project. If the request is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static vegetation line under the following conditions:
- (A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(5) of this Rule;
- (B) Development setbacks shall be calculated from the shoreline erosion rate in place at the time of permit issuance;
- (C) No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure. When the configuration of a lot precludes the placement of a building or structure in line with the landward-most adjacent building or structure, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;
- (D) With the exception of swimming pools, the development defined in Rule .0309(a) of this Section shall be allowed oceanward of the static vegetation line; and
- (E) Development shall not be eligible for the exception defined in Rule .0309(b) of this Section.
- (b) No development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon that would adversely affect the integrity of the dune. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these other dunes shall be allowed only to the extent permitted by 15A NCAC 07H .0308(b).
- (c) Development shall not cause irreversible damage to historic architectural or archaeological resources as documented by the local historic commission, the North Carolina Department of Natural and Cultural Resources, or the National Historical Registry.
- (d) Development shall comply with minimum lot size and setback requirements established by local regulations.
- (e) Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks existing as of June 1, 1979.
- (f) Development shall comply with the general management objective for ocean hazard areas set forth in 15A NCAC 07H .0303.
- (g) Development shall not interfere with legal access to, or use of, public resources, nor shall such development increase the risk of damage to public trust areas.
- (h) Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense and may include actions that:
- (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
- (2) restore the affected environment; or

- (3) compensate for the adverse impacts by replacing or providing substitute resources.
- (i) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written acknowledgment from the applicant to the Division of Coastal Management that the applicant is aware of the risks associated with development in this hazardous area and the limited suitability of this area for permanent structures. The acknowledgement shall state that the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.
- (j) ~~All~~ The relocation or elevation of structures shall require permit approval. Structures relocated with public funds shall comply with the applicable setback line and other applicable AEC rules. Structures, including septic tanks and other essential accessories, relocated entirely with non-public funds shall be relocated the maximum feasible distance landward of the present location. Septic tanks shall not be located oceanward of the primary structure. All relocation of structures shall meet all other applicable local and state rules.
- (1) Structures relocated landward with public funds shall comply with the applicable ocean hazard setbacks and other applicable AEC rules.
 - (2) Structures relocated landward entirely with non-public funds that do not meet current applicable ocean hazard setbacks may be relocated the maximum feasible distance landward of its present location. Septic tanks shall not be relocated oceanward of the primary structure.
 - (3) Existing structures shall not be elevated if any portion of the structure is located seaward of the vegetation line.
- (k) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). Any such structure shall be relocated or dismantled within two years of the time when it becomes imminently threatened, and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach fill takes place within two years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This permit condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed pursuant to 15A NCAC 07H .0308(a)(2).

Authority G.S. 113A-107; 113A-113(b)(6); 113A-124.

15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

(a) Ocean Shoreline Erosion Control Activities:

- (1) Use Standards Applicable to all Erosion Control Activities:
 - (A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.

- (B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, unless specifically authorized under the Coastal Area Management Act, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters.
- (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
- (D) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule .0306(h) of this Section.
- (E) Project construction shall be timed to minimize adverse effects on biological activity.
- (F) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
- (G) Permanent erosion control structures that would otherwise be prohibited by these standards may be permitted on finding by the Division that:
 - (i) the erosion control structure is necessary to protect a bridge that provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in Part (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
 - (iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.

- (H) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
- (i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in Part (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;
 - (iii) the structure is limited in extent and scope to that necessary to protect the site; and
 - (iv) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of significant adverse impacts on adjoining properties and on public access to and use of the beach.
- (I) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
- (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits;
 - (ii) dredging alone is not practicable to maintain safe access to the affected channel;
 - (iii) the structure is limited in extent and scope to that necessary to maintain the channel;
 - (iv) the structure shall not have significant adverse impacts on fisheries or other public trust resources; and
 - (v) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any significant adverse impacts on adjoining properties and on public access to and use of the beach.
- (J) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:
- (i) the structure will not be enlarged beyond the dimensions set out in the permit;
 - (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and
 - (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.
- (K) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 07M .0200 and general and specific use standards within this Section.
- (2) Temporary Erosion Control Structures:
- (A) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.
 - (B) Temporary erosion control structures as defined in Part (A) of this Subparagraph may be used to protect only imminently threatened roads and associated right of ways, and buildings

- and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.
- (C) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed under Rule .0309 of this Section as an exception to the erosion setback requirement.
- (D) Temporary erosion control structures may be placed waterward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
- (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected except to align with temporary erosion control structures on adjacent properties, where the Division has determined that gaps between adjacent erosion control structures may result in an increased risk of damage to the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet waterward of the structure to be protected, or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet waterward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or the Director's designee in accordance with Part (A) of this Subparagraph.
- (F) Temporary erosion control structures may remain in place for up to eight years for a building and its associated septic system, a bridge or a road. The property owner shall be responsible for removal of any portion of the temporary erosion control structure exposed above grade within 30 days of the end of the allowable time period.
- (G) An imminently threatened structure or property may be protected only once, regardless of ownership, unless the threatened structure or property is located in a community that is actively pursuing a beach nourishment project, or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. Existing temporary erosion control structures may be permitted for additional eight-year periods provided that the structure or property being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter, and the community in which it is located is actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (H) of this Subparagraph shall begin at the time the initial erosion control structure was installed. For the purpose of this Rule:
- (i) a building and its septic system shall be considered separate structures,
 - (ii) a road or highway may be incrementally protected as sections become imminently threatened. The time period for removal of each contiguous section of temporary erosion control structure shall begin at the time that the initial section was installed, in accordance with Part (F) of this Subparagraph.

- (H) For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with G.S. 113A-115.1 if it:
- (i) has been issued an active CAMA permit, where necessary, approving such project; or
 - (ii) has been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or
 - (iii) has received a favorable economic evaluation report on a federal project; or
 - (iv) is in the planning stages of a project designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and initiated by a local government or community with a commitment of local or state funds to construct the project or the identification of the financial resources or funding bases necessary to fund the beach nourishment, inlet relocation or stabilization project.
- If beach nourishment, inlet relocation or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Part (F) of this Subparagraph.
- (I) Once a temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, it shall be removed to the maximum extent practicable by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.
- (J) Removal of temporary erosion control structures is not required if they are covered by sand. Any portion of the temporary erosion control structure that becomes exposed above grade after the expiration of the permitted time period shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management.
- (K) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
- (L) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the temporary erosion control structure shall not exceed 20 feet, and the total height shall not exceed six feet, as measured from the bottom of the lowest bag.
- (M) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- (N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.
- (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and in accordance with Rule .0312 of this Section.
- (4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the first line of stable

vegetation to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:

- (A) The area on which this activity is being performed shall maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;
- (B) The activity shall not exceed the lateral bounds of the applicant's property unless he has permission of the adjoining land owner(s);
- (C) Movement of material from seaward of the mean low water line will require a CAMA Major Development and State Dredge and Fill Permit;
- (D) The activity shall not increase erosion on neighboring properties and shall not have an adverse effect on natural or cultural resources;
- (E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.

(b) Dune Establishment and Stabilization.

- (1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same configuration as adjacent natural dunes.
- (2) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.
- (3) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas shall be replanted or temporarily stabilized until planting can be completed.
- (4) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand in the area in which it is to be placed.
- (5) No new dunes shall be created in inlet hazard areas. Reconstruction or repair of existing dune systems as defined in Rule .0305 of this Section and within an Inlet Hazard Area is permissible.
- (6) Sand held in storage in any dune, other than the frontal or primary dune, shall remain on the lot or tract of land to the maximum extent practicable and may be redistributed within the

Ocean Hazard AEC provided that it is not placed any farther oceanward than the crest of a primary dune, if present, or the crest of a frontal dune.

- (7) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid dune impacts.

(c) Structural Accessways:

- (1) Structural accessways shall be permitted across primary or frontal dunes so long as they are designed and constructed in a manner that entails negligible alteration of the primary or frontal dune. Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a) of this Rule.
- (2) An accessway shall be considered to entail negligible alteration of primary or frontal dunes provided that:
 - (A) The accessway is exclusively for pedestrian use;
 - (B) The accessway is a maximum of six feet in width;
 - (C) Except in the case of beach matting for a local, State, or federal government's public access, the accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the dune. Where this is deemed by the Division of Coastal Management to be impossible due to any more restrictive local, State, or federal building requirements, the structure shall touch the dune only to the extent necessary. Beach matting for a local, State, or federal government's public access shall be installed at grade and not involve any excavation or fill of the dune; and
 - (D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.
- (3) An accessway that does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this Paragraph. Public fishing piers are not prohibited provided all other applicable standards of this Rule are met.
- (4) In order to preserve the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") may be provided for off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than 15 feet in width and may be constructed of wooden sections fastened together, or other materials approved by the Division, over the length of the affected

dune area. Installation of a Hatteras ramp shall be done in a manner that will preserve the dune's function as a protective barrier against flooding and erosion by not reducing the volume of the dune.

- (5) Structural accessways may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune, provided they do not interfere with public trust rights and emergency access along the beach. Structural accessways are not restricted by the requirement to be landward of the FLSNV as described in Rule .0309(a) of this Section.

(d) Building Construction Standards. New building construction and any construction identified in .0306(a)(5) of this Section and 15A NCAC 07J .0210 shall comply with the following standards:

- (1) In order to avoid danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any building constructed within the ocean hazard area shall comply with relevant sections of the North Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.
- (2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.
- (3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on or seaward of the primary dune, the pilings shall extend to five feet below mean sea level.
- (4) All foundations shall be designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100-year storm. Cantilevered decks and walkways shall meet the requirements of this Part or shall be designed to break-away without structural damage to the main structure.

Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-115.1; 113A-124.

**SECTION .1200 - GENERAL PERMIT FOR
CONSTRUCTION OF PIERS AND DOCKING
FACILITIES: IN ESTUARINE AND PUBLIC TRUST
WATERS AND OCEAN HAZARD AREAS**

15A NCAC 07H .1205 SPECIFIC CONDITIONS

(a) Piers and docking facilities may extend or be located up to a maximum of 400 feet waterward from the normal high water line or the normal water level, whichever is applicable.

(b) Piers and docking facilities shall not extend beyond the established pier length along the same shoreline for similar use. This restriction shall not apply to piers and docking facilities 100 feet or less in length unless necessary to avoid interference with navigation or other uses of the waters by the public such as blocking established navigation routes or interfering with access to adjoining properties as determined by the Division of Coastal Management. The length of piers and docking facilities shall be measured from the waterward edge of any wetlands that border the water body.

(c) Piers and docking facilities longer than 200 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least one foot at each 100 foot increment of pier length longer than 200 feet, or if the additional length is necessary to span some obstruction to navigation. Measurements to determine pier and docking facility lengths shall be made from the waterward edge of any coastal wetland vegetation that borders the water body.

(d) Piers shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.

(e) The total square footage of shaded impact for docks and mooring facilities (excluding the pier) allowed shall be 8 square feet per linear foot of shoreline with a maximum of 800 square feet. In calculating the shaded impact, uncovered open water slips shall not be counted in the total.

(f) The maximum size of any individual component of the docking facility authorized by this general permit shall not exceed 400 square feet.

(g) Docking facilities shall not be constructed in a designated Primary Nursery Area with less than two feet of water at normal low water level or normal water level under the general permit set forth in this Section without prior approval from the Division of Marine Fisheries or the Wildlife Resources Commission.

(h) Piers and docking facilities located over shellfish beds or submerged aquatic vegetation as defined by the Marine Fisheries Commission may be constructed without prior consultation from the Division of Marine Fisheries or the Wildlife Resources Commission if the following two conditions are met:

- (1) Water depth at the docking facility location is equal to or greater than two feet of water at normal low water level or normal water level; and
- (2) The pier and docking facility is located to minimize the area of submerged aquatic vegetation or shellfish beds under the structure as determined by the Division of Coastal Management.

(i) Floating piers and floating docking facilities located in Primary Nursery Areas, over shellfish beds, or over submerged aquatic vegetation shall be allowed if the water depth between the bottom of the proposed structure and the substrate is at least 18 inches at normal low water level or normal water level.

(j) Docking facilities shall have no more than six feet of any dimension extending over coastal wetlands and shall be elevated

at least three feet above any coastal wetland substrate as measured from the bottom of the decking.

(k) The width requirements established in Paragraph (d) of this Rule shall not apply to pier structures in existence on or before July 1, 2001 when structural modifications are needed to prevent or minimize storm damage. In these cases, pilings and cross bracing may be used to provide structural support as long as they do not extend more than two feet on either side of the principal structure. These modifications shall not be used to expand the floor decking of platforms and piers.

(l) Boathouses shall not exceed a combined total of 400 square feet and shall have sides extending no further than one-half the height of the walls as measured in a downward direction from the top wall plate or header to the Normal Water Level or Normal High Water and only covering the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline. Structural boat covers, utilizing frame-supported fabric covering, can be permitted on properties with less than 75 linear feet of shoreline when using screened fabric for side walls.

(m) The area enclosed by a boat lift shall not exceed 400 square feet.

(n) Piers and docking facilities shall be single story. They may be roofed but shall not allow second story use.

(o) Pier and docking facility alignments along federally maintained channels shall also meet Corps of Engineers regulations for construction pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(p) Piers and docking facilities shall in no case extend more than 1/4 the width of a natural water body, human-made canal, or basin. Measurements to determine widths of the water body, human-made canals, or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body. The 1/4 length limitation shall not apply when the proposed pier and docking facility is located between longer structures within 200 feet of the applicant's property. However, the proposed pier and docking facility shall not be longer than the pier head line established by the adjacent piers and docking facilities nor longer than 1/3 the width of the water body.

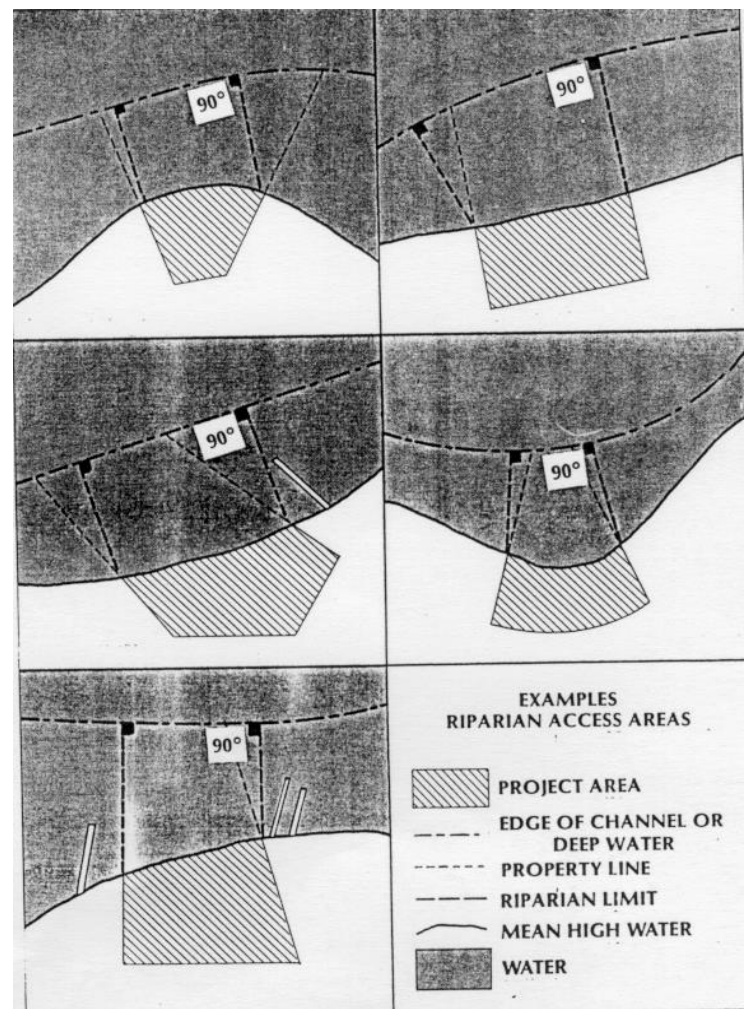
(q) Piers and docking facilities shall not interfere with the access to any riparian property, and shall have a minimum setback of 15 feet between any part of the pier and docking facility and the adjacent property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided in this Paragraph may be waived by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of the pier or docking facility. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. Application of this Rule may be aided by reference to the diagram in Paragraph (t) of this Rule illustrating the Rule as applied to various shoreline

configurations. Copies of the diagram may be obtained from the Division of Coastal Management website at <http://www.nccoastalmanagement.net>. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier or docking facility shall be aligned to meet the intent of this Rule to the maximum extent practicable.

(r) Piers and docking facilities shall provide docking space for no more than two boats, as defined in 15A NCAC 07M .0602(a), except when stored on a platform that has already been accounted for within the shading impacts condition of this general permit. Boats stored on floating or fixed platforms shall not count as docking spaces.

(s) Applicants for authorization to construct a pier or docking facility shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed pier or docking facility would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.

(t) The diagram shown below illustrates various shoreline configurations:



(u) Shared piers or docking facilities shall be allowed, provided that in addition to complying with Paragraphs (a) through (t) of this Rule the following shall also apply:

- (1) The shared pier or docking facility shall be confined to two adjacent riparian property owners and the landward point of origination of the structure shall overlap the shared property line.
- (2) Shared piers and docking facilities shall be designed to provide docking space for no more than four boats.
- (3) The total square footage of shaded impact for docks and mooring facilities shall be calculated using Paragraph (e) of this Rule and in addition shall allow for combined shoreline of both properties.
- (4) The property owners of the shared pier shall not be required to obtain a 15-foot waiver from each other as described in Paragraph (q) of this Rule as is applies to the shared riparian line for any work associated with the shared pier, provided that the title owners of both properties have executed a shared pier agreement that has become a part of the permit file.
- (5) The construction of a second access pier or docking facility not associated with the shared pier shall not be authorized under the general permit set forth in this Section.

Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124.

SECTION .1800 - GENERAL PERMIT TO ALLOW BEACH BULLDOZING IN THE OCEAN HAZARD AEC

15A NCAC 07H .1801 PURPOSE

This permit will allow beach bulldozing needed to reconstruct or repair dune systems, as defined in Rule .0305 of this Subchapter. For the purpose of this general permit, "beach bulldozing" is defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to repair damage to frontal or primary dunes. This general permit is subject to the procedures outlined in Subchapter 07J .1100 and shall apply only to the Ocean Erodible AEC. This general permit shall not apply to the Inlet Hazard AEC. 07J .1100, and shall not apply where a town or community has a Major Permit for either an ongoing beach bulldozing project, or project completed within 30 days of a request for a General Permit.

Authority G.S. 113-229(cl); 113A-107; 113A-113(b); 113A-118.1.

15A NCAC 07H .1805 SPECIFIC CONDITIONS

- (a) The area where this activity is being performed shall maintain a slope that follows the pre-emergency slopes as closely as possible so as not to endanger the public or the public's use of the beach. The movement of material by a bulldozer, front-end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation.
- (b) The activity shall not exceed the lateral bounds of the applicant's property without the written permission of the adjoining landowner(s).

- (c) The permit shall not authorize movement of material from seaward of the mean low water line.
- (d) The activity shall not increase erosion on neighboring properties.
- (e) Adding sand to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. Upon completion of the project, the fill areas shall be replanted with native vegetation, such as Sea Oats (*Uniola paniculata*), or if outside the planting season, shall be stabilized with sand fencing until planting can occur.
- (f) In order to minimize adverse impacts to ~~nesting sea turtles, threatened and endangered species,~~ no bulldozing shall occur inside the Ocean Hazard AEC within the period of April 1 through November 15 of any ~~year~~ year, ~~or anytime inside an Inlet Hazard AEC~~ without the prior approval of the Division of Coastal Management, in coordination with the North Carolina Wildlife Resources Commission, the United States Fish and Wildlife Service, and the United States Army Corps of Engineers, ~~that the work can be accomplished without significant adverse impact to sea turtle nests or suitable nesting habitat.~~ Engineers.
- (g) If one contiguous acre or more of oceanfront property is to be excavated or filled, an erosion and sedimentation control plan shall be filed with the Division of Energy, Mineral, and Land Resources, or appropriate local government having jurisdiction. This plan must be approved prior to commencing the land disturbing activity.

Authority G.S. 113-229(cl); 113A-107; 113A-113(b); 113A-118.1.

SUBCHAPTER 07J - PROCEDURES FOR PROCESSING AND ENFORCEMENT OF MAJOR AND MINOR DEVELOPMENT PERMITS, VARIANCE REQUESTS, APPEALS FROM PERMIT DECISIONS, DECLARATORY RULINGS, AND STATIC LINE EXCEPTIONS

SECTION .0400 - FINAL APPROVAL AND ENFORCEMENT

15A NCAC 07J .0403 DEVELOPMENT PERIOD/COMMENCEMENT/CONTINUATION

- (a) New dredge and fill permits and CAMA permits, ~~excepting~~ Major permits shall expire five years from the date of permit issuance, with the exception of publicly-sponsored, multi-phased beach nourishment projects, which shall expire 10 years from the date of permit issuance. Minor permits, except those authorizing beach bulldozing when authorized through issuance of a CAMA minor permit, shall expire on December 31 of the third year following the year of permit issuance.
- (b) CAMA minor ~~permit~~ permits authorizing beach bulldozing shall expire 30 days from the date of permit issuance. Following permit expiration, the ~~applicant may request~~ permit holder is entitled to request an extension in accordance with Rule .0404(a) of this Section.
- (c) Development After Permit Expiration. Any development undertaken after permit expiration shall be considered unpermitted and shall constitute a violation of G.S. 113A-118 or G.S. 113-229. Any development to be undertaken after permit

expiration shall require ~~either a new permit, or extension of the original permit according to 15A NCAC 07J .0404 with the exception of Paragraph (e) of this Rule.~~ a new permit.

(d) Commencement of Development in Ocean Hazard AEC. No development shall begin until the oceanfront setback requirement can be ~~met established~~ in accordance with 15A NCAC 07H .0306. When the permit holder or an individual receiving an exception ~~to the permit requirement~~ is ready to begin development, they shall arrange an onsite meeting with the Division of Coastal Management or Local Permitting Officer to determine the oceanfront setback. This setback determination shall replace the one completed at the time the permit was processed and approved and development shall begin within ~~of~~ 60 days from the date of that meeting. In the case of a shoreline change that ~~alters the location of the permitted development~~ a new setback determination may be required. ~~reduces the determined setback;~~ a new setback determination may be required. To determine if a new setback is required, additional coordination with the Division of Coastal Management or Local Permitting Officer shall be required. ~~Upon completion of the measurement, the Division of Coastal Management or Local Permitting Officer will issue a written statement to the permittee certifying the same.~~ required before development begins.

~~(e) Continuation of Development in the Ocean Hazard AEC. Once permitted development has begun, development in the Ocean Hazard AEC may continue beyond the authorized development period if, in the opinion of the Division of Coastal Management or Local Permitting Officer, substantial progress has been made and is continuing according to customary and usual building standards and schedules. Substantial progress is defined as beginning with the placement of foundation pilings, and proof of the local building inspector's certification that the installed pilings have passed a floor and foundation inspection.~~

~~(f)(e)~~ Any permit that has been ~~stayed~~ suspended as a result of litigation shall be extended at the permit holder's written request for a period equivalent to the period of permit suspension, but not to exceed the development period authorized under Paragraph (a) of this Rule.

Authority G.S. 113A-118; 113A-124(c)(8).

15A NCAC 07J .0404 DEVELOPMENT PERIOD EXTENSION

(a) For CAMA minor permits authorizing beach bulldozing, the permit holder ~~may~~ is entitled to request a one-time 30-day permit extension. No additional extensions shall be granted after the 30-day extension has expired. Notwithstanding this Paragraph, the permit holder ~~may~~ is eligible to apply for another minor permit authorizing beach bulldozing following expiration of the 30-day permit extension.

~~(b) Where no development has been initiated during the development period, the Division of Coastal Management or Local Permit Officer shall extend the authorized development period for no more than two years upon receipt of a signed and dated request from the applicant containing the following:~~

- ~~(1)~~ a statement of the intention of the applicant to complete the work.

- ~~(2)~~ a statement of the reasons why the project will not be completed before the expiration of the current permit;
- ~~(3)~~ a statement that there has been no change of plans since the issuance of the original permit other than changes that would have the effect of reducing the scope of the project or previously approved permit modifications;
- ~~(4)~~ notice of any change in ownership of the property to be developed and a request for transfer of the permit, if appropriate; and
- ~~(5)~~ a statement that the project is in compliance with all conditions of the current permit.

~~Where substantial development, either within or outside the AEC, has begun and is continuing on a permitted project, the permitting authority shall grant as many two year extensions as necessary to complete the initial development. For the purpose of this Rule, "substantial development" shall be deemed to have occurred on a project if the permittee can show that development has progressed beyond basic site preparation, such as land clearing and grading, and construction has begun and is continuing on the primary structure or structures authorized under the permit. For purposes of residential subdivision, installation of subdivision roads consistent with an approved subdivision plat shall constitute substantial development. Renewals for maintenance and repairs of previously approved projects may be granted for periods not to exceed 10 years.~~

(b) All other CAMA permits may be extended where substantial development, either within or outside the AEC, has begun or is continuing. The permitting authority shall grant as many 2-year extensions as necessary to complete the initial development, with the exception that multi-phased beach nourishment projects may be granted 10-year extensions to allow for continuing project implementation. Renewals for maintenance of previously approved dredging projects may be granted for periods not to exceed five years. For the purpose of this Rule, substantial development shall be deemed to have occurred on a project if the permit holder can show that development has progressed beyond basic site preparation, such as land clearing and grading, and construction has begun and is continuing on the primary structure or structures authorized under the permit. For elevated structures in Ocean Hazard Areas, substantial development begins with the placement of foundation pilings, and proof of the local building inspector's certification that the installed pilings have passed a floor and foundation inspection. For residential subdivisions, installation of subdivision roads consistent with an approved subdivision plat shall constitute substantial development.

(c) To request an extension pursuant to Paragraphs (a) and (b) of this Rule, the permit holder shall submit a signed and dated request containing the following:

- (1) a statement of the completed and remaining work;
- (2) a statement that there has been no change of plans since the issuance of the original permit other than changes that would have the effect of reducing the scope of the project, or previously approved permit modifications;

- (3) notice of any change in ownership of the property to be developed and a request for transfer of the permit if appropriate; and
- (4) a statement that the project is in compliance with all conditions of the current permit.

~~(e)(d)~~ When an extension request For extension requests where substantial development has not ~~met the criteria of~~ occurred in accordance with Paragraph (b) of this Rule, the Division of Coastal Management may circulate the request to the commenting State resource agencies along with a copy of the original permit application. Commenting State resource agencies will be given ~~three weeks~~ 30 days in which to comment on the extension request. Upon the expiration of the commenting period the Division of Coastal Management will notify the applicant permit holder of its actions on the extension request.

~~(d)(e)~~ Notwithstanding Paragraphs (b) and ~~(e)(d)~~ of this Rule, an extension request may be denied on making findings as required in either G.S. 113A-120 or G.S. 113-229(e). Changes in circumstances or in development standards shall be considered and applied by the Division of Coastal Management in making a decision on an extension request.

~~(e)(f)~~ The applicant for a major development extension request shall submit, with the request, a check or money order payable to the Department in the sum of one hundred dollars (\$100.00).

~~(f)~~ Modifications to extended permits may be considered pursuant to 15A NCAC 07J .0405.

Authority G.S. 113A-119; 113A-119.1; 113A-124(c)(8).

SUBCHAPTER 07K - ACTIVITIES IN AREAS OF ENVIRONMENTAL CONCERN WHICH DO NOT REQUIRE A COASTAL AREA MANAGEMENT ACT PERMIT

SECTION .0200 - CLASSES OF MINOR MAINTENANCE AND IMPROVEMENTS WHICH SHALL BE EXEMPTED FROM THE CAMA MAJOR DEVELOPMENT PERMIT REQUIREMENT

15A NCAC 07K .0208 SINGLE FAMILY RESIDENCES EXEMPTED

(a) All single family residences constructed within the Coastal Shorelines Area of Environmental Concern that are more than 40 feet landward of normal high water or normal water level, and involve no land disturbing activity within the 40 feet buffer area are exempted from the CAMA permit requirement as long as this exemption is consistent with all other applicable CAMA permit standards and local land use plans and rules in effect at the time the exemption is granted.

(b) This exemption allows for the construction of a generally shore perpendicular access to the water, provided that the access shall be no wider than six feet. The access may be constructed out of materials such as wood, composite material, gravel, paver stones, concrete, brick, or similar materials. Any access constructed over wetlands shall be elevated at least three feet above any wetland substrate as measured from the bottom of the decking.

(c) Within the AEC for estuarine shorelines contiguous to waters classified as Outstanding Resource Waters (ORW), no CAMA

permit shall be required if the proposed development is a single-family residence that has a built upon area of 25 percent or less and is at least 40 feet from waters classified as ORW.

(d) Before beginning any work under this exemption, the CAMA local permit officer or the Department of Environmental Quality representative shall be notified of the proposed activity to allow on-site review. Notification may be by telephone at (252) 808-2808, in person, or in writing to the North Carolina Division of Coastal Management, 400 Commerce Ave., Morehead City, NC 28557. Notification shall include:

- (1) the name, address, and telephone number of the landowner and the location of the work, including the county, nearest community, and water body; and
- (2) the dimensions of the proposed project, including proposed landscaping and the location of normal high water or normal water level.

(e) In eroding areas, this exemption shall apply only when the local permit officer has determined that the house has been located the maximum feasible distance back on the lot but not less than forty feet.

(f) Construction of the structure authorized by this exemption shall be completed by December 31 of the third year of the issuance date of this exemption.

(g) The elevation of existing structures within the Coastal Shorelines AEC is exempt from CAMA permit requirements as long as the structure is elevated entirely within the existing footprint and is consistent with all other applicable permit standards, local land use plans and rules in effect at the time the exemption is granted.

