NORTH CAROLINA REGISTER

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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	270th day from publication in the Register
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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.

-The 20232 Low-Income Housing Tax Credit Qualified Allocation Plan For the State of North Carolina

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I. INTRODUCTION

The ~~2022~~2023 Qualified Allocation Plan (the Plan) has been developed by the North Carolina Housing Finance Agency (the Agency) as administrative agent for the North Carolina Federal Tax Reform Allocation Committee (the Committee) in compliance with Section 42 of the Internal Revenue Code of 1986, as amended (the Code). For purposes of the Plan, the term "Agency" shall mean the Agency acting on behalf of the Committee, unless otherwise provided.

The Plan was reviewed in one public hearing and met the other legal requirements prior to final adoption by the Committee. The staff of the Agency was present at the hearing to take comments and answer questions.

The Agency will only allocate low-income housing tax credits in compliance with the Plan. The Code requires the Plan contain certain elements. These elements, and others added by the Committee, are listed below.

A. Selection criteria to be used in determining the allocation of tax credits:
- Project location and site suitability.
- Market demand and local housing needs.
- Serving the lowest income tenants.
- Serving qualified tenants for the longest periods.
- Design and quality of construction.
- Financial structure and long-term viability.
- Use of federal project-based rental assistance.
- Use of mortgage subsidies.
- Experience of development team and management agent(s).
- Serving persons with disabilities and persons who are homeless.
- Willingness to solicit referrals from public housing waiting lists.
- Tenant populations of individuals with children.
- Projects intended for eventual tenant ownership.
- Projects that are part of a community redevelopment effort.
- Energy efficiency.
- Historic nature of the buildings.

B. Threshold, underwriting and process requirements.

C. Description of the Agency's compliance monitoring program, including procedures to notify the Internal Revenue Service of noncompliance with the requirements of the program.

In the process of administering the tax credit, Rental Production Program (RPP) and Workforce Housing Loan Program (WHLP), the Agency will make decisions and interpretations regarding project applications and the Plan. RPP and WHLP are state investments dedicated to making rental developments financially feasible and more affordable for working families and seniors. Unless otherwise stated, the Agency is entitled to the full discretion allowed by law in making all such decisions and interpretations. The Agency reserves the right to amend, modify, or withdraw provisions contained in the Plan that are inconsistent or in conflict with state or federal laws or regulations. In the event of a major:
- natural disaster
- pandemic / epidemic,
- disruption in the financial markets, or
- reduction in subsidy resources available, including tax credits, RPP, and WHLP funding,

the Agency may disregard any section of the Plan, including point scoring and evaluation criteria, that interferes with an appropriate response.

II. SET-ASIDES, AWARD LIMITATIONS, AND COUNTY DESIGNATIONS

The Agency will determine whether applications are eligible under Section II(A) or II(B). This Section II only applies to 9% Tax Credit applications.

A. REHABILITATION SET-ASIDE

The Agency will award up to ten percent (10%) of tax credits available after forward commitments to projects proposing rehabilitation of existing housing. The Agency may exceed this limitation to completely fund a project request. In the event eligible requests exceed the amount available, the Agency will determine awards based on the evaluation criteria in Section IV(H)(3). The maximum award under this set-aside to any one Principal will be one project.

The following will be considered new construction under Section II(B) below:

- adaptive re-use projects,
- entirely vacant residential buildings,
- proposals to increase and/or substantially re-configure residential units.

B. NEW CONSTRUCTION SET-ASIDES

1. GEOGRAPHIC REGIONS

The Agency will award tax credits remaining after awards described above to new construction projects, starting with those earning the highest scoring totals within each of the following four geographic set-asides and continuing in descending score order through the last project that can be fully funded. The Agency reserves the right to revise the available credits in each set-aside to award the next highest scoring application statewide under Section II(G)(1).

West 16%		Central 23%		Metro 38%	East 23%	
Alexander	Lincoln	Alamance	Moore	Buncombe	Beaufort	Jones
Alleghany	Macon	Anson	Orange	Cumberland	Bertie	Lenoir
Ashe	Madison	Cabarrus	Person	Durham	Bladen	Martin
Avery	McDowell	Caswell	Randolph	Forsyth	Brunswick	Nash
Burke	Mitchell	Chatham	Richmond	Guilford	Camden	New Hanover
Caldwell	Polk	Davidson	Rockingham	Mecklenburg	Carteret	Northampton
Catawba	Rutherford	Davie	Rowan	Wake	Chowan	Onslow
Cherokee	Surry	Franklin	Scotland		Columbus	Pamlico
Clay	Swain	Granville	Stanly		Craven	Pasquotank
Cleveland	Transylvania	Harnett	Stokes		Currituck	Pender
Gaston	Watauga	Hoke	Union		Dare	Perquimans
Graham	Wilkes	Iredell	Vance		Duplin	Pitt
Haywood	Yadkin	Lee	Warren		Edgecombe	Robeson
Henderson	Yancey	Montgomery			Gates	Sampson
Jackson					Greene	Tyrrell
					Halifax	Washington
					Hertford	Wayne
					Hyde	Wilson
					Johnston	

2. REDEVELOPMENT PROJECTS

(a) If necessary, the Agency will adjust the awards under the Plan to ensure the overall allocation results in awards for two (2) Redevelopment Projects. Specifically, tax credits that would have

been awarded to the lowest ranking project(s) that do(es) not meet the criteria below will be awarded to the next highest ranking Redevelopment Project(s). The Agency may make such adjustment(s) in any geographic set-aside.

(b) The following are required to qualify as a Redevelopment Project:

(i) The site currently contains or contained at least one structure used for commercial, residential, educational, or governmental purposes.

(ii) The application proposes adaptive re-use with historic rehabilitation credits and/or new construction.

(iii) Any required demolition has been completed or is scheduled for completion in ~~2022~~2023 (not including the project buildings). For a Rental Assistance Demonstration (RAD) project under the U.S. Department of Housing and Urban Development (HUD), any required demolition must be scheduled to be completed by June 30, 202~~43~~.

(iv) A unit of local government initiated the project, evidenced by a Request for Proposal, Council minutes, or other documentation stipulating the project was originally envisioned by the local government, and has invested community development resources in the Half Mile area within the last ten years. A resolution will not suffice as evidence of local government initiation.

(v) As of the preliminary application deadline, a unit of local government formally adopted a plan to address the deterioration (if any) in the Half Mile area and approved one or more of the following for the project:

- donation of at least one parcel of land,
- waiver of impact, tap, or related fees normally charged,
- commitment to lend/grant at least $750,000 in the Metro region and $250,000 in the East, Central or West of its housing development funds (net of any amount paid to the unit of government) as a source of permanent funding, or
- is part of the RAD program under HUD.

The Agency will require official documentation of each element of local government participation.

3. ~~DISASTER RECOVERY~~

~~(a) Bonus Points~~

~~New construction applications in counties declared a federal disaster area (Individual Assistance designation) under Tropical Storm Fred will receive 1 bonus point.~~

~~(b) County Award Limits~~

~~Should each county with an eligible application in the West region receive one new construction award and credits remain in the respective region , counties declared a federal disaster area (Individual Assistance designation) under Tropical Storm Fred are eligible to receive a second new construction award.~~

~~If necessary, the Agency will adjust the awards under the Plan to ensure the overall allocation results in no less than one award for Buncombe County in the Metro region. The initial maximum under II(F)(1)(b) will not apply to Buncombe County should that county be eligible for a second new construction award~~

C. USDA RURAL DEVELOPMENT

Up to $750,000 will be awarded to eligible rehabilitation and/or new construction project(s) with existing U.S. Department of Agriculture, Rural Development (RD) Section 515 financing and project-based rental assistance for at least fifty percent (50%) of the units. These projects will count towards the applicable set-asides and limits. The maximum award under this set-aside to any one Principal will be one project. Other RD applications will be considered under the applicable set-asides.

D. NONPROFIT AND CHDO SET-ASIDES, NATIONAL HOUSING TRUST FUND, AND CHOICE NEIGHBORHOODS IMPLEMENTATION SET-ASIDE

1. SET-ASIDES AND NATIONAL HOUSING TRUST FUND

If necessary, the Agency will adjust the awards under the Plan to ensure that the overall allocation results in:

- ten percent (10%) of the state's federal tax credit ceiling being awarded to projects involving tax-exempt organizations (nonprofits),
- fifteen percent (15%) of the Agency's HOME funds being awarded to projects involving Community Housing Development Organizations certified by the Agency (CHDOs) and
- all funds available from the National Housing Trust Fund have been awarded.

Specifically, tax credits that would have been awarded to the lowest ranking project(s) that do(es) not fall into one of these categories will be awarded to the next highest ranking project(s) that do(es) until the overall allocation(s) reach(es) the necessary percentage(s). The Agency may make such adjustment(s) in any set-aside.

(a) Nonprofit Set-Aside

To qualify as a nonprofit application, the project must either:

- not involve any for-profit Principals or
- comply with the material participation requirements of the Code, applicable federal regulations and Section VI(A)(2).

(b) CHDO Set-Aside

To qualify as a CHDO application,

- the project must meet the requirements of subsection (D)(1)(a) above and 24 CFR 92.300(a)(1),
- the Applicant, any Principal, or any affiliate must not undertake any choice-limiting activity prior to successful completion of the U.S. Department of Housing and Urban Development (HUD) environmental clearance review, and
- the project and owner must comply with regulations regarding the federal CHDO set-aside.

The Agency may determine the requirements of the federal CHDO set-aside have been or will be met without implementing subsection (D)(1)(b).

(c) National Housing Trust Fund

To qualify for the National Housing Trust Fund, the project must:

- be located in a High Income county as designated in Section II(F)(2) and
- commit at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of area median income. See **Appendix J** for additional information.

2. CHOICE NEIGHBORHOODS IMPLEMENTATION SET-ASIDE

The Agency will award one (1) new construction project not to exceed $1,000,000 which contains Choice Neighborhoods Implementation (CNI) funds, as determined by the Agency. Any Public Housing Authority involved in more than one application containing CNI funds will be required to indicate their priority project. Tax credits under this section II(DG) will be taken from the total available after allocation to the Rehabilitation set-aside but prior to allocations under the New Construction set-aside. An award under this section II(DG) will not count towards any county award limits described in section F(1) below~~above~~. This set-aside will remain in each QAP through 2025.

E. PRINCIPAL AND PROJECT AWARD LIMITS

1. PRINCIPAL LIMITS

(a) The maximum awards to any one Principal will be a total of $2,000,000 in tax credits, including all set-asides. New construction awards will be counted towards this limitation first (in score order), then rehabilitation awards. No Principal can receive more than 2 new construction awards.

(b) The Agency may further limit awards based on unforeseen circumstances.

(c) For purposes of the maximum allowed in this subsection (E)(1), the Agency may determine that a person or entity not included in an application is a Principal for the project. Such determination would include consideration of relationships between the parties in previously awarded projects and other common interests. Standard fee for service contract relationships (such as accountants or attorneys) will not be considered.

2. PROJECT LIMIT

The maximum award to any one project will be $1,200,000.

3. AGENCY-DESIGNATED BASIS BOOST

The Agency can boost the eligible basis of new construction projects committing to the targeting in Section IV(B)(2) or that are located in an Opportunity Zone by up to ten percent (10%). Projects using the DDA or QCT basis increase are not eligible under this section.

F. COUNTY AWARD LIMITS AND INCOME DESIGNATIONS

1. AWARD LIMITS

(a) Rehabilitation and East, Central, and West Regions

No county will be awarded more than one project under the rehabilitation set-aside. No county will be awarded more than one project under the new construction set-aside ~~except as specified under Section II(B)(3)(b).~~

(b) Metro Region

The initial maximum award(s) for a county will be its percent share of the Metro region based on population (see **Appendix K**), unless exceeding this amount is necessary to complete a project request. If any tax credits remain, the Agency will make awards to the next highest scoring application(s). A county may receive one additional award, even if in excess of its share. ~~See Section II(B)(3)(b) for Buncombe County exception.~~

2. INCOME DESIGNATIONS

The Agency is responsible for designating each county as High, Moderate or Low Income. The criteria used as a guide in making this determination was HUD's FY 2022~~1~~ Median Family Income.

High		Moderate		Low	
Buncombe	~~Guilford~~	Alamance	Macon	Alleghany	Lenoir
Brunswick	Henderson	Alexander	Mitchell	Anson	Martin
Cabarrus	Iredell	Beaufort	Montgomery	Ashe	McDowell
Camden	Johnston	Burke	Nash	Avery	~~Montgomery~~
Carteret	Lincoln	Caldwell	Onslow	Bertie	Northampton
Chatham	Madison	Caswell	Pamlico	Bladen	~~Perquimans~~
Currituck	Mecklenburg	Catawba	Pasquotank	Cherokee	Richmond
Dare	Moore	Craven	~~Pender~~	Chowan	Robeson
Durham	New Hanover	Cumberland	Perquimans	Clay	Rockingham
~~Forsyth~~	Orange	Davie	Person	Cleveland	Rutherford
Franklin	Pender	Davidson	Pitt	Columbus	Sampson
Gaston	Union	Edgecombe	Polk	Duplin	Scotland
	Wake	Forsyth	Randolph	Graham	Swain
	Watauga	Gates	~~Rockingham~~	Halifax	Tyrrell
		Granville	Rowan	Hertford	Vance
		Greene	Stanly	Hyde	Warren
		Guilford	Stokes	Jones	Washington
		Harnett	Surry		Wayne
		Haywood	Transylvania		~~Yancey~~
		Hoke	~~Wayne~~		
		Jackson	Wilkes		
		Lee	Wilson		
		~~Lincoln~~	Yadkin		
			Yancey		

G. OTHER AWARDS AND RETURNED ALLOCATIONS

1. The Agency may award tax credits remaining from the geographic set-asides to the next highest scoring eligible new construction application(s) in the East, Central, and West regions and/or one or more eligible rehabilitation applications. The Agency may also carry forward any amount of tax credits to the next year.

2. An owner who received an award of 9% tax credits in ~~2019 or 2020~~2021 is eligible to receive an allocation of ~~2022~~2023 tax credits equal to or less than the amount of the original tax credits awarded to the project. The Owner must request an allocation of ~~2022~~2023 credits between ~~October 1~~November 1, 2022~~1~~ and December 31, 2022~~1~~. The allocation will not count against the ~~2022~~2023 Principal limit.

   The following will apply to those owners requesting a new tax credit allocation:

   - Owners will return their allocation for an allocation of ~~2022~~2023 tax credits.
   - Projects must comply with the requirements in the Qualified Allocation Plan for the original allocation and all representations made in the original awarded application (unless otherwise waived by the Agency).
   - Projects seeking additional credits will need to re-apply in the ~~2022~~2023 cycle.

3. The Agency may make a forward commitment of the next year's tax credits in an amount necessary to fully fund project(s) with a partial award or to any project application that was submitted in a prior year if such application meets all the minimum requirements of the Plan. In the event that credits are returned or the state receives credits from the national pool, the Agency may elect to carry such credits forward, make an award to any project application (subject only to the nonprofit set aside), or a combination of both.

III. DEADLINES, APPLICATION AND FEES

A. APPLICATION AND AWARD SCHEDULE

The following schedule will apply to the ~~2022~~2023 application process for 9% Tax Credits and the first round of tax-exempt bond volume and 4% Tax Credits.

January 2~~0~~1	Deadline for submission of preliminary applications (12:00 noon)
March 1~~3~~4	Market analysts will submit studies to the Agency and Applicants
March 2~~4~~5	Notification of final site scores
April 3~~4~~	Deadline for market-related project revisions (5:00 p.m.)
April 1~~0~~1	Deadline for the Agency and Applicant to receive the revised market study, if applicable
May 1~~2~~3	Deadline for full applications (12:00 noon)
August	Notification of tax credit awards

The Agency will also accept tax-exempt bond volume and 4% Tax Credit applications any time between May 1~~2~~ and September 29~~3~~0 (5:00 p.m.). When a preliminary application has been submitted in this timeframe, a schedule of milestones will be provided to the Applicant. The preliminary application submission date will determine when those milestones occur which will follow a time frame similar to the 9% Tax Credit round. The Agency will work with the Applicant to determine if the project will receive ~~2022~~2023 or 2024~~3~~ volume cap. Full applications can be submitted no later than January 1~~2~~3, 2024~~3~~.

The Agency reserves the right to change the schedule to accommodate unforeseen circumstances.

B. APPLICATION, ALLOCATION, MONITORING, AND PENALTY FEES

1. All Applicants are required to pay a nonrefundable fee of $6,140 ~~5,820~~ at the submission of the preliminary application. This fee covers the cost of the market study or physical needs assessment and a $1,440 ~~20~~ preliminary application processing fee (which will be assessed for every electronic application submitted). The Agency may charge additional fee(s) to cover the cost of direct contracting with other providers (such as appraisers).
2. All Applicants are required to pay a nonrefundable processing fee of $1,440~~20~~ upon submission of the full application.
3. Entities receiving tax credit awards, including those involving tax-exempt bond volume, are required to pay a nonrefundable allocation fee equal to 0.~~88~~90% of the project's total qualified basis.
4. The allocation fee will be due at the time of either the carryover allocation or bond volume award. Failure to return the required documentation and fee by the date specified may result in cancellation of the allocation. The Agency may assess other fees for additional monitoring responsibilities.
5. Owners must pay a monitoring fee of $1,260 ~~40~~ per unit (includes all units, qualified, unrestricted, and employee) prior to issuance of the project's IRS Form 8609. Any project utilizing income

averaging or for which the Agency is the bond issuer must pay an additional monitoring fee of $300 per unit.

6. If expenses for legal services are incurred by the Committee or Agency to correct mistakes of the owner which jeopardize use of the tax credits, such legal costs will be paid by the owner in the amount charged to the Committee or Agency.
7. _The Agency may assess Applicants or owners a fee of up to $2,000 for each instance of failure to comply with a written requirement, whether or not such requirement is in the Plan. The Agency will not process applications or other documentation relating to any Principal who has an outstanding balance of fees owed; such a delay in processing may result in disqualification of application(s).
8. ~~The Agency will assess $1,500 for a Workforce Housing Loan Program closing and $2,000 for an RPP closing.~~

C. APPLICATION PROCESS AND REQUIREMENTS

1. The Agency may require Applicants to submit any information, letter, or representation relating to Plan requirements or point scoring as part of the application process.
2. Any failure to comply with an Agency request under subsection (C)(1) above or any misrepresentation, false information or omission in any application document may result in disqualification of that application and any other involving the same owner(s), Principal(s), consultant(s) and/or application preparer(s). Any misrepresentation, false information or omission in the application document may also result in a revocation of a tax credit allocation.
3. Only one active application can be submitted per site (new construction or rehabilitation).
4. For any rehabilitation application proposing to combine multiple existing properties into one property, the properties must be adjacent or not separated by more than one like parcel, or by more than a road, street, stream, or other similar property..
5. No Principal or Applicant can be in the ownership entity of more than five (5) new construction 9% Tax Credit preliminary or full applications.
6. The Agency will notify the appropriate unit of government about the project after submission of the full application.
7. For each application one individual or validly existing entity must be identified as the Applicant and execute the preliminary and full applications. An entity may be one of the following:

   (a) corporation, including nonprofits,

   (b) limited partnership, or

   (c) limited liability company.