Authority G.S. 113A-103(5)c.

SUBCHAPTER 07M - GENERAL POLICY GUIDELINES FOR THE COASTAL AREA

SECTION .0300 - SHOREFRONT ACCESS POLICIES

15A NCAC 07M .0301 DECLARATION OF GENERAL POLICY

Authority G.S. 113A-124; 113A-134.1; 113A-134.3.

15A NCAC 07M .0302 DEFINITIONS

As used in this Section, the Public Beach and Coastal Waterfront Access Program is to provide public access to the public trust beaches and waters as defined in 15A NCAC 07H .0305(a)(1) and 15A NCAC 07H .0207(a) in the 20 coastal counties described in G.S. 113A-103(2).

- (1) "Beach" is defined as described in 15A NCAC 07H .0305(a)(1).
- (2) "Coastal Waterfront Access" includes the acquisition and improvement of properties located in the 20-county area under the Coastal Area Management Act (CAMA) jurisdiction as described in G.S. 113A-103(2) that are adjacent or proximate to coastal waterways to which the public has rights of access or public trust rights.

- (3) ~~"Handicapped Accessible" is defined as meeting the standards of the State Building Code for handicapped accessibility.~~
- (4) ~~"Improvements" are facilities that are added to promote public access at an access site. Common improvements include dune crossovers, piers, boardwalks, litter receptacles, parking areas, restrooms, gazebos, boat ramps, canoe/kayak launches, bicycle racks, and foot showers.~~
- (5) ~~"Inlet Beach Access" includes the acquisition and improvement of properties located within Inlet Hazard Areas as defined in 15A NCAC 07H .0304(2).~~
- (6) ~~"Local Access Sites" include those public access points that offer no facilities. These accessways provide only a dune crossover or pier, if needed, litter receptacles, and public access signs. Vehicle parking is not available at these access sites. However, bicycle racks may be provided by local governments.~~
- (7) ~~"Maintenance" is the upkeep and repair of public access sites and their facilities in such a manner that public health and safety is ensured. Where the local government uses or has used access funds administered by the Division of Coastal Management (DCM), the local government shall provide operation and maintenance of the facility for the useful life of that facility as set forth in the individual grant contract.~~
- (8) ~~"Multi-regional Access Sites" are larger than regional accessways but smaller than State parks. Such facilities may be undertaken and constructed with the involvement and support of State and local government agencies. Multi-regional accessways provide parking for a minimum of 80 vehicles, restrooms with indoor showers and changing rooms, and concession stands.~~
- (9) ~~"Neighborhood Access Sites" includes those public access areas offering parking for 5 to 25 vehicles, a dune crossover or pier, litter receptacles, and public access signs. Restroom facilities may be installed.~~
- (10)(3) ~~"Ocean Beach Access" includes the acquisition and improvement of properties adjacent or proximate to the Atlantic Ocean for parking and public passage to the oceanfront.~~
- (11)(4) ~~"Public Trust Areas" is defined in 15A NCAC 07H .0207(a).~~
- (12) ~~"Regional Access Sites" are of such size and offer such facilities that they serve the public from throughout an island or community including day visitors. These sites provide parking for 25 to 80 vehicles, restrooms, a dune crossover, pier, foot showers, litter receptacles, and public access signs.~~

- (13) ~~"Urban Waterfront Access Projects" improve public access to deteriorating urban waterfronts. Such projects include the establishment or rehabilitation of boardwalk areas, shoreline stabilization measures such as the installation or rehabilitation of bulkheads, and the placement or removal of pilings for the purpose of public safety and increased access and use of the urban waterfront.~~
- (5) A "Local Waterfront Access Plan" identifies access needs and opportunities for public access, determines access and facility requirements, establishes standards, develops project design plans or guidelines, establishes priorities, considers financial resource availability (such as grants, impact fees, or occupancy taxes) and construction timing, and provides a system for evaluation of the plan.
- (6) "Certified CAMA Land Use Plan" is defined in 15A NCAC 07B. A local government may identify access needs, develop a local waterfront access plan, and develop local policies to pursue access funding through its land use plan.
- (7) "Tier 1 communities" include Tier 1 counties as determined annually by the North Carolina Department of Commerce as outlined in G.S. 143B-437.08, and the counties respective municipalities. The Division shall use the Tier 1 designation to encourage economic activity in economically distressed communities.

Authority G.S. 113A-124; 113A-134.3.

15A NCAC 07M .0303 STANDARDS FOR PUBLIC ACCESS

Authority G.S. 113A-124; 113A-134.1; 113A-134.3; 153A-277(a); 160A-314(a).

15A NCAC 07M .0306 LOCAL GOVERNMENT AND STATE INVOLVEMENT IN ACCESS

Authority G.S. 113A-124; 113A-134.3.

15A NCAC 07M .0307 ELIGIBILITY, SELECTION CRITERIA AND MATCHING REQUIREMENTS PUBLIC BEACH AND COASTAL WATERFRONT ACCESS PROGRAM

(a) The Division of Coastal Management (DCM) has primary responsibility for administering the Public Beach and Coastal Waterfront Access Program. Subject to the availability of funds, the DCM shall annually solicit pre-application proposals from local governments and shall select competitive projects for final application submittal. Projects from these final applications shall be selected for funding based on criteria in Paragraph (h) of this Rule.

(b) The DCM may use available funds on a non-competitive basis to plan for and provide public access through acquisition and

improvements. Prior to expending the funds, the DCM shall hold a public meeting or hearing at a regularly scheduled meeting of the Commission to discuss its proposal. Members of the public shall be invited to comment to the Coastal Resources Commission (CRC) for 60 days prior to the expenditure of non-competitive money by the DCM.

~~(a)(c)~~ Local governments have responsibility for the selection of public access sites within their jurisdiction. Any local government in the 20-county coastal region having ocean beaches or estuarine or public trust waters within its jurisdiction may apply for access funds for the development of beach or coastal waterfront access facilities with associated improvements. Boat ramps, or canoe/kayak launch areas may also be developed provided that the access facilities incorporate pedestrian access to coastal waters. acquisition and development of beach or coastal waterfront access facilities.

(d) Prior to submitting its final application for a Public Beach and Coastal Waterfront Access grant in accordance with Paragraph (a) of this Rule from the DCM, the local government shall hold a public meeting or hearing at a regularly scheduled meeting of the Commission to discuss its proposal. The local government shall consider public comments prior to its decision to apply for funds from the State.

~~(b)(e)~~ Eligible projects include:

- (1) Land acquisition, including acquisition of unbuildable lots as described in G.S. 113A-134.3(a);
- (2) ~~Local access sites;~~ Development of improvements at new or existing sites that provide public access, such as dune crossovers, piers, boardwalks, parking areas, restrooms, showers, benches, litter receptacles, and bicycle racks;
- (3) ~~Neighborhood access sites or improvements;~~ Development of improvements to public access at deteriorating urban waterfronts. Such projects include the establishment or rehabilitation of boardwalk areas, shoreline stabilization measures such as the installation or rehabilitation of bulkheads, and the placement or removal of pilings for the purpose of public safety and increased access and use of the urban waterfront;
- (4) ~~Regional access sites or improvements;~~
- (5) ~~Multi-regional access sites or improvements;~~
- (6) ~~Urban waterfront development access projects;~~
- ~~(7)(4)~~ Reconstruction Reconstruction, replacement or relocation of existing, damaged facilities;
- (8) ~~Reconstruction or replacement of facilities; and~~
- ~~(9)(5)~~ Offsite parking areas servicing access sites within the local government's jurisdiction; jurisdiction;
- (6) Boat ramps and canoe/kayak launch areas provided that the public access facility incorporates pedestrian access to coastal waters; or
- (7) Maintenance of previously funded access sites. This project category is available only to Tier 1 communities. Such projects include repair and

maintenance of access site facilities and amenities to ensure public health and safety. Repair and maintenance does not include activities such as trash removal, grounds keeping, or custodial services, nor can it be used to pay local government staff salaries.

(f) All projects must meet the standards of handicapped accessibility for individuals with disabilities according to the North Carolina Building Code. Exceptions may be granted where site characteristics impede accessibility improvements.

~~(e)(g)~~ The following criteria shall be used to select projects that may receive financial assistance:

- (1) The applicant demonstrates a need for the project due to a high demand for public access and limited availability within the local government ~~jurisdiction;~~ jurisdiction;
- (2) The project is identified in the ~~local land use plan~~ certified CAMA Land Use Plan or local access plan;
- (3) The applicant has not received previous assistance from the Public Beach and Coastal Waterfront Access Program grant program or the applicant has received assistance and demonstrated its ability to complete previous projects with funds from the grant program;
- (4) The applicant's commitment of matching funds exceeds the required local share of the total project cost provided in ~~Paragraphs (d) and (e)~~ Paragraph (h) of this Rule;
- (5) The project proposal includes multiple funding sources; ~~and~~
- (6) The project location includes donated land with physical limitations, or it has been deemed unbuildable as described in G.S. 113A-134.3(a).
- (7) Priority shall be given to the acquisition of lands that meet G.S. 113A-134.3(a);
- (8) The project acquires land for future access improvements;
- (9) The project creates handicapped accessible facilities at new access sites, adds handicapped accessible facilities to existing sites, or replaces deteriorating facilities; and
- (10) The project's location is within a Tier 1 community.

~~(d) The North Carolina Department of Commerce's Tier designations, as outlined by G.S. 143B-437.08 shall be used to determine the economic status of counties. Land acquisition, including acquisition of unbuildable lots, shall include a local government contribution of at least 15 percent of the acquisition cost, except for Tier 1 and Tier 2 counties as designated by the N.C. Department of Commerce, and their respective municipalities, which shall have a contribution of at least 10 percent. At least one-half of the local contribution shall be cash match, the remainder may be in-kind match.~~

~~(e) Local government contributions for access site improvements shall be at least 25 percent of the project costs, except for Tier 1 and Tier 2 designated counties and their respective municipalities, which shall have a local government contribution of at least 10~~

~~percent of the project costs. At least one-half of the local contribution shall be cash match; the remainder may be in-kind match.~~

~~(h) The applicant's matching requirements are based on project type and their designations as a Tier 1 community. Matching requirements are as follows:~~

- ~~(1) Local government contributions for land acquisition shall be at least 15 percent of the acquisition cost, except for Tier 1 communities which shall have a local government contribution of at least 10 percent of the project cost. At least one-half of the local contribution shall be cash match, the remainder may be in-kind match.~~
- ~~(2) Local government contributions for access site improvements shall be at least 25 percent of the project costs, except for Tier 1 communities which shall have a local government contribution of at least 10 percent of the project costs. At least one-half of the local contribution shall be cash match, the remainder may be in-kind match.~~
- ~~(3) Local government contributions for maintenance of previously funded access sites shall be at least 10 percent of the maintenance project costs. At least one-half of the local government contribution shall be cash match, the remainder may be in-kind match. This project type is only available to Tier 1 communities.~~

~~(i) Federal and other State funds may be used as the local government cash contribution, provided such funds are not already being used as matching funds for other State programs.~~

~~(j) Multi-phase projects shall be considered on their own merits within the pool of applications being reviewed in any year.~~

~~(k) Projects selected for funding may not begin until the Department of Environmental Quality and grant recipient sign a contract. An exception may be granted for land acquisition projects when a waiver has been requested by the applicant in writing and approved by the Division of Coastal Management. A waiver shall be in effect for 18 months from the date of approval. A project receiving a waiver shall not receive preferential treatment in funding decisions.~~

Authority G.S. 113A-124; 113A-134.3.

15A NCAC 07M .0308 PUBLIC INVOLVEMENT/NOTICE

Authority G.S. 113A-124; 113A-134.3.

15A NCAC 07M .0310 STANDARDS FOR PUBLIC ACCESS

(a) Public access projects funded through the Public Beach and Coastal Waterfront Access program shall be consistent with public access policies contained in the local government's land use plan as required under 15A NCAC 07B .0702(d)(2)(A), its local waterfront access plan, or a local recreation plan that addresses public access.

(b) Land acquired with Public Beach and Coastal Waterfront Access program funds shall be dedicated in perpetuity for public access and benefit of the general public, and the dedication shall be recorded in the local Register of Deeds by the grantee. Any lease or easement agreement shall extend at least 25 years. If land acquired or improved with Public Beach and Coastal Waterfront Access Program grant funds is sold or otherwise disposed of, the local government shall reimburse the State at a percentage equal to the percentage of grant funds provided for the original purchase or improvement, at current market value at the time of the sale or disposition.

(c) Local governments that receive or have received funding through this grant program shall operate and maintain the public access sites and their facilities in such a manner that public health and safety is ensured for the useful life of that facility as set forth in the individual grant contract.

(d) Local governments with public access sites funded by the Division of Coastal Management pursuant to G.S. 113A-134.3 may charge user fees as long as those fees are used exclusively for the operation, maintenance, and enhancement of existing public access sites, including trash removal, law enforcement and public safety, beach nourishment projects or the provision of new public access sites through acquisition or easement. Local governments shall prepare annual accounting reports for fees generated by Public Beach and Coastal Waterfront Access Program funded access sites and shall make the report available upon request. Any local government that has not made the most recent required accounting report available shall not receive further funding under this program until the inconsistency is corrected.

Authority G.S. 113A-124; 113A-134.1; 113A-134.3; 153A-277(a); 160A-314(a).

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Dental Examiners intends to adopt the rules cited as 21 NCAC 16Q .0103-.0105, .0702 and amend the rules cited as 21 NCAC 16Q .0202, .0302, .0405 and .0703.

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

Proposed Effective Date: May 1, 2022

Public Hearing:

Date: February 3, 2022

Time: 6:30 p.m.

Location: 2000 Perimeter Park Drive, Suite 160, Morrisville, NC 27560

Reason for Proposed Action:

21 NCAC 16Q .0103 is proposed to address the practice requirements for a permit holder to administer general

anesthesia, moderate conscious sedation, and moderate pediatric conscious sedation.

21 NCAC 16Q .0104 is proposed to address requirements for facility inspections and evaluations.

21 NCAC 16Q .0105 is proposed to set out requirements related to dedicated sedation monitoring and sedation providers.

21 NCAC 16Q .0202 is proposed for amendment to set out modified requirements for a general anesthesia permit applicant or holder.

21 NCAC 16Q .0302 is proposed for amendment to set out modified requirements for a moderate conscious sedation permit applicant or holder.

21 NCAC 16Q .0405 is proposed for amendment to set out modified requirements for a moderate pediatric conscious sedation permit applicant or holder.

21 NCAC 16Q .0702 is proposed to address adverse event tracking.

21 NCAC 16Q .0703 is proposed for amendment to change requirements for adverse occurrence reporting.

Comments may be submitted to: Bobby White, 2000 Perimeter Park Drive, Suite 160, Morrisville, NC 27560

Comment period ends: March 4, 2022

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 984-236-1850.

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

SUBCHAPTER 16Q - GENERAL ANESTHESIA AND SEDATION

SECTION .0100 – GENERAL

21 NCAC 16Q .0103 EQUIPMENT, PERSONNEL, AND CLINICAL REQUIREMENTS TO ADMINISTER ANESTHESIA OR MODERATE SEDATION

(a) Before administering general anesthesia, moderate conscious sedation, or moderate pediatric conscious sedation ("anesthesia or moderate sedation"), or supervising a CRNA to administer or RN employed to deliver anesthesia or moderate sedation, a dentist shall hold an unexpired permit issued by the Board in accordance with this Subchapter permitting the dentist to administer that level of sedation.

(b) Before performing sedation procedures in a facility other than a hospital or credentialed surgery center, the permit holder shall ensure that the Board has been notified that the permit holder intends to administer anesthesia or moderate sedation at the facility and shall ensure that the facility has passed a facility inspection by the Board in accordance with this Subchapter.

(c) The permit holder shall ensure that the facility where the sedation procedure is to be performed meets the following requirements at the time of the procedure:

- (1) The permit holder shall ensure the facility is equipped with the following:
 - (A) an operatory of size and design to permit access of emergency equipment and personnel and to permit emergency management;
 - (B) a CPR board or dental chair without enhancements suitable for providing emergency treatment;
 - (C) lighting as necessary for specific procedures and back-up lighting;
 - (D) suction equipment as necessary for specific procedures, including non-electrical back-up suction;
 - (E) positive pressure oxygen delivery system, including full face masks for small, medium, and large patients, and back-up E-cylinder portable oxygen tank apart from the central system;
 - (F) small, medium, and large oral and nasal airways;
 - (G) a blood pressure monitoring device;
 - (H) an EKG monitor;
 - (I) a pulse oximeter;
 - (J) an automatic external defibrillator (AED);
 - (K) a capnograph;
 - (L) a thermometer;
 - (M) vascular access set-up as necessary for specific procedures, including hardware and fluids;
 - (N) a laryngoscope with working batteries;
 - (O) intubation forceps and advanced airway devices;
 - (P) tonsillar suction with back-up suction;
 - (Q) syringes as necessary for specific procedures; and
 - (R) tourniquet and tape.

- (2) The permit holder shall ensure all monitoring and other equipment in the facility receives preventive maintenance no less frequently than once per year, including safety and function checks per the manufacturers' recommendations. The permit holder shall maintain documentation of all preventive maintenance performed, and shall ensure equipment is replaced upon its expiration or as clinically required.
 - (3) The permit holder shall ensure the following unexpired drugs are maintained in the facility and are accessible from the operatory and recovery rooms:
 - (A) epinephrine;
 - (B) atropine;
 - (C) an antiarrhythmic;
 - (D) an antihistamine;
 - (E) an antihypertensive;
 - (F) a bronchodilator;
 - (G) an antihypoglycemic agent;
 - (H) a vasopressor;
 - (I) a corticosteroid;
 - (J) an anticonvulsant;
 - (K) appropriate reversal agents;
 - (L) nitroglycerine;
 - (M) an antiemetic; and
 - (N) dextrose.
 - (4) The permit holder shall maintain written emergency and patient discharge protocols accessible from the operatory and recovery rooms. The written emergency manual shall include a protocol for activation of emergency management services for life-threatening complications along with the information set out in Rule .0101(17) of this Section.
 - (5) The permit holder shall satisfy any additional facility requirements applicable to the level of the permit, as set out in Rule .0202, .0206, .0302, or .0405 of this Subchapter.
- (d) The permit holder shall ensure that the following staffing, education, and training requirements are met prior to performing a sedation procedure:
- (1) The permit holder shall provide training to familiarize all auxiliaries in the treatment of clinical emergencies including those set out in Rule .0702(d) of this Subchapter, and shall review and practice responding to clinical emergencies with all auxiliaries as a team and in person every six months.
 - (2) All auxiliaries in the facility shall be BLS certified.
 - (3) Unless the permit holder is dedicated to patient care and monitoring regarding anesthesia or moderate sedation throughout the sedation procedure and is not performing the surgery or other dental procedure, the permit holder shall ensure that an auxiliary meeting the education and training requirements of this Subchapter is dedicated to patient monitoring and recording anesthesia or sedation data throughout the sedation procedure.
 - (4) The permit holder and any auxiliary dedicated to patient monitoring shall complete a training course every two years offered by a Board-approved continuing education course sponsor as set out in 21 NCAC 16R .0202, which the permit holder may apply toward fulfillment of the continuing education required each calendar year for license renewal, that includes the following topics:
 - (A) patient assessment and selection;
 - (B) appropriate medications and dosages, including those for moderate conscious sedation;
 - (C) proper patient monitoring;
 - (D) effective airway management; and
 - (E) recognizing, diagnosing, and effectively managing medical emergencies.
 - (5) The permit holder shall complete one hour of continuing education on substance abuse issues each calendar year, which the permit holder may apply toward fulfillment of the continuing education required for license renewal.
 - (6) The permit holder shall satisfy any additional staffing, education, and training requirements applicable to the level of the permit, as set out in Rule .0202, .0302, or .0405 of this Subchapter.
- (e) Before starting any sedation procedure, the permit holder shall:
- (1) evaluate the patient for health risks as follows:
 - (A) a patient who is medically stable and who is ASA I or II shall be evaluated by reviewing the patient's current medical history and medication use; or
 - (B) a patient who is not medically stable or who is ASA III or higher shall be evaluated by the permit holder's consultation with the patient's primary care physician or consulting medical specialist regarding the potential risks posed by the planned dental procedure;
 - (2) evaluate the patient's food and fluid intake following the ASA guidelines for pre-operative fasting applicable to elective procedures involving the administration of anesthesia or moderate sedation. The ASA guidelines are incorporated by reference, including subsequent amendments and editions, and may be accessed at <https://www.asahq.org> at no cost; and
 - (3) perform a "time out" immediately prior to starting the sedation procedure, including verifying:
 - (A) correct patient;

- (B) correct procedure;
- (C) correct site;
- (D) correct medication and dosage based on the patient's pertinent health history, medical conditions, and body mass index;
- (E) availability of special equipment that may be needed; and
- (F) necessary documentation in the treatment record as set out in Subparagraphs (h)(2) and (3) of this Rule.

(f) During the sedation procedure:

- (1) The permit holder shall not administer or cause to be administered anesthetic or sedative agents in amounts exceeding the manufacturers' maximum recommended dosages.
- (2) Prescriptions intended to accomplish procedural sedation, including enteral dosages, shall be administered only under the direct supervision of the permit holder.
- (3) When IV sedation is used, IV infusion shall be administered before the start of the procedure and maintained until the patient is ready for discharge.
- (4) Capnography shall be used to monitor patients. The permit holder shall ensure the patient's base line vital signs are taken and recorded, including temperature, SPO2, blood pressure, and pulse. The permit holder shall ensure the patient's blood pressure, oxygen saturation, ET CO2, pulse, and respiration rates are monitored continuously and are recorded in intervals of five minutes or less during the procedure. All vital sign information monitored and recorded shall be printed, downloaded, or otherwise retained as part of the sedation record. A permit holder's failure to maintain the vital sign documentation produced by capnograph shall be deemed a failure to monitor the patient as required pursuant to the rules of this Subchapter.
- (5) If a patient immobilization device is used, the permit holder shall ensure that:
 - (A) the device is applied to avoid airway obstruction or chest restriction;
 - (B) the patient's head position and respiratory excursions are checked frequently to ensure airway patency;
 - (C) a hand or foot is kept exposed; and
 - (D) the patient is attended at all times.
- (6) The permit holder shall satisfy any additional requirements applicable to the level of the permit, as set out in Rule .0202, .0302, or .0405 of this Subchapter.

(g) Post-operative monitoring and discharge shall include the following:

- (1) The permit holder or an auxiliary under his or her direct supervision shall monitor the patient's

post-operative vital signs until the patient is recovered and is ready for discharge from the office. Recovery from anesthesia or moderate sedation shall include documentation of the following:

- (A) stable cardiovascular function;
- (B) uncompromised airway patency;
- (C) patient arousable and protective reflexes intact;
- (D) state of hydration within normal limits;
- (E) patient can talk, if applicable;
- (F) patient can sit unaided, if applicable;
- (G) patient can ambulate with minimal assistance, if applicable; and
- (H) for a special needs patient, the pre-sedation level of responsiveness or the level as close as possible for that patient shall be achieved.

(2) Before allowing the patient to leave the office, the permit holder shall determine that the patient has met the recovery criteria set out in Subparagraph (g)(1) of this Rule and the following discharge criteria:

- (A) oxygenation, circulation, activity, skin color, and level of consciousness are stable and have been documented;
- (B) explanation and documentation of written post-operative instructions have been provided to the patient or a person responsible for the patient at time of discharge; and
- (C) a person authorized by or responsible for the patient is available to transport the patient after discharge, and for a patient for whom a motor vehicle restraint system is required, an additional responsible individual is available to attend to the patient.

(h) The permit holder shall maintain the following in the patient treatment records for 10 years:

- (1) the patient's current written medical history including known allergies and previous surgeries;
- (2) a pre-operative assessment as set out in Subparagraphs (e)(1) and (2) of this Rule;
- (3) consent to the procedure and to the anesthesia or sedation, signed by the patient or guardian, identifying the procedure and its risks and benefits, the level of anesthesia or sedation and its risks and benefits, and the date signed;
- (4) a copy or description of any prescription used for sedation, including medication administered enterally, along with the instructions given to the patient or person responsible for the patient;
- (5) the anesthesia or sedation record that shall include:

- (A) the patient's base line vital signs, including temperature, SPO2, blood pressure, and pulse;
- (B) real-time documentation, in intervals of five minutes or less, of the patient's vital signs including capnography documentation pursuant to Subparagraph (f)(4) of this Rule;
- (C) documentation of a "time out" as set out in Subparagraph (e)(3) of this Rule;
- (D) procedure start and end times;
- (E) gauge of needle and location of IV on the patient, if used;
- (F) drugs administered during the procedure, including route of administration, dosage, strength, time, and sequence of administration, with separate entries for each increment of medication that is titrated to effect;
- (G) documentation of the individualized patient effect of administered drugs and the patient's level of consciousness and responsiveness;
- (H) documentation of complications, morbidity, or adverse events and clinical responses as set out in Rule .0702(d) of this Subchapter, and their treatment; and
- (I) status of patient upon discharge, including documentation of satisfying the requirements set out in Paragraph (g) of this Rule; and
- (6) any additional documentation applicable to the level of the permit, as set out in Rule .0202, .0302, or .0405 of this Subchapter.

Authority G.S. 90-28; 90-30.1; 90-31.1; 90-48.

21 NCAC 16Q .0104 REQUIREMENTS FOR INSPECTIONS AND EVALUATIONS

- (a) During a facility inspection pursuant to the rules of this Subchapter, for a dentist applying for or holding a permit to administer general anesthesia, moderate conscious sedation, or moderate pediatric conscious sedation, the applicant or permit holder shall demonstrate satisfaction of the requirements set forth in Rule .0103(c) and (d) of this Section.
- (b) During an evaluation, for a dentist applying for or holding a permit to administer general anesthesia, moderate conscious sedation, or moderate pediatric conscious sedation, the applicant or permit holder shall demonstrate the administration of anesthesia or sedation in accordance with the level of the permit, and shall demonstrate competency including but not limited to the following areas:
 - (1) pre-operative patient evaluation and procedures, including the requirements set forth in Rule .0103(e) of this Section;
 - (2) operative procedures, including the deployment of an intravenous delivery system and the

- requirements set forth in Rule .0103(f) of this Section;
- (3) post-operative patient monitoring and discharge, including the requirements set forth in Rule .0103(g) of this Section; and
- (4) treatment of the clinical emergencies set out in Rule .0702(d) of this Subchapter.
- (c) During the evaluation, the applicant shall take a written examination on the topics set forth in Paragraph (b) of this Rule. The applicant shall obtain a passing score on the written examination by answering 80 percent of the examination questions correctly. If the applicant fails to obtain a passing score on the written examination, he or she may be re-examined in accordance with Rule .0204(h), .0306(h), or .0408(h) of this Subchapter.
- (d) The permit holder shall be subject to re-evaluation every five years. Each facility where the permit holder administers anesthesia or sedation shall be subject to a facility inspection upon annual renewal of the permit.

Authority G.S. 90-28; 90-30.1; 90-48.

21 NCAC 16Q .0105 REQUIREMENTS FOR DEDICATED ANESTHESIA AND SEDATION MONITORING

- (a) During a sedation procedure involving the administration of general anesthesia, moderate conscious sedation, or moderate pediatric conscious sedation, the permit holder performing the surgical or other dental treatment shall utilize either a dedicated sedation provider or a dedicated sedation auxiliary as set out in this Rule. The dedicated sedation provider or dedicated sedation auxiliary shall not perform the surgical or dental treatment or any other dental assisting tasks during the sedation procedure.
- (b) The permit holder shall utilize a dedicated sedation provider to administer any medication that is contraindicated for administration by the person performing the surgical or other dental treatment, as indicated by either the U.S. Food and Drug Administration or the manufacturer.
- (c) For purposes of this Rule, a "dedicated sedation provider" shall mean a practitioner who is dedicated to administering the anesthesia or sedation and monitoring the patient's well-being throughout the sedation procedure. The dedicated sedation provider shall be:
 - (1) a dentist holding an itinerant (mobile) permit in accordance with Rules .0206, .0304, or .0406 of this Subchapter;
 - (2) a dentist holding a permit in accordance with Rules .0201, .0301, or .0404 of this Subchapter, and who has satisfied the requirements of Rule .0103(b) of this Section to administer the anesthesia or sedation level at the facility where the sedation procedure is performed;
 - (3) an anesthesiologist licensed and practicing in accordance with the rules of the North Carolina Medical Board; or
 - (4) a CRNA licensed and practicing in accordance with the rules of the North Carolina Board of Nursing, under the supervision and direction of the permit holder who shall ensure the level

sedation administered does not exceed the level of the sedation allowed by the permit holder's permit.

(d) For purposes of this Rule, a "dedicated sedation auxiliary" shall mean an auxiliary with an unexpired ACLS certification who is dedicated to patient monitoring and recording anesthesia or sedation data throughout the sedation procedure. The dedicated sedation auxiliary shall be:

- (1) an RN licensed and practicing in accordance with the rules of the North Carolina Board of Nursing; or
- (2) a dental assistant with proof of an unexpired dental anesthesia assistant certification from the Dental Anesthesia Assistant National Certification Examination program offered by the American Association of Oral and Maxillofacial Surgeons, or from another Board-approved dental anesthesia assistant certification program. A list of approved programs is available on the Board's website at www.ncdentalboard.org.

(e) The permit holder shall ensure that each dedicated sedation auxiliary completes the training course set out in Rule .0103 of this Section every two years in addition to the training set out in this Rule.

Authority G.S. 90-28; 90-30.1; 90-48.

SECTION .0200 - GENERAL ANESTHESIA

21 NCAC 16Q .0202 GENERAL ANESTHESIA EQUIPMENT AND CLINICAL REQUIREMENTS

(a) A dentist administering holding or applying for a permit to administer general anesthesia shall ensure that the facility where the general anesthesia is administered meets the following requirements: be subject to the requirements set out in Section .0100 of this Subchapter.

(b) In addition to the drugs listed in Rule .0103(c)(3) of this Subchapter, an unexpired neuromuscular blocking agent shall be maintained in the facility and be accessible from the operatory and recovery rooms.

- (1) The facility shall be equipped with the following:
 - (A) an operatory of size and design to permit access of emergency equipment and personnel and to permit emergency management;
 - (B) a CPR board or dental chair without enhancements, suitable for providing emergency treatment;
 - (C) lighting as necessary for specific procedures and back up lighting;
 - (D) suction equipment as necessary for specific procedures, including non-electrical back up suction;
 - (E) positive pressure oxygen delivery system, including full face masks for small, medium, and large patients, and

back-up E-cylinder portable oxygen tank apart from the central system;

- (F) small, medium, and large oral and nasal airways;
- (G) blood pressure monitoring device;
- (H) EKG monitor;
- (I) pulse oximeter;
- (J) automatic external defibrillator (AED);
- (K) precordial stethoscope or capnograph;
- (L) thermometer;
- (M) vascular access set up as necessary for specific procedures, including hardware and fluids;
- (N) laryngoscope with working batteries;
- (O) intubation forceps and advanced airway devices;
- (P) tonsillar suction with back up suction;
- (Q) syringes as necessary for specific procedures; and
- (R) tourniquet and tape.

(2) The following unexpired drugs shall be maintained in the facility and with access from the operatory and recovery rooms:

- (A) Epinephrine;
- (B) Atropine;
- (C) antiarrhythmic;
- (D) antihistamine;
- (E) antihypertensive;
- (F) bronchodilator;
- (G) antihypoglycemic agent;
- (H) vasopressor;
- (I) corticosteroid;
- (J) anticonvulsant;
- (K) muscle relaxant;
- (L) appropriate reversal agents;
- (M) nitroglycerine;
- (N) antiemetic; and
- (O) Dextrose.

(3) The permit holder shall maintain written emergency and patient discharge protocols. The permit holder shall also provide training to familiarize auxiliaries in the treatment of clinical emergencies.

(4) The permit holder shall maintain the following records for 10 years:

- (A) Patient's current written medical history, including a record of known allergies and previous surgeries;
- (B) Consent to general anesthesia, signed by the patient or guardian, identifying the risks and benefits, level of anesthesia, and date signed;
- (C) Consent to the procedure, signed by the patient or guardian identifying the risks, benefits, and date signed; and
- (D) Patient base line vital signs, including temperature, SPO2, blood pressure, and pulse.

- (5) The anesthesia record shall include:
- (A) ~~base line vital signs, blood pressure (unless patient behavior prevents recording), oxygen saturation, ET CO2 if capnography is utilized, pulse and respiration rates of the patient recorded in real time at 15 minute intervals;~~
 - (B) ~~procedure start and end times;~~
 - (C) ~~gauge of needle and location of IV on the patient, if used;~~
 - (D) ~~status of patient upon discharge; and~~
 - (E) ~~documentation of complications or morbidity.~~

- (6) The facility shall be staffed with at least two BLS certified auxiliaries, one of whom shall be dedicated to patient monitoring and recording general anesthesia or sedation data throughout the sedation procedure. This Subparagraph shall not apply if the dentist permit holder is dedicated to patient care and monitoring regarding general anesthesia or sedation throughout the sedation procedure and is not performing the surgery or other dental procedure.

(b) ~~During an inspection or evaluation, the applicant or permit holder shall demonstrate the administration of anesthesia while the evaluator observes, and shall demonstrate competency in the following areas:~~

- (1) ~~monitoring of blood pressure, pulse, ET CO2 if capnography is utilized, and respiration;~~
- (2) ~~drug dosage and administration;~~
- (3) ~~treatment of untoward reactions including respiratory or cardiac depression;~~
- (4) ~~sterile technique;~~
- (5) ~~use of BLS certified auxiliaries;~~
- (6) ~~monitoring of patient during recovery; and~~
- (7) ~~sufficiency of patient recovery time.~~

(c) ~~During an inspection or evaluation, the applicant or permit holder shall demonstrate competency in the treatment of the following clinical emergencies:~~

- (1) ~~laryngospasm;~~
- (2) ~~bronchospasm;~~
- (3) ~~emesis and aspiration;~~
- (4) ~~respiratory depression and arrest;~~
- (5) ~~angina pectoris;~~
- (6) ~~myocardial infarction;~~
- (7) ~~hypertension and hypotension;~~
- (8) ~~syncope;~~
- (9) ~~allergic reactions;~~
- (10) ~~convulsions;~~
- (11) ~~bradycardia;~~
- (12) ~~hypoglycemia;~~
- (13) ~~cardiac arrest; and~~
- (14) ~~airway obstruction.~~

(d) ~~During the evaluation, the permit applicant shall take a written examination on the topics set forth in Paragraphs (b) and (c) of this Rule. The permit applicant must obtain a passing score on the written examination by answering 80 percent of the examination~~

~~questions correctly. If the permit applicant fails to obtain a passing score on the written examination that is administered during the evaluation, he or she may be re-examined in accordance with Rule .0204(h) of this Section.~~

(e) ~~A general anesthesia permit holder shall evaluate a patient for health risks before starting any anesthesia procedure.~~

(f) ~~Post operative monitoring and discharge shall include the following:~~

- (1) ~~the permit holder or a BLS certified auxiliary under his or her direct supervision shall monitor the patient's vital signs throughout the sedation procedure until the patient is recovered as defined by Subparagraph (f)(2) of this Rule and is ready for discharge from the office; and~~
- (2) ~~recovery from general anesthesia shall include documentation of the following:~~
 - (A) ~~cardiovascular function stable;~~
 - (B) ~~airway patency uncompromised;~~
 - (C) ~~patient arousable and protective reflexes intact;~~
 - (D) ~~state of hydration within normal limits;~~
 - (E) ~~patient can talk, if applicable;~~
 - (F) ~~patient can sit unaided, if applicable;~~
 - (G) ~~patient can ambulate, if applicable, with minimal assistance; and~~
 - (H) ~~for the special needs patient or a patient incapable of the usually expected responses, the pre sedation level of responsiveness or the level as close as possible for that patient shall be achieved; and~~
- (3) ~~before allowing the patient to leave the office, the dentist shall determine that the patient has met the recovery criteria set out in Subparagraph (f)(2) of this Rule and the following discharge criteria:~~
 - (A) ~~oxygenation, circulation, activity, skin color, and level of consciousness are stable and have been documented;~~
 - (B) ~~explanation and documentation of written postoperative instructions have been provided to the patient or a person responsible for the patient at time of discharge; and~~
 - (C) ~~a person authorized by the patient is available to transport the patient after discharge.~~

Authority G.S. 90-28; 90-30.1; 90-48.

SECTION .0300 - MODERATE CONSCIOUS SEDATION

21 NCAC 16Q .0302 MODERATE PARENTERAL AND ENTERAL CONSCIOUS SEDATION CLINICAL REQUIREMENTS AND EQUIPMENT

(a) ~~A dentist administering holding or applying for a permit to administer moderate conscious sedation or supervising any CRNA employed to administer or RN employed to deliver~~

moderate conscious sedation shall ~~ensure that the facility where the sedation is administered meets the following requirements: be subject to the requirements set out in Section .0100 of this Subchapter.~~

(b) In addition to the drugs listed in Rule .0103(c)(3) of this Subchapter, an unexpired muscle relaxant shall be maintained in the facility and be accessible from the operatory and recovery rooms.

(c) A moderate conscious sedation permit holder shall not use:

- (1) drugs designed by the manufacturer for use in administering general anesthesia or deep sedation; or
- (2) drugs contraindicated for use in moderate conscious sedation.
- ~~(1) The facility shall be equipped with the following:
 - (A) an operatory of size and design to permit access of emergency equipment and personnel and to permit emergency management;
 - (B) a CPR board or a dental chair without enhancements, suitable for providing emergency treatment;
 - (C) lighting as necessary for specific procedures and back-up lighting;
 - (D) suction equipment as necessary for specific procedures, including non-electrical back-up suction;
 - (E) positive pressure oxygen delivery system, including full face masks for small, medium, and large patients and back-up E-cylinder portable oxygen tank apart from the central system;
 - (F) small, medium, and large oral and nasal airways;
 - (G) blood pressure monitoring device;
 - (H) EKG monitor;
 - (I) pulse oximeter;
 - (J) automatic external defibrillator (AED);
 - (K) precordial stethoscope or capnograph;
 - (L) thermometer;
 - (M) vascular access set up as necessary for specific procedures, including hardware and fluids;
 - (N) laryngoscope with working batteries;
 - (O) intubation forceps and advanced airway devices;
 - (P) tonsillar suction with back-up suction;
 - (Q) syringes as necessary for specific procedures; and
 - (R) tourniquet and tape.~~
- ~~(2) The following unexpired drugs shall be maintained in the facility and with access from the operatory and recovery rooms:
 - (A) Epinephrine;
 - (B) Atropine;
 - (C) antiarrhythmic;
 - (D)~~

- ~~(E) antihypertensive;~~
- ~~(F) bronchodilator;~~
- ~~(G) antihypoglycemic agent;~~
- ~~(H) vasopressor;~~
- ~~(I) corticosteroid;~~
- ~~(J) anticonvulsant;~~
- ~~(K) muscle relaxant;~~
- ~~(L) appropriate reversal agents;~~
- ~~(M) nitroglycerine;~~
- ~~(N) antiemetic; and~~
- ~~(O) Dextrose.~~

~~(3) The permit holder shall maintain written emergency and patient discharge protocols. The permit holder shall also provide training to familiarize auxiliaries in the treatment of clinical emergencies;~~

~~(4) The dentist shall maintain the following records for at least 10 years:~~

- ~~(A) patient's current written medical history and pre-operative assessment;~~
- ~~(B) drugs administered during the procedure, including route of administration, dosage, strength, time, and sequence of administration; and~~
- ~~(C) a sedation record;~~

~~(5) The sedation record shall include:~~

- ~~(A) base line vital signs, blood pressure (unless patient behavior prevents recording), oxygen saturation, ET CO2 if capnography is utilized, pulse and respiration rates of the patient recorded in real time at 15 minute intervals;~~
- ~~(B) procedure start and end times;~~
- ~~(C) gauge of needle and location of IV on the patient, if used;~~
- ~~(D) status of patient upon discharge;~~
- ~~(E) documentation of complications or morbidity; and~~
- ~~(F) consent form, signed by the patient or guardian, identifying the procedure, risks and benefits, level of sedation, and date signed; and~~

~~(6) The following conditions shall be satisfied during a sedation procedure:~~

- ~~(A) The facility shall be staffed with at least two BLS certified auxiliaries, one of whom shall be dedicated to patient monitoring and recording sedation data throughout the sedation procedure. This Subparagraph shall not apply if the dentist permit holder is dedicated to patient care and monitoring regarding sedation throughout the sedation procedure and is not performing the surgery or other dental procedure; and~~
- ~~(B) If IV sedation is used, IV infusion shall be administered before the start~~

of the procedure and maintained until the patient is ready for discharge.

~~(b) During an inspection or evaluation, the applicant or permit holder shall demonstrate the administration of moderate conscious sedation on a patient, including the deployment of an intravenous delivery system, while the evaluator observes. During the demonstration, the applicant or permit holder shall demonstrate competency in the following areas:~~

- ~~(1) monitoring blood pressure, pulse, ET CO₂ if capnography is utilized, and respiration;~~
- ~~(2) drug dosage and administration;~~
- ~~(3) treatment of untoward reactions including respiratory or cardiac depression if applicable;~~
- ~~(4) sterile technique;~~
- ~~(5) use of BLS-certified auxiliaries;~~
- ~~(6) monitoring of patient during recovery; and~~
- ~~(7) sufficiency of patient recovery time.~~

~~(c) During an inspection or evaluation, the applicant or permit holder shall demonstrate competency to the evaluator in the treatment of the following clinical emergencies:~~

- ~~(1) laryngospasm;~~
- ~~(2) bronchospasm;~~
- ~~(3) emesis and aspiration;~~
- ~~(4) respiratory depression and arrest;~~
- ~~(5) angina pectoris;~~
- ~~(6) myocardial infarction;~~
- ~~(7) hypertension and hypotension;~~
- ~~(8) allergic reactions;~~
- ~~(9) convulsions;~~
- ~~(10) syncope;~~
- ~~(11) bradycardia;~~
- ~~(12) hypoglycemia;~~
- ~~(13) cardiac arrest; and~~
- ~~(14) airway obstruction.~~

~~(d) During the evaluation, the permit applicant shall take a written examination on the topics set forth in Paragraphs (b) and (c) of this Rule. The permit applicant must obtain a passing score on the written examination by answering 80 percent of the examination questions correctly. If the permit applicant fails to obtain a passing score on the written examination that is administered during the evaluation, he or she may be re-examined in accordance with Rule .0306(h) of this Section.~~

~~(e) A moderate conscious sedation permit holder shall evaluate a patient for health risks before starting any sedation procedure as follows:~~

- ~~(1) a patient who is medically stable and who is ASA I or II shall be evaluated by reviewing the patient's current medical history and medication use or;~~
- ~~(2) a patient who is not medically stable or who is ASA III or higher shall be evaluated by a consultation with the patient's primary care physician or consulting medical specialist regarding the potential risks posed by the procedure.~~

~~(f) Post operative monitoring and discharge:~~

- ~~(1) the permit holder or a BLS-certified auxiliary under his or her direct supervision shall monitor the patient's vital signs throughout the sedation~~

~~procedure until the patient is recovered as defined in Subparagraph (f)(2) of this Rule and is ready for discharge from the office.~~

~~(2) recovery from moderate conscious sedation shall include documentation of the following:~~

- ~~(A) cardiovascular function stable;~~
- ~~(B) airway patency uncompromised;~~
- ~~(C) patient arousable and protective reflexes intact;~~
- ~~(D) state of hydration within normal limits;~~
- ~~(E) patient can talk, if applicable;~~
- ~~(F) patient can sit unaided, if applicable;~~
- ~~(G) patient can ambulate, if applicable, with minimal assistance; and~~
- ~~(H) for the special needs patient or patient incapable of the usually expected responses, the pre sedation level of responsiveness or the level as close as possible for that patient shall be achieved.~~

~~(3) before allowing the patient to leave the office, the dentist shall determine that the patient has met the recovery criteria set out in Subparagraph (f)(2) of this Rule and the following discharge criteria:~~

- ~~(A) oxygenation, circulation, activity, skin color, and level of consciousness are stable, and have been documented;~~
- ~~(B) explanation and documentation of written postoperative instructions have been provided to the patient or a person responsible for the patient at the time of discharge; and~~
- ~~(C) a person authorized by the patient is available to transport the patient after discharge.~~

Authority G.S. 90-28; 90-30.1; 90-48.

SECTION .0400 - PEDIATRIC MODERATE CONSCIOUS SEDATION

21 NCAC 16Q .0405 MODERATE PEDIATRIC CONSCIOUS SEDATION CLINICAL REQUIREMENTS AND EQUIPMENT

(a) A dentist administering holding or applying for a permit to administer moderate pediatric conscious sedation shall ensure that the facility where the sedation is administered meets the following requirements: be subject to the requirements set out in Section .0100 of this Subchapter.

(b) In addition to the drugs listed in Rule .0103(c)(3) of this Subchapter, an unexpired muscle relaxant shall be maintained in the facility and be accessible from the operatory and recovery rooms.

(c) In addition to the requirements set out in Rule .0103(c)(4) of this Subchapter, the permit holder's emergency manual shall include assignments to be performed in the event of emergency by a BLS-certified auxiliary with PALS or comparable training.

(d) In addition to the requirements set out in Rule .0103(e) and (f) of this Subchapter, the permit holder shall ensure that patients who have been administered moderate pediatric conscious sedation are monitored for alertness, responsiveness, breathing, and skin coloration during waiting periods before operative procedures by the permit holder or an auxiliary dedicated to patient monitoring.

(e) In addition to the requirements set out in Rule .0103(h) of this Subchapter, the permit holder shall maintain documentation of pre-sedation instructions and information provided to the patient or person responsible for the patient, which shall include:

- (1) objectives of the sedation;
- (2) anticipated changes in patient behavior during and after sedation;
- (3) instructions to person responsible for a patient transported in a car seat regarding patient head position to avoid airway obstruction;
- (4) a 24-hour telephone number for the permit holder or his or her BLS-certified auxiliaries;
and
- (5) instructions on limitations of activities and dietary precautions.

(f) A moderate pediatric conscious sedation permit holder shall not use:

- (1) drugs designed by the manufacturer for use in administering general anesthesia or deep sedation; or
- (2) drugs contraindicated for use in moderate pediatric conscious sedation.
- (1) The facility shall be equipped with the following:
 - (A) an operatory of size and design to permit access of emergency equipment and personnel and to permit emergency management;
 - (B) a CPR board or a dental chair without enhancements, suitable for providing emergency treatment;
 - (C) lighting as necessary for specific procedures and back up lighting;
 - (D) suction equipment as necessary for specific procedures, including non-electrical back up suction;
 - (E) positive pressure oxygen delivery system, including full face masks for small, medium, and large patients and back up E cylinder portable oxygen tank apart from the central system;
 - (F) small, medium, and large oral and nasal airways;
 - (G) blood pressure monitoring device;
 - (H) EKG monitor;
 - (I) pulse oximeter;
 - (J) automatic external defibrillator (AED);
 - (K) precordial stethoscope or capnograph;
 - (L) thermometer;

- (M) vascular access set up as necessary for specific procedures, including hardware and fluids;
- (N) laryngoscope with working batteries;
- (O) intubation forceps and advanced airway devices;
- (P) tonsillar suction with back up suction;
- (Q) syringes as necessary for specific procedures; and
- (R) tourniquet and tape.

(2) The following unexpired drugs shall be maintained in the facility and with access from the operatory and recovery rooms:

- (A) Epinephrine;
- (B) Atropine;
- (C) antiarrhythmic;
- (D) antihistamine;
- (E) antihypertensive;
- (F) bronchodilator;
- (G) antihypoglycemic agent;
- (H) vasopressor;
- (I) corticosteroid;
- (J) anticonvulsant;
- (K) muscle relaxant;
- (L) appropriate reversal agents;
- (M) nitroglycerine;
- (N) antiemetic; and
- (O) Dextrose.

(3) The permit holder shall maintain written emergency and patient discharge protocols. The permit holder shall also provide training to familiarize auxiliaries in the treatment of clinical emergencies;

(4) The following records are maintained for at least 10 years:

- (A) patient's current written medical history and pre-operative assessment;
- (B) drugs administered during the procedure, including route of administration, dosage, strength, time, and sequence of administration;
- (C) a sedation record; and
- (D) a consent form, signed by the patient or a guardian, identifying the procedure, risks and benefits, level of sedation, and date signed;

(5) The sedation record shall include:

- (A) base line vital signs, blood pressure (unless patient behavior prevents recording), oxygen saturation, ET CO2 if capnography is utilized, pulse and respiration rates of the patient recorded in real time at 15 minute intervals;
- (B) procedure start and end times;
- (C) gauge of needle and location of IV on the patient, if used;
- (D) status of patient upon discharge; and

- ~~(E) documentation of complications or morbidity; and~~
- ~~(6) The following conditions shall be satisfied during a sedation procedure:~~
 - ~~(A) the facility shall be staffed with at least two BLS certified auxiliaries, one of whom shall be dedicated to patient monitoring and recording sedation data throughout the sedation procedure. This Subparagraph shall not apply if the dentist permit holder is dedicated to patient care and monitoring regarding sedation throughout the sedation procedure and is not performing the surgery or other dental procedure; and~~
 - ~~(B) when IV sedation is used, IV infusion shall be administered before the commencement of the procedure and maintained until the patient is ready for discharge.~~
- ~~(b) During an inspection or evaluation, applicants and permit holders who use intravenous sedation shall demonstrate the administration of moderate pediatric conscious sedation on a live patient, including the deployment of an intravenous delivery system, while the evaluator observes. Applicants and permit holders who do not use IV sedation shall describe the proper deployment of an intravascular delivery system to the evaluator and shall demonstrate the administration of moderate pediatric conscious sedation on a live patient while the evaluator observes.~~
- ~~(c) During the demonstration, all applicants and permit holders shall demonstrate competency in the following areas:~~
 - ~~(1) monitoring blood pressure, pulse, and respiration;~~
 - ~~(2) drug dosage and administration;~~
 - ~~(3) treatment of untoward reactions including respiratory or cardiac depression if applicable;~~
 - ~~(4) sterile technique;~~
 - ~~(5) use of BLS certified auxiliaries;~~
 - ~~(6) monitoring of patient during recovery; and~~
 - ~~(7) sufficiency of patient recovery time.~~
- ~~(d) During an inspection or evaluation, the applicant or permit holder shall demonstrate competency in the treatment of the following clinical emergencies:~~
 - ~~(1) laryngospasm;~~
 - ~~(2) bronchospasm;~~
 - ~~(3) emesis and aspiration;~~
 - ~~(4) respiratory depression and arrest;~~
 - ~~(5) angina pectoris;~~
 - ~~(6) myocardial infarction;~~
 - ~~(7) hypertension and hypotension;~~
 - ~~(8) allergic reactions;~~
 - ~~(9) convulsions;~~
 - ~~(10) syncope;~~
 - ~~(11) bradycardia;~~
 - ~~(12) hypoglycemia;~~
 - ~~(13) cardiac arrest; and~~
 - ~~(14) airway obstruction.~~

- ~~(e) During the evaluation, the permit applicant shall take a written examination on the topics set forth in Paragraphs (c) and (d) of this Rule. The permit applicant must obtain a passing score on the written examination by answering 80 percent of the examination questions correctly. If the permit applicant fails to obtain a passing score on the written examination that is administered during the evaluation, he or she may be re-examined in accordance with Rule .0408(h) of this Section.~~
- ~~(f) A moderate pediatric conscious sedation permit holder shall evaluate patients for health risks before starting any sedation procedure as follows:~~
 - ~~(1) a patient who is medically stable and who is ASA I or II shall be evaluated by reviewing the patient's current medical history and medication use; or~~
 - ~~(2) a patient who is not medically stable or who is ASA III or higher shall be evaluated by a consultation with the patient's primary care physician or consulting medical specialist regarding the potential risks posed by the procedure.~~
- ~~(g) Patient monitoring:~~
 - ~~(1) Patients who have been administered moderate pediatric conscious sedation shall be monitored for alertness, responsiveness, breathing, and skin coloration during waiting periods before operative procedures.~~
 - ~~(2) The permit holder or a BLS certified auxiliary under his or her direct supervision shall monitor the patient's vital signs throughout the sedation procedure until the patient is recovered as defined in Subparagraph (g)(3) of this Rule and is ready for discharge from the office.~~
 - ~~(3) Recovery from moderate pediatric conscious sedation shall include documentation of the following:~~
 - ~~(A) cardiovascular function stable;~~
 - ~~(B) airway patency uncompromised;~~
 - ~~(C) patient arousable and protective reflexes intact;~~
 - ~~(D) state of hydration within normal limits;~~
 - ~~(E) patient can talk, if applicable;~~
 - ~~(F) patient can sit unaided, if applicable;~~
 - ~~(G) patient can ambulate, if applicable, with minimal assistance; and~~
 - ~~(H) for the special needs patient or a patient incapable of the usually expected responses, the pre sedation level of responsiveness or the level as close as possible for that patient shall be achieved.~~
 - ~~(4) Before allowing the patient to leave the office, the dentist shall determine that the patient has met the recovery criteria set out in Subparagraph (g)(3) of this Rule and the following discharge criteria:~~

- (A) ~~oxygenation, circulation, activity, skin color, and level of consciousness are stable, and have been documented;~~
- (B) ~~explanation and documentation of written postoperative instructions have been provided to a person responsible for the patient at time of discharge; and~~
- (C) ~~a person responsible for the patient is available to transport the patient after discharge, and for the patient for whom a motor vehicle restraint system is required, an additional responsible individual is available to attend to the patient.~~

Authority G.S. 90-28; 90-30.1; 90-48.

SECTION .0700 – COMPLIANCE AND REPORTING

21 NCAC 16Q .0702 TRACKING OF ADVERSE EVENTS

(a) A dentist who holds a permit to administer general anesthesia or sedation shall maintain an adverse event record, separate from patient treatment records, in which the permit holder tracks all adverse events during sedation procedures, including the permit holder's interventions to respond to each adverse event.

(b) On a quarterly basis, the permit holder shall examine all adverse events for assessment of risk reduction, including modification of procedures or equipment, or completion of relevant training or continuing education by the permit holder and all auxiliaries involved in sedation procedures.

(c) Each adverse event and risk reduction assessment shall be documented and maintained in the permit holder's adverse event record for 10 years. The permit holder's adverse event record shall be made available during a Board conducted facility inspection or evaluation.

(d) For purposes of this Rule, the term "adverse event" shall include the following clinical emergencies:

- (1) airway obstruction;
- (2) allergic reactions;
- (3) angina pectoris;
- (4) apnea;
- (5) bradycardia;
- (6) bronchospasm;
- (7) cardiac arrest;
- (8) convulsions;
- (9) emesis and aspiration;
- (10) hypertensive crisis, including rise in blood pressure to 180/120 mm Hg or higher;
- (11) hypoglycemia;
- (12) hypotension, including drop in blood pressure to 90/60 mm Hg or lower;
- (13) hypoventilation and respiratory arrest;
- (14) hypoxemia and hypoxia;
- (15) laryngospasm;
- (16) myocardial infarction; and
- (17) syncope.

Authority G.S. 90-28; 90-30.1; 90-48.

21 NCAC 16Q .0703 REPORTS OF ADVERSE OCCURRENCES

(a) ~~A dentist who holds a permit to administer general anesthesia or sedation shall report to the Board within 72 hours after each adverse occurrence related to the administration of general anesthesia or sedation that results in the death of a patient if the patient dies or has permanent organic brain dysfunction within 24 hours of after the procedure. administration of general anesthesia or sedation. Sedation permit Permit holders shall cease administration of general anesthesia or sedation until the Board has investigated the death or permanent organic brain dysfunction and approved resumption of permit privileges. General anesthesia permit holders shall cease administration of general anesthesia and sedation until the Board has reviewed the incident report and approved resumption of permit privileges.~~

(b) ~~A dentist who holds a permit to administer general anesthesia or sedation shall report to the Board within 30 days after each adverse occurrence related to if the patient is admitted to a hospital for a medical emergency or physical injury within 24 hours after the administration of general anesthesia or sedation. sedation that results in permanent organic brain dysfunction of a patient occurring within 24 hours of the procedure or that results in physical injury or severe medical emergencies, causing hospitalization of a patient occurring within 24 hours of the procedure.~~

(c) The adverse occurrence report shall be in writing and shall include the following:

- (1) dentist's name, license number and permit number;
- (2) date and time of the occurrence;
- (3) facility where the occurrence took place;
- (4) name and address of the patient;
- (5) surgical procedure involved;
- (6) type and dosage of sedation or anesthesia utilized in the procedure;
- (7) circumstances involved in the occurrence; and
- (8) anesthesia records.

(d) Upon receipt of any such report, report submitted pursuant to this Rule, the Board shall investigate and shall take disciplinary action if the evidence demonstrates that a licensee has violated the Dental Practice Act set forth in Article 2 of G.S. Chapter 90 of the General Statutes or the Board's rules of this Chapter.

Authority G.S. 90-28; 90-30.1; 90-41; 90-48.

CHAPTER 32 - MEDICAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the Medical Board intends to amend the rules cited as 21 NCAC 32B .1303, .1350, .1402; and 32S .0213.

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncmedboard.org/about_the_board/rule_changes

Proposed Effective Date: May 1, 2022

Public Hearing:

Date: March 3, 2022

Time: 10:00 a.m.

Location: Public Hearing will be held via teleconference: 1-919-518-9840; Conference ID: 436 577 690#

Reason for Proposed Action:

21 NCAC 32B .1303, .1350, .1402: To eliminate all USMLE Step 2 CS and COMLEX Level 2 PE licensure requirements to all license applications.

21 NCAC 32S .0213: To clarify supervisory exemptions if multiple supervising physicians are involved in postgraduate training.

Comments may be submitted to: Wanda Long, P.O. Box 20007, Raleigh, NC 27619-0007; email rules@ncmedboard.org

Comment period ends: March 4, 2022

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 984-236-1850.