   Only the identified Applicant will have the ability to make decisions with regard to that application and be considered under Section IV(D)(1). The Applicant may enter into joint venture or other agreements but the Agency will not be responsible for evaluating those documents to determine the relative rights of the parties. If the application receives an award the Applicant must become a managing member or general partner of the ownership entity.

IV. SELECTION CRITERIA AND THRESHOLD REQUIREMENTS

Applications must meet all applicable threshold requirements to be considered for award and funding. Scoring and threshold determinations made in prior years are not binding on the Agency for the ~~2022~~2023 cycle.

A. SITE AND MARKET EVALUATION

The Agency will not accept a full application where the preliminary application does not meet all site and market threshold requirements.

1. SITE EVALUATION (MAXIMUM 62 POINTS)

(a) General Site Requirements:

(i) Sites must be sized to accommodate the number and type of units proposed. The Applicant or a Principal must have site control by the preliminary application deadline as evidenced by an option, contract or deed. The documentation of site control must include a plot plan.

(ii) Required zoning must be in place by the full application deadline, including special/conditional use permits, and any other discretionary land use approval required (includes all legislative or quasi-judicial decisions).

(iii) Water and sewer must be available with adequate capacity to serve the site. Sites should be accessed directly by existing paved, publicly maintained roads. If not, it will be the owner's responsibility to extend utilities and roads to the site. In such cases, the Applicant must explain and budget for such plans and document the right to perform such work.

(iv) To be eligible for RPP funds, the preliminary application must contain the Agency's "Notice of Real Property Acquisition" form. The form must be executed by all parties before or at the same time as the option or contract.

(b) Criteria for Site Score Evaluation:

Site scores will be based on the following factors. Each will also serve as a threshold requirement; the Agency may remove an application from consideration if the site is sufficiently inadequate in one of the categories. An application must have a minimum total score of 45 points.

(i) NEIGHBORHOOD CHARACTERISTICS (MAXIMUM 10 POINTS)

Good: 10 points if structures within a Half Mile are well maintained or the site qualifies as a Redevelopment Project (see Section II(B)(2)(b))

Fair: 5 points if structures within a Half Mile are not well maintained and there are visible signs of deterioration

Poor: 0 points if structures within a Half Mile are Blighted or have physical security modifications (e.g. barbed wire fencing or bars on windows)

Half Mile: The half mile radius from the approximate center of the site (does not apply to Amenities below).

Blighted: A structure that is abandoned, deteriorated substantially beyond normal wear and tear, a public nuisance, or appears to violate minimum health and safety standards.

(ii) AMENITIES (MAXIMUM 38 POINTS)

Other than applications with tribally-appropriated funds or near bus/transit stops (described at the end of this subsection), points will be determined according to the matrix below. For an amenity to be eligible for points, the application must include documentation required by the Agency of meeting the applicable criteria. In all cases the establishment must be open to the general public and operating as of the preliminary application deadline with no announced closing prior to the notification of final site scores.

Driving Distance in Miles

Primary Amenities *(maximum 26 points)*	≤ 1.5	≤ 2	≤ 2.5	≤ 3.5
Grocery	12pts.	10 pts.	8 pts.	6 pts.
Shopping	7 pts.	6 pts.	5 pts.	4 pts.
Pharmacy	7 pts.	6 pts.	5 pts.	4 pts.
Secondary Amenities *(maximum 12 points)*	≤ 1.5	≤ 2	≤ 2.5	≤ 3.5
Other Primary Amenity	5 pts.	4 pts.	3 pts.	2 pts.
Service	3 pts.	2 pts.	1 pt.	0 pts.
Healthcare	3 pts.	2 pts.	1 pt.	0 pts.
Public Facility	3 pts.	2 pts.	1 pt.	0 pts.
Public School (Family)	3 pts.	2 pts.	1 pt.	0 pts.
Senior Center (Senior)	3 pts.	2 pts.	1 pt.	0 pts.
Retail	3 pts.	2 pts.	1 pt.	0 pts.

Driving Distance in Miles, Small Town*

Primary Amenities *(maximum 26 points)*	≤ 2.5	≤ 3	≤ 3.5	≤ 4.5
Grocery	12 pts.	10 pts.	8 pts.	6 pts.
Shopping	7 pts.	6 pts.	5 pts.	4 pts.
Pharmacy	7 pts.	6 pts.	5 pts.	4 pts.
Secondary Amenities *(maximum 12 points)*	≤ 2.5	≤ 3.	≤ 3.5	≤ 4.5
Other Primary Amenity	5 pts.	4 pts.	3 pts.	2 pts.
Service	3 pts.	2 pts.	1 pt.	0 pts.
Healthcare	3 pts.	2 pts.	1 pt.	0 pts.
Public Facility	3 pts.	2 pts.	1 pt.	0 pts.
Public School (Family)	3 pts.	2 pts.	1 pt.	0 pts.
Senior Center (Senior)	3 pts.	2 pts.	1 pt.	0 pts.
Retail	3 pts.	2 pts.	1 pt.	0 pts.

* A Small Town is a municipality with a population of less than 10,000 people. The list of town sizes can be found on the Office of State Budget and Management web site at https://demography.osbm.nc.gov/explore/dataset/2020certifiedpopulationestimates/table/?disjunctive.county&disjunctive.municipality&sort=municipality-. The Certified 2020 Population Estimates, Municipal Estimates – Alphabetically by municipality will be used to determine a town's population. A site is not required to be within the town limits to qualify but must have an address of a Small Town. Any application in an unincorporated town not appearing on the Small Town list but recognized as a community must have Agency approval to be considered a Small Town prior to the preliminary application deadline.

Only one establishment will count for each row under Primary and Secondary Amenities. For example, an application for a site with a public park, library, and community center all between one point five (1.5) miles and two (2) miles will receive only 2 points under Public Facility.

The driving distance will be the mileage as calculated by Google Maps and must be a drivable route as of the preliminary application deadline. The drivable route must be shown

in satellite view map format (written directions optional). A photo of each amenity must also be provided. The measurement will be:

- the point closest to the site entrance to or from
- the point closest to the amenity entrance.

Driveways, access easements, and other distances in excess of 500 feet between the nearest residential building of the proposed project and road shown on Google Maps will be included in the driving distance. For scattered site projects, the measurement will be from the location with the longest driving distance(s). Scattered site is defined as buildings on separate parcels, not connected by internal drive, and with separate entrances. A scattered site cannot have parcels separated by more than one like parcel, or by more than a road, street, stream, or other similar property.

The following establishments qualify as a Grocery:

Aldi	Galaxy Food Centers	Lidl	Trader Joe's
Bi-Lo	The Fresh Market	Lowes Foods	Walmart Neighborhood Market
Bo's Food Stores	Harris Teeter	Piggly Wiggly	Walmart Supercenter
Compare Foods	~~Harveys~~	Publix	Weaver Street Market
Earth Fare	Hopey & Company	Red & White	Wegmans
Fairvalue	IGA	Sav-Mor	Whole Foods
Family Foods	Ingle's Market	Save-A-Lot	
Food Lion	Just $ave	Sprouts	
Food Matters Market	Kroger	Super Target	

The following establishments qualify as Shopping:

Big Lots	Maxway	Super Target
Dollar General	Ollie's Bargain Outlet	Walmart
Dollar Tree	Roses	Walmart Supercenter
Family Dollar	Roses Express	
Fred's Super Dollar	Target	

To qualify as a Pharmacy, the establishment must have non-medical general merchandise items for sale (not including pharmacies within hospitals).

To qualify as a Secondary Amenity, the establishment must meet the applicable requirement(s) below.

Other Primary Amenity: second Grocery, Shopping or Pharmacy (not used as Primary Amenity)

Service: restaurant, bank/credit union, or gas station with convenience store

Healthcare: hospital, urgent care business, general/family practice, or general dentist (not to include orthodontist); does not include medical specialists or clinics within pharmacies

Public Facility (any of the following):

- community center with scheduled activities operated by a local government
- public park owned and maintained by a local government containing, at a minimum, playground equipment and/or walking/bike trails and listed on a map, website, or other official means; a greenway or trailhead does not qualify
- library operated by a local government open at least five days a week

Public School: non-alternative elementary, middle or high school (family properties only)

Senior Center: with scheduled activities operated by a local government (senior properties only)

Retail: any Grocery or Shopping not listed as a Primary or Other Primary Amenity; any strip shopping center with a minimum of 4 operating establishments; any grocery or general merchandise establishment

A commitment of at least $250,000 in tribally-appropriated funds (including through the Native American Housing Assistance and Self Determination Act) qualifies for 6 points, not to exceed the total for subsection (ii). The commitment must meet the requirements of Section VI(B)(6)(b) and be submitted as part of the preliminary application.

A bus/transit stop qualifies for 6 points, not to exceed the total for subsection (ii), if it is:

- in service as of the preliminary application date,
- at a fixed location and has a covered waiting area,
- served by a public transportation system six days a week, including for 10 consecutive hours on weekdays, and
- within 0.25 miles walking distance of the proposed project site entrance using existing continuous sidewalks (excluding the proposed project site) and crosswalks.

A bus/transit stop qualifies for 2 points, not to exceed the total for subsection (ii), if all of the above criteria are met except for a covered waiting area.

(iii) SITE SUITABILITY (MAXIMUM 12 POINTS)

3 points if there is no Incompatible Use, which includes the following activities, conditions, or uses within the distance ranges specified:

Half Mile

- airports
- chemical or hazardous materials storage/disposal
- industrial or agricultural activities with environmental concerns (such as odors or pollution)
- commercial junk or salvage yards
- landfills currently in operation
- sources of excessive noise
- wastewater treatment facilities

A parcel or right of way within 500 feet containing any of the following:

- adult entertainment establishment
- distribution facility
- factory or similar operation
- jail or prison
- large swamp

Any of the following within 250 feet of a proposed project building:

- electrical utility substation, whether active or not
- frequently used railroad tracks (not to include passenger light rail)
- high traffic corridor (500 feet for an interstate)
- power transmission lines and tower

3 points if there are no negative features, design challenges, physical barriers, or other unusual and problematic circumstances that would impede project construction or adversely affect future tenants, including but not limited to: power transmission lines and towers, flood hazards, steep slopes, large boulders, ravines, year-round streams, wetlands, and other similar features (for adaptive re-use projects: suitability for residential use and

difficulties posed by the building(s), such as limited parking, environmental problems or the need for excessive demolition)

3 points if the project would be visible to potential tenants using normal travel patterns and is within 500 feet of a building that is currently in use for residential, commercial, educational, or governmental purposes (excluding Blighted structures or Incompatible Uses)

3 points if traffic controls allow for safe access to the site; for example limited sight distance (blind curve) or having to cross three or more lanes of traffic going the same direction when exiting the site would not receive points.

(iv) SITE NEGATIVE POINTS (NEGATIVE 3 POINTS)

Up to 3 points will be deducted from a site deemed to be unsuitable for housing. This determination recognizes a site may meet all site evaluation scoring criteria but not be suitable for housing regardless of having required zoning or local government support.

(v) WALK SCORE (MAXIMUM 2 POINTS)

The Agency will award up to two (2) points based on the Walk Score for the proposed site, according to www.walkscore.com. Points will be awarded as follows:

WALK SCORE	POINTS
60 to 100 points	2
20 to 59 points	1
0 to 19 points	0

Applicant will provide a screen shot of the Walk Score with the Preliminary Application. If address for proposed site cannot be found in the Walk Score tool, use the closest address available to the site entrance of the proposed site.

For scattered site projects, the Walk Score should be provided for each site and a weighted average based upon number of units at each site will be calculated to determine the score.

2. MARKET ANALYSIS

The Agency will administer the market study process based on this Section and the terms of **Appendix A** (incorporated herein by reference).

(a) The Agency will contract directly with market analysts to perform studies. Applicants may interact with market analysts and will have an opportunity to revise their project (unit mix, targeting). Any revisions must be submitted in writing to both the market analyst and to the Agency, following the schedule in Section III(A), and will be binding on the Applicant for the full application.

(b) The Agency will limit the number of projects awarded in the same application round to those that it determines can be supported in the market.

(c) The following four criteria are threshold requirements for new construction applications:

(i) the project's capture rate,

(ii) the project's absorption rate,

(iii) the vacancy rate at comparable properties (what qualifies as a comparable will vary based on the circumstances), and

(iv) the project's effect on existing or awarded properties with 9% Tax Credits or Agency loans.

(d) Applicants may not increase the total number of units after submission of the preliminary application. Unless ~~2022~~2023 rent and income limits are released by the 9% preliminary application deadline, 202~~2~~1 rent and income limits must be used for the preliminary application, market study, and any market study revision. After the deadline for completing market-related project revisions Applicants may not increase:

(i) rents, irrespective of a decrease in utility allowances,

(ii) the number of income targeted units in any bedroom type, or

(iii) the number of units in any bedroom type.

(e) The Agency is not bound by the conclusions or recommendations of the market analyst(s), and will use its discretion in evaluating the criteria listed in this subsection (A)(2).

(f) Projects may not give preferences to potential tenants based on:

(i) residing in the jurisdiction of a particular local government,

(ii) having a particular disability, or

(iii) being part of a specific occupational group (e.g. artists).

(g) Age-restricted (senior) projects may not contain three or more bedroom units.

(h) No project can have more than four (4) income bands consisting of: 20%, 30%, 40%, 50%, 60%, 70%, 80% of area median income, and market rate.

B. RENT AFFORDABILITY

1. FEDERAL RENTAL ASSISTANCE

Applicants proposing to convert tenant-based Housing Choice Vouchers (Section 8) to a project-based subsidy (pursuant to 24 CFR Part 983) must submit a letter from the issuing authority in a form approved by the Agency. Conversion of vouchers will be treated similar to a funding source under Section VI(B)(6)(e); a project will be ineligible for an allocation if it does not meet requirements set by the Agency as part of the application and award process. Such requirements may involve the public housing authority's (PHA's) Annual Plan, selection policy, and approval for advertising.

2. TENANT RENT LEVELS AND RPP (MAXIMUM 2 POINTS)

An application may earn points under one of the following scenarios:

(a) If the project is in a High Income county:

- 2 points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of area median income.
- 1 point will be awarded if at least fifteen percent (15%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of area median income.

(b) If the project is in a Moderate Income county:

- 2 points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below forty percent (40%) of area median income.
- 1 point will be awarded if at least fifteen percent (15%) of qualified low-income units will be affordable to and occupied by households with incomes at or below forty percent (40%) of area median income.

(c) If the project is in a Low Income county:

- 2 points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of area median income.
- 1 point will be awarded if at least fifteen percent (15%) of qualified low-income units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of area median income.

To qualify for an RPP loan, at least forty percent (40%) of qualified low-income units in a project will be affordable to and occupied by households with incomes at or below fifty percent (50%) of area median income. Targeting in subsection (a), (b) or (c) above counts towards this requirement.

3. INCOME AVERAGING

Only new construction projects and rehabilitation projects not subject to an existing Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits are eligible to utilize income averaging. Applicants electing to use income averaging must comply with the following:

(a) The income average for the property cannot exceed 60% of area median income,
(b) The income average for any bedroom type cannot exceed 60% of area median income,
(c) Market rate units are prohibited, and
(d) For projects with more than one building, Owners must select that each building is part of a multiple building set-aside on line 8b in Part II of IRS Form 8609.

C. PROJECT DEVELOPMENT COSTS, RPP LIMITATIONS, AND WHLP

1. MAXIMUM PROJECT DEVELOPMENT COSTS (NEGATIVE 10 POINTS)

(a) The Agency will assess negative points to applications listing more than the following in lines 5 and 6 of the Project Development Costs (PDC) description, as outlined in Chart A below. The point structure in Chart B will apply to the following:

- all units are detached single family houses or duplexes,
- serving persons with severe mobility impairments,
- development challenges resulting from being within or adjacent to a central business district,
- public housing redevelopment projects, or
- building(s) with both steel and concrete construction and at least four stories of housing.

The per-unit amount calculation includes all items covered by the construction contract, ENERGY STAR, certifications for green programs, and any other costs not unique to the specific proposal.

Chart A		Chart B	
$TBD~~95,000~~	-10	$TBD~~106,000~~	-10

(b) Lines 5 and 6 of the PDC description must total at least ~~$75,000 per unit and~~ cannot exceed $TBD~~115,000~~ per unit.

(c) The Agency will review proposed costs for historic adaptive re-use projects and approve the amount during the full application review process but in no case can lines 5 and 6 of the PDC exceed $TBD~~130,000~~ per unit.

See Section VI(B) for other cost restrictions.

2. RESTRICTIONS ON RPP AWARDS

(a) Projects requesting RPP funds must submit the Agency's "Notice of Real Property Acquisition" form with the preliminary application and may not:

(i) request RPP funds in excess of the following amounts per unit: $15,000 in High Income counties; $20,000 in Moderate Income counties; $25,000 in Low Income counties,

(ii) include market-rate units, (iii) involve Principals who have entered into a workout or deferment plan within the previous year for an RPP loan awarded after January 1, 2013,

(iv) request less than $150,000 or more than $1,~~8~~000,000 per project,

(v) have a commitment of funds from a local government under terms that will result in more repayment than determined under subsection (C)(2)(b) below,

(vi) have a federally insured loan or one which would require the RPP loan to have a term of more than 20 years or limits repayment, or

(vii) have a Principal listed on SAM.gov as being ineligible to receive federal funds.

The maximum award of RPP funds to any one Principal will be a total of $2,~~1,6~~000,000. Requesting an RPP loan may result in an application being ineligible under Section VI(B)(6)(e) if the Agency has inadequate funds.

(b) Projects may only request an RPP loan if the principal and interest payments for RPP and any local government financing will be equal to the anticipated net operating income divided by 1.15, less conventional debt service:

Repayment of RPP and local government loans = (NOI / 1.15) – conventional debt service.

The amount of repayment will be split between the RPP loan and local government lenders based on their relative percentage of loan amounts. For example:

RPP Loan = $400,000

local government loan = $200,000

	Year 1	Year 2	Year 3	Year 4
Anticipated amount available for repayment	$10,000	$8,000	$6,000	$4,000
RPP principal and interest payments	$6,667	$5,333	$4,000	$2,667
local government P&I payments	$3,333	$2,667	$2,000	$1,333

Lien position will be determined by loan amount: the larger loan will have the higher lien position. For equal loan amounts, the local government will have the higher lien position.