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

**SUBCHAPTER 32B – LICENSE TO PRACTICE
MEDICINE**

SECTION .1300 - GENERAL

21 NCAC 32B .1303 APPLICATION FOR PHYSICIAN LICENSE

- (a) In order to obtain a physician license, an applicant shall:
- (1) submit a completed application, attesting under oath or affirmation that the information on the application is true and complete and authorizing the release to the Board of all information pertaining to the application;
 - (2) submit a photograph that shows a front view of your face; photograph, two inches by two

~~inches, affixed to the oath or affirmation that has been attested to by a notary public;~~

- (3) submit documentation of a legal name change, if applicable;
- (4) supply a certified copy of applicant's birth certificate if the applicant was born in the U.S. or a certified copy of a valid and unexpired U.S. passport. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status that the Board will use to verify applicant's ability to work lawfully in the U.S.;
- (5) submit proof on the Board's Medical Education Certification form that the applicant has completed at least 130 weeks of medical education and received a medical degree. However, the Board shall waive the 130-week requirement if the applicant has been certified or recertified by an ABMS, CCFP, FRCP, FRCS, or AOA approved specialty board within the past 10 years;
- (6) for an applicant who has graduated from a medical or osteopathic school approved by the LCME, the CACMS, or COCA, meet the requirements set forth in G.S. 90-9.1;
- (7) for an applicant graduating from a medical school not approved by the LCME, meet the requirements set forth in G.S. 90-9.2;
- (8) provide proof of passage of an examination testing ~~general~~ medical knowledge. In addition to the examinations set forth in G.S. 90-10.1 ~~(a state board licensing examination, NBME, USMLE, FLEX, or their successors)~~, the Board accepts the following examinations (or their successors) for licensure:
 - (A) COMLEX;
 - ~~(B) NBOME; and~~
 - ~~(B)(C) MCCQE; and~~
 - (C) Current certification or current recertification by an ABMS, CCFP, FRCP, FRCS, AOA, ABOMS or other Board approved specialty board.
- (9) submit proof that the applicant has completed graduate medical education as required by G.S. 90-9.1 or 90-9.2, as follows:
 - (A) A graduate of a medical school approved by LCME, CACMS, or COCA shall have completed at least one year of graduate medical education approved by ACGME, CFPC, RCPSC, or AOA;
 - (B) A graduate of a medical school not approved by LCME shall have completed three years of graduate medical education approved by ACGME, CFPC, RCPSC, or AOA;
 - (C) An applicant may satisfy the graduate medical education requirements of Parts (A) or (B) of this Subparagraph

- by showing proof of current certification by a specialty board recognized by the ABMS, CCFP, FRCP, FRCS, or AOA;
- (10) submit a FCVS profile:
- (A) If the applicant is a graduate of a medical school approved by LCME, CACMS, or COCA, and the applicant previously has completed a FCVS profile; or
- (B) If the applicant is a graduate of a medical school other than those approved by LCME, COCA, or CACMS;
- (11) if a graduate of a medical school other than those approved by LCME, AOA, COCA, or CACMS, furnish an original ECFMG certification status report of a currently valid certification of the ECFMG. The ECFMG certification status report requirement shall be waived if: the applicant has passed the ECFMG examination and successfully completed an approved Fifth Pathway program (original ECFMG score transcript from the ECFMG required);
- (12) submit an AMA Physician Profile and, if the applicant is an osteopathic physician, also submit an AOA Physician Profile;
- (13) if applying on the basis of the USMLE, submit:
- (A) a transcript from the FSMB showing a score on USMLE Step 1, ~~both portions of Step 2 (clinical knowledge and clinical skills)~~ and Step 3; and
- (B) proof that the applicant has passed each step within three attempts. However, the Board shall waive the three-attempt requirement if the applicant has been certified or recertified by an ABMS, CCFP, FRCP, FRCS, AOA, American Board of Oral Maxillofacial Surgery ("ABOMS") approved specialty board within the past 10 years;
- (14) if applying on the basis of COMLEX, submit:
- (A) a transcript from the NBOME showing a score on COMLEX Level 1, ~~both portions of Level 2 (cognitive evaluation and performance evaluation)~~ and Level 3; and
- (B) proof that the applicant has passed COMLEX within three attempts. However, the Board shall waive the three-attempt requirement if the applicant has been certified or recertified by an ABMS, CCFP, FRCP, FRCS, AOA, or ABOMS approved specialty board within the past 10 years;
- (15) if applying on the basis of any other board-approved examination, submit a transcript showing a passing score;
- (16) submit two completed fingerprint record cards; ~~cards supplied by the Board~~;
- (17) submit a signed consent allowing a search of local, state, and national files for any criminal record;
- (18) provide two original references from persons with no family or marital relationship to the applicant. These references shall be:
- (A) from physicians who have observed the applicant's work in a clinical environment within the past three years;
- (B) on forms supplied by the Board;
- (C) dated within six months of the submission of the application; and
- (D) bearing the original signature of the writer;
- (19) pay to the Board a non-refundable fee pursuant to G.S. 90-13.1(a), plus the cost of a criminal background check; and
- (20) upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.
- (b) In addition to the requirements of Paragraph (a) of this Rule, the applicant shall submit proof that the applicant has:
- (1) within the past 10 years taken and passed either:
- (A) an exam listed in G.S. 90-10.1 (a state board licensing examination, NBOME, USMLE, COMLEX, or MCCQE or their successors);
- (B) SPEX (with a score of 75 or higher); or
- (C) COMVEX (with a score of 75 or higher);
- (2) within the past 10 years:
- (A) obtained certification or recertification or CAQ by a specialty board recognized by the ABMS, CCFP, FRCP, FRCS, AOA or American Board of Maxillofacial Surgery;
- (B) met requirements for ABMS MOC (maintenance of certification) or AOA OCC (Osteopathic continuous certification);
- (3) within the past 10 years completed GME approved by ACGME, CFPC, RCPSC, or AOA; or
- (4) within the past three years completed CME as required by 21 NCAC 32R .0101(a), .0101(b), and .0102.
- (c) All reports must be submitted directly to the Board from the primary source.
- (d) An applicant shall appear in person for an interview with the Board or its agent, if the Board determines it needs more

information to evaluate the applicant based on the information provided by the applicant and the Board's concerns.

(e) An application must be completed within one year of submission. If not, the applicant shall be charged another application fee, plus the cost of another criminal background check.

Authority G.S. 90-5.1(a)(3); 90-8.1; 90-9.1; 90-9.2; 90-13.1.

21 NCAC 32B .1350 REINSTATEMENT OF PHYSICIAN LICENSE

(a) "Reinstatement" is for a physician who has held a North Carolina license, but whose license either has been inactive for more than one year, or whose license became inactive as a result of disciplinary action (revocation or suspension) taken by the Board. It also applies to a physician who has surrendered a license prior to charges being filed by the Board.

(b) All applicants for reinstatement shall:

- (1) submit a completed application, ~~that can be found on the Board's website in the application section~~ at <http://www.ncmedboard.org/licensing>, attesting under oath or affirmation that information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit a photograph that shows a front view of your face;
- ~~(2)(3)~~ submit documentation of a legal name change, if applicable;
- ~~(3)(4)~~ supply a ~~certified~~ copy of the applicant's birth certificate if the applicant was born in the U.S. or a certified copy of a valid and unexpired U.S. passport. If the applicant does not possess proof of U.S. citizenship, the applicant shall provide information about the applicant's immigration status that the Board shall use to verify the applicant's legal presence in the U.S. Applicants who are not physically present in the U.S. and who do not plan to practice by being physically present in the U.S. shall submit a written statement to that effect;
- ~~(4)(5)~~ furnish an original ECFMG certification status report of a currently valid certification of the ECFMG if the applicant is a graduate of a medical school other than those approved by LCME, AOA, COCA, or CACMS. The ECFMG certification status report requirement shall be waived if: the applicant has passed the ECFMG examination and completed an approved Fifth Pathway program (original ECFMG score transcript from the ECFMG required);
- (5) ~~submit the AMA Physician Profile; and, if the applicant is an osteopathic physician, also submit the AOA Physician Profile;~~
- (6) submit documentation of CME obtained in the last three years;

- (7) submit two completed fingerprint cards; ~~cards supplied by the Board;~~
- (8) submit a signed consent allowing a search of local, state, and national files to disclose any criminal record;
- (9) provide two original references from persons with no family or marital relationship to the applicant. These references shall be:
 - (A) from physicians who have observed the applicant's work in a clinical environment within the past three years;
 - (B) on forms supplied by the Board;
 - (C) dated within six months of submission of the application; and
 - (D) bearing the original signature of the author;
- (10) pay to the Board a non-refundable fee pursuant to G.S. 90-13.1(a), plus the cost of a criminal background check; and
- (11) upon request, provide any additional information the Board deems necessary to evaluate the applicant's qualifications.

(c) In addition to the requirements of Paragraph (b) of this Rule, the applicant shall submit proof that the applicant has:

- (1) within the past 10 years taken and passed either:
 - (A) an exam listed in G.S. 90-10.1 (a state board licensing examination, NBOME, USMLE, COMLEX, or MCCQE or their successors);
 - (B) SPEX (with a score of 75 or higher); or
 - (C) COMLEX (with a score of 75 or higher);
- (2) within the past ten years:
 - (A) obtained certification or recertification of CAQ by a specialty board recognized by the ABMS, CCFP, FRCP, FRCS, AOA, or American Board of Oral Maxillofacial Surgery;
 - (B) met requirements for ABMS MOC (maintenance of certification) or AOA OCC (Osteopathic continuous certification);
- (3) within the past 10 years completed GME approved by ACGME, CFPC, RCPSC or AOA; or
- (4) within the past three years completed CME as required by 21 NCAC 32R .0101(a), .0101(b), and .0102.

(d) All reports shall be submitted directly to the Board from the primary source.

(e) An applicant shall be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character if the Board determines it needs more information to evaluate the applicant based on the information provided by the applicant and the Board's concerns.

(f) An application must be complete within one year of submission. If not, the applicant shall be charged another

application fee plus the cost of another criminal background check.

(g) Notwithstanding the provisions of this Rule, the licensure requirements established by rule at the time the applicant first received his or her equivalent North Carolina license shall apply. Information about these Rules is available from the Board.

Authority G.S. 90-5.1(a)(3); 90-8.1; 90-9.1; 90-10.1; 90-13.1.

SECTION .1400 – RESIDENT'S TRAINING LICENSE

21 NCAC 32B .1402 APPLICATION FOR RESIDENT'S TRAINING LICENSE

(a) In order to obtain a Resident's Training License, an applicant shall:

- (1) submit a completed application which can be found on the Board's website in the application ~~section~~ at ~~http://www.ncmedboard.org/licensing,~~ attesting under oath or affirmation that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit documentation of a legal name change, if applicable;
- (3) submit a photograph that shows a front view of your face; ~~photograph, two inches by two inches, affixed to the oath or affirmation which has been attested to by a notary public;~~
- (4) submit proof on the Board's Medical Education Certification form that the applicant has completed at least 130 weeks of medical education; ~~education to P.O. Box 20007, Raleigh, NC 27619 or license@ncmedboard.org.~~
- (5) furnish an original ECFMG certification status report of a currently valid ECFMG certification if the applicant is a graduate of a medical school other than those approved by LCME, AOA, COCA, or CACMS. The ECFMG certification status report requirement shall be waived if:
 - (A) if the applicant has passed the ECFMG examination and successfully completed an approved Fifth Pathway program (the applicant shall provide an ECFMG score transcript from the ECFMG); or
 - (B) ~~the applicant has been licensed in another state on the basis of a written examination before the establishment of the ECFMG in 1958;~~
- (6) submit an appointment letter from the program director of the GME program or his or her appointed agent verifying the applicant's appointment and commencement date;
- (7) submit two completed fingerprint record cards; ~~cards supplied by the Board to P.O. Box 20007, Raleigh, NC 27619;~~

- (8) submit a signed consent form allowing a search of local, state, and national files for any criminal record; ~~record to P.O. Box 20007, Raleigh, NC 27619.~~
- (9) pay a non-refundable fee pursuant to G.S. 90-13.1(b), plus the cost of a criminal background check;
- (10) provide proof that the applicant has taken and passed within three attempts:
 - (A) COMLEX Level 1, ~~each component of COMLEX Level 2 (cognitive evaluation and performance evaluation) and, if taken, COMLEX Level 3; or~~
 - (B) USMLE Step 1, ~~each component of USMLE Step 2 (Clinical Knowledge and Clinical Skills) and, if taken USMLE Step 3; or~~
 - (C) MCCQE Part 1 and, if taken, MCCQE Pat 2;
- (11) In the event any of the above required information should indicate a concern about the applicant's qualifications, upon request, the applicant shall supply any additional information the Board deems necessary to evaluate the applicant's competence and character.

(b) In the event any of the above required information should indicate a concern about the applicant's qualifications, an applicant shall be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character, if the Board needs more information to complete the application.

(c) If the applicant previously held a North Carolina residency training license, the licensure requirements established by rule at the time the applicant first received his or her North Carolina residency training license shall apply. Information about these Rules is available from the Board.

Authority G.S. 90-8.1; 90-12.01; 90-13.1; 90-14(a).

SUBCHAPTER 32S - PHYSICIAN ASSISTANTS

SECTION .0200 – PHYSICIAN ASSISTANT REGISTRATION

21 NCAC 32S .0213 PHYSICIAN SUPERVISION OF PHYSICIAN ASSISTANTS

- (a) A physician wishing to serve as a primary supervising physician shall exercise supervision of the physician assistant in accordance with rules adopted by the Board.
- (b) A physician assistant may perform medical acts, tasks, or functions only under the supervision of a physician. Supervision shall be continuous but, except as otherwise provided in the rules of this Subchapter, shall not be construed as requiring the physical presence of the supervising physician at the time and place that the services are rendered.
- (c) Each team of physician(s) and physician assistant(s) shall ensure:

- (1) the physician assistant's scope of practice is identified;
- (2) delegation of medical tasks is appropriate to the skills of the supervising physician(s) as well as the physician assistant's level of competence;
- (3) the relationship of, and access to, each supervising physician is defined; and
- (4) a process for evaluation of the physician assistant's performance is established.

(d) Each supervising physician and physician assistant shall sign a statement, as defined in Rule .0201(9) of this Subchapter, that describes the supervisory arrangements in all settings. The physician assistant shall maintain written prescribing instructions at each site. This statement shall be kept on file at all practice sites, and shall be available upon request by the Board.

(e) A primary supervising physician and a physician assistant in a new practice arrangement shall meet monthly for the first six months to discuss practice relevant clinical issues and quality improvement measures. Thereafter, the primary supervising physician and the physician assistant shall meet at least once every six months. A written record of these meetings shall be signed and

dated by both the supervising physician and the physician assistant, and shall be available upon request by the Board. The written record shall include a description of the relevant clinical issues discussed and the quality improvement measures taken.

(f) Physician assistants enrolled and participating in a postgraduate training program shall designate on their intent to practice form as required by Rule .0203 of this Subchapter a single physician as their primary supervising physician as determined by the postgraduate training program. For purposes of this Rule, a postgraduate training program shall mean a professional development program of at least 12 months sponsored or co-sponsored by a licensed hospital and healthcare system in which the participants rotate through at least three or more distinct medical specialties. As the participants rotates through the program's various specialties, all other supervising physicians shall be designated as a backups.

Authority G.S. 90-9.3; 90-18(c)(13); 90-18.1.

APPROVED RULES

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

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

**REGISTER CITATION TO THE
NOTICE OF TEXT****MENTAL HEALTH/DD/SAS, COMMISSION FOR**

<u>Schedule I</u>	10A NCAC	26F	.0102*	n/a G.S. 90-88(d)
<u>Schedule II</u>	10A NCAC	26F	.0103*	n/a G.S. 90-88(d)
<u>Schedule IV</u>	10A NCAC	26F	.0105*	n/a G.S. 90-88(d)
<u>Schedule V</u>	10A NCAC	26F	.0106*	n/a G.S. 90-88(d)

INSURANCE, DEPARTMENT OF

<u>Division Procedures</u>	11 NCAC	04	.0115*	35:14 NCR
<u>Policy or Service Fees</u>	11 NCAC	04	.0120*	35:14 NCR
<u>Premium Notices: Payments and Refunds</u>	11 NCAC	04	.0314*	35:14 NCR
<u>Issuance of Contracts</u>	11 NCAC	04	.0315*	35:14 NCR
<u>Contestability Clause and Rescission</u>	11 NCAC	04	.0316*	35:14 NCR
<u>Sex Discrimination: Life: Accident and Health Insurance</u>	11 NCAC	04	.0317*	35:14 NCR
<u>Life Insurance Sales: Financing First Year Premium</u>	11 NCAC	04	.0318*	35:14 NCR
<u>Claims Practices: Life: Accident and Health Insurance</u>	11 NCAC	04	.0319*	35:14 NCR
<u>Safe Driver Incentive Plan</u>	11 NCAC	04	.0415*	35:14 NCR
<u>Disclosure Requirements</u>	11 NCAC	04	.0427*	35:14 NCR
<u>Commingling</u>	11 NCAC	04	.0429	35:14 NCR
<u>Refund of Excess Premium on Scheduled Items</u>	11 NCAC	04	.0432*	35:14 NCR
<u>Refund of Auto Insurance Premium on New Business</u>	11 NCAC	04	.0433	35:14 NCR
<u>Scope and Definitions</u>	11 NCAC	04	.0501*	35:14 NCR
<u>Assumed Expenses and Current Scale</u>	11 NCAC	04	.0502*	35:14 NCR
<u>Illustrated Policies</u>	11 NCAC	04	.0503*	35:14 NCR
<u>General Rules</u>	11 NCAC	04	.0504*	35:14 NCR
<u>Standards and Basic Illustrations</u>	11 NCAC	04	.0505*	35:14 NCR
<u>Standards for Supplemental Illustrations</u>	11 NCAC	04	.0506*	35:14 NCR
<u>Delivery of Illustration and Record Retention</u>	11 NCAC	04	.0507*	35:14 NCR
<u>Annual Reports and Notices to Policy Owners</u>	11 NCAC	04	.0508*	35:14 NCR
<u>Annual Certifications</u>	11 NCAC	04	.0509*	35:14 NCR

CODE OFFICIALS QUALIFICATION BOARD

<u>Residential Changeout Inspector</u>	11 NCAC	08	.0734	35:23 NCR
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COASTAL RESOURCES COMMISSION

<u>General Use Standards for Ocean Hazard Areas</u>	15A NCAC	07H	.0306	35:20 NCR
<u>Specific Use Standards for Ocean Hazard Areas</u>	15A NCAC	07H	.0308*	35:20 NCR
<u>Purpose</u>	15A NCAC	07H	.1201*	34:09 NCR
<u>Approval Procedures</u>	15A NCAC	07H	.1202*	34:09 NCR
<u>Permit Fee</u>	15A NCAC	07H	.1203	34:09 NCR
<u>General Conditions</u>	15A NCAC	07H	.1204*	34:09 NCR

<u>Specific Conditions</u>	15A NCAC 07H .1205*	34:09 NCR
<u>Application Procedures</u>	15A NCAC 07J .1105*	34:09 NCR
<u>Permit Conditions</u>	15A NCAC 07J .1106*	34:09 NCR
<u>Permit Compliance</u>	15A NCAC 07J .1107*	34:09 NCR
<u>Requesting the Development Line</u>	15A NCAC 07J .1301*	35:20 NCR
<u>Structural Accessways Over Frontal Dunes Exempted</u>	15A NCAC 07K .0207*	35:20 NCR

ENVIRONMENTAL QUALITY, DEPARTMENT OF

<u>Statement of Purpose</u>	15A NCAC 07O .0101*	36:02 NCR
<u>Definitions as used in this Subchapter</u>	15A NCAC 07O .0102*	36:02 NCR
<u>Responsibilities: Duties of The Coastal Reserve Program</u>	15A NCAC 07O .0103	36:02 NCR
<u>State and Local Coastal Reserve Advisory Committees</u>	15A NCAC 07O .0104*	36:02 NCR
<u>Reserve Components</u>	15A NCAC 07O .0105	36:02 NCR
<u>Management Plan</u>	15A NCAC 07O .0201*	36:02 NCR
<u>Reserve Use Requirements</u>	15A NCAC 07O .0202*	36:02 NCR
<u>Special Activity Authorization</u>	15A NCAC 07O .0203*	36:02 NCR

TREASURER, DEPARTMENT OF STATE

<u>Correspondence</u>	20 NCAC 01F .0102	36:04 NCR
<u>Petition for Rulemaking</u>	20 NCAC 01F .0111	36:04 NCR
<u>Form of Requests</u>	20 NCAC 01F .0203	36:04 NCR
<u>Who Makes Ruling</u>	20 NCAC 01F .0204	36:04 NCR
<u>Ruling Procedures</u>	20 NCAC 01F .0207	36:04 NCR
<u>Declaratory Rulings</u>	20 NCAC 01F .0208	36:04 NCR

STATE HUMAN RESOURCES COMMISSION

<u>Temporary Appointment</u>	25 NCAC 01C .0405*	36:02 NCR
<u>Temporary Part-time Appointment</u>	25 NCAC 01C .0407	36:02 NCR

The following rules are subject to legislative review.

MEDICAL CARE COMMISSION

<u>Infection Prevention and Control Policies and Procedures</u>	10A NCAC 13F .1801*	35:19 NCR
<u>Reporting and Notification of a Suspected or Confirmed Co...</u>	10A NCAC 13F .1802*	35:19 NCR
<u>Infection Prevention and Control</u>	10A NCAC 13G .1701*	35:19 NCR
<u>Reporting and Notification of a Suspected or Confirmed Co...</u>	10A NCAC 13G .1702*	35:19 NCR

TITLE 10A - DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 13F .1801 INFECTION PREVENTION AND CONTROL POLICIES AND PROCEDURES

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

control that shall be made available on the Division of Health Service Regulation, Adult Care Licensure Section website at <https://info.ncdhhs.gov/dhsr/acls/acforms.html> at no cost. The facility shall either:

- (1) utilize the set of policies and procedures for infection prevention and control approved by the Department;
- (2) develop policies and procedures for infection prevention and control that are consistent with the set of Department approved policies and procedures; or
- (3) develop policies and procedures for infection prevention and control that are based on

nationally recognized standards in infection prevention and control that are consistent with the federal CDC published guidelines on infection prevention and control.

(b) The facility's infection and control policies and procedures shall be implemented by the facility and shall address the following:

- (1) Standard and transmission-based precautions, including:
 - (A) respiratory hygiene and cough etiquette;
 - (B) environmental cleaning and disinfection;
 - (C) reprocessing and disinfection of reusable resident medical equipment;
 - (D) hand hygiene;
 - (E) accessibility and proper use of personal protective equipment (PPE); and
 - (F) types of transmission-based precautions and when each type is indicated, including contact precautions, droplet precautions, and airborne precautions;
- (2) When and how to report to the local health department when there is a suspected or confirmed reportable communicable disease case or condition, or communicable disease outbreak in accordance with Rule .1802 of this Section;
- (3) Measures for the facility to consider taking in the event of a communicable disease outbreak to prevent the spread of illness, such as isolating infected residents; limiting or stopping group activities and communal dining; limiting or restricting outside visitation to the facility; screening staff, residents, and visitors for signs of illness; and use of source control as tolerated by the residents; and
- (4) Strategies for addressing potential staffing issues and ensuring staffing to meet the needs of the residents during a communicable disease outbreak.

(c) When a communicable disease outbreak has been identified at the facility or there is an emerging infectious disease threat, the facility shall ensure implementation of the facility's infection prevention and control policies and procedures, and when issued, guidance or directives specific to the communicable disease outbreak or emerging infectious disease threat that have been issued in writing by the North Carolina Department of Health and Human Services or local health department.

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

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

History Note: Authority G.S. 131D-2.16; 131D-4.4A; 143B-165;
Emergency Adoption Eff. October 23, 2020;
Temporary Adoption Eff. December 30, 2020;
Eff. Pending Legislative Review.

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

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

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

- (1) not disclose any personally identifiable information of the residents or staff;
- (2) provide information on the measures the facility is taking to prevent or reduce the risk of transmission, including whether normal operations of the facility will change; and
- (3) provide information to the resident(s) concerning measures they can take to reduce the risk of spread or transmission of infection.

(c) Following the initial notice to residents and their representative(s) of a communicable disease outbreak, the facility shall provide the following:

- (1) an update every two weeks until the communicable illness within the facility has resolved, as determined by the local health department; and
- (2) an update that the communicable illness within the facility has resolved, as determined by the local health department.

History Note: Authority G.S. 131D-2.16; 131D-4.4B; 131D-4.5; 143B-165;
Emergency Adoption Eff. October 23, 2020;
Temporary Adoption Eff. December 30, 2020;
Eff. Pending Legislative Review.

10A NCAC 13G .1701 INFECTION PREVENTION AND CONTROL POLICIES AND PROCEDURES

(a) In accordance with Rule .1211(a)(4) of this Subchapter and G.S. 131D-4.4A(b)(1), the facility shall establish and implement infection prevention and control policies and procedures consistent with the federal Centers for Disease Control and Prevention (CDC) published guidelines on infection prevention and control. The Department shall approve a set of policies and procedures for infection prevention and control consistent with the federal CDC published guidelines on infection prevention and control that will be made available on the Division of Health Service Regulation, Adult Care Licensure Section website at

<https://info.ncdhhs.gov/dhsr/acls/acforms.html> at no cost. The facility shall either:

- (1) utilize the set of policies and procedures for infection prevention and control approved by the Department;
- (2) develop policies and procedures for infection and prevention and control that are consistent with the set of Department approved policies and procedures; or
- (3) develop policies and procedures for infection prevention and control that are based on nationally recognized standards in infection prevention and control that are consistent with the federal CDC published guidelines on infection prevention and control.

(b) The facility's infection and control policies and procedures shall be implemented by the facility and shall address the following:

- (1) Standard and transmission-based precautions, including:
 - (A) respiratory hygiene and cough etiquette;
 - (B) environmental cleaning and disinfection;
 - (C) reprocessing and disinfection of reusable resident medical equipment;
 - (D) hand hygiene;
 - (E) accessibility and proper use of personal protective equipment (PPE); and
 - (F) types of transmission-based precautions and when each type is indicated, including contact precautions, droplet precautions, and airborne precautions;
- (2) When and how to report to the local health department when there is a suspected or confirmed reportable communicable disease case or condition, or communicable disease outbreak in accordance with Rule .1702 of this Section;
- (3) Measures for the facility to consider taking in the event of a communicable disease outbreak to prevent the spread of illness, such as isolating infected residents; limiting or stopping group activities and communal dining; limiting or restricting outside visitation to the facility; screening staff, residents, and visitors for signs of illness; and use of source control as tolerated by the residents; and
- (4) Strategies for addressing potential staffing issues and ensuring staffing to meet the needs of the residents during a communicable disease outbreak.

(c) When a communicable disease outbreak has been identified at the facility or there is an emerging infectious disease threat, the facility shall ensure implementation of the facility's infection prevention and control policies and procedures, and when issued, guidance or directives specific to the communicable disease

outbreak or emerging infectious disease threat that have been issued in writing by the North Carolina Department of Health and Human Services or local health department.

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

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

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

Emergency Adoption Eff. October 23, 2020;

Temporary Adoption Eff. December 30, 2020;

Eff. Pending Legislative Review.

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

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

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

- (1) not disclose any personally identifiable information of the residents or staff;
- (2) provide information on the measures the facility is taking to prevent or reduce the risk of transmission, including whether normal operations of the facility will change; and
- (3) provide information to the resident(s) concerning measures they can take to reduce the risk of spread or transmission of infection.

(c) Following the initial notice to residents and their representative(s) of a communicable disease outbreak, the facility shall provide the following:

- (1) an update every two weeks until the communicable illness within the facility has resolved, as determined by the local health department; and
- (2) an update that the communicable illness within the facility has resolved, as determined by the local health department.

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

Emergency Adoption Eff. October 23, 2020;

Temporary Adoption Eff. December 30, 2020;

Eff. Pending Legislative Review.

10A NCAC 26F .0102 SCHEDULE I

(a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated and as specified in G.S. 90-89. Each drug or substance has been assigned the Drug Enforcement Administration controlled substances code number set forth in the Code of Federal Regulations, Title 21, Section 1308.11.

(b) The Commission for MH/DD/SAS may add, delete, or reschedule substances within Schedules I-VI as specified in G.S. 90-88.

(c) As specified in G.S. 90-88, the Commission for MH/DD/SAS adds the following substance within Schedule I for Stimulants:

- (1) 2, 5 - Dimethoxy-4-(n)-propylthiophenethylamine; and
- (2) N-Benzylpiperazine.

(d) As specified in G.S. 90-88, the Commission for MH/DD/SAS adds the following substance within Schedule I for Hallucinogenic substances:

- (1) Alpha-Methyltryptamine;
- (2) 5-Methoxy-N, N-diisopropyltryptamine;
- (3) methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3-methylbutanoate, (FUB-AMB, MMB-FUBINACA, AMB-FUBINACA) DEA controlled substances code number 7021;
- (4) methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate (Other names: MMB-CHMICA; AMB-CHMICA) DEA controlled substances code number 7044;
- (5) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide (Other name: 5F-AB-PINACA) DEA controlled substances code number 7025;
- (6) Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (Other names: NM2201; CBL2201) DEA controlled substances code number 7221;
- (7) 1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboxamide (Other name: 5F-CUMYL-P7AICA) DEA controlled substances code number 7085;
- (8) 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide (Other names: 4-CN-CUMYL-BUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL BINACA; CUMYL-4CN-BINACA; SGT-78) DEA controlled substances code number 7089;
- (9) N-ethylpentylone (Other names: ephylone, 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)pentan-1-one) DEA controlled substances code number 7543; and
- (10) 1-(4-methoxyphenyl)-N-methylpropan-2-amine (other names: para-methoxymethamphetamine, PMMA) DEA controlled substances code number 1245.