(c) Loan payments made to the Applicant, any Principal, member or partner of the ownership entity, or any affiliate thereof, will be taken out of cash flow remaining after RPP payments.

(d) An application may be ineligible for RPP funds due to one or more of the listed parties (including but not limited to members/partners, general contractor, and management agent) having failed to comply with the Agency's requirements on a prior loan.

3. WORKFORCE HOUSING LOAN PROGRAM (Subject to appropriation)

(a) Projects with 9% Tax Credits which meet the Agency's loan criteria are eligible for WHLP. As required under the legislation, these criteria support the financing of projects similar to those created under G.S. 105-129.42.

(b) A loan will not be closed until the outstanding balance on the first-tier construction financing exceeds the principal amount and the entire loan must be used to pay down a portion of the then existing construction debt.

(c) The terms will be zero percent (0%) interest, thirty year balloon (no payments). The Agency will take all eligible sources into consideration in setting the amount. The following percent of eligible basis will be the calculated loan amount. In no event will the loan amount exceed the statutory maximum.

County Income Designation	Percent of Eligible Basis	Statutory Maximum
High	4%	$250,000
Moderate	10%	$1,500,000
Low	16%	$2,000,000

Requesting a WHLP loan may result in an application being ineligible under Section VI(B)(6)(e) if the Agency has inadequate funds. Projects in the Metro geographic set-aside are ineligible to request WHLP. The maximum award of WHLP funds to any one Principal will be a total of $2,000,000.

D. CAPABILITY OF THE PROJECT TEAM

1. DEVELOPMENT EXPERIENCE

(a) To be eligible for an award of 9% Tax Credits, at least one Principal must have successfully developed, operated and maintained in compliance either one (1) 9% Tax Credit project in North Carolina or six (6) separate 9% Tax Credit projects totaling in excess of 200 units. The project(s) must have been placed in service between January 1, 2015 and January 1, 2022~~4~~. Such Principal must:

(i) be identified in the preliminary application as the Applicant under Section III(C)(7),

(ii) become a general partner or managing member of the ownership entity, and

(iii) remain responsible for overseeing the project and operation of the project for a period of at least two (2) years after placed in service. The Agency will determine what qualifies as successful and who can be considered as involved in a particular project.

(b) All owners and Principals must disclose all previous participation in the low-income housing tax credit program. Additionally, owners and Principals that have participated in an out of state tax credit allocation may be required to complete an Authorization for Release of Information form.

(c) The Agency reserves the right to determine that a particular development team does not meet the threshold requirement of subsection (D)(1)(a) due to differences between its prior work and the proposed project. Particularly important in this evaluation is the type of subsidy program used in the previous experience (such as tax-exempt bonds, RD).

2. MANAGEMENT EXPERIENCE

The management agent must be eligible to be on the Approved Management Company List. To be Approved, the management agent must:

(a) have at least one similar tax credit project in their current portfolio,
(b) have a valid North Carolina real estate license and be registered with the North Carolina Secretary of State as of the full application deadline (excluding public housing authorities),

(c) be requesting Key assistance timely and accurately (if applicable),

(d) be reporting in the Agency's Rental Compliance Reporting System (RCRS) timely and accurately (if applicable)

(e) have at least one staff person in a supervisory capacity with regard to the project who has attended at least three Agency sponsored trainings within the past 12 months (currently named Compliance 101, Advanced Compliance and DHHS Targeting and Key) as of the full application ~~deadline~~, (Beginning 2024 QAP, this requirement will only be reviewed at the end of the calendar year) and

(f) have at least one staff person serving in a supervisory capacity with regard to the project who has been certified as a tax credit compliance specialist.

Such certification must be from an organization approved by the Agency (see **Appendix C**). None of the persons or entities serving as management agent may have in their portfolio a project with material or uncorrected noncompliance beyond the cure period unless there is a plan of action to address the issue(s). Any management agent found to have implemented a rent increase on an existing tax credit property without the required Agency approval may be prohibited from serving as management agent for an application. Should a management agent be removed from the Approved Management Company list for failure to comply with the above requirements, and the issue is not resolved following an opportunity to cure, the management agent will remain off of the Approved Management list for a period of no less than one year. The management agent listed on the application must be retained by the ownership entity for at least two (2) years after project completion, unless the Agency approves a change.

3. PROJECT TEAM DISQUALIFICATIONS

The Agency may disqualify any owner, Principal or management agent, who:

(a) has been debarred or received a limited denial of participation in the past ten years by any federal or state agency from participating in any development program;

(b) within the past ten years has been in a bankruptcy; an adverse fair housing settlement, judgment or administrative determination; an adverse civil rights settlement, judgment or administrative determination; or an adverse federal, state or local government proceeding and settlement, judgment or administrative determination;

(c) has been in a mortgage default or arrearage of three months or more within the last five years on any publicly subsidized project;

(d) has been involved within the past ten years in a project which previously received an allocation of tax credits but failed to meet standards or requirements of the tax credit allocation or failed to fulfill one of the representations contained in an application for tax credits;

(e) has been found to be directly or indirectly responsible for any other project within the past five years in which there is or was uncorrected noncompliance more than three months from the date of notification by the Agency or any other state allocating agency;

(f) interferes with a tax credit application for which it is not an owner or Principal at a public hearing or other official meeting;

(g) has outstanding flags in HUD's national 2530 National Participation system;

(h) ~~has been involved in any project awarded 9% Tax Credits in 2021 for which either the equity investment has not closed as of the full application deadline or the "10% test" has not been met;~~

(i) has been involved in any project awarded tax credits after 2000 where there has been a change in general partners or managing members during the last five years that the Agency did not approve in writing beforehand;

(j) would be removed from the ownership of a project that is the subject of an application under the rehabilitation set-aside in the current cycle;

(k) requested a qualified contract for a North Carolina tax credit property; or

(l) is not in good standing with the Agency.

A disqualification under this subsection (D)(3) will result in the individual or entity involved not being allowed to participate in the ~~2022~~2023 cycle and removing from consideration any application where they are identified.

E. UNIT MIX AND PROJECT SIZE

1. Ten (-10) points will be subtracted from any full application that includes market-rate units. This penalty will not apply where either
   - the rents for all market rate units are at least five percent (5%) higher than the maximum allowed for a unit at 80% AMI and the market study indicates that such rents are feasible, or
   - there is a commitment for a grant or no-payment financing equal to at least the amount of foregone federal tax credit equity.
2. New construction 9% Tax Credit projects may not exceed the following:
   - Metro Region - one hundred and twenty (120) units
   - Central, East, and West Regions - eighty-four (84) units.
3. New construction tax-exempt bond projects may not exceed two hundred (200) units unless approved by the Agency prior to the preliminary application submission.
4. All new construction projects must have at least twenty-four (24) qualified low-income units.

The Agency reserves the right to waive the penalties and limitations in this Section IV(E) for proposals that reduce low-income and minority concentration, including public housing projects, and subsection (E)(2) for proposals that are within a transit station area as defined by the Charlotte Region Transit Station Area Joint Development Principles and Policy Guidelines or adaptive re-use projects where made necessary by the building(s) physical structure.

F. SPECIAL CRITERIA AND TIEBREAKERS

1. ENERGY STAR CERTIFICATION

   New construction residential buildings must achieve ENERGY STAR Multifamily New Construction Program certification and comply with all energy efficiency standards as defined in **Appendix B** (incorporated herein by reference). Adaptive re-use and rehabilitation projects must comply to the extent doing so is economically feasible and as allowed by historic preservation rules.

2. APPLICANT BONUS POINTS (MAXIMUM 2 POINTS)
   An Applicant is entitled to two bonus points as part of the full application submission. No application can receive more than one bonus point. No Principal or Applicant is entitled to more than two bonus points for all applications in which they may be involved. Should an Applicant or Principal use more than 2 bonus points, the Agency will determine which application receives the bonus point(s), if at all.

3. UNITS FOR THE MOBILITY IMPAIRED

   Five percent (5%) of all units in new construction projects must meet the accessibility standards as defined in **Appendix B** (incorporated herein by reference). THESE UNITS ARE IN ADDITION TO MOBILITY IMPAIRED UNITS REQUIRED BY FEDERAL AND STATE LAW (INCLUDING BUILDING CODES). If laws or codes do not require mobility impaired units for a project, a total of

ten percent (10%) of the units must be fully accessible. Units for the mobility impaired should be available to all tenants who would benefit from their design and are not necessarily reserved under the Targeting Program requirements of subsection (F)(~~4~~5).

4. TARGETING PROGRAM

All projects will be required to target ten percent (10%) of the total units to persons with disabilities and persons who are homeless. Projects with federal project-based rental assistance must target at least five (5) units regardless of size. Projects that have targeted units under this subsection are not required to provide onsite supportive services or a service coordinator.

Owners must submit the following documents, all of which are fully described in **Appendix D** (incorporated herein by reference).

(a) Targeting Unit Agreement

(b) Owner Agreement to Participate (if applicable)

(c) Property Profile

(d) Tenant Selection Plan

(e) Rental Assistance Plan (if applicable)

(f) Affirmative Fair Housing Marketing Plan

These documents must be submitted to the Agency no later than the times specified in **Appendix D** but in no case later than six months prior to the project's placed in service date. The Agency may set additional requirements, as needed. The requirements of this subsection (F)(~~4~~5) may be fully or partially waived to the extent the Agency determines they are not feasible.

5. OLMSTEAD SETTLEMENT INITIATIVE (MAXIMUM 4 POINTS)

(a) Projects proposing 1 bedroom units as a percentage of the total project units will be awarded points based on the following:

7.5% of total units	1 point
10% of total units	2 points
15% of total units	3 points

Tax-exempt bond projects must contain 1 bedroom units totaling a minimum of 10% of total project units.

(b) Projects proposed in the following DHHS priority counties will be awarded 1 point.

Alamance	Forsyth	~~Onslow*~~
Buncombe	Gaston	Orange
Burke	Guilford	Pitt
Cabarrus	Henderson	Robeson
~~Caldwell*~~	Iredell	~~Rowan*~~
~~Craven*~~	~~Johnston*~~	Wake
Cumberland	Mecklenburg	Wayne
Durham	New Hanover	Wilson

~~**These counties will no longer be listed as DHHS priority counties after the 2022 QAP cycle.*~~

6. SECTION 1602 EXCHANGE PROJECTS (NEGATIVE 40 POINTS)

The Agency may deduct up to forty (-40) points from any application if the Applicant, any owner, Principal or affiliate thereof is also involved in a Section 1602 Exchange project with uncorrected material noncompliance.

7. TIEBREAKER CRITERIA

The following will be used to award tax credits in the event that the final scores of more than one project are identical.

(a) First Tiebreaker: The county with the least number of 9% tax credit units produced over the last 5 years (see **Appendix L** for listing of units produced by county).

(b) Second Tiebreaker: The project with the highest overall Walk Score.

(c) Third Tiebreaker: The project with the lowest average income targeting.

(d) Fourth Tiebreaker: Tenants with Children: Projects that can serve tenant populations with children. Projects will qualify for this designation if at least twenty-five (25%) of the units are three or four bedrooms. This tiebreaker will only apply where the market study shows a clear demand for this population (as determined by the Agency).

(e) Fifth Tiebreaker: Tenant Ownership: Projects that are intended for eventual tenant ownership. Such projects must utilize a detached single family site plan and building design and have a business plan describing how the project will convert to tenant ownership at the end of the 30-year compliance period.

In the event that a tie remains after considering the above tiebreakers, the project requesting the least amount of federal tax credits will be awarded.

G. DESIGN STANDARDS

All proposed measures must be shown in the application to receive points.

1. THRESHOLD REQUIREMENTS

The minimum threshold requirements for design are found in **Appendix B** (incorporated herein by reference) and must be used for all projects receiving tax credits or RPP funding.

2. CRITERIA FOR SCORE EVALUATION (MAXIMUM 30 POINTS)

The Agency will determine points based on the following criteria as applied to the site drawings submitted with the full application.

(a) Site Layout

The Agency will award up to 5 points based on its evaluation of the site layout. The following characteristics will be considered.

(i) The location of residential buildings in relation to parking, site amenities, community building, postal facilities and trash collection areas.

(ii) The degree to which site layout ensures a low, controlled traffic speed through the project.

(b) Quality of Design and Construction

(The points in this subsection are mutually exclusive with Section IV(G)(2)(c) below.)

The Agency will award up to 25 points for new construction projects based on its evaluation of the quality of the building design, and the materials and finishes specified. The following characteristics will be considered:

(i) The extent to which the design uses multiple roof lines, gables, dormers and similar elements to break up large roof sections.

(ii) The extent to which the design uses multiple types, styles, and colors of siding and brick veneer to add visual appeal to the building elevations.

(iii) The level of detail that is achieved through the use of porches, railings, and other exterior features.

(iv) Use of brick veneer or masonry products on building exteriors.

(c) Adaptive Re-Use

(The points in this subsection are mutually exclusive with Section IV(G)(2)(b) above.)

The Agency will award up to 25 points based on the following characteristics:

(i) The extent to which the building(s) fit with surrounding streetscape after adaptation or have problems with orientation, sightlines, bulk and scale.

(ii) Aesthetics after adaptation.

(iii) Presence of special design elements or architectural features that may not be physically or financially available if new construction was introduced on the same site.

H. CRITERIA FOR SELECTION OF REHABILITATION PROJECTS

1. GENERAL THRESHOLD REQUIREMENTS

To be eligible for an allocation under Section II(A), a project must:

(a) have either (i) received a tax credit allocation and be in the extended use period or (ii) federal project-based rental assistance for at least thirty percent (30%) of the total units,

(b) have been placed in service on or before December 31, 200~~7~~6,

(c) require rehabilitation expenses in excess of $25,000 per unit (as supported by a physical needs assessment conducted or approved by the Agency),

(d) not have an acquisition cost in excess of sixty percent (60%) of the total replacement costs,

(e) not be feasible using tax-exempt bonds (as determined by the Agency),

(f) not have received an Agency loan in the last five years,

(g) not be deteriorated to the point of requiring demolition,

(h) not have begun or completed a full debt restructuring under the Mark to Market process (or any similar HUD program) within the last five years, and

(i) have total replacement costs of less than $TBD~~140,000 per unit~~, including all Agency-required rehabilitation work.

Rehabilitation expenses include hard construction costs directly attributable to the project, excluding costs for a new community building, as calculated using lines 2 through 7 (less line 6) in the PDC description.

2. THRESHOLD DESIGN REQUIREMENTS

In addition to the relevant sections of **Appendix B** (incorporated herein by reference), the Agency will require owners to complete the following as appropriate for their project.

(a) Improve site amenities and common areas by upgrading or adding a freestanding community building, making repairs and additions to landscaping, adding new site amenities such as playgrounds, and repairing parking areas.

(b) Improve building exteriors by replacing deteriorated siding, replacing aged roofing, adding gutters and downspouts, and adding new architectural features to improve appearance.

(c) Upgrade unit interiors by replacing flooring, installing new cabinets and countertops, replacing damaged interior doors, replacing light fixtures, and repainting units.

(d) Replace and upgrade mechanical systems and appliances including HVAC systems, water heaters and plumbing fixtures, electrical panels, refrigerators, and ranges.

(e) Improve energy efficiency by replacing inefficient doors and windows, adding additional insulation in attics, and upgrading the efficiency of mechanical systems and appliances.

(f) Improve site and unit accessibility for persons with disabilities by making necessary alterations at common areas, alterations at single story ground floor units, adding or improving handicapped parking areas, and repairing or replacing sidewalks along accessible routes.

3. EVALUATION CRITERIA

The Agency will evaluate applications under Section II(A) based on the following criteria, which are listed in order of importance. Each one will serve both to determine awards and as a threshold requirement; the Agency may remove an application from consideration if the proposal is sufficiently inadequate in any of the categories. For purposes of making awards, the Agency will not consider subsections (d) through (f) below if the outcome is determined by the criteria in subsections (a) through (c).

(a) The Agency will give the highest priority to applications proposing to rehabilitate the most distressed housing with a tax credit allocation, particularly buildings with accessibility or life, health and safety problems.

(b) Applications will have a reduced likelihood of receiving an award of tax credits if the Agency determines the property has not been properly maintained and any current owner will remain part of the new ownership.

(c) Applications will have a reduced likelihood of being awarded tax credits to the extent that the purpose is to subsidize an ownership transfer.

(d) Shortcomings in the above criteria will be mitigated to the extent that a tax credit allocation is necessary to prevent (i) conversion of units to market rate rents or (ii) loss of government resources (including past, present and future investments).

(e) The Agency will give priority to applications that have mortgage subsidy resources committed as part of the application.

(f) Applications will have priority to the extent that the rehabilitation improvements are a part of a community revitalization plan or will benefit the surrounding community. However, projects in severely distressed areas will have a reduced likelihood of being awarded tax credits.

(g) Applications will have a reduced likelihood of being awarded tax credits based on the number of tenants that would be permanently relocated (including market-rate).

(h) While the rehabilitation set-aside is not subject to any regional set-aside, the Agency will consider the geographic distribution of this resource and will attempt to avoid a concentration of awards in any one area of the state.

V. ALLOCATION OF BOND CAP

A. ORDER OF PRIORITY

The Committee will allocate the multifamily portion of the state's tax-exempt bond authority in the following order of priority:

1. Projects that serve as a component of an overall public housing revitalization effort.
2. Rehabilitation of existing rent restricted housing.
3. Rehabilitation of projects consisting of entirely market-rate units.
4. Adaptive re-use projects.
5. Other new construction projects.

Applications will only be allocated bond authority if there is enough remaining after awarding all eligible applications in higher priority levels. Within each category, applications seeking the least amount of authority per low-income unit will have priority.

B. ELIGIBILITY FOR AWARD

Except as otherwise indicated, owners of projects with tax-exempt bonds and 4% Tax Credits must meet all requirements of the Plan. Even with an allocation of bond authority, projects must meet the threshold requirements to be eligible for tax credits.

1. All projects must meet the requirements under Section IV(F)(45).
2. Rehabilitation applications must:
   (a) have been placed in service on or before December 31, 20076,
   (b) require rehabilitation expenses in excess of $15,000 per unit,
   (c) not have an acquisition cost in excess of seventy percent (70%) of the total replacement costs,
   (d) not have begun or completed a full debt restructuring under the Mark to Market process (or any similar HUD program) within the last five years, and
   (e) not be deteriorated to the point of requiring demolition.
3. The inducement resolution must be submitted with the full application.
4. To be eligible for an award of tax-exempt bond volume, at least one Principal must have successfully developed, operated and maintained in compliance either one 9% Tax Credit project in North Carolina or one tax-exempt bond project in any state. The project must have been placed in service between January 1, 2015 and January 1, 20224. Such Principal must:
   - be identified in the preliminary application as the Applicant under Section III(C)(76),
   - become a general partner or managing member of the ownership entity, and
   - remain responsible for overseeing the project and operation of the project for a period of two (2) years after placed in service.