(e) As specified in G.S. 90-88, the Commission for MH/DD/SAS adds the following substance within Schedule I for Opiates:

- (1) para-Methoxybutyryl fentanyl (N-(4-methoxyphenyl)-N-(1-phenethylpiperidin-4-

yl)butyramide) DEA controlled substances code number 9837;

- (2) Cyclopentyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopentanecarboxamide) DEA controlled substances code number 9847;
- (3) Isobutyryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylisobutyramide) DEA controlled substances code number 9827;
- (4) para-Chloroisobutyryl fentanyl (N-(4-chlorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide) DEA controlled substances code number 9826;
- (5) Crotonyl fentanyl ((E)-N-(1-phenethylpiperidin-4-yl)-N-phenylbut-2-enamide) DEA controlled substances code number 9844;
- (6) Phenyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylbenzamide; also known as benzoyl fentanyl) DEA controlled substances code number 9841;
- (7) para-Methylfentanyl (N-(4-methylphenyl)-N-(1-phenethylpiperidin-4-yl)propionamide; also known as 4-methylfentanyl) DEA controlled substances code number 9817;
- (8) ortho-Methyl methoxyacetyl fentanyl (2-methoxy-N-(2-methylphenyl)-N-(1-phenethylpiperidin-4-yl)acetamide; also known as 2-methyl methoxyacetyl fentanyl) DEA controlled substances code number 9820;
- (9) ortho-Methyl acetylfentanyl (N-(2-methylphenyl)-N-(1-phenethylpiperidin-4-yl)acetamide; also known as 2-methyl acetylfentanyl) DEA controlled substances code number 9848;
- (10) Thiofuranyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylthiophene-2-carboxamide; also known as 2-thiofuranyl fentanyl; thiophene fentanyl) DEA controlled substances code number 9839;
- (11) beta-Methyl fentanyl (N-phenyl-N-(1-(2-phenylpropyl)piperidin-4-yl)propionamide; also known as β -methyl fentanyl) DEA controlled substances code number 9856;
- (12) beta'-Phenyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N,3-diphenylpropanamide; also known as β' -phenyl fentanyl; 3-phenylpropanoyl fentanyl) DEA controlled substances code number 9842;
- (13) 2'-Fluoro ortho-fluorofentanyl (N-(1-(2-fluorophenethyl)piperidin-4-yl)-N-(2-fluorophenyl)propionamide; also known as 2'-fluoro 2-fluorofentanyl) DEA controlled substances code number 9855;
- (14) 4'-Methyl acetyl fentanyl (N-(1-(4-methylphenethyl)piperidin-4-yl)-N-phenylacetamide) DEA controlled substances code number 9819;

- (15) ortho-Fluorobutyryl fentanyl (N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)butyramide; also known as 2-fluorobutyryl fentanyl) DEA controlled substances code number 9846;
- (16) Fentanyl carbamate (ethyl (1-phenethylpiperidin-4-yl)(phenyl)carbamate) DEA controlled substances code number 9851;
- (17) ortho-Fluoroacryl fentanyl (N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)acrylamide) DEA controlled substances code number 9852;
- (18) para-Fluoro furanyl fentanyl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)furan-2-carboxamide) DEA controlled substances code number 9854; and
- (19) ortho-Fluoroisobutyryl fentanyl (N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide) DEA controlled substances code number 9853.

History Note: Authority G.S. 90-88; 90-89; 143B-147; Eff. June 30, 1978;
Amended Eff. November 1, 2005; July 1, 1995; November 1, 1994; April 1, 1994; January 1, 1994;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Amended Eff. December 1, 2021.

10A NCAC 26F .0103 SCHEDULE II

- (a) Schedule II shall consist of the drugs and other substances by whatever official name, common or usual name, chemical name, or brand name designated and as specified in G.S. 90-90. Each drug or substance has been assigned the Drug Enforcement Administration controlled substances code number set forth in the Code of Federal Regulations, Title 21, Section 1308.12.
- (b) As specified in G.S. 90-88, the Commission for MH/DD/SAS adds Lisdexamfetamine, its salts, isomers, and salts of its isomers to Schedule II for Stimulants.
- (c) As specified in G.S. 90-88, the Commission for MH/DD/SAS adds Tapentadol, its esters, ethers, salts, isomers and salts of its isomers, esters and ethers to Schedule II for Opiates.
- (d) As specified in G.S. 90-88, the Commission for MH/DD/SAS adds fentanyl immediate precursor chemical, N-phenyl-N-(piperidin-4-yl) propionamide (norfentanyl), DEA controlled substances code number 8366, its esters, ethers, salts, isomers and salts of its isomers, esters and ethers, to Schedule II for Opiates.
- (e) As specified in G.S. 90-88, the Commission for MH/DD/SAS adds Oliceridine (N-[(3-methoxythiophen-2-yl)methyl]({2-[(9R)-9-(pyridin-2-yl)-6-oxaspiro[4.5]decan-9-yl]ethyl})amine), DEA controlled substances code number 9245, its esters, ethers, salts, isomers and salts of its isomers, esters and ethers, to Schedule II for Opiates.

History Note: Authority G.S. 90-88; 90-90; 143B-147; Eff. June 30, 1978;
Amended Eff. January 1, 1994; April 1, 1993; August 1, 1991; August 1, 1989;
Temporary Amendment Eff. May 13, 1997;

Amended Eff. February 1, 2010; June 1, 2009; August 1, 2002; July 1, 1998;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Amended Eff. December 1, 2021.

10A NCAC 26F .0105 SCHEDULE IV

(a) Schedule IV shall consist of the drugs and other substances by whatever official name, common or usual name, chemical name, or brand name designated and listed in either G.S. 90-92 or this Rule. Each drug or substance has been assigned the Drug Enforcement Administration (DEA) controlled substances code number set forth in the Code of Federal Regulations, Title 21, Section 1308.14.

(b) As specified in G.S. 90-88, the Commission for MH/DD/SAS adds the following substances within Schedule IV for Depressants:

- (1) Dichloralphenazone - DEA controlled substances code number 2467;
- (2) Zopiclone - DEA controlled substances code number 2784;
- (3) Fospropol - DEA controlled substances code number 2138;
- (4) Carisoprodol - DEA controlled substances code number 8192;
- (5) Lemborexant - DEA controlled substances code number 2245; and
- (6) Remimazolam - DEA controlled substances code number 2846.

(c) As specified in G.S. 90-88, the Commission for MH/DD/SAS adds the following substances within Schedule IV for Stimulants: Serdexmethylphenidate – DEA controlled substances code number 1729.

History Note: Authority G.S. 90-88; 90-92; 143B-147; Eff. June 30, 1978;
Amended Eff. July 1, 1993; January 1, 1989; December 1, 1987; August 1, 1987;
Temporary Amendment Eff. May 28, 1998;
Temporary Amendment Expired March 12, 1999;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. January 1, 2002; February 15, 2001;
Amended Eff. July 1, 2012; July 1, 2011; November 1, 2005; April 1, 2003; August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Amended Eff. December 1, 2021.

10A NCAC 26F .0106 SCHEDULE V

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

(b) Narcotic drugs containing non-narcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the

free anhydrous base or alkaloid, in limited quantities as set forth in this Paragraph, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

- (1) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams,
- (2) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams,
- (3) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams,
- (4) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit,
- (5) not more than 100 milligrams of opium per 100 milliliters or per 100 grams,
- (6) not more than 0.5 milligrams of difenoxin and not less than 25 micrograms atropine sulfate per dosage unit.

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

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

- (1) Lacosamide – DEA controlled substances code number 2746;
- (2) Ezogabine – DEA controlled substances number 2779;
- (3) Cenobamate – DEA controlled substances number 2720; and
- (4) Lasmiditan – DEA controlled substances number 2790.

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

TITLE 11 - DEPARTMENT OF INSURANCE

11 NCAC 04 .0115 DIVISION PROCEDURES

(a) Complaints arising from insurance products, companies, insurance agents, adjusters, brokers, producers, and motor vehicle damage appraisers regulated under G.S. Chapter 58 will be processed in the following manner:

- (1) The analyst will request an explanation from company, agent, appraiser, or adjuster.

- (2) If the analyst finds that the issue has been handled in a manner that does not comply with statute, rule or policy contract, then the analyst will require that corrective action taken be to resolve the complaint.

- (3) If the issue is not resolved, the Deputy Commissioner may arrange a conference with the company representatives to resolve the problem.

(b) If a conference does not resolve a disputed issue, the Deputy Commissioner may recommend to the Commissioner that legal action as outlined in G.S. Chapter 58 be taken to ensure compliance with the statutes and rules, administered by the Department. Alternatively, this Division may refer issues to other Divisions for further investigation and regulatory action.

(c) The Division will not investigate a complaint that is also the subject matter of a pending lawsuit filed by an attorney representing the complainant. If a lawsuit has not been filed but the complainant has retained an attorney, as indicated on the complaint form or other correspondence submitted relating to the complaint, the Division will investigate the complaint provided it has first obtained the attorney's written consent solicited through the complainant.

History Note: Authority G.S. 58-2-40; 58-2-50; 58-2-155; 58-2-185; 58-2-190; 58-2-195; 58-2-200; 58-3-100; 58-33-45; 58-65-1; 58-65-40; 58-67-20; 58-67-150;

Eff. December 15, 1979;

Amended Eff. April 1, 1989;

Readopted Eff. December 1, 2021.

11 NCAC 04 .0120 POLICY OR SERVICE FEES

An insurer, agent, broker, or limited representative who deals with an applicant and who intends to charge a policy or service fee in accordance with G.S. 58-33-85(b) shall not do so unless he or she complies with the following:

- (1) A sign that shall be displayed and visible using large and bolded print so as to be seen and read by the public from any part of the office lobby that informs the applicant that a policy or service fee of [amount] will be charged.
- (2) The applicant's written consent shall be obtained on a separate form each time a policy or service fee is charged. The form, created by the insurer, agent, broker or limited representative, shall be entitled, "Policy or Service Fee Consent" and shall include the date and amount of each fee charged.
- (3) A dated receipt for the payment of a policy or service fee shall be issued either separately from the policy premium receipt or stated separately on the receipt issued for the policy premium.

History Note: Authority G.S. 58-2-40; 58-2-195; 58-33-85(b);

Eff. February 1, 1993;

Amended Eff. February 1, 1996;

Readopted Eff. December 1, 2021.

11 NCAC 04 .0314 PREMIUM NOTICES:

PAYMENTS AND REFUNDS

The Commissioner shall consider an unfair trade practice the failure by an insurer to adhere to any of the following procedures concerning premium notices, payments and refunds on life, accident, health, or disability policies pursuant to G.S. 58-63-15:

- (1) Premium Notices. Any insurer that makes a practice of sending premium notices shall maintain records to show that it mailed or otherwise delivered the notice to an individual insured or policy owner.
- (2) Timely Remittance. Insurance companies shall use date of mailing, rather than date of receipt, to determine whether the insured has made timely remittance of premium, provided the premium payment is received within seven days after either the termination date of the policy or the last day of its grace period, whichever is later.
- (3) Right to Return Policy. When this right is given by contract or statute, no insurer shall abridge or frustrate the right of the insured to return a policy within 10 days after he or she receives it for a full refund of premiums paid. Evidence of such delivery shall be signed statements from the policyowner of the date of delivery, copies of signed certified mail receipt, certification of mailing, or firm mailing book entry.
- (4) Unearned Premium Refund. When this right is given by contract or statute, no insurer shall abridge or frustrate the right of the insured to receive a refund of unearned premium.
- (5) Unearned Premium on Health Policies. When an insured covered by an accident, health or disability policy dies during the term of the policy, his or her insurer shall refund the unearned premium.
- (6) Commingling. No licensed person may commingle premiums, insurance deposits or other such funds. These funds are received in a fiduciary capacity on behalf of policyowner and must be immediately forwarded to the proper insurers or be deposited into an authorized account that is separate and distinct from the person's operating or personal accounts. The account shall be used to receive and disburse premiums paid for insurers, return premiums to policyowner, pay bank charges for the account, and transfer of earned commissions or fees.

History Note: Authority G.S. 58-2-40; 58-2-195; 58-51-10; 58-51-15; 58-63-65; 58-65-40; 58-67-50; 58-67-65; 58-67-150; 58-63-40;

Eff. December 15, 1979;

Amended Eff April 1, 1989;

Readopted Eff. December 1, 2021.

11 NCAC 04 .0315 ISSUANCE OF CONTRACTS

The Commissioner shall consider an unfair trade practice the failure by an insurer to adhere to any of the following procedures with respect to the issuance of life, accident, health, or disability policies pursuant to G.S. 58-63-15:

- (1) Policies to Cover Newborn Infants. No health application or requirements of insurability shall be used to circumvent the requirements of North Carolina General Statute 58-51-30.
- (2) Rating of Guaranteed Issue Coverages. There shall be no rating of policies where guaranteed issue at a specified rate is to the public. When only guaranteed issue is presented for sale, the insurer shall disclose in writing to any applicant subjected to individual rating because the applicant did not qualify for guaranteed issue, the fact that his or her rate deviates from the specified rate for the guaranteed issue coverage. This Item shall not apply to individual policies issued to employees under a contract between their employer and his or her insurer.
- (3) Replacement of Existing Coverage. With respect to individual accident, health and disability coverages, when an insurer's agent, by misrepresenting the new policy as a supplement or addition to the existing policy, induces an insured to consent to the replacement of his or her existing policy with a new policy, new waiting periods shall be decreased by the amount of time coverage was afforded under the existing policy.
- (4) Continuous Coverage Under Credit Life, Accident and Health Policies. In a series of credit life or credit accident and health insurance transactions where the insured, the lender, and the insurer are the same and there is no lapse in coverage between transactions, the waiting periods of the insurance agreements shall run from the date of the first insurance contract, at least to the extent of the amount and term of the indebtedness outstanding at the time of renewal or refinancing.

History Note: Authority G.S. 58-2-40; 58-3-125; 58-3-150; 58-33-75; 58-51-30; 58-63-40; 58-65-40; 58-67-50; 58-67-65; 58-67-150;

Eff. December 15, 1979;

Amended Eff. April 8, 2002; April 1, 1989; December 15, 1979;

Readopted Eff. December 1, 2021.

11 NCAC 04 .0316 CONTESTABILITY CLAUSE AND RESCISSION

If an insurer does not attempt to rescind an accident, health, or disability policy upon becoming aware that the insured's application contained false statements, the insurer may not subsequently use such false statements as a basis for attempted rescission or alteration of the policy. The Commissioner shall consider failure to adhere to this principle an unfair trade practice pursuant to G.S. 58-63-15.

History Note: Authority G.S. 58-2-40; 58-63-40; 58-65-1; 58-63-15; 58-65-40;
Eff. December 15, 1979;
Readopted Eff. December 1, 2021.

11 NCAC 04 .0317 SEX DISCRIMINATION: LIFE: ACCIDENT AND HEALTH INSURANCE

(a) Prohibited Practices. The Commissioner shall consider unfair discrimination the denial of life, accident, health or disability insurance on the basis of the insured's or prospective insured's sex or marital status. The amount of benefits payable on any term, condition or type of coverage shall not be restricted, modified, excluded or reduced on the basis of the sex or marital status of the insured or prospective insured. All underwriting criteria shall be applied in all instances of similar circumstances without regard to the sex or marital status of the insured or prospective insured, except to the extent that the amount of the benefits, terms, conditions or type of coverage vary as a result of the application of rate or premium differentials not prohibited under this Chapter, such as differentials for life insurance or annuities derived from sex-based life expectancy tables. Nothing in this Paragraph shall prohibit an insurer from taking marital status into account for the purpose of determining persons eligible for dependent benefits. Examples of the practices prohibited by this Section include:

- (1) denying coverage to females employed at home, employed part-time or employed by relatives when coverage is offered to males similarly employed;
- (2) denying policy riders to females when the riders are available to males;
- (3) denying maternity coverage to unmarried females covered under a policy or contract if maternity coverage is available to married females covered under that policy or contract;
- (4) denying, under group contracts, dependent coverage to husbands of female employees, when dependent coverage is available to wives of male employees;
- (5) denying disability income contracts to employed women when coverage is offered to men similarly employed;
- (6) treating complications of pregnancy differently from any other illness or sickness under the contract;
- (7) restricting, reducing, modifying, or excluding benefits payable for disorders of the genital organs of only one sex;
- (8) offering lower maximum monthly benefits to women than to men who are in the same classification under a disability income contract;
- (9) offering more restrictive benefit periods and more restrictive definitions of disability to women than to men in the same classifications under a disability income contract;
- (10) establishing different conditions by sex under which the policyholder may exercise benefit options contained in the contract; and

- (11) limiting the amount of coverage an insured or prospective insured may purchase based upon the insured's or prospective insured's marital status unless such limitation is for the purpose of defining persons eligible for dependent benefits.

(b) Applicability and Scope. This Rule shall apply to all contracts delivered or issued for delivery in this State by an insurer on or after the effective date of this Rule and to all existing group contracts which are amended or renewed on or after the effective date of this Rule.

History Note: Authority G.S. 58-2-40; 58-3-120; 58-63-1; 58-63-65;
Eff. December 15, 1979;
Readopted Eff. December 1, 2021.

11 NCAC 04 .0318 LIFE INSURANCE SALES: FINANCING FIRST YEAR PREMIUM

(a) The Commissioner shall consider an unfair trade practice the failure by an insurance company to adhere to the following procedures concerning the sale of life insurance contracts for which the first year's premium or any portion thereof is financed through a device suggested by the insurer or its agent with the insurance policy itself being assigned as security:

- (1) Minimum Down-Payment Required. A minimum down-payment of twenty five dollars (\$25.00) in cash or by valid and currently collectible check of the applicant is required for the insurance. Under no circumstances shall a company or an agent directly or indirectly either furnish this down-payment or waive this requirement.
- (2) Financing Device to be Explained in Policy Application. The furnishing of a promissory note in connection with financing part of the first year's premium must be explained in the policy application. The explanation must be clear and complete and shall specify the principal sum of the note or notes, the interest payable, the due date, the amount payable on that due date, the interest rate and the annual percentage rate.
- (3) Execution of Promissory Note. All blank spaces in a promissory note form or an assignment of an insurance policy form subsequently executed by the insured must be filled in by the handwriting of the insured except blank spaces relating to the policy number to be issued, and the signatures of witnesses and co-makers. No agent or anyone acting under his or her direction or control other than the insured shall write in such spaces.
- (4) Promissory Note May be Sold Only With Recourse. If a promissory note is taken to finance part of the first year's premium, the note may be sold or otherwise transferred by the payee with recourse only, and this fact must appear in bold print on the face of the note.

- (5) Note to be Retained Until Policy Acceptance is Executed. Any promissory note given by the applicant in connection with an application for a policy shall not be sold or otherwise transferred by the agent or company, nor any commissions on the sale paid to the agent until 15 days after a properly executed policy acceptance form has been received in the home office of the insurance company issuing the policy.
- (6) Copy of Note to be Furnished Applicant. A copy of the note executed by the applicant must be attached to the policy when delivered.
- (7) Policy Acceptance to be Executed on Delivery of the Policy; Contract Rescission. Upon delivery of the policy, a policy acceptance form must be executed that recites the following:
 - (a) The policy has been issued as represented;
 - (b) The applicant acknowledges and understands the provisions and obligations of the debt he has incurred in connection with applying for the policy and the terms are set forth in the record;
 - (c) The applicant understands that he or she may cancel the policy and his or her promissory note and his or her down-payment will be returned if he or she refuses to accept delivery of the policy and sign the acceptance form, and the applicant understands that at any time within 10 days after the execution of the policy acceptance form he or she shall be allowed to rescind the agreement, and the promissory note, together with the total amount of his or her down-payment, shall be returned to the applicant;
 - (d) The applicant further understands that the rescission or rejection must be communicated to the company by mail and return of the policy within the 10 day period; and
 - (e) The applicant acknowledges that the obligations of the debt cannot be altered by a cancellation of the policy at his or her request unless properly cancelled within 10 days, in writing, mailed to the company at the address specified. The policy acceptance form shall contain a number designation corresponding to the policy issued and shall not be made available to the agent until the application is received in the home office. The provisions of Sub-items (7)(c) and (d) of this Item shall be printed in bold type upon the face of the policy.
- (8) Insured to be Notified of Assignment. The insurer, the note purchaser, assignee or company shall notify the note maker (insured) and all co-makers regarding the purchase, transfer or assignment of the note, after such transfer, inviting any questions relative to the note or the policy that is used as collateral security for the note.
- (9) Requests for Cancellation to be Handled Promptly. The company and its agents shall give prompt and complete cooperation to the insured and the Department when requests to cancel the policy and premium financing arrangements are received.
- (10) Special Rule in Event Applicant is Under Eighteen Years of Age. If the applicant is a minor and executes a promissory note for the payment of part or all of the first year's premium, the note must be witnessed by at least one of the applicant's parents or guardian.
- (11) Disclosure of Extended Obligations. The agent shall clearly disclose to the insured that the cancellation of the note may reduce the cash surrender value of the policy in direct proportion to the amount of the promissory note. The agent shall not use terms such as "bonus payment", "free insurance", or any other term that induces the applicant to believe that the promissory note will be paid by monies other than his or her policy cash values. Terms leading the applicant to believe that he is receiving free insurance by deferring the premium payment for the first year shall not be employed.
- (12) Cash Values. Cash values shown at the presentation shall be based on the policy offered. The cash values shown at the time of presentation shall be a specimen of the policy being offered and not for a larger policy.
- (13) Cancellation of Existing Insurance. The disturbing of any permanent insurance, including the partial or total replacement of any provisions of an existing policy for the purpose of placing additional insurance, or "twisting" as defined in G.S. 58-3-115, will be cause for investigation and review by the Department of Insurance.
- (14) Licensed Agents. Only licensed agents are eligible to sell life insurance. No person other than a licensed agent shall participate in or receive commission or any other valuable consideration in connection with the solicitation, negotiation, procurement, or making of life insurance contracts in this State.
- (15) Agent Identification. An agent or field representative who is licensed by this State as a life insurance agent shall not represent, refer to,

or hold himself or herself out to the public under any special title that would obscure the fact that he is a licensed agent of the company. Identification as an agent or representative of a special division may be permitted providing such a division actually exists and the agency relationship is disclosed.

(b) This Rule shall not apply to life insurance policies financed in conformity with G.S. 58, Article 35.

History Note: Authority G.S. 58-2-40; 58-3-115; 58-63-40; Eff. December 15, 1979; Amended Eff. April 8, 2002; Readopted Eff. December 1, 2021.

11 NCAC 04 .0319 CLAIMS PRACTICES: LIFE: ACCIDENT AND HEALTH INSURANCE

The Commissioner shall consider as prima facie violative of G.S. 58-63-15(11) the failure by an insurer to adhere to the following procedures concerning settlement of life, accident, health and claims:

- (1) Examining Physician's Opinion. When the patient's health is in question, an insurer shall give greater weight to the opinion of a physician who has examined the patient than to the opinion of a physician who has not examined the patient and whose opinion is based solely on a review of the examining physician's notes or reports. As used in this Item, "examination of the patient" shall include the interpretation by a specialist of the results of diagnostic tests performed on the patient by others.
- (2) Settlement Offers. Initial offers of settlement or compromise made by an insurer or its representative shall remain open for a period of time of not less than 30 calendar days.
- (3) Multiple Health Impairments. When an insured is confined to the hospital with multiple health impairments some of which are excluded from coverage, the insurer or its representative shall make pro rata payments where treatment for excluded conditions can be separated.
- (4) Assignment of Benefits. If an accident, health, or disability contract does not prohibit assignment of benefits and an assignment including notice to the insurer prior to the payment of the claim, is made, the insurer shall honor the assignment, even though it may have erroneously paid the insured. Submission of a completed claims form indicating that an assignment is on file shall be treated as though it were submission of the actual assignment.
- (5) Claim Status Reports. Health insurance claims subject to 58-3-225 shall be processed in accordance with the provisions of that statute. Otherwise, if benefits claimed under an accident, health, or disability contract have not been paid within 45 days after receipt of the initial claim by the insurer, the insurer shall at

that time mail a claim status report to the insured.

History Note: Authority G.S. 58-2-40; 58-3-225; 58-63-15; 58-63-65; 58-65-1; 58-65-40; 58-65-125; 58-67-65; 58-67-150; Eff. December 15, 1979; Amended Eff. July 1, 2012; April 8, 2002; April 1, 1989; Readopted Eff. December 1, 2021.

11 NCAC 04 .0415 SAFE DRIVER INCENTIVE PLAN

The following are Department of Insurance provisions regarding the Safe Driver Incentive Plan ("SDIP"):

- (1) License revocation for refusal to submit to chemical tests shall not be considered conviction of a moving traffic violation.
- (2) A conviction for driving the wrong way on a one-way street is not a conviction for driving on the wrong side of the road.
- (3) The revocation or suspension of a driver's license solely because of the accumulation of motor vehicle points shall not be considered a conviction.
- (4) When new operators are added to an automobile policy, their SDIP points may be added to the policy at the same time coverage is extended to them.
- (5) SDIP points for an operator whose license has been suspended or revoked may be added only at the date the operator again becomes eligible for license. However, SDIP points may be charged at the inception date of the current policy if the operator has previously been convicted of a moving traffic violation while his or her license was suspended or revoked or if there is evidence that the operator does operate a motor vehicle.
- (6) If an operator dies or permanently leaves an insured's household during the policy period, the operator's SDIP points shall be removed at the time of his or her death or departure.

History Note: Authority G.S. 58-2-40; 58-36-65; 58-36-75; Eff. December 15, 1979; Amended Eff. February 1, 1993; Readopted Eff. December 1, 2021.

11 NCAC 04 .0427 DISCLOSURE REQUIREMENTS

Every insurer that writes motor vehicle insurance in this State and that intends to require or specify the use of after market parts must disclose to its policyholders in writing, either in the policy or on a sticker attached thereto, the following information in all capital letters and font size no smaller than ten-point:

IN THE REPAIR OF YOUR COVERED
AUTO UNDER THE PHYSICAL DAMAGE
COVERAGE PROVISIONS OF THIS
POLICY, WE MAY REQUIRE OR SPECIFY
THE USE OF AUTOMOBILE PARTS NOT

MADE BY THE ORIGINAL MANUFACTURER. THESE PARTS ARE REQUIRED TO BE AT LEAST EQUAL IN TERMS OF FIT, QUALITY, PERFORMANCE AND WARRANTY TO THE ORIGINAL MANUFACTURER PARTS THEY REPLACE.

All after market parts installed on a motor vehicle shall be identified on the estimate and invoice for such repair.

*History Note: Authority G.S. 58-2-40;
Eff. April 1, 1989;
Amended Eff. March 1, 2004;
Readopted Eff. December 1, 2021.*

11 NCAC 04 .0429 COMMINGLING

The accounting records maintained by agents, brokers, and limited representatives shall be separate and apart from any other business records and demonstrate at all times that collected funds due to insurers and return premiums due to policyholders are available at all times.

*History Note: Authority G.S. 58-2-40; 58-2-195;
Eff. February 1, 1993;
Amended Eff. February 1, 1996;
Readopted Eff. December 1, 2021.*

11 NCAC 04 .0432 REFUND OF EXCESS PREMIUM ON SCHEDULED ITEMS

If an insured has any scheduled item listed for additional insurance covered by a homeowner's or personal inland marine insurance policy, and that item is replaced for less than the scheduled amount of coverage, the insurer shall refund the insured the difference in premium charged between the scheduled amount of coverage and the actual amount of the loss paid by the insurer, if the refund per policy term is greater than five dollars (\$5.00). Any refund shall be computed from the date of issuance of the policy or five years, whichever is less.

*History Note: Authority G.S. 58-2-40; 58-63-65;
Eff. April 1, 1995;
Amended Eff. July 1, 2012;
Readopted Eff. December 1, 2021.*

11 NCAC 04 .0433 REFUND OF AUTO INSURANCE PREMIUM ON NEW BUSINESS

If an insured asks an insurer to cancel a newly issued motor vehicle insurance policy on or before the premium billing due date, the unearned premium refund made by the insurer shall be made on a pro rata rather than a short rate basis, and the refund shall be based on the premium initially quoted by the insurer if both of the following conditions are met:

- (1) The insured provided the insurer with accurate and complete rating information.
- (2) The insurer subsequently calculated the premium to be greater than the premium initially quoted.

History Note: Authority G.S. 58-2-40; 58-36-85; 58-63-65;

*Eff. April 1, 1995;
Readopted Eff. December 1, 2021.*

11 NCAC 04 .0501 SCOPE AND DEFINITIONS

(a) These Rules apply to all policies sold on and after the effective dates of these Rules and to all certificates issued under those policies.

(b) As used in this Section, the following terms have the following meanings:

- (1) "Actuarial Standards Board" means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.
- (2) "Basic illustration" means a ledger or proposal used in the sale of a policy that shows both guaranteed and non-guaranteed elements.
- (3) "Contract premium" means the gross premium that is required to be paid under a fixed premium policy, including the premium for a rider for which benefits are shown in the illustration.
- (4) "Currently payable scale" means a scale of non-guaranteed elements in effect for a policy as of the preparation date of the illustration or declared to become effective within the next 95 days.
- (5) "Disciplined current scale" means a scale of non-guaranteed elements constituting a limit on illustrations currently being illustrated by an insurer that is based on actual recent historical experience, as certified annually by an illustration actuary designated by the insurer.
- (6) "Guaranteed elements" means the premiums, benefits, values, credits, or charges under a policy that are guaranteed and determined at issue.
- (7) "Illustrated scale" means a scale of non-guaranteed elements currently being illustrated that is not more favorable to the policy owner than the lesser of:
 - (A) The disciplined current scale; or
 - (B) The currently payable scale.
- (8) "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy over a period of years and that is either a basic illustration, in-force illustration, or a supplemental illustration.
- (9) "In force illustration" means an illustration furnished at any time after the policy that it depicts has been in force for one year or more.
- (10) "Illustration actuary" means an actuary meeting the requirements of 11 NCAC 04 .0509 who certifies to illustrations based on the standard of practice promulgated by the Actuarial Standards Board.
- (11) "Lapse-supported illustration" means an illustration of a policy failing the test of self-supporting as defined in this Subparagraph (b)(16) of this Rule, under a modified

- persistence rate assumption using persistence rates underlying the disciplined current scale for the first five years and 100 percent policy persistence thereafter.
- (12) "Non-guaranteed elements" means the premiums, benefits, values, credits, or charges under a policy that are not guaranteed or not determined at issue.
- (13) "Policy" means a group or individual life insurance policy or certificate. "Policy" does not include:
- (A) A variable life insurance policy or certificate.
 - (B) An annuity contract.
 - (C) A credit life insurance policy or certificate.
 - (D) A life insurance policy with no illustrated death benefit on any individual exceeding ten thousand dollars (\$10,000).
- (14) "Policy owner" means the owner named in a policy or the certificate holder in the case of a group policy.
- (15) "Premium outlay" means the amount of premium assumed to be paid by the policy owner or other premium payer out-of-pocket.
- (16) "Self-supporting illustration" means an illustration of a policy for which it can be demonstrated that, when using experience assumptions underlying the disciplined current scale, for all illustrated points in time on or after the fifteenth policy anniversary or the twentieth policy anniversary for second-or-later-to-die policies (or upon policy expiration if sooner), the accumulated value of all policy cash flows equals or exceeds the total policy owner value available. For this purpose, policy owner value will include cash surrender values and any other illustrated benefit amounts available at the policy owner's election.
- (17) "Supplemental illustration" means an illustration furnished in addition to a basic illustration that meets the applicable requirements of this Section, and that may be presented in a format differing from the basic illustration, but may only depict a scale of non-guaranteed elements that is permitted in a basic illustration.