   The Agency will determine what qualifies as successful and who can be considered as involved in a particular project.

VI. GENERAL REQUIREMENTS

A. GENERAL THRESHOLD REQUIREMENTS FOR PROJECT PROPOSALS

1. PROJECTS WITH HISTORIC TAX CREDITS

   Buildings either must be on the National Register of Historic Places or approved for the State Historic Preservation Office's study list at the time of the full application. Evidence of meeting this requirement should be provided.

2. NONPROFIT SET-ASIDE

For purposes of being considered as a nonprofit sponsored application under Section II(D)(1)(a), at least one nonprofit entity (or, where applicable, its qualified corporation) involved in a project must:

(a) be qualified under Section 501(c)(3) or (4) of the Code,

(b) materially participate, as defined under federal law, in the acquisition, development, ownership, and ongoing operation of the property for the entire compliance period,

(c) have as one of its exempt purposes the fostering of low-income housing,

(d) be a managing member or general partner of the ownership entity.

The Agency reserves the right to make a determination that the nonprofit owner is not affiliated with or controlled by a for-profit entity or entities other than a qualified corporation. There can be no identity of interest between any nonprofit owner and for-profit entity, other than a qualified corporation.

3. REQUIRED REPORTS

All projects involving use of existing structures must submit the following:

(a) For projects built prior to 1978, a hazardous material report which provides the results of testing for asbestos containing materials, lead based paint, Polychlorinated Biphenyls (PCBs), underground storage tanks, petroleum bulk storage tanks, Chlorofluorocarbons (CFCs), and other hazardous materials. The testing must be performed by professionals licensed to do hazardous materials testing. A report written by an architect or building contractor or developer will not suffice. A plan and projected costs for removal of hazardous materials must also be included.

(b) A report assessing the structural integrity of the building(s) being renovated from an architect or engineer. Report must be dated no more than six (6) months from the full application deadline.

(c) A current termite inspection report. Report must be dated no more than six (6) months from the full application deadline.

4. APPRAISALS

The Agency will not allow the project budget to include more for land or lease costs than the lesser of its appraised market value or the purchase or lease price. Applicants must submit with the full application a real estate "as is" appraisal that is a) dated no more than six (6) months from the full application deadline, b) prepared by an independent, state certified appraiser and c) complies with the Uniform Standards of Professional Appraisal Practice. The appraisal must encompass all parcels that comprise the project. Comparable properties used in the appraisal must be in reasonable proximity to the project. The Agency may order an additional appraisal with costs to be paid by the Applicant. Appraisals for rehabilitation and adaptive re-use projects must break out the land and building values from the total value.

5. CONCENTRATION

Projects cannot be in areas of minority and low-income concentration (measured by comparing the percentage of minority and low-income households in the site's census tract with the community overall). The Agency may make an exception for projects in economically distressed areas which have community revitalization plans with public funds committed to support the effort.

6. DISPLACEMENT

For rehabilitation projects and in every other instance of tenant displacement, including temporary, the Applicant must supply with the full application a plan describing how displaced persons will be relocated, including a description of the costs of relocation. The owner is responsible for all relocation expenses, which must be included in the project's development budget. Owners must also

comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as revised in 49 C.F.R. Part 24.

7. FEASIBILITY

The Agency will not allocate tax credits or RPP funding to applications that may have difficulty being completed or operated for the compliance period. Examples include projects that may not secure an equity investment or a Principal that has inadequate capacity to successfully carry out the development process.

8. SMOKE-FREE HOUSING

Owners must prohibit smoking in all indoor common areas, individual living areas (including patios and balconies), and within 25 feet of building entries or ventilation intakes. A non-smoking clause must be included in the lease for each household.

B. UNDERWRITING THRESHOLD REQUIREMENTS

The following minimum financial underwriting requirements apply to all projects. Projects that cannot meet these minimum requirements, as determined by the Agency, will not receive tax credits or RPP funding. Any documentation required as part of the application must be dated and be within 6 months of the application deadline, unless otherwise stated.

1. LOAN UNDERWRITING STANDARDS

(a) Projects applying for tax credits only will be underwritten with rents escalating at two percent (2%) and operating expenses escalating at three percent (3%).

(b) All projects will be underwritten assuming a constant seven percent (7%) vacancy and must reflect a 1.15 Debt Coverage Ratio (DCR) for twenty (20) years.

(c) Applications requesting RPP funds must use current Low HOME rents for fifteen percent (15%) of the total units (spread proportionally through all bedroom types) and may be required to comply with HOME program requirements, including 42 U.S.C. 12701 et seq., 24 C.F.R. Part 92 and all relevant administrative guidance. Projects awarded RPP funds must also comply with the RPP Guidelines in **Appendix G** (incorporated herein by reference).

(d) The Agency may determine that the interest rate on a loan must be reduced where an application shows an excessive amount accruing towards a balloon payment.

2. OPERATING EXPENSES

(a) New construction (excluding adaptive re-use): minimum of $3,8~~6~~00 per unit per year not including taxes, reserves and resident support services.

(b) Renovation (includes rehabilitation and adaptive re-use): minimum of $4,000~~3,800~~ per unit per year not including taxes, reserves and resident support services. For projects with RD loans, the operating expenses will be based upon the current RD approved operating budget.

3. EQUITY PRICING

(a) Projects will be underwritten using Applicants proposed equity pricing. Pricing above $0.90 will require a commitment letter from a syndicator or investor with as much detail as is possible. At a minimum, the letter should include the equity pricing, total capital contribution amount, estimated pay-in schedule and any reserve requirements. Should an Applicant receive an allocation of tax credits and fail to receive equity pricing at least equal to the pricing used in the awarded

application, any equity shortfall will be the responsibility of the Applicant. The Agency will not approve an increase of the rents stated in the awarded application to support additional debt to cover the equity shortfall.

(b) Equity should be calculated net of any syndication fees. Bridge loan interest typically incurred by the syndicator to enable an up front payment of equity should not be charged to the project directly, but be reflected in the net payment of equity. Equity should be based on tax credits to be used by the investor(s), excluding those allocated to the Principals unless these entities are making an equity contribution in exchange for the tax credits.

4. RESERVES

(a) ~~Rent-up Reserve: Required for all except tax-exempt bond projects. A reasonable amount must be established based on the projected rent-up time considering the market and target population, but in no event shall be less than $300 per unit. These funds must be available to the management agent to pay rent-up expenses incurred in excess of rent-up expenses budgeted for in the PDC description. The funds are to be deposited in a separate bank account and evidence of such transaction provided to the Agency ninety (90) days prior to the expected placed in service date. All funds remaining in the rent-up reserve at the time the project reaches ninety-three (93%) occupancy must be transferred to the project replacement reserve account.~~

~~For those projects receiving loan funds from RD, the 2% initial operating and maintenance capital established by RD will be considered the required rent-up reserve deposit.~~

(b) Operating Reserve: Required for all projects except those receiving loan funds from RD. The operating reserve will be the greater of a) $1,500 per unit or b) six month's debt service and operating expenses (four months for tax-exempt bond projects), and must be maintained for the duration of the extended use period.

The operating reserve can be funded by deferring the developer fees of the project. If this method is utilized, the deferred amounts owed to the developer can only be repaid from cash flow if all required replacement reserve deposits have been made. For tax credit projects where no RPP loan applies, the operating reserve can be capitalized by an equity pay in up to one year after certificate of occupancy is received. This will be monitored by the Agency. This reserve must stay with the project at the time of investor exit.

(c) Replacement Reserve: All new construction projects must budget replacement reserves of $250 per unit per year. Rehabilitation and adaptive re-use projects must budget replacement reserves of $350 per unit per year. The replacement reserve must be capitalized from the project's operations, escalating by four percent (4%) annually. This reserve must stay with the project at the time of investor exit.

In both types of renovation projects mentioned above, the Agency reserves the right to increase the required amount of annual replacement reserves if the Agency determines such an increase is warranted after a detailed review of the project's physical needs assessment.

For those projects receiving RD loan funds, the required funding of the replacement reserve will be established, administered and approved by RD.

5. DEFERRED DEVELOPER FEES (NEGATIVE 2 POINTS)

Developer fees can be deferred to cover a gap in funding sources as long as:

(a) the entire amount will be paid within fifteen years and meets the standards required by the IRS to stay in basis,

(b) the deferred portion does not exceed fifty percent (50%) of the total amount as of the full application, and

(c) payment projections do not negatively impact the operation of the project.

Each of these will be determined by the Agency. Nonprofit organizations must include a resolution from the Board of Directors allowing such a deferred payment obligation to the project. The developer may not charge interest on the deferred amount in excess of the long term AFR.

Deferment of more than twenty-five (25%) of the total developer fee will result in a deduction of 2 points.

6. FINANCING COMMITMENT

(a) For all projects proposing private permanent financing, a letter of intent is required (see **Appendix E**). This letter must be on lender's letterhead, must clearly state the term of the permanent loan is at least fifteen (15) years, how the interest rate will be indexed and the current rate at the time of the letter, the amortization period, any prepayment penalties, anticipated security interest in the property, and lien position. The interest rate must be fixed and no balloon payments may be due for fifteen years.

(b) For all projects proposing public permanent financing, binding commitments on lender's letterhead are required to be submitted by the full application deadline (see **Appendix E**). Local governments also must identify the source of funding (e.g. HOME, trust fund). All loans must have a fixed interest rate and no balloon payments for at least fifteen (15) years after project completion. A binding commitment is defined as a letter, resolution or binding contract from a unit of government. The same terms described for the letter of intent (using the format approved by the Agency) from a private lender must be included in the commitment.

(c) The Agency may request a letter from a construction lender documenting the loan amount, interest rate, and any origination fees.

(d) Any Owner Investment listed as a source cannot exceed $10,000.

(e) Applications may only include one set of proposed funding sources; the Agency will not consider multiple financial scenarios. A project will be ineligible for allocation if any of the listed funding sources will not be available in an amount or under the terms described in the application. The Agency may waive this limitation if the project otherwise demonstrates financial feasibility. Project cash flow may not be used as a source of funds.

7. DEVELOPER FEES

(a) Developer fees shall be up to $15,000 per unit for new construction projects and twenty-eight point five percent (28.5%) of PDC line item 4 for rehabilitation projects, both being set at award.

(b) Notwithstanding the amount calculated in subsection (7)(a), the developer fee for any project shall be a maximum of $1,800,000 (the maximum for projects with tax-exempt bonds is $3,000,000).

(c) Contractor general requirements shall be limited to six percent (6%) of hard costs.

(d) Contractor profit and overhead shall be limited to ten percent (10%) (8% profit, 2% overhead) of total hard costs, including general requirements.

(e) Where an identity of interest exists between the owner and contractor, the contractor profit and overhead shall be limited to eight percent (8%) (6% profit, 2% overhead).

8. CONSULTING FEES

The total amount of any consulting fees and developer fees shall be no more than the maximum developer fee allowed to that project.

9. ARCHITECTS' FEES

The architects' fees, including design and inspection fees, shall be limited to three percent (3%) of the total hard costs plus general requirements, overhead, profit and construction contingency (total of lines 2 through 10 on the PDC description). This amount does not include engineering costs.

10. INVESTOR SERVICES FEES

Investor services fees must be paid from net cash flow and not be calculated into the minimum debt coverage ratio.

11. PROJECT CONTINGENCY FUNDING

All new construction projects shall have a hard cost contingency line item of five percent (5%) of total hard costs, including general requirements, contractor profit and overhead. Rehabilitation and adaptive re-use projects shall include a hard cost contingency line item of ten percent (10%) of total hard costs.

12. PROJECT OWNERSHIP

There must be common ownership between all units and buildings within a single project for the duration of the compliance period.

13. SECTION 8 PROJECT-BASED RENTAL ASSISTANCE

For all new construction projects that propose to utilize Section 8 project-based rental assistance, the Agency will underwrite the rents according to the tax credit and HOME limits. These limits are based on data published annually by HUD. If the Section 8 contract administrator is willing to allow rents above these limits, the project may receive the additional revenue in practice, but Agency underwriting will use the lower revenue projections regardless of the length of the Section 8 contract.

Given the uncertainty of long-term federal commitment to Section 8 rental assistance, the Agency considers underwriting to the more conservative revenue levels to best serve the project's long-term financial viability.

14. WATER, SEWER, AND TAP FEES

Any water, sewer, and tap fees charged to the project must be entered on a separate line item of the PDC description. Applications must provide letters from local provider(s) documenting either the amounts or if no fees will be charged.

VII. POST-AWARD PROCESSES AND REQUIREMENTS

A. ALLOCATION TERMS AND REVOCATION

1. At any time between award and issuance of IRS Form 8609, owners must have approval from the Agency prior to:

   (a) changing the anticipated or final sources (amount, terms, or provider), including equity;

   (b) increasing the anticipated or final uses by more than two percent (2%);

   (c) altering the designs approved by
   - the Agency at full application, or
   - local building code office,

   including amenities, site layout, floor plans and elevations (Approved Design);

   (d) starting construction, including sitework;

   (e) increasing rents for new construction units;

(f) increasing rents for rehabilitation units above existing rents at time of award (rents shown in the approved application can be instituted once rehabilitation is complete);

(g) occupying units;

(h) any other change to the awarded application.

At its discretion, the Agency can request any documentation related to project costs. If an increase in uses or design alteration is due to a local government requirement, owners do not need prior approval but rather must provide the Agency with prompt written notice. Failure to comply with a requirement of this subsection may result in a fine of up to $25,000, revocation of the reservation or allocation, future disqualification under Section IV(D)(3) of any Principal involved, or other recourse available to the Agency.

2. Ownership entities must submit a completed carryover agreement and expend at least ten percent (10%) of the project's reasonably expected basis, both by dates to be determined by the Agency.

3. IRS Form 8609 will not be issued until:

(a) submission of a Final Cost Certification by an independent auditor that complies with the Agency's requirements;

(b) the owner documents attendance at an Agency sponsored or approved tax credit compliance seminar sponsored within the previous 12 months (see **Appendix C** for list of approved seminars); the management agent documents attendance at an Agency sponsored tax credit compliance seminar within the previous 12 months;

(c) monitoring fees have been paid;

(d) the project has been built according to the Approved Design;

(e) the Agency determines the project has adhered to all representations made in the approved application and will meet all relevant Plan requirements;

(f) documentation of the ownership entity having paid all applicable state and local taxes for the most recent year due; and

(g) submission of a listing of the name and address for all contractors and subcontractors indicating if there exists an identity of interest with the Owner and a statement from each representing the entity will comply with all applicable employment rules and regulations.

4. The actual tax credits allocated will be the lesser of the tax credits reserved, the applicable rate multiplied by qualified basis (as approved by the Agency), or the amount determined by the Agency pursuant to its evaluation as required under Section 42(m)(2) of the Code. Projects will be required to elect a project-based allocation. An allocation does not constitute a representation or warranty by the Agency or Committee that the ownership entity or its owners will qualify for the tax credits. The Agency's interpretation of the Code, regulations, notices, or other guidance is not binding on the federal government.

5. Owners must record, prior to all other liens against the property in the registry of deeds in the county where the project is located, a thirty (30) year Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits (Extended Use Agreement) stating the owner will not apply for relief under Section 42(h)(6)(E)(i)(II) of the Code and will comply with other requirements under the Code, Plan, other relevant statutes and regulations, and all representations made in the approved application. The Extended Use Agreement also may contain other provisions as determined by the Agency. The owner must have good and marketable title and obtain the consent of any prior recorded lienholder (other than for construction financing) to be bound by the Extended Use Agreement terms. Owners may not claim tax credits in any taxable year unless the Extended Use Agreement is in effect and appropriately recorded.

6. The Agency may revoke an allocation if the owner fails to implement all representations in the approved application. In addition to the terms of Section VII(A)(1), owners will acknowledge that the following constitute conditions to their allocation:

   (a) accuracy of all representations made to the Agency, including application uploads,

   (b) adherence to the Plan and all applicable federal, state and local laws and ordinances, including the Code and Fair Housing Act,

   (c) provision and maintenance of amenities for the benefit of the tenants, and

   (d) not incurring a penalty under N.C.G.S. § 105-236 for failure to file a return, failure to pay taxes, or having a large tax deficiency (as defined under N.C.G.S. § 105-236). The Agency may request documentation demonstrating all project related taxes have been paid.

   An owner's or project's failure to comply with all such conditions without written authorization from the Agency will entitle the Agency, in its discretion, to deem the allocation to be cancelled by mutual consent. After any such cancellation, the owner will acknowledge that neither it nor the project will have any right to claim tax credits pursuant to the allocation. The Agency reserves the right, in its discretion, to modify or waive any such failed condition.

B. COMPLIANCE MONITORING

1. Owners must comply with Section 42 of the Code, IRS regulations, rulings, procedures, decisions and notices, state statutes, the Fair Housing Act, state laws, local codes, Agency loan documents, **Appendix F** (incorporated herein by reference), and any other legal requirements. The Agency may treat any failure to do so as a violation of the Plan.
2. The Agency will adopt and revise standards, policies, procedures, and other requirements in administering the tax credit program. Examples include training and online reporting. Owners must comply with all such requirements regardless of whether or not they expressly appear in the Plan or **Appendix F**. The Agency will have access to any project information, including physical access to the property, all financial records and tenant information.

VIII. DEFINITIONS

The terms listed below will be defined in the Plan as indicated below regardless of capitalization, unless the context clearly indicates otherwise. Terms used in the Plan but not defined below will have the same meaning as under the Code and IRS regulations.

4% Tax Credit: Low-income housing tax credits available pursuant to Section 42(h)(4) of the Code.

9% Tax Credit: Low-income housing tax credits available for allocation under the state's volume cap pursuant to Section 42(h)(3) of the Code.

Affiliate: As to any person or entity (i) any entity of which a majority of the voting interest is owned by such person or entity, (ii) any person or entity directly or indirectly controlling (10% or more) such person or entity, (iii) any person or entity under direct or indirect common control with any such person or entity, or (iv) any officer, director, employee, manager, stockholder (10% or more), partner or member of any such person or entity or of any person or entity referred to in the preceding clauses (i), (ii) or (iii).

Applicant: The entity considered under Section III(C)(6).

Choice-Limiting Activity: Includes leasing or disposition of real property and any activity that will result in a physical change to the property, including acquisition, demolition, movement, rehabilitation, conversion, repair, or construction.

Developer: Any individual or entity responsible for initiating and controlling the development process and ensuring that all, or any material portion of all, phases of the development process are accomplished. Furthermore, the developer is the individual or entity identified as such in the Ownership Entity Agreement and any and all Development Fee Agreements.

Entity: Without limitation, any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, public agency or other entity, other than a human being.