History Note: Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65;
Eff. January 1, 1997;
Readopted Eff. December 1, 2021.

11 NCAC 04 .0502 ASSUMED EXPENSES AND CURRENT SCALE

- (a) An insurer may choose to designate each year the method of determining assumed expenses for all policies from the following:
- (1) Fully allocated expenses.

- (2) Marginal expense.
- (3) A table of fully allocated expenses developed by the Actuarial Standards Board and approved by the National Association of Insurance Commissioners.

Marginal expenses may be used only if greater than a generally recognized expense table. If no generally recognized expense table is approved, fully allocated expenses must be used.

(b) Further guidance in determining the disciplined current scale as contained in standards established by the Actuarial Standards Board may be relied upon if the standards:

- (1) Are consistent with all provisions of this Section.
- (2) Limit a disciplined current scale to reflect only actions that have been taken on events that have already occurred.
- (3) Do not permit a disciplined current scale to include any projected trends of improvements in experience or any assumed improvements in experience beyond the illustration date.
- (4) As used in this Rule, "minimum assumed expenses" means the minimum expenses used in the calculation of the disciplined current scale for a policy. Do not permit assumed expenses to be less than minimum assumed expenses.

History Note: Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65;
Eff. January 1, 1997;
Readopted Eff. December 1, 2021.

11 NCAC 04 .0503 ILLUSTRATED POLICIES

(a) Each insurer marketing policies regulated by this Section shall notify the Commissioner whether a policy form is to be marketed with or without an illustration. For all policy forms being marketed on the effective date of this Section, the insurer shall identify in writing those policy forms and whether or not an illustration will be used with them. For policy forms filed after the effective date of this Section, the identification shall be made at the time of filing. Any previous identification may be changed by notice to the Commissioner.

(b) If the insurer identifies a policy form as one to be marketed without an illustration, any use of an illustration before the first policy anniversary for any policy form using that policy is prohibited.

(c) If a policy form is identified by an insurer as one to be marketed with an illustration, the insurer shall prepare and deliver a basic illustration in accordance with this Section, except that a basic illustration need not be provided to individual members of a single employer group or to individuals insured under multiple lives coverage issued to a single applicant unless the coverage is marketed to those individuals. The illustration furnished to an applicant for a group policy issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

(d) As used in this Paragraph, "non-term group life" means a group policy or individual policies of traditional permanent or

universal life insurance issued to members of a single employer group where:

- (1) Every plan of coverage was selected by the employer.
- (2) The premium is paid by the employer or through payroll deduction.
- (3) Group underwriting or simplified underwriting is used.

Potential enrollees for policies and certificates of non-term group life subject to this Section shall be furnished a quotation with the enrollment materials. The quotation shall show potential policy values for sample ages and policy years on a guaranteed and non-guaranteed basis appropriate to the group and the coverage. This quotation shall not be considered an illustration for purposes of this Section, but all information provided shall be consistent with the illustrated scale. A basic illustration shall be provided at delivery of the policy or certificate to enrollees for non-term group life who enroll for more than the minimum premium necessary to provide pure death benefit protection. In addition, the insurer shall make a basic illustration available to any non-term group life enrollee who requests it.

History Note: Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65;
Eff. January 1, 1997;
Readopted Eff. December 1, 2021.

11 NCAC 04 .0504 GENERAL RULES

(a) As used in this Rule, "generic name" means a title descriptive of the policy being illustrated, such as "whole life", "term life", or "flexible premium adjustable life." An illustration used in the sale of a policy shall satisfy the requirements of this Section, be labeled "life insurance illustration" and contain the following information:

- (1) Name of insurer;
- (2) Name and business address of producer or insurer's authorized representative, if any;
- (3) Name, age and sex of proposed insured, except where a composite illustration is permitted under this Section;
- (4) Underwriting or rating classification upon which the illustration is based;
- (5) Generic name of the policy, the company product name, if different, and policy form number;
- (6) Initial death benefit; and
- (7) Dividend option election or application of non-guaranteed elements, if applicable.

(b) When using an illustration in the sale of a policy, an insurer or its agents or other authorized representatives shall not:

- (1) Represent the policy as anything other than a life insurance policy;
- (2) Use or describe non-guaranteed elements in a manner that is misleading;
- (3) State or imply that the payment or amount of non-guaranteed elements is guaranteed;
- (4) Use an illustration that does not comply with the requirements of this Section;

- (5) Use an illustration that at any policy duration depicts policy performance more favorable to the policy owner than that produced by the illustrated scale of the insurer whose policy is being illustrated;
 - (6) Provide an applicant with an incomplete illustration;
 - (7) Represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact;
 - (8) Use the term "vanish" or "vanishing premium", or a similar term that implies the policy becomes paid up, to describe a plan for using non-guaranteed elements to pay a portion of future premiums;
 - (9) Except for policies that can never develop nonforfeiture values, use an illustration that is "lapse-supported"; or
 - (10) Use an illustration that is not "self-supporting."
- (c) If an interest rate used to determine the illustrated non-guaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale.

History Note: Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65;
Eff. January 1, 1997;
Readopted Eff. December 1, 2021.

11 NCAC 04 .0505 STANDARDS FOR BASIC ILLUSTRATIONS

(a) Format. A basic illustration shall conform with the following requirements:

- (1) The illustration shall be labeled with the date on which it was prepared.
- (2) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration (e.g., the fourth page of a seven-page illustration shall be labeled "page 4 of 7 pages").
- (3) The assumed dates of payment receipt and benefit pay-out within a policy year shall be clearly identified.
- (4) If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the policy is assumed to have been in force.
- (5) The assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay.
- (6) Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed.

- (7) If the illustration shows any non-guaranteed elements, they shall not be based on a scale more favorable to the policy owner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled non-guaranteed.
- (8) The guaranteed elements, if any, shall be shown before corresponding non-guaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements (e.g., "see page one for guaranteed elements").
- (9) The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender.
- (10) The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans and policy loan interest, as applicable.
- (11) Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form.
- (12) Any illustration of non-guaranteed elements shall be accompanied by a statement indicating that:
 - (A) The benefits and values are not guaranteed;
 - (B) The assumptions on which they are based are subject to change by the insurer; and
 - (C) Actual results may be more or less favorable.
- (13) If the illustration shows that the premium payer may have the option to allow policy charges to be paid using non-guaranteed values, the illustration must clearly disclose that a charge continues to be required and that, depending on actual results, the premium payer may need to continue or resume premium outlays. Similar disclosure shall be made for premium outlay of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up.
- (14) If the applicant plans to use dividends or policy values, guaranteed or non-guaranteed, to pay all or a portion of the contract premium or policy charges, or for any other purpose, the illustration may reflect those plans and the effect on future policy benefits and values.

(b) Narrative Summary. A basic illustration shall include the following:

- (1) A brief description of the policy being illustrated, including a statement that it is a life insurance policy.
- (2) A brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that must be paid to guarantee coverage for the term of the policy, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code.
- (3) A brief description of any policy features, riders or options, guaranteed or non-guaranteed, shown in the basic illustration and the effect they may have on the benefits and values of the policy.
- (4) Identification and a brief definition of column headings and key terms used in the illustration.
- (5) A statement containing the following: This illustration assumes that the currently illustrated non-guaranteed elements will continue unchanged for all years shown. This is not likely to occur. Actual results may be more or less favorable than those shown.

(c) Numeric Summary.

- (1) Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable. For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium. This summary shall be shown for at least policy years 5, 10 and 20 and at age 70, if applicable, on the three bases shown below. For multiple life policies the summary shall show policy years 5, 10, 20 and 30. The columns of the numeric summary shall be as follows:
 - (A) Policy guarantees;
 - (B) Insurer's illustrated scale; and
 - (C) Insurer's illustrated scale used but with the non-guaranteed elements reduced as follows:
 - (i) Dividends at 50 percent of the dividends contained in the illustrated scale used;
 - (ii) Non-guaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and
 - (iii) All non-guaranteed charges, including but not limited to, term insurance charges, mortality and expense charges, at rates that are the

average of the guaranteed rates and the rates contained in the illustrated scale used.

- (2) In addition, if coverage would cease before policy maturity or age 100, the year when coverage ceases shall be identified for each of the three bases.

(d) **Statements.** Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or the policy owner in the case of an illustration provided at time of delivery, as required in this Section.

- (1) A statement to be signed and dated by the applicant or policy owner reading as follows: "I have received a copy of this illustration and understand that any non-guaranteed elements illustrated are subject to change and could be either higher or lower. The agent has told me they are not guaranteed."
- (2) A statement to be signed and dated by the insurance producer or other authorized representative of the insurer reading as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any non-guaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."

(e) **Tabular Detail.**

- (1) A basic illustration shall include the following for at least each policy year from one to 10 and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration, and except for term insurance beyond the 20th year, for any year in which the premium outlay and contract premium, if applicable is to change:
 - (A) The premium outlay and mode the applicant plans to pay and the contract premium, as applicable;
 - (B) The corresponding guaranteed death benefit, as provided in the policy; and
 - (C) The corresponding guaranteed value available upon surrender, as provided in the policy.
- (2) For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium.
- (3) Non-guaranteed elements may be shown if described in the policy. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends. If any non-guaranteed elements are shown they must be shown at the same durations as the corresponding guaranteed elements, if any. If no guaranteed benefit or value is available at any duration for which a non-guaranteed benefit or value is shown, a

zero shall be displayed in the guaranteed column.

History Note: Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65; Eff. January 1, 1997; Readopted Eff. December 1, 2021.

11 NCAC 04 .0506 STANDARDS FOR SUPPLEMENTAL ILLUSTRATIONS

(a) A supplemental illustration may be provided as long as:

- (1) It is appended to, accompanied by or preceded by a basic illustration that complies with Rule .0505 of this Section;
- (2) The non-guaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration;
- (3) It contains the same statement required of a basic illustration that non-guaranteed elements are not guaranteed; and
- (4) For a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the illustration.

(b) The supplemental illustration shall include a notice referring to the basic illustration for guaranteed elements.

History Note: Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65; Eff. January 1, 1997; Readopted Eff. December 1, 2021.

11 NCAC 04 .0507 DELIVERY OF ILLUSTRATION AND RECORD RETENTION

- (a) If a basic illustration is used by an insurance agent or other authorized representative of the insurer in the sale of a policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this Rule, shall be submitted by an insurance agent or other authorized representative to the insurer and the applicant at the time of policy application.
- (b) If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall conform to the requirements of this Rule, shall be labeled "Revised Illustration" and shall be signed and dated by the applicant or policy owner and insurance agent or other authorized representative of the insurer no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.
- (c) If no illustration is used by an insurance agent or other authorized representative in the sale of a policy or if the policy is applied for other than as illustrated, the producer or representative shall certify to that effect in writing on a form provided by the insurer. On the same form the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and

shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. This form shall be submitted to the insurer at the time of policy application.

(d) If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.

(e) If the basic illustration or revised illustration is sent to the applicant or policy owner by mail directly from the insurer, it shall include instructions for the applicant or policy owner to sign the duplicate copy of the numeric summary page of the illustration for the policy issued and return the signed copy to the insurer. The insurer's obligation under this Paragraph shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the numeric summary page. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed numeric summary page.

(f) A copy of the basic illustration and a revised basic illustration, if any, signed if required by rule, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three years after the policy is no longer in force. A copy need not be retained if no policy is issued.

History Note: Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65;

Eff. January 1, 1997;

Readopted Eff. December 1, 2021.

11 NCAC 04 .0508 ANNUAL REPORTS AND NOTICES TO POLICY OWNERS

(a) In the case of a policy designated as one for which an illustration will be issued, the insurer shall provide each policy owner with an annual report on the status of the policy that shall contain the information specified in this Rule.

(b) For universal life policies, the report shall include the following:

- (1) The beginning and end date of the current report period;
- (2) The policy value at the end of the previous report period and at the end of the current report period;
- (3) The total amounts that have been credited or debited to the policy value during the current period, identifying each by type (e.g., interest, mortality, expense and riders);
- (4) The current death benefit at the end of the current report period on each life covered by the policy;
- (5) The net cash surrender value of the policy as of the end of the current report period;
- (6) The amount of outstanding loans, if any, as of the end of the current report period; and
- (7) Either:
 - (A) For fixed premium policies: If, assuming guaranteed interest, mortality, expense loads and

continued scheduled premium payments, the policy's net cash surrender value is such that it would not maintain insurance in force until the end of the next reporting period, a notice to this effect shall be included in the report; or

(B) For flexible premium policies: If, assuming guaranteed interest, mortality and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect shall be included in the report.

(c) For all other policies, where applicable, the report shall contain:

- (1) Current death benefit;
- (2) Annual contract premium;
- (3) Current cash surrender value;
- (4) Current dividend;
- (5) Application of current dividend; and
- (6) Amount of outstanding loan.

(d) Insurers writing policies that do not build nonforfeiture values shall only be required to provide an annual report with respect to these policies for those years when a change has been made to nonguaranteed policy elements by the insurer.

(e) If the annual report does not include an in force illustration, it shall contain the following notice in boldface print with a capitalized heading "IMPORTANT POLICY OWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration of your policy. You may annually request, without charge, such an illustration by calling [insurer's phone number], writing to [insurer's name] at [insurer's address] or contacting your agent. If you do not receive an illustration of your policy within 30 days from your request, you should contact your State insurance department." The insurer may vary the sequential order of the methods for obtaining an in force illustration.

(f) Upon the request of the policy owner, the insurer shall furnish an in force illustration of current and future benefits and values based on the insurer's present illustrated scale. This illustration shall comply with the requirements of 11 NCAC 04 .0504(a), .0504(b), .0505(a), and .0505(e). No signature or other acknowledgment of receipt of this illustration shall be required.

(g) If an adverse change in any non-guaranteed element that could affect the policy has been made by the insurer since the last annual report, the annual report shall contain a notice of that fact and a description of the change. The notice and description shall be printed in boldface print in a type at least two points larger than the report.

History Note: Authority G.S. 58-2-40; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65;

Eff. January 1, 1997;

Readopted Eff. December 1, 2021.

11 NCAC 04 .0509 ANNUAL CERTIFICATIONS

(a) The board of directors of each insurer shall appoint one or more illustration actuaries.

(b) The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the Actuarial Standard of Practice for Compliance with the NAIC Model Regulation on Life Insurance Illustrations promulgated by the Actuarial Standards Board, and that the illustrated scales used in insurer-authorized illustrations meet the requirements of this Section.

(c) The illustration actuary shall:

- (1) Be a member in good standing of the American Academy of Actuaries;
- (2) Be knowledgeable of the standard of practice regarding life insurance policy illustrations;
- (3) Not have been found by the Commissioner, following appropriate notice and opportunity for hearing to have:
 - (A) Violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his or her dealings as an illustration actuary;
 - (B) Been found guilty of fraudulent or dishonest practices;
 - (C) Demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary; or
 - (D) Resigned or been removed as an illustration actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards;
- (4) Notify the Commissioner of any action taken by an insurance regulator of another state with laws similar to that under Subparagraph (c)(3) of this Rule;
- (5) Disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If nonguaranteed elements illustrated for new policies are not consistent with those illustrated for similar in force policies, this shall be disclosed in the annual certification. If nonguaranteed elements illustrated for both new and in force policies are not consistent with the nonguaranteed elements actually being paid, charged, or credited to the same or similar form, this shall be disclosed in the annual certification; and

(6) Disclose in the annual certification which of the following methods are used to allocate overhead expenses for all illustrations:

- (A) Fully allocated expenses;
- (B) Marginal expenses; or
- (C) A table of fully allocated expenses developed by the Actuarial Standards Board and approved by the National Association of Insurance Commissioners.

(d) The illustration actuary shall file a certification with the board and with the Commissioner:

- (1) Annually for all policies for which illustrations are used; and
- (2) Before a new policy is illustrated.

At the time an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the Commissioner.

(e) If an illustration actuary is unable to certify the scale for any policy illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the Commissioner of his or her inability to certify.

(f) An officer of the insurer, other than the illustration actuary, shall certify annually that the illustration formats meet the requirements of this Rule and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary and that the company has provided its agents with information about the expense allocation used by the company in its illustrations and disclosed as required in Subparagraph (c)(6) of this Rule.

(g) The annual certifications shall be provided to the Commissioner each year by a date determined by the insurer.

(h) At the time an insurer changes the illustration actuary responsible for all or a portion of the company's policies, the insurer shall notify the Commissioner of that fact and disclose the reason for the change.

History Note: Authority G.S. 58-2-40; 58-2-171; 58-58-1; 58-58-40; 58-60-15; 58-60-20; 58-63-15; 58-63-65;

Eff. January 1, 1997;

Readopted Eff. December 1, 2021.

11 NCAC 08 .0734 RESIDENTIAL CHANGEOUT INSPECTOR

(a) Qualifications and types:

- (1) A residential changeout inspector shall be authorized to inspect the replacement of a residential appliance as described in Subparagraph (2) of this Paragraph for one-and-two family dwellings, and individual residential units of condominiums and apartments provided the individual residential appliance serves only that residential dwelling unit.
- (2) A residential changeout inspector may inspect the replacement of heating and air conditioning appliances and water heaters, provided that all of the following apply:

- (A) the new appliance requires no alterations to the existing ducting, fuel type, or piping systems other than that required for transitioning to the new appliance;
- (B) any venting associated with the new appliance shall be allowed to be installed, replaced, and repaired where such venting does not pass through a rated assembly;
- (C) any new gas appliance shall be of the same category as the appliance being replaced;
- (D) the new appliance does not require relocation, excluding minor adjustments in the same general vicinity;
- (E) the installation of the new appliance does not require the relocation or addition to the existing electrical system, except the replacement of the appliance's branch circuit overcurrent device, or the replacement of the appliance's branch circuit where such circuit does not pass through a rated assembly shall be allowed; and
- (F) the electrical branch circuit serving the appliance is single phase.

(b) The inspection performance log referenced in this Rule is available on the Office of State Fire Marshal website. The inspection performance log shall describe the criteria for authenticating the applicant and supervisors' qualifications, and the inspections performed.

(c) Every applicant shall:

- (1) provide documentation that the applicant possesses a minimum of a high school education or a high school equivalency certificate;
- (2) provide notarized certification by a city or county manager, clerk, or director of inspection department that the applicant will be performing "code enforcement," as defined in G.S. 143-151.8(a)(3), as an employee of that city or county; or provide certification by the head of the Engineering and Building Codes Division of the North Carolina Department of Insurance that the applicant will be performing "code enforcement," as defined in G.S. 143-151.8(a)(3), for a State department or agency;
- (3) successfully complete courses developed by the Board. All applicants must successfully complete a law and administration course and a residential changeout inspections course. For the purpose of entry into the written examination administered by the Board, courses must be completed within five years of the exam in Subparagraph (4) of this Paragraph. These courses shall be administered and taught in the N.C. Community College System or

other educational agencies accredited by a regional accrediting association. The North Carolina Department of Insurance, Office of State Fire Marshal may administer and teach certification courses for the purposes of developing program content and professional development. For the purposes of this Rule, "successful completion" is defined as attendance of a minimum of 80 percent of the hours taught and achieving a minimum score of 70 percent on the course exam; and

- (4) achieve a passing grade of 70 percent on the written examination administered by the Board.

(d) Residential Changeout Inspector. A standard certificate, residential changeout inspector, shall be issued to any applicant who possesses a probationary residential changeout inspection certificate pursuant to Rule 11 NCAC 08 .0602, complies with Paragraph (c) of this Rule, and one of the following education and experience qualifications:

- (1) possess any level standard certificate as an electrical inspector, mechanical inspector, or plumbing inspector; or
- (2) all the following:
 - (A) at least six months of conducting residential changeout inspections with a probationary residential changeout inspection certificate; and
 - (B) completion and submission of an inspection performance log as administered by the North Carolina Department of Insurance, Office of State Fire Marshal.

*History Note: Authority G.S. 143-151.12; 143-151.13;
Eff. August 1, 2020;
Amended Eff. December 1, 2021.*

TITLE 15A - DEPARTMENT OF ENVIRONMENTAL QUALITY

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

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

- (1) The ocean hazard setback for development shall be measured in a landward direction from the vegetation line, the static vegetation line, or the measurement line, whichever is applicable.
- (2) In areas with a development line, the ocean hazard setback shall be set in accordance with Subparagraphs (a)(3) through (9) of this Rule. With the exception of those types of development defined in 15A NCAC 07J .1301(d), in no case shall new development be sited seaward of the development line. In areas with a Static Line Exception approved in

- accordance with 15A NCAC 07J .1200 and a Development Line approved in accordance with 15A NCAC 07J .1300, the petitioner shall notify the Division of Coastal Management which one of the two approaches will be utilized and applied to the entire large-scale project area as defined in 15A NCAC 07H .0305(a)(7).
- (3) In no case shall a development line be created or established on State-owned lands or oceanward of the mean high water line or perpetual property easement line, whichever is more restrictive.
- (4) The ocean hazard setback shall be determined by both the size of development and the shoreline long term erosion rate as defined in Rule .0304 of this Section. "Development size" is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:
- (A) The total square footage of heated or air-conditioned living space;
 - (B) The total square footage of parking elevated above ground level; and
 - (C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing.
- Decks, roof-covered porches, and walkways shall not be included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.
- (5) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback shall be established based on the following criteria:
- (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
 - (B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
 - (C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate, whichever is greater;
 - (D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;
 - (E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;
 - (F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;
 - (G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;
 - (H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
 - (I) Infrastructure that is linear in nature, such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water, and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
 - (J) Parking lots greater than or equal to 5,000 square feet require a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
 - (K) Notwithstanding any other setback requirement of this Subparagraph, a building or other structure greater than or equal to 5,000 square feet in a community with a static line exception in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater.

- The setback shall be measured landward from either the static vegetation line, the vegetation line, or measurement line, whichever is farthest landward; and
- (L) Notwithstanding any other setback requirement of this Subparagraph, replacement of single-family or duplex residential structures with a total floor area greater than 5,000 square feet, and commercial and multi-family residential structures with a total floor area no greater than 10,000 square feet, shall be allowed provided that the structure meets the following criteria:
- (i) the structure was originally constructed prior to August 11, 2009;
 - (ii) the structure as replaced does not exceed the original footprint or square footage;
 - (iii) it is not possible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under Subparagraph (a)(5) of this Rule;
 - (iv) the structure as replaced meets the minimum setback required under Part (a)(5)(A) of this Rule; and
 - (v) the structure is rebuilt as far landward on the lot as feasible.
- (6) If a primary dune exists in the AEC on or landward of the lot where the development is proposed, the development shall be landward of the crest of the primary dune, the ocean hazard setback, or development line, whichever is farthest from vegetation line, static vegetation line, or measurement line, whichever is applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback, but shall not be located on or oceanward of a frontal dune or the development line. The words "existing lots" in this Rule shall mean a lot or tract of land that, as of June 1, 1979, is specifically described in a recorded plat and cannot be enlarged by combining the lot or tract of land with a contiguous lot or tract of land under the same ownership.
- (7) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot where the development is proposed, the development shall be set landward of the frontal dune, ocean hazard setback, or development line, whichever is farthest from the vegetation line, static vegetation line, or measurement line, whichever is applicable.
- (8) If neither a primary nor frontal dune exists in the AEC on or landward of the lot where development is proposed, the structure shall be landward of the ocean hazard setback or development line, whichever is more restrictive.
- (9) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.
- (10) Established common law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.
- (11) Development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the static vegetation line as defined in this Section, unless a development line has been approved by the Coastal Resources Commission in accordance with 15A NCAC 07J .1300.
- (12) In order to allow for development landward of the large-scale beach fill project that cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Subparagraphs (a)(1) and (a)(5) of this Rule, a local government, group of local governments involved in a regional beach fill project, or qualified "owners' association" as defined in G.S. 47F-1-103(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association and has jurisdiction over at least one mile of ocean shoreline, may petition the Coastal Resources Commission for a "static line exception" in accordance with 15A NCAC 07J .1200. The static line exception shall apply to development of property that lies both within the jurisdictional boundary of the petitioner and the boundaries of the large-scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to

use the setback provisions defined in Part (a)(5)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner, and the boundaries of the large-scale beach fill project. If the request is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static vegetation line under the following conditions:

- (A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(5) of this Rule;
- (B) Development setbacks shall be calculated from the shoreline erosion rate in place at the time of permit issuance;
- (C) No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure. When the configuration of a lot precludes the placement of a building or structure in line with the landward-most adjacent building or structure, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;
- (D) With the exception of swimming pools, the development defined in Rule .0309(a) of this Section shall be allowed oceanward of the static vegetation line; and
- (E) Development shall not be eligible for the exception defined in Rule .0309(b) of this Section.

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

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

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

(e) Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks existing as of June 1, 1979.

(f) Development shall comply with the general management objective for ocean hazard areas set forth in 15A NCAC 07H .0303.

(g) Development shall not interfere with legal access to, or use of, public resources, nor shall such development increase the risk of damage to public trust areas.

(h) Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense and may include actions that:

- (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
- (2) restore the affected environment; or
- (3) compensate for the adverse impacts by replacing or providing substitute resources.

(i) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written acknowledgment from the applicant to the Division of Coastal Management that the applicant is aware of the risks associated with development in this hazardous area and the limited suitability of this area for permanent structures. The acknowledgement shall state that the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

(j) All relocation of structures shall require permit approval. Structures relocated with public funds shall comply with the applicable setback line and other applicable AEC rules. Structures, including septic tanks and other essential accessories, relocated entirely with non-public funds shall be relocated the maximum feasible distance landward of the present location. Septic tanks shall not be located oceanward of the primary structure. All relocation of structures shall meet all other applicable local and state rules.

(k) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). Any such structure shall be relocated or dismantled within two years of the time when it becomes imminently threatened, and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach fill takes place within two years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This permit condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed pursuant to 15A NCAC 07H .0308(a)(2).

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;

Eff. September 9, 1977;

Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985;

RRC Objection due to ambiguity Eff. January 24, 1992;

Amended Eff. March 1, 1992;

RRC Objection due to ambiguity Eff. May 21, 1992;

Amended Eff. February 1, 1993; October 1, 1992; June 19, 1992;

*RRC Objection due to ambiguity Eff. May 18, 1995;
Amended Eff. August 11, 2009; April 1, 2007; November 1, 2004;
June 27, 1995;
Temporary Amendment Eff. January 3, 2013;
Amended Eff. September 1, 2017; February 1, 2017; April 1,
2016; September 1, 2013;
Readopted Eff. December 1, 2020;
Amended Eff. December 1, 2021.*

**15A NCAC 07H .0308 SPECIFIC USE STANDARDS
FOR OCEAN HAZARD AREAS**

(a) Ocean Shoreline Erosion Control Activities:

- (1) Use Standards Applicable to all Erosion Control Activities:
 - (A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.
 - (B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, unless specifically authorized under the Coastal Area Management Act, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters.
 - (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
 - (D) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule .0306(h) of this Section.
 - (E) Project construction shall be timed to minimize adverse effects on biological activity.
 - (F) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
 - (G) Permanent erosion control structures that would otherwise be prohibited by these standards may be permitted on finding by the Division that:
 - (i) the erosion control structure is necessary to protect a bridge that provides the only

- existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in Part (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
 - (iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.
- (H) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
- (i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in Part (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;
 - (iii) the structure is limited in extent and scope to that necessary to protect the site; and
 - (iv) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of significant adverse impacts on adjoining properties and on public access to and use of the beach.
- (I) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
- (i) the structure is necessary to maintain an existing

- commercial navigation channel of regional significance within federally authorized limits;
 - (ii) dredging alone is not practicable to maintain safe access to the affected channel;
 - (iii) the structure is limited in extent and scope to that necessary to maintain the channel;
 - (iv) the structure shall not have significant adverse impacts on fisheries or other public trust resources; and
 - (v) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any significant adverse impacts on adjoining properties and on public access to and use of the beach.
- (J) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:
 - (i) the structure will not be enlarged beyond the dimensions set out in the permit;
 - (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and
 - (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.
- (K) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 07M .0200 and general and specific use standards within this Section.
- (2) Temporary Erosion Control Structures:
 - (A) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.
 - (B) Temporary erosion control structures as defined in Part (A) of this Subparagraph may be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.
 - (C) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed under Rule .0309 of this Section as an exception to the erosion setback requirement.
 - (D) Temporary erosion control structures may be placed waterward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
 - (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected except to align with temporary erosion control structures on adjacent properties, where the Division has determined that gaps between adjacent erosion control structures may result in an increased risk of damage to the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet

waterward of the structure to be protected, or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet waterward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or the Director's designee in accordance with Part (A) of this Subparagraph.

- (F) Temporary erosion control structures may remain in place for up to eight years for a building and its associated septic system, a bridge or a road. The property owner shall be responsible for removal of any portion of the temporary erosion control structure exposed above grade within 30 days of the end of the allowable time period.
- (G) An imminently threatened structure or property may be protected only once, regardless of ownership, unless the threatened structure or property is located in a community that is actively pursuing a beach nourishment project, or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. Existing temporary erosion control structures may be permitted for additional eight-year periods provided that the structure or property being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter, and the community in which it is located is actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (H) of this Subparagraph shall begin at the time the initial erosion control

structure was installed. For the purpose of this Rule:

- (i) a building and its septic system shall be considered separate structures,
 - (ii) a road or highway may be incrementally protected as sections become imminently threatened. The time period for removal of each contiguous section of temporary erosion control structure shall begin at the time that the initial section was installed, in accordance with Part (F) of this Subparagraph.
- (H) For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with G.S. 113A-115.1 if it:
- (i) has been issued an active CAMA permit, where necessary, approving such project; or
 - (ii) has been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or
 - (iii) has received a favorable economic evaluation report on a federal project; or
 - (iv) is in the planning stages of a project designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and initiated by a local government or community with a commitment of local or state funds to construct the project or the identification of the financial resources or funding bases necessary to fund the beach nourishment, inlet relocation or stabilization project.