Management Agent: Individual(s) or Entity responsible for the day to day operations of the project, which may or may not be related to the Owner(s) or ownership entity.

Market-Rate Units: Units that are not subject to tax credit restrictions; does not include manager units.

Material Participation: Involvement in the development and operation of the project on a basis which is regular, continuous and substantial throughout the compliance period as defined in Code Sections 42 and 469(h) and the regulations promulgated thereunder.

Owner(s): Person(s) or entity(ies) that own an equity interest in the Ownership Entity.

Ownership Entity: The ownership entity to which tax credits and/or any RPP loan funds will be awarded.

Person: Any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so requires.

Person with a Disability: An adult who has a permanent physical or mental impairment which substantially limits one or more major life activities as further defined in North Carolina's Persons with Disabilities Protection Act (N.C.G.S. § 168A-3 (7a)).

Person who is Homeless: An adult who is living in places not meant for habitation (such as streets, cars, parks), emergency shelter, or in transitional or temporary housing but originally came from a place not meant for habitation or emergency shelter.

Principal: Principal includes (1) all persons or entities who are or who will become partners or members of the ownership entity, (2) all persons or entities whose affiliates are or who will become partners or members of the ownership entity, (3) all persons or entities who directly or indirectly earn a portion of the development fee for development services with respect to a project and/or earn any compensation for development services rendered to such project, which compensation is funded directly or indirectly from the development fee of such project, and such amount earned exceeds the lesser of twenty-five percent (25%) of the development fee for such project or $100,000, and (4) all affiliates of such persons or entities in clause (3) who directly or indirectly earn a portion of the development fee for development services with respect to any project in the current year and/or earn any compensation for development services rendered to any project in the current year, which compensation is funded directly or indirectly from the development fee of any such project, and such amount earned exceeds the lesser of twenty-five percent 25% of the development fee for such project or $100,000. For purposes of determining Principal status the Agency may disregard multiple layers of pass-through or corporate entities. A partner or member will not be a Principal where its only involvement is that of the tax credit equity investor.

Qualified Corporation: Any corporation if, at all times such corporation is in existence, 100% of the stock of such corporation is held by a nonprofit organization that meets the requirements under Code Section 42(h)(5).

Rental Production Program (RPP): Agency loan program for multifamily affordable rental housing.

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

(919) 707-7806

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

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

- Rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0101 to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Parts 1910 promulgated as of June 1, 2022, and

- The *North Carolina Administrative Code* at 13 NCAC 07A .0301 automatically adopts subsequent amendments to certain parts of the *Code of Federal Regulation.* However, Title 29, Part 1910—General Industry Standards does not automatically include subsequent amendments.

This update encompasses the following recent verbatim adoption:

- Occupational Safety and Health Standards, CFR Correction, General Industry, 29 CFR § 1910 *(87 FR 32999, June 1, 2022)*

This final rule is a CFR correction to an error that was only editorial or technical in nature. The correction was made to the equation in Section II of Appendix A of the OSHA standard on occupational noise exposure in General Industry, 29 CFR 1910.95 regarding insertion of "TWA=16.61." OSHA's final rule was effective June 1, 2022.

For additional information, please contact:

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

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

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

NORTH CAROLINA DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH DIVISION

FEDERAL LAW RULE CERTIFICATION

September 1, 2022

This certification is made in accordance with N.C.G.S. 150B-19.1(g)(1).

This final rule is a CFR correction to an error that was only editorial or technical in nature. The correction was made to the equation in Section II of Appendix A of the OSHA standard on occupational noise exposure in General Industry, 29 CFR 1910.95. OSHA's final rule was effective June 1, 2022.

The attached amendment of 13 NCAC 07F .0101 is required by 29 CFR 1902.4(a)(1) and G.S. 95-131(a) in order for North Carolina's Occupational Safety and Health program to be as effective as the federal program and to maintain North Carolina's state plan status under the federal Occupational Safety and Health Act of 1970. This rule was adopted in accordance with 150B-21.5(c). Pursuant to the provisions of G.S. 150B-21.3(e), **the effective date of this action is September 1, 2022**.

Hollis Yelverton for Kevin Beauregard

Kevin Beauregard, Deputy Commissioner / Director
North Carolina Department of Labor
Occupational Safety and Health Division

Jill F. Cramer, General Counsel
North Carolina Department of Labor
Agency Rulemaking Coordinator

North Carolina Department of Labor
Division of Occupational Safety and Health
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(919) 707-7806

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

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

- Rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0201 to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Parts 1926 promulgated as of June 29, 2022, and

- Rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0201 to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Parts 1926 promulgated as of June 30, 2022, and

- The *North Carolina Administrative Code* at 13 NCAC 07A .0301 automatically adopts subsequent amendments to certain parts of the *Code of Federal Regulation.*

This update encompasses the following recent verbatim adoptions:

- Safety and Health Regulations for Construction, 29 CFR § 1926 *(87 FR 38657, June 29, 2022)* to 29 CFR 1926.62(d)(4)(ii)

This final rule is a CFR correction to an error that was only editorial or technical in nature. The correction was made to the OSHA standard on lead in construction, 29 CFR 1926.62(d)(4)(ii). OSHA's final rule was effective June 29, 2022.

- Safety and Health Regulations for Construction – Lead, 29 CFR § 1926 (87 FR 38985, June 30, 2022) to 29 CFR 1926.62(d)(2)(iv)

This final rule is a correcting amendment to the OSHA standard for lead in construction. It corrects the inadvertent removal of regulatory text resulting from a notice of correcting amendments issued February 18, 2020. It revises 29 CFR 1926.62(d)(2)(iv). OSHA's final rule was effective June 30, 2022.

For additional information, please contact:

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

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

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

NORTH CAROLINA DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH DIVISION

FEDERAL LAW RULE CERTIFICATION

September 1, 2022

This certification is made in accordance with N.C.G.S. 150B-19.1(g)(1).

(1) This final rule is a CFR correction to an error that was only editorial or technical in nature. The correction was made to the OSHA standard on lead in construction, 29 CFR 1926.62(d)(4)(ii). OSHA's final rule was effective June 29, 2022.

(2) This final rule is a correcting amendment to the OSHA standard for lead in construction. It corrects the inadvertent removal of regulatory text resulting from a notice of correcting amendments issued February 18, 2020. It revises 29 CFR 1926.62(d)(2)(iv). OSHA's final rule was effective June 30, 2022.

The attached amendment of 13 NCAC 07F .0201 is required by 29 CFR 1902.4(a)(1) and G.S. 95-131(a) in order for North Carolina's Occupational Safety and Health program to be as effective as the federal program and to maintain North Carolina's state plan status under the federal Occupational Safety and Health Act of 1970. This rule was adopted in accordance with 150B-21.5(c). Pursuant to the provisions of G.S. 150B-21.3(e), **the effective date of this action is September 1, 2022.**

Holli Yelverton for Kevin Beauregard

Kevin Beauregard, Deputy Commissioner / Director
North Carolina Department of Labor
Occupational Safety and Health Division

Jill F. Cramer, General Counsel
North Carolina Department of Labor
Agency Rulemaking Coordinator

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

(919) 707-7806

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

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

- Rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0501 to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Parts 1915 promulgated as of October 4, 2021, and

- The *North Carolina Administrative Code* at 13 NCAC 07A .0301 automatically adopts subsequent amendments to certain parts of the *Code of Federal Regulation.*

This update encompasses the following recent verbatim adoption:

- Occupational Safety and Health Standards, Incorporation by Reference; Notice of Corrections, Maritime Standards, Shipyard Employment, 29 CFR § 1915 *(86 FR 54611, October 4, 2021)*

The Occupational Safety and Health Administration (OSHA) made minor corrections to the Incorporation by Reference section for Maritime due to inadvertent mistakes in three final rules: Updating OSHA Standards Based on National Consensus Standards, Personal Protective Equipment; Updating OSHA Standards Based on National Consensus Standards, Eye and Face Protection; and Standards Improvement Project – Phase IV. OSHA's final rule was effective October 4, 2021.

For additional information, please contact:

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

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

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

NORTH CAROLINA DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH DIVISION

FEDERAL LAW RULE CERTIFICATION

September 1, 2022

This certification is made in accordance with N.C.G.S. 150B-19.1(g)(1).

The Occupational Safety and Health Administration (OSHA) made minor corrections to the Incorporation by Reference section for Maritime due to inadvertent mistakes in three final rules: Updating OSHA Standards Based on National Consensus Standards, Personal Protective Equipment; Updating OSHA Standards Based on National Consensus Standards, Eye and Face Protection; and Standards Improvement Project – Phase IV. OSHA's final rule was effective October 4, 2021.

The attached amendment of 13 NCAC 07F .0501 is required by 29 CFR 1902.4(a)(1) and G.S. 95-131(a) in order for North Carolina's Occupational Safety and Health program to be as effective as the federal program and to maintain North Carolina's state plan status under the federal Occupational Safety and Health Act of 1970. This rule was adopted in accordance with 150B-21.5(c). Pursuant to the provisions of G.S. 150B-21.3(e), **the effective date of this action is September 1, 2022**.

Hollis Yelverton for Kevin Beauregard
Kevin Beauregard, Deputy Commissioner / Director
North Carolina Department of Labor
Occupational Safety and Health Division

Jill F. Cramer, General Counsel
North Carolina Department of Labor
Agency Rulemaking Coordinator

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 14B – DEPARTMENT OF PUBLIC SAFETY

Notice *is hereby given in accordance with G.S. 150B-21.2 that the Private Protective Services Board intends to amend the rule cited as 14B NCAC 16 .0707.*

Link to agency website pursuant to G.S. 150B-19.1(c): *https://www.ncdps.gov/dps-services/permits-licenses/private-protective-services-board*

Proposed Effective Date: *February 1, 2023*

Public Hearing:
Date: *October 25, 2022*
Time: *2:00 p.m.*
Location: *3101 Industrial Dr., Suite 104, Raleigh, NC 27609*

Reason for Proposed Action: *The rule governing unarmed guard training is being amended to incorporate all current methods of administering training.*

Comments may be submitted to: *Paul Sherwin, 3101 Industrial Dr., Suite 104, Raleigh, NC 27609; phone (919) 788-5320; fax (919) 715-0370; email paul.sherwin@ncdps.gov*

Comment period ends: *December 2, 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 (>= $1,000,000)**
☐ **Approved by OSBM**
☒ **No fiscal note required**

CHAPTER 16 - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0700 - SECURITY GUARD REGISTRATION (UNARMED)

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

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

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

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

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

(c) The 16 hours of training may be delivered ~~remotely~~ in-person, in-person remotely, synchronously on-line, or in a hybrid format under the following conditions:

~~(1) The training is presented by a Board certified unarmed security officer trainer.~~

(1) In-Person is defined as an instructor physically present in-person in a classroom setting with students physically present in-person in a classroom setting. This is considered traditional in-person training. In-Person remotely is defined as an instructor delivering a course to students in an in-person seated classroom while also transmitting to another or multiple other classrooms where students are in-person and observing via video and sound technology. Students must have the ability to have constant audio and visual communication with the

instructor as the instructor is presenting. Synchronously on-line is defined as instruction utilizing an on-line audio/video platform where the instructor is teaching the course live to students that are attending live and the instructor and students have constant visual and audio communication with each other available. Hybrid format is defined as instruction utilizing both in-person classroom teaching as well as synchronously on-line. The instruction is delivered by an instructor that is in-person in a classroom with in-person seated students while the instruction is also being delivered simultaneously in an on-line live format where on-line students have had the ability to have constant audio and video communication with the in-person students and instructor.

(2) Each student is ~~given~~ provided a copy of the unarmed security guard training manual to use for the duration of the 16 hour training course.

(3) The technology used allows the trainer to see the students and the students to see the trainer in real time during the training.

(4) All students ~~in each classroom~~ are able to see and read the screen or monitor, and they must be able to hear and understand the audio presentation. All monitors used in ~~each~~ a classroom setting must be at least 32 ~~inches wide.~~ inches.

(5) The technology used is of sufficient quality so that the training audio and video is delivered smoothly and without interruption.

~~(6) Each student is taught to use the audio and video equipment in the classroom prior to the start of the 16 hour unarmed security officer training course.~~

~~(7)~~(6) The total number of students receiving the ~~remote~~ in-person or in-person remotely training at one time does not exceed 35 students. There is no size limitation for synchronous on-line training.

~~(8)~~(7) Any additional training beyond the Board mandated training in the unarmed security guard training manual is taught either before or after the 16 hour unarmed security officer training.

~~(9)~~(8) The Director is notified five days prior to training of the location of each classroom, name, and location of the certified trainer, and the number of students who will be ~~present.~~ present, if in person, or provided a link, login information, or other credentials to access the training if remote, synchronously on-line, or in a hybrid format.

~~(10) The sponsoring agency allows the Director or the Director's designee access via computer of the training during the time that it is taking place.~~

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

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02H .0804.*

Link to agency website pursuant to G.S. 150B-19.1(c): *https://deq.nc.gov/about/divisions/water-resources/water-resources-science-and-data/water-sciences-home-page/chemistry-laboratory/laboratory-certification-branch*

Proposed Effective Date: *March 1, 2023*

Public Hearing:
Date: *November 29, 2022*
Time: *6:00 p.m.*
Location: *Ground Floor Hearing room in the Archdale Building, 512 North Salisbury Street, Raleigh, NC 27603*

Reason for Proposed Action:
A multitude of emerging contaminants broadly known as "Per- and Polyfluoroalkyl Substances (PFAS)" are of great concern for NC regulators and the general public at large. DEQ anticipates requiring many permitted facilities to test for this class of compounds in the near future. Permits require analyses to be performed by certified laboratories (i.e., certified by NC WW/GW Laboratory Certification Branch). EPA method 1633 "Analysis of Per- and Polyfluoroalkyl Substances (PFAS) in Aqueous, Solid, Biosolids, and Tissue Samples by LC-MS/MS" will allow testing for 40 PFAS target analytes and is anticipated to be promulgated within the year. The NC WW/GW Laboratory Certification Branch does not currently have the authority to certify for the parameter known as "PFAS". This parameter must be added to Certification rule 15A NCAC 02H .0804 (d).
Analysis of "Organic Fluorine" provides an aggregate measurement of chemical substances that contain carbon-fluorine bonds.

This analysis is especially useful for understanding the presence and forms of PFAS in wastewater when used in conjunction with methods that target individual PFAS compounds. This analysis may also be useful in confirming the need for remediation of sites where PFAS contaminated is suspected. The NC WW/GW Laboratory Certification Branch does not currently have the authority to certify for the parameter known as "Organic Fluorine". This parameter must be added to Certification rule 15A NCAC 02H .0804 (d).

Comments may be submitted to: *Laboratory Certification Branch Manager, 1623 Mail Service Center, Raleigh, NC 27699-1623; email CertificationRuleComments@ncdenr.gov.*

Comment period ends: *December 2, 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 (>= $1,000,000)**
☒ **Approved by OSBM**
☐ **No fiscal note required**

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02H - PROCEDURES FOR PERMITS: APPROVALS

SECTION .0800 – LABORATORY CERTIFICATION

15A NCAC 02H .0804 PARAMETERS FOR WHICH CERTIFICATION MAY BE REQUESTED

(a) Commercial Laboratories shall obtain Certification for Parameter Methods used to generate data that will be reported by the client to the State in accordance with the rules of this Section. Municipal and Industrial Laboratories shall obtain Certification for Parameter Methods used to generate data that will be reported to the State in accordance with the rules of this Section. Commercial Laboratories shall obtain Certification for Field Parameter Methods used to generate data that will be reported by the client to the State in accordance with the rules of this Section. Municipal and Industrial laboratories shall obtain Certification for Field Parameter Methods used to generate data that will be reported to the State in accordance with the rules of this Section.

(b) Inorganics: Each of the inorganic, physical characteristic, and microbiological analytes listed in this Paragraph shall be considered a certifiable parameter. Analytical methods shall be determined from the sources listed in Rule .0805(a)(1) of this Section. One or more analytical methods or Parameter Methods may be listed with a laboratory's certified Parameters. Certifiable inorganic, physical characteristic, and microbiological Parameters are as follows:

(1) Acidity;
(2) Alkalinity;
(3) Biochemical Oxygen Demand;
(4) Bromide;
(5) Carbonaceous Biochemical Oxygen Demand;
(6) Chemical Oxygen Demand;
(7) Chloride;
(8) Chlorine, Free Available;
(9) Chlorine, Total Residual;
(10) Chlorophyll;
(11) Coliform, Fecal;
(12) Coliform, Total;
(13) Color;
(14) Conductivity/Specific Conductance;
(15) Cyanide;
(16) Dissolved Organic Carbon;
(17) Dissolved Oxygen;
(18) Enterococci;
(19) Escherichia Coliform (E. coli);
(20) Flash Point;
(21) Fluoride;
(22) Hardness, Total;
(23) Ignitability;
(24) Surfactants as Methylene Blue Active Surfactants;
(25) Nitrogen, Ammonia;
(26) Nitrogen, Nitrite plus Nitrate;
(27) Nitrogen, Nitrate;
(28) Nitrogen, Nitrite;
(29) Nitrogen, Total Kjeldahl;
(30) Oil and Grease;
(31) Orthophosphate;
(32) Paint Filter Liquids;
(33) pH;
(34) Phenols;
(35) Phosphorus, Total;
(36) Residue, Settleable;
(37) Residue, Total;
(38) Residue, Total Dissolved;
(39) Residue, Total Suspended;
(40) Residue, Volatile;
(41) Salinity;
(42) Salmonella;
(43) Silica;
(44) Sulfate;
(45) Sulfide;
(46) Sulfite;
(47) Temperature;
(48) Total Organic Carbon;
(49) Turbidity;
(50) Vector Attraction Reduction: Option 1;
(51) Vector Attraction Reduction: Option 2;
(52) Vector Attraction Reduction: Option 3;
(53) Vector Attraction Reduction: Option 4;
(54) Vector Attraction Reduction: Option 5;
(55) Vector Attraction Reduction: Option 6;
(56) Vector Attraction Reduction: Option 7;
(57) Vector Attraction Reduction: Option 8; and
(58) Vector Attraction Reduction: Option 12.

(c) Metals: Each of the metals listed in this Paragraph shall be considered a certifiable Parameter. One or more Parameter Methods shall be listed with a laboratory's certified Parameters. Analytical methods shall be determined from the sources listed in Rule .0805(a)(1) of this Section. Certifiable metals are as follows:

(1) Aluminum;
(2) Antimony;
(3) Arsenic;
(4) Barium;
(5) Beryllium;
(6) Boron;
(7) Cadmium;
(8) Calcium;
(9) Chromium, Hexavalent (Chromium VI);
(10) Chromium, Total;
(11) Chromium, Trivalent (Chromium III);
(12) Cobalt;
(13) Copper;
(14) Hardness, Total (Calcium + Magnesium);
(15) Iron;
(16) Lead;
(17) Lithium;
(18) Magnesium;
(19) Manganese;
(20) Mercury;
(21) Molybdenum;
(22) Nickel;
(23) Potassium;
(24) Phosphorus;
(25) Selenium;
(26) Silica;
(27) Silver;
(28) Sodium;
(29) Strontium;
(30) Thallium;
(31) Tin;
(32) Titanium;
(33) Vanadium; and
(34) Zinc.