- If beach nourishment, inlet relocation or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Part (F) of this Subparagraph.
- (I) Once a temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, it shall be removed to the maximum extent practicable by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment project, or an inlet relocation or stabilization project, any portion of the temporary erosion control structure exposed above grade shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.
- (J) Removal of temporary erosion control structures is not required if they are covered by sand. Any portion of the temporary erosion control structure that becomes exposed above grade after the expiration of the permitted time period shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management.
- (K) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
- (L) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the temporary erosion control structure shall not exceed 20 feet, and the total height shall not exceed six feet, as measured from the bottom of the lowest bag.
- (M) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- (N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.
- (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and in accordance with Rule .0312 of this Section.
- (4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:
- (A) The area on which this activity is being performed shall maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;
- (B) The activity shall not exceed the lateral bounds of the applicant's property unless he has permission of the adjoining land owner(s);
- (C) Movement of material from seaward of the mean low water line will require a CAMA Major Development and State Dredge and Fill Permit;
- (D) The activity shall not increase erosion on neighboring properties and shall not have an adverse effect on natural or cultural resources;
- (E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.
- (b) Dune Establishment and Stabilization.
- (1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same configuration as adjacent natural dunes.
- (2) Existing primary and frontal dunes shall not, except for beach nourishment and emergency

situations, be broadened or extended in an oceanward direction.

- (3) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas shall be replanted or temporarily stabilized until planting can be completed.
- (4) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand in the area in which it is to be placed.
- (5) No new dunes shall be created in inlet hazard areas.
- (6) Sand held in storage in any dune, other than the frontal or primary dune, shall remain on the lot or tract of land to the maximum extent practicable and may be redistributed within the Ocean Hazard AEC provided that it is not placed any farther oceanward than the crest of a primary dune, if present, or the crest of a frontal dune.
- (7) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid dune impacts.

(c) Structural Accessways:

- (1) Structural accessways shall be permitted across primary or frontal dunes so long as they are designed and constructed in a manner that entails negligible alteration of the primary or frontal dune. Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a) of this Rule.
- (2) An accessway shall be considered to entail negligible alteration of primary or frontal dunes provided that:
 - (A) The accessway is exclusively for pedestrian use;
 - (B) The accessway is a maximum of six feet in width;
 - (C) Except in the case of beach matting for a local, State, or federal government's public access, the accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the dune. Where this is deemed by the Division of Coastal Management to be impossible due to any more restrictive local, State, or federal building requirements, the structure shall touch the dune only to the extent necessary. Beach matting for a local, State, or federal government's public access shall be installed at grade and not involve any excavation or fill of the dune; and
 - (D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.

- (3) An accessway that does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this Paragraph. Public fishing piers are not prohibited provided all other applicable standards of this Rule are met.

- (4) In order to preserve the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") may be provided for off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than 15 feet in width and may be constructed of wooden sections fastened together, or other materials approved by the Division, over the length of the affected dune area. Installation of a Hatteras ramp shall be done in a manner that will preserve the dune's function as a protective barrier against flooding and erosion by not reducing the volume of the dune.

- (5) Structural accessways may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune, provided they do not interfere with public trust rights and emergency access along the beach. Structural accessways are not restricted by the requirement to be landward of the FLSNV as described in Rule .0309(a) of this Section.

(d) Building Construction Standards. New building construction and any construction identified in .0306(a)(5) of this Section and 15A NCAC 07J .0210 shall comply with the following standards:

- (1) In order to avoid danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any building constructed within the ocean hazard area shall comply with relevant sections of the North Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.
- (2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.
- (3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on or seaward of the primary dune, the pilings shall extend to five feet below mean sea level.
- (4) All foundations shall be designed to be stable during applicable fluctuations in ground

elevation and wave forces during a 100-year storm. Cantilevered decks and walkways shall meet the requirements of this Part or shall be designed to break-away without structural damage to the main structure.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-115.1; 113A-124; Eff. June 1, 1979;
Temporary Amendment Eff. June 20, 1989, for a period of 180 days to expire on December 17, 1989;
Amended Eff. August 3, 1992; December 1, 1991; March 1, 1990; December 1, 1989;
RRC Objection Eff. November 19, 1992 due to ambiguity;
RRC Objection Eff. January 21, 1993 due to ambiguity;
Amended Eff. March 1, 1993; December 28, 1992;
RRC Objection Eff. March 16, 1995 due to ambiguity;
Amended Eff. April 1, 1999; February 1, 1996; May 4, 1995;
Temporary Amendment Eff. July 3, 2000; May 22, 2000;
Amended Eff. April 1, 2019; May 1, 2013; July 1, 2009; April 1, 2008; February 1, 2006; August 1, 2002;
Readopted Eff. December 1, 2020;
Amended Eff. December 1, 2021.

15A NCAC 07H .1201 PURPOSE

A permit under this Section shall allow the construction of piers and docking facilities, including pile supported or floating, in the Estuarine and Public Trust Waters AECs and construction of piers and docks within Coastal Wetland AECs according to the authority provided in Subchapter 07J .1100 and according to the rules in this Section. This permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjacent Ocean Erodible Area.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; Eff. March 1, 1984;
Amended Eff. July 1, 2009; April 1, 2003;
Readopted Eff. December 1, 2021.

15A NCAC 07H .1202 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and request approval for development.

(b) The applicant shall provide:

- (1) the site location, dimensions of the project area and name, and his or her address; and
- (2) confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in

writing for consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice and indicate that no response will be interpreted as no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

(c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. A permit to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction shall be completed within 120 days of the issuance of the general permit or the authorization shall expire and it shall be necessary to re-examine the proposed development to determine if the general permit may be reissued.

(d) Any modification or addition to the permitted project shall require prior approval from the Division of Coastal Management.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; Eff. March 1, 1984;
Amended Eff. October 1, 2007; August 1, 1998; January 1, 1990;
Readopted Eff. December 1, 2021.

15A NCAC 07H .1203 PERMIT FEE

The applicant shall pay a permit fee of two hundred dollars (\$200.00) by check or money order payable to the Department.

History Note: Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113-119.1; 113A-124; Eff. March 1, 1984;
Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;
Readopted Eff. December 1, 2021.

15A NCAC 07H .1204 GENERAL CONDITIONS

(a) Piers and docking facilities authorized by the general permit set forth in this Section shall be for the exclusive use of the land owner or occupant and shall not be leased, rented, or used for any commercial purpose. Piers and docking facilities shall provide docking space for no more than two boats. Docking facilities providing docking space for more than two boats shall be reviewed through the major permitting process due to their greater potential for adverse impacts and, therefore, are not authorized by this general permit, excluding the exceptions described in Rule .1205 of this Section.

(b) Individuals shall allow representatives of the Department of Environmental Quality to make inspections at any time in order to ensure that the activity being performed under the authority of the general permit set forth in this Section is in accordance with the terms and conditions prescribed herein.

(c) There shall be no interference with navigation or use of the waters by the public through the existence of piers and docking facilities.

(d) The permit set forth in this Section shall not be applicable to proposed construction where the Department determines that the proposed activity will endanger adjoining properties or significantly affect historic, cultural, scenic, conservation or recreation values, identified in G.S. 113A-102 and G.S. 113A-113(b)(4).

(e) The permit set forth in this Section does not eliminate the need to obtain any other required State, local, or federal authorization.

(f) Development carried out under the permit set forth in this Section shall be consistent with all State, federal, local requirements, and local land use plans current at the time of authorization.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;

Eff. March 1, 1984;

Amended Eff. May 1, 1990;

RRC Objection due to ambiguity Eff. May 19, 1994;

Amended Eff. August 1, 2014; July 1, 2009; August 1, 1998; July 1, 1994;

Readopted Eff. December 1, 2021.

15A NCAC 07H .1205 SPECIFIC CONDITIONS

(a) Piers and docking facilities may extend or be located up to a maximum of 400 feet waterward from the normal high water line or the normal water level, whichever is applicable.

(b) Piers and docking facilities shall not extend beyond the established pier length along the same shoreline for similar use. This restriction shall not apply to piers and docking facilities 100 feet or less in length unless necessary to avoid interference with navigation or other uses of the waters by the public such as blocking established navigation routes or interfering with access to adjoining properties as determined by the Division of Coastal Management. The length of piers and docking facilities shall be measured from the waterward edge of any wetlands that border the water body.

(c) Piers and docking facilities longer than 200 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least one foot at each 100 foot increment of pier length longer than 200 feet, or if the additional length is necessary to span some obstruction to navigation. Measurements to determine pier and docking facility lengths shall be made from the waterward edge of any coastal wetland vegetation that borders the water body.

(d) Piers shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.

(e) The total square footage of shaded impact for docks and mooring facilities (excluding the pier) allowed shall be 8 square feet per linear foot of shoreline with a maximum of 800 square feet. In calculating the shaded impact, uncovered open water slips shall not be counted in the total.

(f) The maximum size of any individual component of the docking facility authorized by this general permit shall not exceed 400 square feet.

(g) Docking facilities shall not be constructed in a designated Primary Nursery Area with less than two feet of water at normal low water level or normal water level under the general permit set forth in this Section without prior approval from the Division of Marine Fisheries or the Wildlife Resources Commission.

(h) Piers and docking facilities located over shellfish beds or submerged aquatic vegetation as defined by the Marine Fisheries Commission may be constructed without prior consultation from the Division of Marine Fisheries or the Wildlife Resources Commission if the following two conditions are met:

(1) Water depth at the docking facility location is equal to or greater than two feet of water at normal low water level or normal water level; and

(2) The pier and docking facility is located to minimize the area of submerged aquatic vegetation or shellfish beds under the structure as determined by the Division of Coastal Management.

(i) Floating piers and floating docking facilities located in Primary Nursery Areas, over shellfish beds, or over submerged aquatic vegetation shall be allowed if the water depth between the bottom of the proposed structure and the substrate is at least 18 inches at normal low water level or normal water level.

(j) Docking facilities shall have no more than six feet of any dimension extending over coastal wetlands and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.

(k) The width requirements established in Paragraph (d) of this Rule shall not apply to pier structures in existence on or before July 1, 2001 when structural modifications are needed to prevent or minimize storm damage. In these cases, pilings and cross bracing may be used to provide structural support as long as they do not extend more than two feet on either side of the principal structure. These modifications shall not be used to expand the floor decking of platforms and piers.

(l) Boathouses shall not exceed a combined total of 400 square feet and shall have sides extending no further than one-half the height of the walls as measured in a downward direction from the top wall plate or header and only covering the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline.

(m) The area enclosed by a boat lift shall not exceed 400 square feet.

(n) Piers and docking facilities shall be single story. They may be roofed but shall not allow second story use.

(o) Pier and docking facility alignments along federally maintained channels shall also meet Corps of Engineers regulations for construction pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(p) Piers and docking facilities shall in no case extend more than 1/4 the width of a natural water body, human-made canal, or basin. Measurements to determine widths of the water body, human-made canals, or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body. The 1/4 length limitation shall not apply when the proposed pier and docking facility is located between longer structures within 200 feet of the applicant's property. However, the proposed

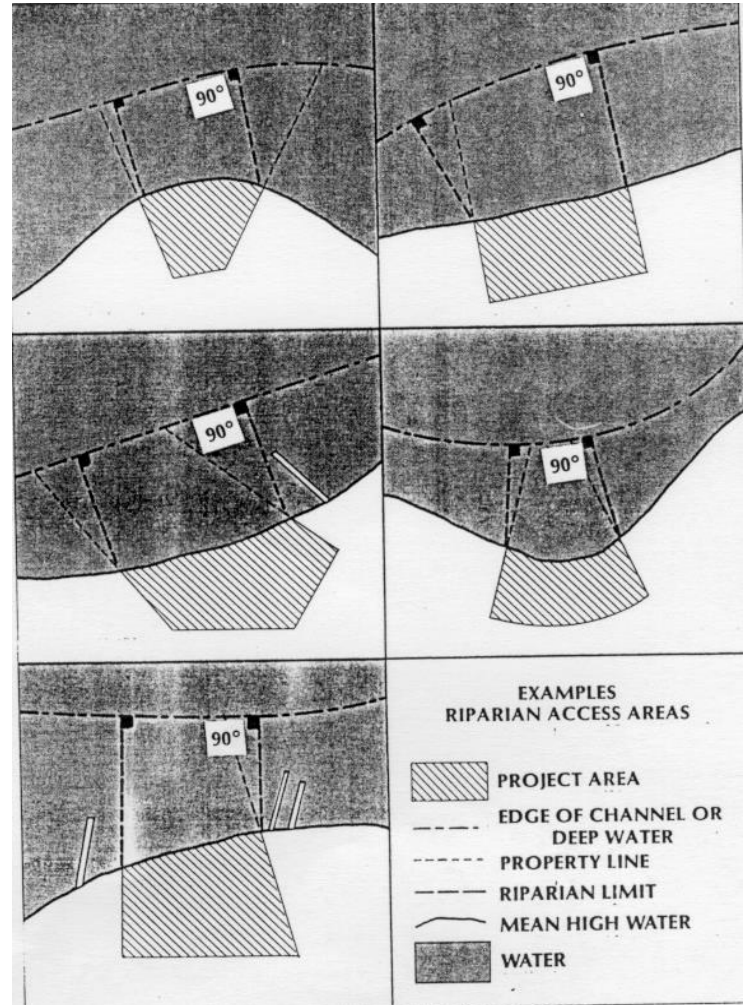
pier and docking facility shall not be longer than the pier head line established by the adjacent piers and docking facilities nor longer than 1/3 the width of the water body.

(q) Piers and docking facilities shall not interfere with the access to any riparian property, and shall have a minimum setback of 15 feet between any part of the pier and docking facility and the adjacent property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided in this Paragraph may be waived by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of the pier or docking facility. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. Application of this Rule may be aided by reference to the diagram in Paragraph (t) of this Rule illustrating the Rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management website at <http://www.nccoastalmanagement.net>. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier or docking facility shall be aligned to meet the intent of this Rule to the maximum extent practicable.

(r) Piers and docking facilities shall provide docking space for no more than two boats, as defined in 15A NCAC 07M .0602(a), except when stored on a platform that has already been accounted for within the shading impacts condition of this general permit. Boats stored on floating or fixed platforms shall not count as docking spaces.

(s) Applicants for authorization to construct a pier or docking facility shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed pier or docking facility would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.

(t) The diagram shown below illustrates various shoreline configurations:



(u) Shared piers or docking facilities shall be allowed, provided that in addition to complying with Paragraphs (a) through (t) of this Rule the following shall also apply:

- (1) The shared pier or docking facility shall be confined to two adjacent riparian property owners and the landward point of origination of the structure shall overlap the shared property line.
- (2) Shared piers and docking facilities shall be designed to provide docking space for no more than four boats.
- (3) The total square footage of shaded impact for docks and mooring facilities shall be calculated using Paragraph (e) of this Rule and in addition shall allow for combined shoreline of both properties.
- (4) The property owners of the shared pier shall not be required to obtain a 15-foot waiver from each other as described in Paragraph (q) of this Rule as is applies to the shared riparian line for any work associated with the shared pier, provided that the title owners of both properties

have executed a shared pier agreement that has become a part of the permit file.

- (5) The construction of a second access pier or docking facility not associated with the shared pier shall not be authorized under the general permit set forth in this Section.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;

Eff. March 1, 1984;

Amended Eff. December 1, 1991; May 1, 1990; March 1, 1990;

RRC Objection due to ambiguity Eff. March 18, 1993;

Amended Eff. August 1, 1998; April 23, 1993;

Temporary Amendment Eff. December 20, 2001;

Amended Eff. August 1, 2014; July 1, 2009; April 1, 2003;

Readopted Eff. December 1, 2021.

15A NCAC 07J .1105 APPLICATION PROCEDURES

Authorization to initiate development covered by the general permit shall comply with the procedures outlined in each permit. The procedures shall be established to explain in detail the application process, notification requirements, and permit fees.

History Note: Authority G.S. 113A-107; 113A-118.1; 113-229(c2);

Eff. September 1, 1983;

Readopted Eff. December 1, 2021.

15A NCAC 07J .1106 PERMIT CONDITIONS

Each general permit shall have a set of general and specific conditions. Additionally, the Division of Coastal Management may add conditions to each instrument of authorization if necessary to protect the public interest. The Division of Coastal Management may, on a case-by-case basis, override the general permit and require an individual application and review if this individual review is deemed to be in the public interest. Provisions for individual review by State agencies of requests for general permit authorization may be made for each category if this review is deemed necessary to protect coastal resources or other aspects of public interest.

History Note: Authority G.S. 113A-107; 113A-118.1; 113-229(c2); 113-229(e); 113A-120(b);

Eff. September 1, 1983;

Readopted Eff. December 1, 2021.

15A NCAC 07J .1107 PERMIT COMPLIANCE

All development authorized through the general permit must be done in compliance with all conditions listed on the permit. Development undertaken without a Coastal Area Management Act or Dredge and Fill permit or in violation of permit conditions or failure to comply with operational permit conditions shall be a violation subject to the penalties set out in G.S. 113A-126 or G.S. 113-229.

History Note: Authority G.S. 113A-107; 113A-118.1; 113-229(c2);

Eff. September 1, 1983;

Amended Eff. March 1, 1985;

Readopted Eff. December 1, 2021.

15A NCAC 07J .1301 REQUESTING THE DEVELOPMENT LINE

(a) Any local government, group of local governments involved in a regional beach fill project, or qualified owner's association with territorial jurisdiction over an area that is subject to ocean hazard area setbacks pursuant to 15A NCAC 07H .0305 may petition the Coastal Resources Commission for a development line for the purpose of siting oceanfront development in accordance with the provisions of this Section. A "qualified owner's association" is an owner's association, as defined in G.S. 47F-1-103(3), that has authority to approve the locations of structures on lots within the territorial jurisdiction of the association and has jurisdiction over at least one mile of ocean shoreline.

(b) A development line request shall apply to the entire large-scale project area as defined in 15A NCAC 07H .0305(a)(7) and, at the petitioner's request, may be extended to include the entire oceanfront jurisdiction or legal boundary of the petitioner.

(c) In determining where to position a requested development line, the petitioner shall use an adjacent neighbor sight-line approach, resulting in an average line of structures. In areas where the seaward edge of existing development is not linear, the petitioner may determine an average line of construction on a case-by-case basis. In no case shall a development line be established seaward of the most seaward structure within the petitioner's oceanfront jurisdiction.

(d) The following types of development shall be permitted seaward of the development line if all other provisions of this Subchapter and other State and local regulations are met:

- (1) campsites;
- (2) beach accessways consistent with 15A NCAC 07H .0308(c);
- (3) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
- (4) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
- (5) temporary amusement stands, consistent with 15A NCAC 07H .1900; and
- (6) sand fences consistent with 15A NCAC 07H .0311.

In all cases, this development shall be permitted only if it is landward of the vegetation line, measurement line, or static vegetation line, whichever is applicable; involves no alteration or removal of primary or frontal dunes that would compromise the integrity of the dune as a protective landform or the dune vegetation; has overwalks to protect any existing dunes; is not essential to the continued existence or use of an associated principal development, such as septic systems and utilities; and is not required to satisfy minimum requirements of local zoning, subdivision, and health regulations.

(e) An existing structure that is oceanward of an approved development line may remain in place until damaged greater than 50 percent in accordance with Rule .0210 of this Subchapter. At that time it may only be replaced landward of the development

line and shall meet the applicable ocean hazard setback requirements as defined in 15A NCAC 07H .0306(a).

(f) A request for a development line or amendment shall be made in writing by the petitioner and submitted to the CRC by sending the written request to the Director of the Division of Coastal Management. A complete request shall include the following:

- (1) A detailed survey of the development line using on-ground observation and survey or aerial imagery along the oceanfront jurisdiction or legal boundary, including;
 - (A) The development line, static vegetation line, mean high water line, and any other information necessary for a review of the petitioner's proposed development line, such as a pre-nourishment project mean high water line, local ordinances, or easements; and
 - (B) Surveyed development line spatial data in a geographic information systems (GIS) format referencing North Carolina State Plane North American Datum 83 US Survey Foot, to include Federal Geographic Data Committee (FGDC) compliant metadata;
- (2) All local regulations associated with the development line;
- (3) A record of local adoption of the development line by the petitioner; and
- (4) Documentation of incorporation of a development line into local ordinances or rules and regulations of an owner's association.

(g) Once a development line is approved by the Coastal Resources Commission, only the petitioner may request a change or reestablishment of the position of the development line.

(h) A development line request shall be submitted to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a completed development line request, including notification of the date of the meeting at which the request will be considered by the Coastal Resources Commission, shall be provided to the petitioner by the Division of Coastal Management.

(i) The Coastal Resources Commission shall consider a development line request no later than the second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management, unless the petitioner and the Division of Coastal Management agree upon a later date.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
 Eff. April 1, 2016;
 Amended Eff. September 1, 2017;
 Readopted Eff. September 1, 2021;
 Amended Eff. December 1, 2021.

15A NCAC 07K .0207 STRUCTURAL ACCESSWAYS OVER FRONTAL DUNES EXEMPTED

(a) The North Carolina Coastal Resources Commission exempts from the CAMA permit requirement all structural pedestrian accessways, including beach matting installed by a local, State, or federal government to provide public access over primary and frontal dunes when such accessways can be shown to meet the following criteria:

- (1) The accessway shall not exceed six feet in width and shall be for private residential or for public access to an ocean beach. This exemption does not apply to accessways for commercial use or for motor-powered vehicular use.
- (2) The accessway shall be constructed so as to make no alterations to the frontal dunes that are not necessary to construct the accessway. This means that the accessway shall be constructed over the frontal dune without any alteration of the dunes. In no case shall the dune be altered so as to diminish its capacity as a protective barrier against flooding and by not reducing the volume of the dune. Driving of pilings into the dune or a local, State, or federal government's use of beach matting for public access that is installed at grade and involves no excavation or fill shall not be considered alteration of a frontal dune for the purposes of this Rule.
- (3) The accessway shall conform with any applicable local or State building code standards.
- (4) Structural accessways may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune, provided they do not interfere with public trust rights and emergency access along the beach. Structural accessways are not restricted by the requirement to be landward of the First Line of Stable and Natural Vegetation as described in 15A NCAC 07H .0309(a).
- (5) Damaged, non-functioning, or portions of accessways that become non-compliant with Subparagraph (4) of this Paragraph shall be removed by the property owner.

(b) Before beginning any work under this exemption the CAMA local permit officer or Department of Environmental Quality representative shall be notified of the proposed activity to allow on-site review of the proposed accessway. Notification can be by telephone, in person, or in writing and must include:

- (1) name, address, and telephone number of landowner and location of work including county and nearest community; and
- (2) the dimensions of the proposed structural accessway.

History Note: Authority G.S. 113A-103(5)c;
 Eff. November 1, 1984;
 Amended Eff. December 1, 1991; May 1, 1990;
 Readopted Eff. August 1, 2021;

Amended Eff. December 1, 2021.

15A NCAC 070 .0101 STATEMENT OF PURPOSE

The principal purposes of the North Carolina Coastal Reserve and supporting programs are to:

- (1) preserve coastal ecosystems representative of the various biogeographic regions and typologies in North Carolina and to make them available for continuous future study of the processes, functions, and influences which shape and sustain the coastal ecosystems;
- (2) provide new information on coastal ecosystem processes to decisionmakers as a basis for the promotion of management of coastal resources;
- (3) provide a focal point for educational activities that increase the public awareness and understanding of coastal ecosystems, effects of humans on them, and the importance of coastal systems to the state and the Nation;
- (4) accommodate traditional uses, and other uses of the Reserve as long as they do not disturb the Reserve environment and are compatible with the research and educational activities within the Reserve components.

History Note: Authority G.S. 113-3; 113-8; 113A-129.2; 143B-10;

Eff. July 1, 1986;

Amended Eff. April 1, 1988;

Readopted Eff. February 1, 2022.

15A NCAC 070 .0102 DEFINITIONS AS USED IN THIS SUBCHAPTER

Definitions as used in this Subchapter are:

- (1) "Coastal Reserve" or "Reserve" means those coastal land and water areas, which include land and water portions of an estuary and adjacent transitional areas and uplands, set aside as a natural field laboratory and classroom to be maintained in their natural state to provide for long-term opportunities for research, education and compatible traditional uses and enjoyment of natural and scenic beauty. The Coastal Reserve includes the North Carolina National Estuarine Research Reserve. Coastal Reserve components are identified in 15A NCAC 070 .0105.
- (2) "Estuary" means that part of a river or stream or body of water having unimpaired connection with the open sea, where sea water is measurably diluted with fresh water derived from land drainage.
- (3) "Traditional uses" means public trust uses as defined in G.S. 1-45.1, including fishing, hunting, navigation, and recreation.

History Note: Authority G.S. 113-3; 113-8; 113A-129.2; 143B-10;

Eff. July 1, 1986;

Amended Eff. April 1, 1988;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017;

Amended Eff. February 1, 2022.

15A NCAC 070 .0103 RESPONSIBILITIES: DUTIES OF THE COASTAL RESERVE PROGRAM

The Coastal Reserve Program of the Division of Coastal Management shall be responsible for managing and protecting the North Carolina Coastal Reserve; promoting and coordinating research and educational programs at the components while allowing for compatible traditional uses; maintaining a management plan for the Reserve; maintaining cooperative agreements with scientific, educational, and resource management agencies and private citizens that will assist in the management of the Reserve; and providing new information on coastal processes to coastal management decisionmakers.

History Note: Authority G.S. 113-3; 113-8; 113A-129.1-3; 143B-10;

Eff. July 1, 1986;

Amended Eff. April 1, 1988;

Readopted Eff. February 1, 2022.

15A NCAC 070 .0104 STATE AND LOCAL COASTAL RESERVE ADVISORY COMMITTEES

Advisory committees shall be established for each Reserve component and shall advise Reserve staff regarding program activities and component management. Members of the committees shall include researchers, educators, managers, partner agencies and organizations, and citizens that use or are affected by the Reserve and its components. The committees shall be appointed by the Secretary of the Department of Environmental Quality.

History Note: Authority G.S. 113-3; 113-8; 113A-129.2; 143B-10;

Eff. July 1, 1986;

Amended Eff. May 1, 1990; April 1, 1988;

Readopted Eff. February 1, 2022.

15A NCAC 070 .0105 RESERVE COMPONENTS

(a) The North Carolina Coastal Reserve includes the following components:

- (1) Zeke's Island;
- (2) Rachel Carson;
- (3) Currituck Banks;
- (4) Masonboro Island;
- (5) Permuda Island;
- (6) Buxton Woods;
- (7) Bald Head Woods;
- (8) Kitty Hawk Woods;
- (9) Bird Island; and
- (10) Emily and Richardson Preyer Buckridge.

The North Carolina National Estuarine Research Reserve includes components in Subparagraphs (a)(1) - (4) of this Rule.

(b) Detailed boundary maps for each component are maintained and available for inspection at the Division of Coastal Management, 400 Commerce Avenue, Morehead City NC 28557.

History Note: Authority G.S. 113-3; 113-8; 113A-129.2; 113A-129.3; 143B-10;
Eff. July 1, 1986;
Amended Eff. February 1, 2006; April 1, 1999; August 1, 1991;
 April 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017;
Amended Eff. February 1, 2022.

15A NCAC 070 .0201 MANAGEMENT PLAN

The Division of Coastal Management shall prepare a management plan for the Reserve. The management plan shall contain policies for research, education, natural resource management, and traditional uses at each component and can be found at <https://deq.nc.gov/about/divisions/coastal-management/nc-coastal-reserve/about-reserve/management-plans>. The Secretary of the Department of Environmental Quality shall approve the management plan and its revisions. The Division of Coastal Management shall seek input from the local advisory committees, the Coastal Resources Commission, and the public on revisions to the management plan. The Division of Coastal Management shall monitor and manage Reserve components and report to the Secretary violations of the approved plan and any other situations that may be harmful to the natural resources of the Reserve.

History Note: Authority G.S. 113-3; 113-8; 113A-129.2; 113A-129.3; 143-341; 143-342; 143B-10;
Eff. July 1, 1986;
Amended Eff. May 1, 1990; April 1, 1988;
Readopted Eff. February 1, 2022.

15A NCAC 070 .0202 RESERVE USE REQUIREMENTS

The following use requirements shall apply to the lands and waters within the boundaries of the components of the Reserve:

- (1) The natural character of the Reserve shall be maintained.
- (2) Traditional uses within each component shall be allowed to continue as long as the activities are consistent with 15A NCAC 070 .0101(4). Incompatible traditional uses are prohibited and shall include:
 - (a) fishing, hunting, or trapping activities not allowed by federal, state, and local rules;
 - (b) target shooting; and
 - (c) mechanical clam dredging.
- (3) Disturbing a research or natural resource monitoring project or research equipment in place at the Reserve that is authorized by the Division of Coastal Management is prohibited.
- (4) Camping or any form of habitation on the uplands or wetlands of the Reserve is prohibited except on the uplands at the Masonboro Island Reserve, where camping is allowed for no more than two consecutive nights.
- (5) Fires are prohibited except at the Masonboro Island Reserve on sand at least 15 feet from vegetation.

- (6) Disturbing or removing any live animals, except those allowed by local or state hunting, trapping, and fishing rules as they apply to the Reserve, or vegetation, fungi, or cultural resources within the Reserve unless such action is part of a research or educational project authorized by the Division of Coastal Management is prohibited.
- (7) Persons wishing to engage in scientific research and monitoring, or collection of natural and cultural materials for scientific purposes within the Reserve shall secure written authorization from the Division of Coastal Management prior to beginning said activity. Written authorization does not eliminate the need to obtain any other federal, state, or local authorization, nor to abide by regulations adopted by any federal, state, or local agency. Application for authorization shall be made by contacting Reserve staff at the Division of Coastal Management.
- (8) Producing noise disruptive to local wildlife or the aesthetic enjoyment of the Reserve as a natural area is prohibited.
- (9) Conducting or engaging in acts or uses which are detrimental to the maintenance of the Reserve in its natural condition is prohibited including, disturbances of the soil, mining, commercial or industrial uses, timber harvesting, ditching and draining, and deposition of waste materials.
- (10) The following requirements pertain to littering, dumping, deposition, and pollution:
 - (a) Leaving any personal property unattended within the boundaries of any Reserve component longer than 24 hours is prohibited, at which point it shall be considered litter in accordance with G.S. 14-399 and subject to removal at the owner's expense. Owner may also be subject to prosecution.
 - (b) Abandoning or allowing to be abandoned any vessels of any kind within the boundaries of any Reserve component is prohibited. Vessels not removed within 30 days shall be considered litter in accordance with G.S. 14-399 and subject to removal at the owner's expense. Owner may also be subject to prosecution.
 - (c) Disposing of any litter, as described in G.S. 14-399, within the boundaries of any Reserve component is prohibited.
 - (d) Dumping, depositing, placing, or allowing to be abandoned any autos, appliances, trash, debris, garbage, shell, or discarded material(s) of any

- kind within the boundaries of any Reserve component is prohibited.
- (e) Conducting or engaging in activities that pollute any land, wetland, stream, creek, or other body of water within the boundaries of any Reserve component is prohibited, in accordance with G.S. 75A-10, 76-40.
- (11) The following requirements pertain to vehicles and parking:
 - (a) Motorized vehicles as defined in G.S. 20-4.01(23) are prohibited within the boundaries of any Reserve component while not engaged in a Reserve-based activity, Reserve business, or an activity authorized by the Division of Coastal Management.
 - (b) Motorized vehicles are prohibited outside of designated corridors within the boundaries of Reserve components where vehicles are allowed for upland transportation according to the management plan.
 - (c) Allowing a motorized vehicle to block traffic, gates, driveways, or emergency vehicle access is prohibited.
 - (d) Parking a motorized vehicle within the boundaries of any Reserve component overnight, or allowing a motorized vehicle to remain anywhere within the boundaries of any Reserve component unattended or abandoned for longer than 12 hours is prohibited, except at the Currituck Banks Reserve parking lot where there is a 2 hour limit.
 - (e) The Division or its agents may immobilize or tow any motorized vehicle that is in violation of this Rule at the owner's expense.
 - (f) Non-motorized vehicles are prohibited where the use of the vehicle will damage natural resources and on pedestrian trails not designated for this use.
- (12) The Division staff and its authorized agents are exempt from this Rule when engaged in management activities, such as incorporation of natural materials, beneficial use of dredged materials, or other engineering practices that protect, restore, or enhance the natural character of the Reserve.

15A NCAC 070 .0203 SPECIAL ACTIVITY AUTHORIZATION

The following Items shall apply to special activity authorization within the boundaries of the components of the Reserve:

- (1) Written authorization is required for organized events, commercial activities, and other special activities or uses within the boundaries of any Reserve component not included in the primary uses of research, education, and compatible traditional uses.
- (2) A request for written authorization shall be made by contacting Reserve staff at the Division of Coastal Management. Written authorization does not eliminate the need to obtain any other federal, state, or local authorization, nor to abide by regulations adopted by any federal, state, or local agency.
- (3) A request for written authorization shall be made a minimum of 30 days prior to and up to one year in advance of the activity or use. The request shall include:
 - (a) the name, address, and phone number of the applicant;
 - (b) the name of the organization (if any);
 - (c) the name, address, and phone number of a contact person;
 - (d) the date, time, duration, nature, and location of the proposed activity or use;
 - (e) the estimated number of persons expected to participate;
 - (f) the equipment to be used during the activity; and
 - (g) other information necessary to allow for evaluation of an application.
- (4) The Reserve Manager or designee shall provide written authorization unless one or more of the following apply:
 - (a) A prior request for a written authorization for a similar activity or use has been made and granted; and the activities or uses authorized by the written authorization do not allow multiple activities or uses of that location during the same timeframe;
 - (b) The activity or use will threaten the health, safety, and welfare of persons using the Reserve;
 - (c) The activity or use is of such a nature or duration that it cannot be conducted or performed in the location due to:
 - (i) the potential for damage to the Reserve or facilities;
 - (ii) interference with research or education programs, or site management activities of the Reserve;

History Note: Authority G.S. 113-3; 113-8; 113-264; 113A-129.2; 143B-10; Eff. July 1, 1986; Amended Eff. April 1, 1999; December 1, 1991; April 1, 1988; Readopted Eff. February 1, 2022.

- (iii) disturbance of wildlife, habitats, or other natural features of the Reserve; or
 - (iv) burden placed on public agencies by the activity;
- (d) The activity or use conflicts with the principal purposes of the Reserve as defined in 15A NCAC 070 .0101; or
- (e) The activity or use does not comply with the Reserve use requirements found in Rule .0202 of this Subchapter, dedicated nature preserve letters of allocation under G.S. 143B Article 2 Part 42 Nature Preserves Act, or would constitute a violation of other applicable law or regulation.
- (5) The written authorization may contain conditions consistent with protection and use of the Reserve for the purposes for which it is operated.
- (6) The authorized user shall not transfer or assign authorization, or grant any part of an authorized use, to any person not indicated on the written authorization request.
- (7) If a request is denied, the applicant shall be informed in writing, with the reason(s) for the denial.
- (8) Participants engaged in activities authorized under this Rule shall also be subject to the rules of this Subchapter.
- (9) A written authorization only authorizes uses or activities that conform to the terms contained in the authorization or in applicable federal, state, and local rules and laws. Violation of the terms and conditions of a written authorization, including engaging in any activities or uses not expressly authorized, shall result in revocation of the authorization by the Division of Coastal Management. Violations shall be subject to any other civil penalties prescribed by law. Violations may also be subject to criminal penalties.

History Note: Authority G.S. 113-3; 113-8; 113-264; 113A-129.2; 113A-129.3; 143B-10;
Eff. February 1, 2022.

TITLE 20 - DEPARTMENT OF STATE TREASURER

20 NCAC 01F .0102 CORRESPONDENCE

History Note: Authority G.S. 143A-31;
Eff. February 1, 1976;
Readopted Eff. September 15, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 5, 2016;
Repealed Eff. December 1, 2021.

20 NCAC 01F .0111 PETITION FOR RULEMAKING

- (a) All petitions requesting the adoption, amendment, or repeal of a rule shall be in writing and mailed to the attention of the Rulemaking Coordinator at the address specified in Rule 20 NCAC 01A .0101.
- (b) The petition for rulemaking shall:
 - (1) contain the names and addresses of petitioners;
 - (2) identify the agency, board, or commission to whom the petition is directed for consideration; and
 - (3) for petitions to adopt or amend a rule, draft text of the proposed rule or amendment and a statement of the effect of the requested rule change.
- (c) The petition may contain the following information:
 - (1) the reason for the proposal;
 - (2) anticipated cost factors; or
 - (3) any additional data supporting the petition.
- (d) If the State Treasurer is the appropriate rulemaking body to consider the petition, within 30 days of submission of the petition, the State Treasurer, or deputy pursuant to G.S. 147-75, shall render a final decision. If the decision is to deny the petition, the petitioner shall be notified in writing, stating the reasons for the denial. If the decision is to grant the petition, written notice of the decision shall be provided as set forth in G.S. 150B-20(c) and rulemaking proceedings shall be initiated.
- (e) If a board or commission within the Department of State Treasurer is the appropriate rulemaking body to consider the petition, the petition shall be forwarded to the chair of the board or commission. Within 120 days of submission of the petition, the board or commission shall render a final decision. If the decision is to deny the petition, the petitioner shall be notified by the board or commission in writing, stating the reasons for the denial. If the decision is to grant the petition, written notice of the decision shall be provided as set forth in G.S. 150B-20(c) and rulemaking proceedings shall be initiated.

History Note: Authority G.S. 150B-20;
Eff. December 1, 2021.

20 NCAC 01F .0203 FORM OF REQUESTS 20 NCAC 01F .0204 WHO MAKES RULING

History Note: Authority G.S. 150B-17;
Eff. February 1, 1976;
Readopted Eff. September 15, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 5, 2016;
Repealed Eff. December 1, 2021.

20 NCAC 01F .0207 RULING PROCEDURES

History Note: Authority G.S. 150B-17;
Eff. February 1, 1976;
Readopted Eff. September 15, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 5, 2016;
Repealed Eff. December 1, 2021.

20 NCAC 01F .0208 DECLARATORY RULINGS

(a) All requests for declaratory rulings shall be in writing and mailed to the attention of the Rulemaking Coordinator at the address specified in Rule 20 NCAC 01A .0101.

(b) The request for declaratory ruling shall:

- (1) contain the name and address of the requestor;
- (2) identify the agency, board, or commission to whom the request is directed for consideration;
- (3) identify the statute, rule, or order to which the request relates; and
- (4) contain a statement of the manner in which the requestor is affected, or thinks that the requestor may be affected, by the statute, rule, or order and its application to the requestor.

(c) A decision to grant or deny a request for a declaratory ruling will be made by the State Treasurer, a deputy pursuant to G.S. 147-75, or board or commission within 30 days of receipt. The requestor shall be notified in writing of a decision to grant or deny the request.

(d) A request for declaratory ruling shall be denied by the State Treasurer, deputy, or appropriate board or commission if:

- (1) the request does not meet the requirements set forth in this Rule;
- (2) a declaratory ruling has previously been issued on same or similar facts;
- (3) a controlling decision has already been issued on same or similar facts in a contested case;
- (4) the facts underlying the request were considered at the time of adoption of the rule; or
- (5) the subject matter of the request is involved in pending litigation.

(e) If the request is granted, the State Treasurer, deputy, or appropriate board or commission shall issue a written ruling within 45 days of the decision to grant the request.

*History Note: Authority G.S. 150B-4;
Eff. December 1, 2021.*

TITLE 25 - OFFICE OF STATE HUMAN RESOURCES

25 NCAC 01C .0405 TEMPORARY APPOINTMENT

(a) A temporary appointment is an appointment to fill a workforce need for a limited period of time. Temporary employees may not be used to permanently expand the workforce beyond authorized levels. Temporary appointments shall not

exceed 11 consecutive months, subject to the following exemptions:

- (1) Full-time students, defined as those undergraduate students taking at least 12 credit hours or graduate students taking at least 9 credit hours;
- (2) Retired employees, defined as those individuals drawing a retirement income or Social Security benefits and having signed a statement that they are not available for, nor seeking, permanent employment;
- (3) Inmates that are on a work-release program;
- (4) Interns, defined as those students who, regardless of the number of credit hours enrolled, work to gain occupational experience for a period of time not to exceed three months; and
- (5) Externs, defined as those students who, regardless of the number of credit hours enrolled, are employed as part of a written agreement between the State and an academic institution through which the student is paid and earns course credit.

(b) Employees with a temporary appointment shall not earn or accrue leave or receive total State service credit, retirement credit, severance pay, or priority reemployment consideration.

(c) This Rule applies to all temporary employees employed by the State.

*History Note: Authority G.S. 126-4(5); 126-4(6); 126-4(7a); 126-4(19);
Eff. February 1, 1976;
Amended Eff. August 1, 1995; November 1, 1991; December 1, 1978;
Readopted Eff. April 1, 2016;
Amended Eff. December 1, 2021.*

25 NCAC 01C .0407 TEMPORARY PART-TIME APPOINTMENT

*History Note: Authority G.S. 126-4;
Eff. February 1, 1976;
Amended Eff. August 1, 1995; November 1, 1991; December 1, 1978;
Readopted Eff. April 1, 2016;
Repealed Eff. December 1, 2021.*

This Section contains information for the meeting of the Rules Review Commission January 20, 2022 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. (2nd Vice Chair)
Margaret Currin
Jeff Hyde
Robert A. Rucho

Appointed by House

Andrew P. Atkins (1st Vice Chair)
Wayne R. Boyles, III
Barbara A. Jackson
Randy Overton
Paul Powell

COMMISSION COUNSEL

Amber Cronk May 984-236-1936
Brian Liebman 984-236-1948

RULES REVIEW COMMISSION MEETING DATES

January 20, 2022 March 17, 2022
February 17, 2022 April 21, 2022

AGENDA**RULES REVIEW COMMISSION**

Thursday, January 20, 2022, 9:00 A.M.
1711 New Hope Church Rd., Raleigh, NC 27609

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters
 - A. Soil and Water Conservation Commission - 02 NCAC 59A .0101, .0102, .0103, .0104, .0201, .0202, .0203, .0204, .0301, .0302 (May)
 - B. Environmental Management Commission - 15A NCAC 02L .0202 (May)
 - C. Board of Examiners of Electrical Contractors – 21 NCAC 18B .0308 (Liebman)
 - D. Pharmacy, Board of - 21 NCAC 46 .1417, .1816 (May)
 - E. Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors – 21 NCAC 50 .0415 (Liebman)
- IV. Review of Filings (Permanent Rules) for rules filed between November 23, 2021 through December 20, 2021
 - DHHS - Division of Health Service Regulation (May)
 - Private Protective Services Board (May)
 - Marine Fisheries Commission 15A NCAC 03 (May)
 - Coastal Resources Commission (Liebman)
 - Wildlife Resources Commission (Liebman)
 - Marine Fisheries Commission 15A NCAC 18A (May)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. Existing Rules Review
- VII. Review of the 2022 State Medical Facilities Plan (Liebman)
- VIII. Commission Business
 - Next meeting: February 17, 2022

Commission Review
Log of Permanent Rule Filings
November 23, 2021 through December 20, 2021

HHS - HEALTH SERVICE REGULATION, DIVISION OF

The rules in Chapter 14 concern services provided by the Division of Health Service Regulation.

The rules in Subchapter 14C are Certificate of Need regulations including general provisions (.0100); applications and review process (.0200); exemptions (.0300); appeal process (.0400); enforcement and sanctions (.0500); and criteria and standards for nursing facility or adult care home services (.1100), intensive care services (.1200), pediatric intensive care services (.1300), neonatal services (.1400), hospices, hospice inpatient facilities, and hospice residential care facilities (.1500), cardiac catheterization equipment and cardiac angioplasty equipment (.1600), open heart surgery services and heart-lung bypass machines (.1700), diagnostic centers (.1800), radiation therapy equipment (.1900), home health services (.2000), surgical services and operating rooms (.2100), end stage renal disease services (.2200), computed tomography equipment (.2300), immediate care facility/mentally retarded (ICF/MR) (.2400), substance abuse/chemical dependency treatment beds (.2500), psychiatric beds (.2600), magnetic resonance imaging scanner (.2700), rehabilitation services (.2800), bone marrow transplantation services (.2900), solid organ transplantation services (.3000), major medical equipment (.3100), lithotripter equipment (.3200), air ambulance (.3300), burn intensive care services (.3400), oncology treatment centers (.3500), gamma knife (.3600), positron emission tomography scanner (.3700), acute care beds (.3800), gastrointestinal endoscopy procedure rooms in licensed health service facilities (.3900), and hospice inpatient facilities and hospice residential care facilities (.4000).

Performance Standards
Readopt with Changes*

10A NCAC 14C .1703

PRIVATE PROTECTIVE SERVICES BOARD

The rules in Chapter 16 are from the Private Protective Services Board and cover organization and general provisions (.0100); licenses and trainee permits (.0200); security guard patrol and guard dog service (.0300); private investigator: electronic countermeasures (.0400); polygraph (.0500); psychological stress evaluator (PSE) (.0600); unarmed security guard registration (.0700); armed security guard firearm registration permit (.0800); trainer certificate (.0900); recovery fund (.1000); training and supervision for private investigator associates (.1100); continuing education (.1300); and armed armored car service guards firearm registration permit (.1400).

Reporting Requirements
Amend*

14B NCAC 16 .0110

Experience Requirements for a Polygraph License
Amend*

14B NCAC 16 .0501

Training Requirements for Armed Security Guards
Amend*

14B NCAC 16 .0807

Fees for Trainer Certificate
Amend*

14B NCAC 16 .0903

Accreditation Standards
Amend*

14B NCAC 16 .1203

MARINE FISHERIES COMMISSION

The rules in Subchapter 3I are general and miscellaneous rules.

Ocean Fishing Piers
Readopt without Changes*

15A NCAC 03I .0108

Replacement Costs of Marine and Estuarine Resources - Fish
Readopt without Changes*

15A NCAC 03I .0115

User Conflict Resolution
Readopt without Changes*

15A NCAC 03I .0122

The rules in Subchapter 3J concern the use of nets in general (.0100) and in specific areas (.0200); the use of pots, dredges, and other fishing devices (.0300); fishing gear (.0400); and pound nets (.0500).

<u>Gill Nets, Seines, Identification, Restrictions</u>	15A NCAC 03J .0103
Readopt without Changes*	
<u>Trawl Nets</u>	15A NCAC 03J .0104
Readopt without Changes*	
<u>Channel Nets</u>	15A NCAC 03J .0106
Readopt without Changes*	
<u>Fyke or Hoop Nets</u>	15A NCAC 03J .0111
Readopt without Changes*	
<u>Atlantic Ocean</u>	15A NCAC 03J .0202
Readopt without Changes*	
<u>New River</u>	15A NCAC 03J .0208
Readopt without Changes*	
<u>Fishing Gear</u>	15A NCAC 03J .0401
Readopt without Changes*	
<u>Fishing Gear Restrictions</u>	15A NCAC 03J .0402
Readopt without Changes*	

The rules in Subchapter 3L concern shrimp (.0100); crabs (.0200); and lobsters (.0300).

<u>Horseshoe Crabs</u>	15A NCAC 03L .0207
Readopt with Changes*	
<u>Repacking of Foreign Crab Meat Prohibited</u>	15A NCAC 03L .0210
Adopt*	
<u>American Lobster (Northern Lobster)</u>	15A NCAC 03L .0301
Readopt with Changes*	
<u>Spiny Lobster</u>	15A NCAC 03L .0302
Readopt with Changes*	

The rules in Subchapter 3M cover harvesting of finfish including general rules (.0100); striped bass (.0200); mackerel (.0300); menhaden and Atlantic herring (.0400); and other finfish (.0500).

<u>Spanish and King Mackerel</u>	15A NCAC 03M .0301
Readopt/Repeal*	
<u>Purse Gill Net Prohibited</u>	15A NCAC 03M .0302
Readopt with Changes*	
<u>Bluefish</u>	15A NCAC 03M .0511
Readopt/Repeal*	
<u>Cobia</u>	15A NCAC 03M .0516
Readopt/Repeal*	
<u>Shad</u>	15A NCAC 03M .0519
Readopt with Changes*	

COASTAL RESOURCES COMMISSION

The rules in Subchapter 7H are the state guidelines for areas of environmental concern (AECs) including introduction and general comments (.0100); the estuarine system (.0200); ocean hazard areas (.0300); public water supplies (.0400); natural and cultural resource areas (.0500); development standards (.0600); general permits for construction or maintenance of bulkheads and the placement of riprap for shoreline protection in estuarine and public trust waters (.1100); piers, docks and boat houses in estuarine and public trust waters (.1200); general permit to construct boat ramps along estuarine and public trust shorelines and into estuarine and public trust waters (.1300); groins in estuarine and public trust waters (.1400); excavation within or connecting to existing canals, channels, basins, or ditches in

estuarine waters, public trust waters, and estuarine shoreline AECs (.1500); aerial and subaqueous utility lines with attendant structures in coastal wetlands, estuarine waters, public trust waters and estuarine shorelines (.1600); emergency work requiring a CAMA or a dredge and fill permit (.1700); beach bulldozing landward of the mean high-water mark in the ocean hazard AEC (.1800); temporary structures within the estuarine and ocean hazard AECs (.1900); authorizing minor modifications and repair to existing pier/mooring facilities in estuarine and public trust waters and ocean hazard areas (.2000); construction of sheetpile sill for shoreline protection in estuarine and public trust waters (.2100); construction of freestanding moorings in established waters and public trust areas (.2200); replacement of existing bridges and culverts in estuarine waters, estuarine shorelines, public trust areas and coastal wetlands (.2300); placement of riprap for wetland protection in estuarine and public trust waters (.2400); replacement of structures; the reconstruction of primary or frontal dune systems; and the maintenance excavation of existing canals, basins, channels, or ditches, damaged, destroyed, or filled in by hurricanes or tropical storms (.2500); construction of wetland, stream and buffer mitigation sites by the North Carolina Ecosystem Enhancement Program or the North Carolina Wetlands Restoration Program (.2600); and the construction of riprap sills for wetland enhancement in estuarine and public trust waters (.2700).

<u>Purpose</u>	15A NCAC 07H .1101
Readopt without Changes*	
<u>Approval Procedures</u>	15A NCAC 07H .1102
Readopt without Changes*	
<u>Permit Fee</u>	15A NCAC 07H .1103
Readopt without Changes*	
<u>General Conditions</u>	15A NCAC 07H .1104
Readopt without Changes*	
<u>Specific Conditions</u>	15A NCAC 07H .1105
Readopt without Changes*	
<u>Purpose</u>	15A NCAC 07H .1801
Readopt without Changes*	
<u>Approval Procedures</u>	15A NCAC 07H .1802
Readopt without Changes*	
<u>Permit Fee</u>	15A NCAC 07H .1803
Readopt without Changes*	
<u>General Conditions</u>	15A NCAC 07H .1804
Readopt without Changes*	
<u>Specific Conditions</u>	15A NCAC 07H .1805
Readopt without Changes*	

WILDLIFE RESOURCES COMMISSION

The rules in Subchapter 10B are hunting and trapping rules and cover general hunting and wildlife provisions (.0100), hunting specific animals (.0200), trapping (.0300), and tagging furs (.0400).

<u>Importation of Gray Foxes</u>	15A NCAC 10B .0102
Readopt without Changes*	
<u>Shining Lights in Deer Areas</u>	15A NCAC 10B .0115
Readopt without Changes*	
<u>Wild Birds Defined</u>	15A NCAC 10B .0121
Readopt without Changes*	
<u>Prohibited Hunting on State Fish Hatcheries</u>	15A NCAC 10B .0122
Readopt without Changes*	
<u>Importation of Animal Parts</u>	15A NCAC 10B .0124
Readopt without Changes*	
<u>Release of Mute Swans</u>	15A NCAC 10B .0125
Readopt without Changes*	
<u>Bear</u>	15A NCAC 10B .0202

Readopt without Changes*	
<u>Quail</u>	15A NCAC 10B .0208
Readopt without Changes*	
<u>Wild Turkey</u>	15A NCAC 10B .0209
Readopt without Changes*	
<u>Ruffed Goose</u>	15A NCAC 10B .0210
Readopt without Changes*	
<u>Pheasant (Nonnative Varieties)</u>	15A NCAC 10B .0211
Readopt without Changes*	
<u>Groundhog</u>	15A NCAC 10B .0213
Readopt without Changes*	
<u>Wildcat (Bobcat)</u>	15A NCAC 10B .0214
Readopt without Changes*	
<u>Crows</u>	15A NCAC 10B .0215
Readopt without Changes*	
<u>Coyote</u>	15A NCAC 10B .0219
Readopt without Changes*	
<u>Nutria</u>	15A NCAC 10B .0220
Readopt without Changes*	
<u>Striped Skunk</u>	15A NCAC 10B .0221
Readopt without Changes*	
<u>Armadillo</u>	15A NCAC 10B .0222
Readopt without Changes*	
<u>Elk</u>	15A NCAC 10B .0225
Readopt without Changes*	
<u>Definitions</u>	15A NCAC 10B .0301
Readopt without Changes*	

The rules in Subchapter 10C cover inland fishing including jurisdictional issues involving the Marine Fisheries Commission (.0100); general rules (.0200); game fish (.0300); non-game fish (.0400); primary nursery areas (.0500); and anadromous fish spawning areas (.0600).

<u>Identification</u>	15A NCAC 10C .0201
Readopt without Changes*	
<u>Fish Hatcheries</u>	15A NCAC 10C .0212
Readopt without Changes*	
<u>Snagging Fish</u>	15A NCAC 10C .0213
Readopt without Changes*	
<u>Public Access for Anglers Only</u>	15A NCAC 10C .0217
Readopt without Changes*	

The rules in Subchapter 10H concern activities regulated by the Commission including controlled hunting preserves for domestically raised game birds (.0100), holding wildlife in captivity (.0300), commercial trout ponds (.0400), fish propagation (.0700), falconry (.0800), game bird propagators (.0900), taxidermy (.1000), furbearer propagation (.1100), controlled fox hunting preserves (.1200), reptiles and amphibians (.1300), wildlife captivity and rehabilitation (.1400), wildlife and alligator control agents (.1500).

<u>Controlled Rabbit Hunting Preserves</u>	15A NCAC 10H .1601
Adopt*	

MARINE FISHERIES COMMISSION

The rules in Chapter 18 cover environmental aspects of health such as sanitation (18A), mosquito control (18B), water supplies (18C), and water treatment facility operators (18D).

The rules in Subchapter 18A deal with sanitation and include handling, packing and shipping of crustacean meat (.0100) and shellfish (.0300 and .0400); operation of shellstock plants and reshippers (.0500); shucking and packing plants (.0600); depuration mechanical purification facilities (.0700); wet storage of shellstock (.0800); shellfish growing waters (.0900); summer camps (.1000); grade A milk (.1200); hospitals, nursing homes, rest homes, etc. (.1300); mass gatherings (.1400); local confinement facilities (.1500); residential care facilities (.1600); protection of water supplies (.1700); lodging places (.1800); sewage treatment and disposal systems (.1900); migrant housing (.2100); bed and breakfast homes (.2200); delegation of authority to enforce rules (.2300); public, private and religious schools (.2400); public swimming pools (.2500); restaurants, meat markets, and other food handling establishments (.2600); child day care facilities (.2800); restaurant and lodging fee collection program (.2900); bed and breakfast inns (.3000); lead poisoning prevention (.3100); tattooing (.3200); adult day service facilities (.3300); primitive camps (.3500); rules governing the sanitation of resident camps (.3600); and private drinking water well sampling (.3800).

<u>Definitions</u>	15A NCAC 18A .0134
Readopt with Changes*	
<u>Applicability of Rules</u>	15A NCAC 18A .0136
Readopt with Changes*	
<u>General Requirements for Operation</u>	15A NCAC 18A .0137
Readopt with Changes*	
<u>Supervision</u>	15A NCAC 18A .0138
Readopt with Changes*	
<u>Facility Flooding</u>	15A NCAC 18A .0139
Readopt with Changes*	
<u>Insect Control</u>	15A NCAC 18A .0144
Readopt with Changes*	
<u>Rodent and Animal Control</u>	15A NCAC 18A .0145
Readopt with Changes*	
<u>Water Supply</u>	15A NCAC 18A .0147
Readopt with Changes*	
<u>Ice</u>	15A NCAC 18A .0148
Readopt with Changes*	
<u>Plumbing</u>	15A NCAC 18A .0149
Readopt with Changes*	
<u>Toilets</u>	15A NCAC 18A .0151
Readopt with Changes*	
<u>Solid Waste</u>	15A NCAC 18A .0152
Readopt with Changes*	
<u>Person Hygiene</u>	15A NCAC 18A .0153
Readopt with Changes*	
<u>Equipment and Utensil Construction</u>	15A NCAC 18A .0156
Readopt with Changes*	
<u>Facility and Equipment Sanitation</u>	15A NCAC 18A .0157
Readopt with Changes*	
<u>Equipment Storage</u>	15A NCAC 18A .0158
Readopt with Changes*	
<u>Crustacea Cooking</u>	15A NCAC 18A .0161
Readopt with Changes*	
<u>Cooked Crustacea Air-Cool</u>	15A NCAC 18A .0162
Readopt with Changes*	
<u>Cooked Crustacea Picking</u>	15A NCAC 18A .0164
Readopt with Changes*	
<u>Packing</u>	15A NCAC 18A .0165
Readopt with Changes*	
<u>Picked Crustacea Meat</u>	15A NCAC 18A .0166

Readopt with Changes*			
<u>Single-Service Containers</u>	15A	NCAC	18A .0168
Readopt with Changes*			
<u>Repacking</u>	15A	NCAC	18A .0173
Readopt with Changes*			
<u>Pasteurization Process</u>	15A	NCAC	18A .0174
Readopt with Changes*			
<u>Preparation of Crustacea Meat for Pasteurization</u>	15A	NCAC	18A .0175
Readopt with Changes*			
<u>Pasteurization of Crustacea Meat</u>	15A	NCAC	18A .0176
Readopt with Changes*			
<u>Labeling of Pasteurized Crustacea Meat</u>	15A	NCAC	18A .0177
Readopt with Changes*			
<u>Interfacility Pasteurization</u>	15A	NCAC	18A .0178
Readopt with Changes*			
<u>Embargo or Disposal of Cooked Crustacea or Crustacea Meat</u>	15A	NCAC	18A .0181
Readopt with Changes*			
<u>Bacteriological and Contamination Standards</u>	15A	NCAC	18A .0182
Readopt with Changes*			
<u>Alternative Labeling</u>	15A	NCAC	18A .0183
Readopt with Changes*			
<u>Thermal Processing</u>	15A	NCAC	18A .0184
Readopt with Changes*			
<u>Thermal Processing of Crustacea and Crustacea Meat</u>	15A	NCAC	18A .0185
Readopt with Changes*			
<u>Labeling of Thermally Processed Crustacea and Crustacea Meat</u>	15A	NCAC	18A .0186
Readopt with Changes*			
<u>Interfacility Thermal Processing Procedures</u>	15A	NCAC	18A .0187
Readopt with Changes*			
<u>Monitoring Records</u>	15A	NCAC	18A .0191
Readopt with Changes*			