(d) Organics: Each of the organic Parameters listed in this Paragraph shall be considered a certifiable Parameter. One or more Parameter Methods shall be listed with a laboratory's certified Parameters. Analytical methods shall be determined from the sources listed in Rule .0805(a)(1) of this Section. Certifiable organic Parameters are as follows:

(1) 1,2-Dibromoethane (EDB); 1,2-Dibromo-3-chloro-propane (DBCP); 1,2,3-Trichloropropane (TCP);
(2) Acetonitrile;
(3) Acrolein, Acrylonitrile;
(4) Adsorbable Organic Halides;
(5) Base/Neutral and Acid Organics;
(6) Benzidines;
(7) Chlorinated Acid Herbicides;
(8) Chlorinated Hydrocarbons;
(9) Chlorinated Phenolics;
(10) Explosives;
(11) Extractable Petroleum Hydrocarbons;
(12) Haloethers;
(13) N-Methylcarbamates;
(14) Nitroaromatics and Isophorone;
(15) Nitrosamines;
(16) Nonhalogenated Volatile Organics;
(17) Organic Fluorine;
~~(17)~~(18) Organochlorine Pesticides;
~~(18)~~(19) Organophosphorus Pesticides;
(20) Per- and Polyfluoroalkyl Substances (PFAS);
~~(19)~~(21) Phenols;
~~(20)~~(22) Phthalate Esters;
~~(21)~~(23) Polychlorinated Biphenyls;
~~(22)~~(24) Polynuclear Aromatic Hydrocarbons;
~~(23)~~(25) Purgeable Aromatics;
~~(24)~~(26) Purgeable Halocarbons;
~~(25)~~(27) Purgeable Organics;
~~(26)~~(28) Total Organic Halides;
~~(27)~~(29) Total Petroleum Hydrocarbons – Diesel Range Organics;
~~(28)~~(30) Total Petroleum Hydrocarbons – Gasoline Range Organics; and
~~(29)~~(31) Volatile Petroleum Hydrocarbons.

Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10).

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***Notice** is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Marine Fisheries Commission intends to amend the rule cited as 15A NCAC 03M .0101 and readopt with substantive changes the rule cited as 15A NCAC 18A .0911.*

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

Proposed Effective Date:
15A NCAC 03M .0101- Subject to Legislative Review
15A NCAC 18A .0911-May 1, 2023

Public Hearing:
Date: *November 1, 2022*
Time: *6:00 p.m.*
Location:
WebEx Events meeting link:
https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=e18e682448138378a2107f624ed6aad80 Event number: 2435 343 7920
Event password: 1234
Event phone number: 1-415-655-0003
Listening station: Division of Marine Fisheries Central District Office, 5285 Highway 70 West, Morehead City, NC 28557

Reason for Proposed Action:
***Rule 15A NCAC 03M .0101** is proposed for amendment to provide flexibility to manage variable conditions for the use of finfish as cut bait by simplifying the rule such that only species subject to a possession limit are subject to the requirements unless otherwise specified in a Marine Fisheries Commission rule or a proclamation issued under the authority of a Marine Fisheries Commission rule.*
***Rule 15A NCAC 18A .0911** is proposed for amendment in accordance with G.S. 150B-21.3A to help ensure that North Carolina remains in full compliance with national requirements so that N.C. shellfish can continue to be sold through interstate*

commerce; allow the Division of Marine Fisheries to determine necessary buffer closures for shellfish growing waters in and around marinas based on a more scientific and public health-based rationale; and make implementation and enforceability of requirements clearer.

Comments may be submitted to: *Catherine Blum, P.O. Box 769, Morehead City, NC 28557 (Written comments may also be submitted via an online form available at https://deq.nc.gov/mfc-proposed-rules)*

Comment period ends: *December 2, 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. If the Rules Review Commission receives written and signed objections 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 email. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Rule is automatically subject to legislative review: *S.L. 2019-198: 15A NCAC 03M .0101*

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.
☒ **State funds affected**
☐ **Local funds affected**
☐ **Substantial economic impact (>= $1,000,000)**
☒ **Approved by OSBM**
☐ **No fiscal note required**

CHAPTER 03 - MARINE FISHERIES

SUBCHAPTER 03M - FINFISH

SECTION .0100 – FINFISH, GENERAL

15A NCAC 03M .0101 MUTILATED FINFISH
It shall be unlawful to possess aboard a vessel or while engaged in fishing any species of finfish that is subject to a ~~size or harvest restriction~~ possession limit, including size limit, recreational bag limit, commercial trip limit, or season, without having head and tail attached, ~~except:~~ unless otherwise specified in a rule of the Marine Fisheries Commission or a proclamation issued pursuant to a rule of the Marine Fisheries Commission.

~~(1) mullet when used for bait;~~
~~(2) hickory shad when used for bait, provided that not more than two hickory shad per vessel or fishing operation may be cut for bait at any one time; and~~
~~(3) tuna possessed in a commercial fishing operation as provided in Rule .0520 of this Subchapter.~~

Authority G.S. 113-134; 113-182; 143B-289.52.

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .0900 - CLASSIFICATION OF SHELLFISH GROWING WATERS

15A NCAC 18A .0911 ~~MARINAS:~~ MARINAS, DOCKING ~~FACILITIES:~~ FACILITIES, AND OTHER MOORING AREAS
~~Classification of shellfish~~ Shellfish growing waters with respect to marinas, docking facilities, and other mooring areas shall be ~~done~~ classified in accordance with the following:

(1) ~~All~~ all waters within ~~the immediate vicinity of~~ a marina shall be classified as prohibited to the harvesting of shellfish for human consumption. ~~Excluded from this classification are marinas with less than 30 slips, having no boats over 24 feet in length, no boats with heads and no boats with cabins. Marinas permitted prior to the effective date of this Rule may continue to have boats up to 21 feet in length with cabins and not be subject to the mandatory water classification of prohibited in the immediate vicinity of the marina.~~
~~(2) Owners of marinas conforming to the exclusion provisions in Item (1) of this Rule shall make quarterly reports to the Division. These reports shall include the following information:~~
~~(a) number of slips;~~
~~(b) number and length of boats;~~
~~(c) number and length of boats with cabins;~~
~~(d) number of boats with heads; and~~
~~(e) number of boats with "porta-potties."~~
~~Reports to the Division shall cover the occupancy of the marina on the fifth day of the first month of each quarter of the calendar year and shall be post marked on or before the fifteenth day of the reporting month.~~
~~(3) The minimum requirement for the prohibited area beyond the marina shall be based on the number of slips and the type of marina (open or closed system). The prohibited area shall extend beyond the marina from all boat slips, docks, and docking facilities, according to the following:~~

~~Number of Slips in Marina~~	~~Size of Prohibited Area (Feet)~~	
	~~Open System~~	~~Closed System~~
~~11 - 25~~	~~100~~	~~200~~
~~26 - 50~~	~~150~~	~~275~~
~~51 - 75~~	~~175~~	~~325~~

~~76 100 200 400~~

~~Open system marinas exceeding 100 slips shall require an additional 25 feet for each 25 slips or portion thereof over 100. A closed system marina shall require 50 feet for each 25 slips or portion thereof over 100. Closed system private or residential marinas with more than 75 slips shall require a prohibited area of the number of feet determined above, or 100 feet outside the entrance canal, whichever is greater. Closed system commercial marinas with more than 50 slips shall require a prohibited area of the number of feet determined above, or 100 feet outside the entrance canal, whichever is greater.~~

(2) the Division of Marine Fisheries shall conduct a dilution analysis to determine the minimum extent of the area adjacent to a marina that shall be classified as prohibited to the harvesting of shellfish for human consumption. The prohibited area shall be sized to dilute the concentration of fecal coliform bacteria to less than 14 MPN, as determined by the dilution analysis. The dilution analysis shall be conducted yearly and shall incorporate the following:

(a) the findings of the shoreline survey, including the presence of a sewage pumpout system or dump station; and

(b) the physical factors influencing the dilution and dispersion of human wastes; and

~~(4)~~(3) ~~After a marina is put in use water quality impacts of marina facilities may require a change in classification. In determining if a change in classification is necessary, marina design, marina usage, dilution, dispersion, bacteriological, hydrographic, meteorological, and chemical factors will be considered.~~ slip counts and services for marinas, docking facilities, and mooring areas in close proximity to one another shall be combined for the purposes of determining the necessary prohibited area as required in Items (1) and (2) of this Rule. Docking facilities and mooring areas each with three slips or more and marinas shall be considered to be in close proximity to one another if the dilution analysis indicates that the necessary dilution areas meet or overlap.

~~(5) Areas, other than marinas, where boats are moored or docked may be considered on a case by case basis with respect to sanitary significance relative to actual or potential contamination and classification shall be made as necessary.~~

~~(6) The cumulative impacts of multiple marinas, entrance canals, or other mooring areas, in close proximity to each other are expected to adversely affect public trust waters. When these situations occur the Division will recommend closures exceeding those outlined in Item (3) of this Rule. The following guides will be used in determining close proximity:~~

~~(a) marina entrance canals within 225 feet of each other;~~

~~(b) open system marinas within 450 feet of each other (Mooring areas shall be considered open system marinas);~~

~~(c) where closure areas meet or overlap; and~~

~~(d) open system marinas within 300 feet of a marina entrance canal.~~

Authority G.S. ~~130A-230;~~ 113-134; 113-182; 113-221.2; 143B-289.52.

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, .0104 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: *February 1, 2023*

Public Hearing:
Date: *November 17, 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 sedation.*
***21 NCAC 16Q .0104** is proposed to address requirements for facility inspections and evaluations.*
***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 .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: *December 2, 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 (>= $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 as follows and that the following listed equipment is immediately available and accessible from the operatory and recovery rooms:

(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 precordial or pretracheal stethoscope;

(M) a thermometer;

(N) vascular access set-up as necessary for specific procedures, including hardware and fluids;

(O) a laryngoscope with working batteries;

(P) intubation forceps and advanced airway devices;

(Q) tonsillar suction with back-up suction;

(R) syringes as necessary for specific procedures; and

(S) 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 immediately available 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; and
(M) an antiemetic.

(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 the following, and shall review and practice responding to clinical emergencies with all auxiliaries as a team and in person every six months;
(A) airway obstruction;
(B) allergic reactions;
(C) angina pectoris;
(D) apnea;
(E) bradycardia;
(F) bronchospasm;
(G) cardiac arrest;
(H) convulsions;
(I) emesis and aspiration;
(J) hypertension;
(K) hypoglycemia;
(L) hypotension;
(M) hypoventilation and respiratory arrest;
(N) hypoxemia and hypoxia;
(O) laryngospasm;
(P) myocardial infarction; and
(Q) syncope.

(2) All auxiliaries in the facility shall be BLS certified.

(3) Except as set out in Subparagraph (d)(4) of this Rule, the permit holder performing the surgery or other dental procedure shall ensure that an RN or a BLS-certified auxiliary is dedicated to patient monitoring and recording anesthesia or sedation data throughout the sedation procedure.

(4) The requirement set out in Subparagraph (d)(3) of this Rule shall not apply if the permit holder or an additional sedation provider 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 additional sedation provider shall be:
(A) a dentist holding a permit or mobile permit in satisfaction of this Subchapter to administer the anesthesia or sedation level at the facility where the sedation procedure is performed;
(B) an anesthesiologist licensed and practicing in accordance with the rules of the North Carolina Medical Board; or
(C) 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.

(5) 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 conduct a pre-operative patient evaluation which shall include, but is not limited to, the following:

(1) evaluate the patient for health risks relevant to the potential sedation 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) satisfy any additional requirements for pre-operative patient evaluation and procedures applicable to the level of the permit, as set out in Rule .0202, .0302, or .0405 of this Subchapter.

(f) During the sedation procedure:

(1) Prescriptions intended to accomplish procedural sedation, including enteral dosages, shall be administered only under the direct supervision of the permit holder.

(2) 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.

(3) Capnography shall be used to monitor patients unless an individual patient's behavior or condition prevents use of capnography. In that event, the permit holder shall document in the sedation record the clinical reason capnography could not be used.

(4) The permit holder shall ensure the patient's base line vital signs are taken and recorded, including temperature, SPO2, blood pressure, and pulse.

(5) The permit holder shall ensure the patient's blood pressure, oxygen saturation, ET CO2 (unless capnography cannot be used), pulse, and respiration rates ("vital sign information") are monitored continuously in a manner that enables the permit holder to view vital sign trends throughout the procedure.

(6) The permit holder shall ensure the intraoperative vital sign information is recorded on the anesthesia or sedation record contemporaneously throughout the procedure in intervals of five minutes or less for patients over twelve years old, and in intervals of ten minutes or less for pediatric patients twelve years old or younger.

(7) The permit holder shall satisfy any additional requirements for operative procedures 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.

(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 Paragraph (e) 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) the anesthesia or sedation record that shall include:

(A) the patient's base line vital signs and intraoperative vital sign information as set out in Subparagraphs (f)(4)-(6) of this Rule;

(B) the printed or downloaded vital sign information from the capnograph. A permit holder's failure to maintain capnograph documentation, except as set out in Subparagraph (f)(3) of this Rule, shall be deemed a failure to monitor the patient as required pursuant to this Subchapter;

(C) procedure start and end times;

(D) gauge of needle and location of IV on the patient, if used;

(E) the total amount of any local anesthetic administered during the procedure;

(F) any analgesic, sedative, pharmacological, or reversal agent, or other 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 complications or morbidity, and clinical responses; and

(H) status of patient upon discharge, including documentation of satisfying the requirements set out in Paragraph (g) of this Rule; and

(5) 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 .0103(d)(1) of this Section.

(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.

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 immediately available 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 immediately available and be accessible from the operatory and recovery rooms.

(c) As part of the pre-operative assessment required by Rule .0103(e) of this Subchapter, the permit holder shall evaluate the patient for health risks 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 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.

(d) During the sedation procedure, a moderate conscious sedation permit holder shall not administer anesthetic or sedative agents:

(1) designed by the manufacturer for use in administering general anesthesia or deep sedation;

(2) contraindicated for use in moderate conscious sedation; or

(3) in amounts exceeding the manufacturers' maximum recommended dosages, unless the permit holder documents in the sedation record the clinical reason for exceeding the maximum recommended dosage for the patient.

~~(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 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 immediately available 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 dedicated to patient monitoring.

(d) In addition to the requirements set out in Rule .0103(e) of this Subchapter concerning pre-operative procedures, 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) As part of the pre-operative assessment required by Rule .0103(e) of this Subchapter, the permit holder shall evaluate the patient for health risks 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 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.

(f) If a patient immobilization device is used, the permit holder shall ensure that:

(1) the device is applied to avoid airway obstruction or chest restriction;

(2) the patient's head position and respiratory excursions are checked frequently to ensure airway patency;

(3) a hand or foot is kept exposed; and

(4) the patient is attended at all times.

(g) During the sedation procedure, a moderate pediatric conscious sedation permit holder shall not administer anesthetic or sedative agents:

(1) designed by the manufacturer for use in administering general anesthesia or deep sedation;

(2) contraindicated for use in moderate pediatric conscious sedation; or

(3) in amounts exceeding the manufacturers' maximum recommended dosages, unless the permit holder documents in the sedation record the clinical reason for exceeding the maximum recommended dosage for the patient.

(h) In addition to the requirements set out in Rule .0103(h) of this Subchapter concerning the patient treatment record, 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.

(i) For purposes of Rule .0104(b)(2) of this Subchapter, during an evaluation, a moderate pediatric conscious sedation permit holder or applicant shall demonstrate competency in the deployment of an intravenous delivery system as follows:

(1) a permit holder or applicant who uses intravenous sedation shall demonstrate the administration of moderate pediatric conscious sedation on a live patient, including the deployment of an intravenous delivery system; and

(2) a permit holder or applicant who does not use intravenous sedation shall describe the proper deployment of an intravenous delivery system and shall demonstrate the administration of moderate pediatric conscious sedation on a live patient.

~~(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 .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 holders shall cease administration of 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~~ adverse occurrence 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 on inpatient status 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) the entire patient treatment record including 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.

*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 August 18, 2022 Meeting.

				REGISTER CITATION TO THE NOTICE OF TEXT
AGRICULTURE, BOARD OF				
Records; Animal Shelters, Etc.	02 NCAC	52J	.0101*	36:12 NCR
Records; Boarding Kennels	02 NCAC	52J	.0102*	36:12 NCR
Inspection of Records	02 NCAC	52J	.0103*	36:12 NCR
Definitions	02 NCAC	52J	.0104*	36:12 NCR
Licenses and Registrations	02 NCAC	52J	.0105*	36:12 NCR
Indoor Facilities	02 NCAC	52J	.0202*	36:12 NCR
Outdoor Facilities	02 NCAC	52J	.0203*	36:12 NCR
Primary Enclosures	02 NCAC	52J	.0204*	36:12 NCR
Watering	02 NCAC	52J	.0206	36:12 NCR
Sanitation	02 NCAC	52J	.0207*	36:12 NCR
Classification and Separation	02 NCAC	52J	.0209*	36:12 NCR
Veterinary Care	02 NCAC	52J	.0210*	36:12 NCR
Primary Enclosures Used in Transporting Dogs and Cats	02 NCAC	52J	.0302*	36:12 NCR
Food and Water Requirements	02 NCAC	52J	.0303*	36:12 NCR
Care in Transit	02 NCAC	52J	.0304*	36:12 NCR
Adoption by Reference	02 NCAC	52J	.0401*	36:12 NCR
Authorized Persons	02 NCAC	52J	.0402*	36:12 NCR
Definitions	02 NCAC	52J	.0403*	36:12 NCR
Certification Requirements for Euthanasia Technicians	02 NCAC	52J	.0404*	36:12 NCR
Certification Standards	02 NCAC	52J	.0405*	36:12 NCR
Application Requirements	02 NCAC	52J	.0406*	36:12 NCR
Training and Examinations	02 NCAC	52J	.0407*	36:12 NCR
Probationary Euthanasia Technicians	02 NCAC	52J	.0409	36:12 NCR
Exam Required	02 NCAC	52J	.0410*	36:12 NCR
New Application	02 NCAC	52J	.0411*	36:12 NCR
Issuance of Certification	02 NCAC	52J	.0412	36:12 NCR
Length of Certification	02 NCAC	52J	.0413	36:12 NCR
Termination of Employment	02 NCAC	52J	.0414*	36:12 NCR
Notice of Termination	02 NCAC	52J	.0415*	36:12 NCR
Reinstatement	02 NCAC	52J	.0416*	36:12 NCR
Certification Renewal	02 NCAC	52J	.0417*	36:12 NCR
Intracardiac Injection	02 NCAC	52J	.0501*	36:12 NCR
Euthanasia Under Extraordinary Circumstances	02 NCAC	52J	.0701*	36:12 NCR
Methods and Standards	02 NCAC	52J	.0703*	36:12 NCR
Reports	02 NCAC	52J	.0705*	36:12 NCR
Manual Required	02 NCAC	52J	.0801	36:12 NCR
Contents	02 NCAC	52J	.0802*	36:12 NCR
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TITLE 02 - DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

02 NCAC 52J .0101 RECORDS; ANIMAL SHELTERS, ETC.

Operators of all animal shelters, pet shops, public auctions, and dealers shall maintain records on all dogs and cats showing the following:

(1) origin of animals (including names and addresses of consignors) and date animals were received;

(2) description of animals including species, estimated age, sex, breed or breed type, and color markings;

(3) location of animal, including complete address and contact information, if not kept at the licensed or registered facility;

(4) disposition of animals including name and address of person to whom animal is sold, traded, transferred, or adopted, and the date and time of such transaction; name and address of intermediary transporter if used; in the event of death, the record shall show the date, signs of illness, and cause of death if identified; if euthanized, the record shall show date and type of euthanasia;

(5) record of veterinary care including medications, treatments, procedures, and immunizations. The record shall include:

diagnosis(es), diagnostic testing and results, date and time of administration or procedure, description of medication and initials of person administering any product, medication or procedure. The description of the medication shall include the name, strength or concentration, dosage, and dosing regimen. The dosage regimen shall include the frequency, duration to include the number of dosages or days to be given and the reason for the administration; and

(6) all records shall be created and/or updated within 48 hours of the occurrence of procedures, including but not limited to intake, change of location, medication or treatment administration and/or disposition. The record shall be accurate; creation of a misleading record or deliberate or non-incidental falsification of a record including medication administration documentation during or after an investigation or inspection shall be considered a violation of this regulation.

History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. January 1, 2005; April 1, 1985;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0102 RECORDS; BOARDING KENNELS

Operators of boarding kennels shall maintain records of all dogs and cats showing the following:

(1) name and address of owner or person responsible for animal, the date of entry and signature of the person leaving the animal; and the date of release and signature and address of individual to whom animal is released;

(2) description of animal including breed or breed type, sex, age and color markings;

(3) veterinary care provided while boarded, which shall include date, times of administration, description of medication and initials of person administering product or procedure. The description of the medication shall include the name, strength or concentration, dosage, and dosing regimen. The dosage regimen shall include the frequency and duration to include the number of dosages or days to be given and the reason for the administration;

(4) all records shall be created and/or updated at the time of the occurrence such as intake, medication or treatment administration and/or release. The record shall be accurate; creation of a misleading record or deliberate or non-incidental falsification of a record including medication administration during or after an investigation or inspection shall be considered a violation of this regulation;

(5) an incident file shall be kept within each facility for animals sustaining injury or illness requiring veterinary care; animal death; and/or any animal escape. Each report shall include date of incident, pet's name, breed or breed type/species, age, owner's name and contact information, description of incident and course of action; and

(6) in the event of either an animal death or escape, the licensee shall notify the Animal Welfare Section within 48 hours.

History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. January 1, 2005;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0103 INSPECTION OF RECORDS

All operators of animal shelters, pet shops, boarding kennels, public auctions, and persons operating as dealers shall make all required records available to the Director or his or her authorized representative on request, during the business and cleaning hours listed on the license application and/or during an inspection of the facility or an investigation. The operator must be able to match each animal to its record upon request. Records shall be maintained for a period of one year after the animal is released from a boarding kennel or sold from a pet store or public auction. Animal shelters shall maintain records required by the Animal Welfare Act or this Subchapter for a period of three years after the disposition of the animal.

History Note: Authority G.S. 19A-24; 19A-25;
Eff. April 1, 1984;
Amended Eff. January 1, 2005; April 1, 1985;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0104 DEFINITIONS

As used in this Subchapter:

(1) "Accessories" means any objects used in cleaning and sanitizing primary enclosures, exercise areas, or objects to which an animal may have access, including, but not limited to toys, blankets, food and water utensils, and bedding.

(2) "Adequate" means a condition which, when met, does not jeopardize an animal's comfort, safety or health. Adequate veterinary care means provision of veterinary care sufficient to address the relief of pain and/or suffering experienced by the animal and sufficient to address the medical condition.

(3) "Behavioral-control device" means any apparatus used to control a pet animal's behavior.

(4) "Cage" means a primary enclosure which is enclosed on all sides including the top and bottom.

(5) "Compatible group" means all animals in the group comingle peacefully without the

presence of aggressive, harassing, and/or agitating behaviors toward any other member(s) of the group.

(6) "Common area(s)" means areas of the facility in which multiple animals may have access such as walkway(s), facility lobby(ies), hallway(s), area(s) around primary enclosures and exercise areas, and other such similar areas.

(7) "Disposition" means the adoption, death, euthanasia, release, sale, trade, or transfer from a facility.

(8) "Enrichment" means providing objects or activities, appropriate to the needs of the species as well as the age, size, and condition of the animal, that stimulates the pet and promotes the pet's well-being.

(9) Exercise area means an enclosed space in which an animal(s) is confined, and which is large enough for species-appropriate activity such as walking, running, climbing, jumping, socialization and/or play to occur.

(10) "Husbandry" means the practice of daily care administered to animals.

(11) "Impervious to moisture" means a surface that prevents the absorption of fluids and that can be thoroughly and repeatedly sanitized, will not retain odors, and from which fluids bead up and run off or can be removed without being absorbed into the surface material.

(12) "Infirm" means not physically or mentally strong, especially through age or illness.

(13) "Isolation" means the separation, for the period of communicability, of infected animals from others in such a place and under such conditions to prevent the direct or indirect transmission of the infectious agent from those infected to those that are susceptible or that may spread the agent to others.

(14) "Isolation area" means a location where animals infected with disease may be placed to contain, control, and limit the spread of the disease.

(15) "License period" means July 1 through June 30.

(16) "Long term care" means the housing of an animal for a period of more than 30 consecutive days.

(17) "Potable" means suitable for drinking.

(18) "Properly cleaned" means the removal of carcasses, debris, food waste, excrement, urine, dirty or soiled accessories and other organic material with adequate frequency.

(19) "Social interaction" means friendly physical contact or play between animals of the same species or with a person. Physical contact or play with the caretaker during cage cleaning and/or sanitation is not considered social interaction.

(20) "Special provisions" means additional procedures, protocols, and/or equipment used when caring for, housing and/or transporting animals with special needs. Examples of animals with "special needs" include, but are not limited to, brachycephalic breeds, very young or old animals, animals with a medical condition, infirm animals, and/or animals that are compromised or debilitated.

(21) "Suitable method of drainage" means drainage that allows for the elimination of water and waste products, prevents contamination of animals, allows animals to remain dry, and complies with applicable building codes and local ordinances.

(22) "Supervision " means at least one person (at least 16 years of age) present, at all times, able to constantly, directly view all animals within the entirety of each enclosure or exercise area.

(23) "Surgical procedure" for the purposes of this Subchapter means any invasive procedure performed on an animal to include, but not be limited to: procedures to spay or neuter, any procedure that invades a body cavity and/or requires suturing or repairing of tissues; and/or any treatment of injuries or disorders of the body by incision, manipulation or alteration of organs or tissues with the hands or with instruments. For the purposes of this Subchapter, insertion of a microchip is not considered to be a surgical procedure.

(24) "Veterinarian" means a veterinarian who is currently licensed by North Carolina and/or an adjacent state. The license must be valid with the appropriate state regulatory agency.

History Note: Authority G.S. 19A-24;
Eff. January 1, 2005;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0105 LICENSES AND REGISTRATIONS

All operators of an animal shelter, pet shop, public auction, dealers, and boarding kennels shall have a valid license/registration.

(1) Licenses and registrations are not transferable.

(2) In the event of a change of ownership or management of a regulated facility, the facility shall notify the director of the Animal Welfare Section ('AWS') in writing within 10 days of the change. Submission of a new license or registration application and a facility inspection is required within 10 days. A facility inspection by the AWS is required in the event of such a change.

(3) In the event of a change of name, address, phone, email, or point of contact for the facility, the facility shall notify the director by the Change Form located on the AWS website or other written documentation within 10 days of change.

(4) Renewal applications for license or registration renewal shall be submitted yearly to the AWS office between April 1st and June 15th. Current application forms are located on the AWS website at https://www.ncagr.gov/vet/aws. The contents of the applications shall include the following:
- (a) the name, physical address, phone number, email address and mailing address for the facility;
- (b) the name, address, phone number, and email address for the owner of the facility;
- (c) the hours and days the facility is open to the public;
- (d) the cleaning hours of the facility;
- (e) the number of enclosures and the maximum number of animals on site;
- (f) the description of the facility's program of veterinary care ('PVC') including the disinfection protocols; vaccination protocols including rabies vaccination; the isolation of ill or injured animals; the sale/adoption/transfer of animals; and the provision of routine, emergency and after hours veterinary care;
- (g) animal shelters shall have the PVC reviewed by a licensed veterinarian as described in 02 NCAC 52J .0210(a) and the application for the animal shelter registration shall contain the veterinarian's signature and contact information;
- (h) statement of presence of an emergency disaster plan for the facility; and
- (i) statement of agreement by the owner or authorized agent of the accuracy of the information contained in the application; of the willingness to comply with the rules of this Subchapter and to cooperate as required by law with the Animal Welfare Section inspections and investigations; acknowledgement of authority to execute the application; and agreement to notify the AWS of any significant change in the operation of the facility.

History Note: Authority G.S. 19A-24;
Eff. September 1, 2022.

02 NCAC 52J .0202 INDOOR FACILITIES

(a) Heating and cooling of indoor facilities:
- (1) indoor facilities for dogs and cats shall be adequately heated and cooled to protect the dogs and cats from cold and heat and provide for their health and comfort;
- (2) the ambient temperature shall not be allowed to fall below 50 degrees F or exceed 85 degrees F; and
- (3) special provisions shall be provided to any animal that cannot maintain its normal body temperature. These special provisions shall be sufficient for the animal to maintain its normal body temperature and shall be documented in the animal's record.

(b) Ventilation of indoor facilities:
- (1) indoor housing facilities for dogs and cats shall be adequately ventilated to provide for the health and comfort of the animals at all times; the facilities shall be provided with fresh air either by means of windows, doors, vents and/or air conditioning and shall be ventilated so as to minimize drafts;
- (2) air vents and/or air filters shall be cleaned and/or changed as often as necessary to minimize buildup of debris, dust and biological material and as often as necessary to prevent inhibition or restriction of air flow; and
- (3) air flow shall be adequate to minimize odors and moisture condensation.

(c) Indoor housing facilities for dogs and cats shall have sufficient illumination to permit routine inspections, maintenance, cleaning and housekeeping of the facility and observation of the animals. Illumination shall provide regular diurnal lighting cycles of either natural or artificial light, uniformly diffused throughout the animal facilities.

(d) Interior building surfaces of indoor facilities with which animals come in contact shall be constructed and maintained so that they are impervious to moisture and can be readily sanitized.

(e) Drainage of indoor housing facility:
- (1) a suitable method of drainage shall be provided to rapidly eliminate excess water from an indoor housing facility;
- (2) if closed drain systems are used, they shall be equipped with traps and installed to prevent odors and backup of sewage; and
- (3) the drainage system shall be constructed with barriers adequate to protect the animals from cross-contamination with urine and fecal material from animals housed in adjacent and/or nearby enclosures and/or exercise areas.

History Note: Authority G.S. 19A-24; 19A-30(3);
Eff. April 1, 1984;
Amended Eff. January 1, 2005;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0203 OUTDOOR FACILITIES

(a) In outdoor facilities that are subject to the Animal Welfare Act, primary enclosures, common areas and walkways with which an animal comes in contact:
- (1) shall have groundcover constructed of sealed concrete or other surfaces so long as it is impervious to moisture, and/or;

(2) may use gravel for groundcover so long as it is maintained at a minimum depth of six inches and maintained in a sanitary manner as prescribed in Rule .0207 of this Subchapter.

(b) Exercise areas of outdoor facilities:

(1) shall have flooring or groundcover constructed of sealed concrete or other surfaces impervious to moisture; and/or

(2) use gravel for groundcover so long as it is maintained at a minimum depth of six inches and kept in a sanitary manner; and/or

(3) artificial turf may be allowed so long as it is adequately maintained in good repair, is replaced when damaged, and is cleaned and sanitized in accordance with 02 NCAC 52J .0207; and/or

(4) may contain established grass so long as the animal(s) do not have access to bare dirt and the grass covered area(s) must be kept properly cleaned and sanitized as prescribed in Rule .0207 of this Subchapter. In the event of a contagious disease outbreak, the sanitation, management, and use of the grass area shall be addressed in the veterinarian's written protocol required by 02 NCAC 52J .0210(b) and (c).

(c) Sand and organic materials such as mulch, pine straw, or other similar non-approved material shall not be used as ground cover in primary enclosures, common areas, exercise areas and/or walkways.

(d) Dogs and cats in outdoor primary enclosures shall be provided housing to allow them to remain dry and comfortable during inclement weather:

(1) housing shall be constructed of material which is impervious to moisture and which can be cleaned and sanitized in accordance with 02 NCAC 52J .0207;

(2) one house shall be available for each animal within each primary enclosure. The house(s) shall be of adequate size for the animal housed in the enclosure. In the case of a mother and her unweaned offspring, one house of adequate size to comfortably house the mother and all the offspring together must be provided;

(3) housing structures in outdoor facilities must contain clean, dry bedding or a heat source when the temperature falls below 32 degrees F;

(4) special provisions shall be provided to any animal that cannot maintain its normal body temperature when housed outside. These special provisions shall be adequate for the animal to maintain its normal body temperature and shall be documented in the animal's record. If the animal cannot maintain its normal body temperature even with special provisions, then that animal shall not be housed outside. No infirm animal may be housed outdoors; and

(5) in addition to housing, the enclosure shall provide protection from excessive sun and inclement weather.

(e) Dogs and cats in outdoor areas shall be provided adequate protection from inclement weather and the Sun. This protection shall be sufficient to protect all animals simultaneously in the exercise area. If an animal cannot maintain its normal body temperature in an outdoor exercise area, the animal shall not be placed in an outside exercise area.

(f) Outdoor common areas used for play, enrichment and elimination shall be maintained in good repair and be properly cleaned and sanitized as set forth in 02 NCAC 52J .0207 to protect the animals from injury and/or illness.

(g) Animal owners shall be advised at the time of reservation and admission at a boarding kennel if the animal will be kept in outside facilities. This shall be documented in the animal's record.

(h) A suitable method of drainage shall be provided so that water is adequately drained from the primary enclosures, common areas, exercise areas and walkways and so that the animal(s) does/do not have access to standing water.

History Note: *Authority G.S. 19A-24;*
Eff. April 1, 1984;
Amended Eff. March 23, 2009; January 1, 2005;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0204 PRIMARY ENCLOSURES

(a) Primary enclosures and exercise areas shall be constructed so as to prevent contamination from waste and wastewater from animals in other enclosures. All surfaces with which an animal comes in contact shall be impervious to moisture excluding the ground cover options of gravel and grass allowed for in Rule .0203 of this Section.

(b) For primary enclosures and exercise areas placed into service on or after January 1, 2005, no wood shall be within the animal's reach. For primary enclosures and exercise areas in use in a licensed or registered facility prior to January 1, 2005, any damaged wood shall be replaced in a manner that does not permit contact with wood by the animal.

(c) Primary enclosures and exercise areas for dogs and cats shall be structurally sound and maintained in good repair and in a manner to prevent injury to animals and keep other animals out.

(d) Primary enclosures shall be constructed so as to provide space to allow each dog or cat to walk, turn about freely, and to stand with their tails erect, sit, or lie in a natural position with their limbs extended without touching other animals within the enclosure or the sides or top covering of the enclosure.

(e) Exercise areas shall be constructed to provide adequate space to allow each dog or cat to run and express natural play behaviors typical of the species.

(f) The height of a primary enclosure or an exercise area other than a cage shall be no less than five feet tall.

(g) All primary enclosures and exercise areas shall be constructed to prevent the escape of animals.

(h) Each primary enclosure and exercise area shall be provided with a solid resting surface or surfaces adequate to comfortably hold all occupants of the primary enclosure and exercise area at the same time. All resting surfaces shall be of a non-porous or easily sanitized material, such as a solid floor, towel, or a disposable material such as newspaper. The resting surface or surfaces shall be elevated in primary enclosures housing two or more cats.

(i) In addition to Paragraph (b) of this Rule, each dog shall be provided a minimum square footage of floor space equal to the mathematical square of the sum of the length of the dog in inches, as measured from the tip of its nose to the base of its tail, plus six inches, then divide the product by 144. The calculation is: (length of dog in inches + 6) x (length of dog in inches + 6) = required floor space in square inches. Required floor space in square inches ÷ 144 = required floor space in square feet. The calculation shall be expressed in square feet.
(j) Not more than four adult dogs shall be housed or confined in the same primary enclosure or exercise area without supervision. Dogs younger than six months of age shall not be housed or confined or comingled with adult dogs other than their dams without supervision; this includes any animals owned by the staff or operator of the facility.
(k) If more than four dogs including animals owned by the staff or operator of the facility are housed or confined in an exercise area or primary enclosure, then there shall be at least one person constantly supervising each 10 dogs housed or confined within each primary enclosure or exercise area. This supervision shall be conducted from within the exercise area or primary enclosure such that the person(s) has/have immediate access to the animals in the event of an emergency, aggression or fight between animals.
(l) Pregnant dogs and cats shall be housed singly in a primary enclosure. Nursing dogs and cats shall be housed only with their litter in a primary enclosure until the litter has been weaned. The primary enclosure shall be of sufficient size to allow the dam and all animals in the litter to walk, turn about freely, nurse, and to easily stand with their tails erect, sit, or lie in a natural position with their limbs extended without touching other animals within the enclosure, the sides, or top covering of the enclosure and to leave the whelping/queening area for exercise.
(m) In addition to Paragraphs (d), (e) and (h) of this Rule, each feline older than six months housed in any primary enclosure or exercise area shall be provided a minimum of four square feet of floor space which may include elevated resting surfaces. Each feline younger than six months shall be provided 1.5 square feet.
(n) Not more than 12 cats shall be housed or confined in the same primary enclosure or exercise area.
(o) In all cat primary enclosures and exercise areas, a clean receptacle containing clean litter shall be provided for waste. A minimum of one receptacle per three cats is required for each primary enclosure and exercise area.
(p) Pools in primary enclosures and/or exercise areas:

(1) Whenever water in a pool is deeper than the height at the shoulder of the shortest dog in the pool area, an ingress-egress area shall be provided;
(2) No dog shall have access to the pool or pool area other than a typical kiddie wading pool without supervision;
(3) Facilities shall be constructed, maintained, and managed to protect animals from illness, injury, and death resulting from access to pools or pool areas;
(4) Pools with a capacity of less than 100 gallons shall have the water changed and be cleaned and sanitized daily. Pools with a capacity of 100 gallons or more shall have commercially manufactured filtration and cleaning systems installed and the manufacturer recommendations followed for cleaning, sanitation and water quality; and
(5) Typical kiddie wading pools are to be considered accessories for the purposes of cleaning, sanitation, repair and maintenance.

History Note: *Authority G.S. 19A-24;*
Eff. April 1, 1984;
Amended Eff. January 1, 2005; April 1, 1985;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0206 WATERING

(a) Animals shall have continuous access to fresh, potable water, except as might otherwise be required to provide adequate veterinary care.
(b) Veterinary care for a specific animal that requires water to be withheld, given in intervals, or any variation other than continuous access by an animal can only be prescribed by a veterinarian and shall be documented in writing by the facility. The documentation shall include:

(1) the original veterinary directive signed by the veterinarian issuing it;
(2) the printed name of the veterinarian;
(3) the reason for the restriction;
(4) the specific watering directions;
(5) the origination and review dates of the directive;
(6) the facility shall have the veterinarian review and renew this directive every 30 days until it is no longer required;
(7) the date of the cessation of the directive; and
(8) documentation by the facility of each watering as prescribed by the veterinarian.

(c) Water in receptacles shall be changed daily and whenever visibly soiled.
(d) Watering receptacles shall be durable and kept clean and sanitized.
(e) Damaged receptacles shall be replaced.

History Note: *Authority G.S. 19A-24;*
Eff. April 1, 1984;
Amended Eff. January 1, 2005;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0207 SANITATION

(a) Waste shall be removed from primary enclosures, exercise areas and common areas to prevent contamination of the dogs or cats contained therein and to reduce disease hazards and odors. Enclosures and exercise areas for dogs and cats shall be properly cleaned a minimum of two times per day. The animal must be able to walk or lie down without coming in contact with any waste or debris.
(b) When a hosing or flushing method is used for cleaning an enclosure, dogs or cats contained therein shall be removed during the cleaning process, and adequate measures shall be taken to

protect the animals in clean enclosures from being contaminated with water and other wastes.

(c) Cross contamination barriers shall be in place in primary enclosures and be sufficient to prevent feces, urine and cleaning waste water from entering another occupied primary enclosure.

(d) Sanitation shall be as follows:

(1) prior to the introduction of dogs or cats into empty primary enclosures previously occupied, enclosures and accessories shall be sanitized in the manner provided in Subparagraph (d)(3) of this Rule;

(2) in addition to primary enclosures being properly cleaned a minimum of two times per day, enclosures and accessories shall be sanitized a minimum of once every seven days in the manner provided in Subparagraph (d)(3) of this Rule if the same animal is housed in the same enclosure for seven or more days;

(3) primary enclosures, cages, rooms, hard-surfaced or artificial turf exercise areas, pens, and runs shall be sanitized by:

(A) washing them with hot water (180 degrees F.) and soap or detergent as in a mechanical cage washer; or

(B) removal of visible organic matter, precleaning all soiled surfaces with a detergent or degreaser solution, followed by the application, at the correct concentration, of an animal-safe disinfectant labeled to be effective against common pathogens. The disinfectant is to be left on the surfaces for the time indicated by the manufacturer. After such time, all surfaces shall be thoroughly rinsed to remove all residual chemicals and then the area dried prior to returning the animal(s) to this area; or

(C) cleaning all soiled surfaces with live steam. The area is to be cooled and dried prior to the return of the animal(s).

(4) common areas, any area accessible to multiple animals and exercise areas not covered by 02 NCAC 52J .0207(d)(3) shall be kept clean and sanitary. These areas are to be properly cleaned a minimum of two times per day. Hard and/or impervious surfaces of these areas shall be sanitized a minimum of once every seven days in the manner provided in Subparagraph (d)(3) of this Rule;

(5) food and water receptacles shall be sanitized daily with hot water, detergent, and disinfectant. The disinfectant shall be used consistent with the manufacturer's directions;

(6) soiled linens and cloth products shall be mechanically washed with detergent and sanitized;

(7) any area accessible to multiple animals shall be kept clean and sanitary; and

(8) fans, including floor fans, ceiling fans, wall fans, vent fans, etc. shall be kept clean of accumulated debris, dust and biological material.

(e) Premises (buildings and grounds) shall be kept clean and in good repair in order to protect the animals from injury and to facilitate the prescribed husbandry practices set forth in this Rule. Premises shall remain free of accumulations of trash, junk, waste products, and discarded matter. Weeds, grasses, and bushes must be controlled so as to facilitate cleaning of the premises and to improve pest control, and to protect the health and well-being of the animals.

(f) An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained.

History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. January 1, 2005; April 1, 1985;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0209 CLASSIFICATION AND SEPARATION

Animals housed in the same primary enclosure or confined to an exercise area shall be maintained in compatible groups, with the following additional restrictions:

(1) Females in season (estrus) shall not be housed in the same primary enclosure or exercise area with intact or neutered males, except for planned breeding purposes. Breeding shall not be allowed in animal shelters.

(2) In boarding kennels, animals of different owners shall not have contact with other animals, unless written permission is obtained from the animal's owner. The documentation of this written permission shall be kept as part of the animal's record for one year and must be renewed yearly thereafter.

(3) Any dog or cat exhibiting an aggressive disposition shall be housed individually in a primary enclosure. Housing of aggressive animals shall be such that the animals are prevented from biting or injuring another animal or human.

(4) Puppies or kittens less than six months of age shall not be housed in the same primary enclosure with adult dogs or cats other than their dams, except when permanently maintained in breeding colonies, or if requested in writing, by the animals' owner, as in a boarding kennel. Puppies or kittens between four and 16 weeks of age shall have daily access to human social interaction in addition to the human interaction during the cleaning and sanitation of the enclosures, excluding animals which pose a danger to humans or other animals.

(5) Dogs shall not be housed in the same primary enclosure or exercise areas with cats, nor shall dogs or cats be housed in the same primary enclosure or exercise areas with any other species of animals. Exceptions are allowed at boarding kennels, if requested in writing by the animals' owner.

(6) All facilities shall designate an isolation area for animals being treated or observed for communicable diseases. Dogs or cats in isolation that are being treated for a communicable disease shall be separated from other dogs or cats and other susceptible species of animals in such a manner as to minimize dissemination of such disease. A sign shall be posted at the cage or isolation area when in use, giving notice of a communicable disease, including the identification of the disease. Accessories, cleaning equipment and supplies used in isolation areas shall not be used in other areas of the facility.

(7) Animals in long term care must be provided with human interaction other than interaction for enclosure cleaning, same species social interaction, opportunity for play and exercise, and environmental enrichment daily. The provision of these daily interactions and enrichment shall be adequate for the animal's species, age, size and behavior needs. In addition:

(a) The provision of the daily social interactions and enrichment shall be documented in the animal's records and the records maintained for three years; and

(b) Exemptions from these long-term care provisions are allowed only for safety or health reasons and must be approved by a veterinarian. This exemption must be reviewed and renewed every 30 days if the continuation is necessary. Documentation of the exemption must include the reason for the exemption, the name and contact information of the veterinarian authorizing the exemption, the original exemption date and the dates of review and renewal and alternative(s) offered if any.

(8) All animals shall be confined in primary enclosures or exercise areas. Primary enclosures and exercise areas shall be inspected by the Animal Welfare Section and in compliance with the rules of this Subchapter before an animal can be confined in the enclosure or area.

History Note: *Authority G.S. 19A-24;*
Eff. April 1, 1984;
Amended Eff. January 1, 2005;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0210 VETERINARY CARE

(a) A written program of veterinary care ('PVC') to include disease control and prevention, vaccination, euthanasia (animal shelters only), disposition of diseased, ill, injured, infirm or deformed animals, and provision of adequate routine and emergency veterinary care shall be established with the assistance of a licensed veterinarian by any person who is required to be licensed or registered under the Animal Welfare Act, Article 3 of Chapter 19A of the General Statutes. The following is required of each PVC:

(1) The PVC for animal shelters and pet stores shall be established with the assistance of a veterinarian and the veterinarian's information and signature shall be included in the appropriate section of the license/registration application/renewal application;

(2) The PVC for boarding kennels shall be submitted as part of the license/registration application/renewal and must be approved by the Animal Welfare Section Inspector assigned to the facility;

(3) The facility shall implement and follow the PVC; and

(4) Changes to the PVC shall be submitted for approval to the Animal Welfare Section within 10 days of the effective date.

(b) If there is an infectious disease outbreak that persists for more than seven days at the facility, the facility operator shall consult with a veterinarian for procedures to mitigate the problem. This consultation shall be documented by the facility.

(c) If there is a disease problem that persists for more than 30 days at the facility, the facility operator shall obtain and follow a veterinarian's written recommendations for correcting the problem. These recommendations shall include, at a minimum: sanitation of primary enclosures, common areas, exercise areas and accessories, and protocols for animal intake, evaluation, isolation, disease recognition and treatment and euthanasia (in animal shelters).

(d) Each dog and cat shall be observed daily by the animal caretaker who has been adequately trained or is experienced in animal care or is under the direct supervision of a person who has such training or experience. Sick or diseased, injured, lame, or blind dogs or cats shall be provided with adequate veterinary care in a timely manner or be euthanized, provided that the euthanasia shall not affect compliance with any state or local law requiring the holding, for a specified period, of animals suspected of being diseased. If an animal cannot be euthanized due to a required holding period and does not meet the criteria of G.S. 19A-32.1(b)(2), then adequate veterinary care shall be provided to the animal.

(e) A certified facility shall maintain a list of authorized personnel pursuant to 02 NCAC 52J .0402 and shall maintain this list in the Policy and Procedure Manual pursuant to 02 NCAC 52J .0800.

(f) Diseased, injured, infirm or deformed animals shall be sold or adopted only under the policy set forth in the PVC.

(g) Full written disclosure of the medical condition of the animal and all veterinary medical treatments provided to the animal shall be provided to the person or organization receiving, adopting, purchasing or otherwise acquiring the animal. Proof of written disclosure signed by the person or organization receiving the animal shall be maintained as part of the animal's record.
(h) All animals in a licensed or registered facility shall be in compliance with the North Carolina rabies law, G.S. 130A, Article 6, Part 6. This subsection shall not apply to animals which have been in the facility less than 15 days.
(i) If surgical procedures are performed at the registered/licensed facility, the facility shall:

(1) only perform surgical procedures on animals owned by the facility. The facility shall not perform surgery on animals owned by the public unless the practice of veterinary medicine at that facility falls under the jurisdiction of the North Carolina Board of Veterinary Medicine;
(2) appoint a North Carolina ('NC') licensed veterinarian to be the supervising veterinarian to direct, oversee and be responsible for the performance of all surgical procedures and for the condition of the surgical facility;
(3) ensure all surgical procedures are performed by a NC licensed veterinarian and performed within the designated surgical area;
(4) ensure that the designated surgical area meets the minimum standards for surgery in 21 NCAC 66 .0207(b)(9), the drug procedures meet the minimum standards in 21 NCAC 66 .0207(b)(11) and the recordkeeping procedures meet the minimum standards in 21 NCAC 66 .0207(b)(12);
(5) ensure that the minimum standards for after-hours emergency service in 21 NCAC 66 .0207(b)(19) for the provision of after-hours emergency veterinary care for an animal receiving surgical procedure(s) are met; and
(6) ensure that surgical procedures are not performed until the inspection of the surgical facility and supporting procedures noted in this section has occurred and all deficiencies have been corrected.

(j) Boarding kennels shall not administer a prescription medication, tranquilizer, sedative, or any pharmaceutical drug designed to calm an animal unless the medication or drug is administered under the direction of or by prescription from the animal's veterinarian, and written permission from the animal's owner. In the event a boarding kennel agrees to administer such medications or substances, the medications shall be in the original container issued by the veterinarian or pharmacy and administered according to label directions. The administration of these medications or substances shall be documented as required by 02 NCAC 52J .0102.
(k) Nothing in these rules allows the practice of veterinary medicine in North Carolina beyond what is otherwise authorized by the NC Veterinary Medical Board pursuant to the NC Veterinary Practice Act.

History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. March 23, 2009; January 1, 2005;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0302 PRIMARY ENCLOSURES USED IN TRANSPORTING DOGS AND CATS

(a) Primary enclosures such as compartments or transport cages, cartons, or crates used by persons subject to the Animal Welfare Act to transport cats and dogs shall be constructed, ventilated and designed to protect the health and ensure the safety of the animals. Such enclosures shall be constructed or positioned in the vehicle in such a manner that:

(1) Each animal in the vehicle has adequate fresh air for normal breathing.
(2) The openings of such enclosures are always easily accessible for emergency removals.
(3) The animals are adequately protected from the elements.
(4) The temperature in any area of a vehicle holding an animal shall be maintained between 50 degrees F and 85 degrees F. A facility shall be deemed as being in compliance if its vehicles' animal holding areas are equipped with operable heating and air-conditioning or forced-air heating and cooling, or other temperature control that are adequately utilized. A functional thermometer shall be present in the animal holding area of the vehicle.

(b) Animals transported in the same primary enclosure shall be of the same species. Puppies or kittens less than four months of age shall not be transported in the same primary enclosure with adult dogs and cats other than their dams.
(c) Primary enclosures used to transport dogs and cats shall be large enough for each animal to turn about freely, and to easily stand, sit, or lie down in a natural position. Primary enclosures used to transport dogs and cats shall be secured to the vehicle to prevent sliding or tipping of the enclosure during transit.
(d) Special provisions during transport shall be provided to any animal that cannot maintain its normal body temperature during the transport. These special provisions shall be adequate for the animal to maintain its normal body temperature and shall be documented in the animal's record.
(e) Animals shall not be placed in primary enclosures over other animals in transit unless such enclosure is constructed to prevent animal excreta from entering lower enclosures.
(f) All primary enclosures used to transport dogs and cats shall be sanitized between use for shipments.

History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. March 23, 2009; January 1, 2005;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0303 FOOD AND WATER REQUIREMENTS

If dogs and cats are transported for a period of more than six hours:

(1) The transportation vehicle shall stop a minimum of once every six hours for a period of no less than one hour. Dogs shall be removed from their respective primary enclosures and provided exercise, if it is safe to do so. The reason for the exclusion of any animal from this requirement during a transport shall be documented. During this one-hour period dogs and cats shall be continuously provided a supply of potable water.

(2) No dog or cat shall be subject to vehicular transport which has not been adequately fed within 24 hours of any time during transportation. No puppy or kitten less than six months of age shall be subject to vehicular transport which has not been adequately fed within six hours of any time during transportation.

(3) The primary enclosure used for transportation of cats shall be equipped with a properly cleaned litter box and clean litter.

History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0304 CARE IN TRANSIT

(a) Drivers or traveling attendants shall inspect each animal in transit with adequate frequency to determine the animal's comfort, health, and safety, and to obtain or provide relief or emergency care if needed.

(b) If a transport lasts more than six hours, the transporter shall log the start and end times of the transport, the species, identification of the transported animal(s), any visible injury, illness or other medical condition, and care provided including stops, exercise, watering, feeding and veterinary care. This documentation shall be kept by the facility for a minimum of one year after the transport.

History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0401 ADOPTION BY REFERENCE

A person required to obtain a certificate of registration pursuant to G.S. 19A, Article 3 may use any method of euthanasia approved by the American Veterinary Medical Association ('AVMA'), and/or the Humane Society of the United States ('HSUS') which are hereby incorporated by reference, including subsequent amendments and editions. Copies of these documents may be obtained as follows:

(1) AVMA Guidelines on Euthanasia may be accessed at no cost on their website at www.avma.org.

(2) The HSUS Euthanasia Reference Manual can be accessed at no cost via the link: https://humanepro.org/sites/default/files/documents/euthanasia-reference-manual.pdf.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0402 AUTHORIZED PERSONS

Only a Certified Euthanasia Technician pursuant to 02 NCAC 52J .0403(1) or a veterinarian licensed to practice veterinary medicine in North Carolina, may euthanize an animal in a certified facility.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0403 DEFINITIONS

As used in this Subchapter:

(1) "Certified Euthanasia Technician" means a person who has:
  (a) been instructed in the proper methods of humane euthanasia, security and records keeping;
  (b) has passed the written examination and the practical examination pursuant to 02 NCAC 52J .0410;
  (c) has been issued a Euthanasia Technician Certificate pursuant to 02 NCAC 52J .0412; and
  (d) is employed by a certified facility.

(2) "Certified facility" means a registered animal shelter that employs at least one Certified Euthanasia Technician or North Carolina ('NC') licensed veterinarian to perform euthanasia on animals at that facility.

(3) "Approved Certified Euthanasia Technician trainer" means an individual who has received permission from the Animal Welfare Section to provide training to applicants or individuals seeking to be Certified Euthanasia Technicians and has met the criteria pursuant to 02 NCAC 52J .0408.

(4) "Chemical Agent" means any chemical approved by the American Veterinary Medical Association and/or the Humane Society of the United States which is used to induce death.

(5) "Applicant" means a person who has submitted an application to the Animal Welfare Section (AWS) seeking certification as a Certified Euthanasia Technician, pursuant to Rule .0412 of this Section.

(6) "Conviction of a criminal offense" means having been convicted or entered a plea of guilty or nolo contendere to any offense described in G.S. 19A-24(b)(7).

(7) Euthanasia by injection ('EBI') means the injection of an approved commercially-manufactured euthanasia medication via an intravenous, intraperitoneal or intracardiac (subject to additional conditions) injection into an animal to cause the death of that animal.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0404 CERTIFICATION REQUIREMENTS FOR EUTHANASIA TECHNICIANS

(a) Individuals who perform euthanasia shall be trained and qualified as a Certified Euthanasia Technician as set forth in this Section.

(b) Individuals seeking certification as a Euthanasia Technician shall submit a written application documenting their qualifications to the Animal Welfare Section, North Carolina Department of Agriculture and Consumer Services, 1030 Mail Service Center, Raleigh, NC 27699-1030, on the form provided by the Animal Welfare Section.

(c) The Animal Welfare Section shall receive and review all applications and examination results for Euthanasia Technician certification and determine whether or not to issue the individual applicant proof of certification in the form of a printed certificate, pursuant to 02 NCAC 52J .0412.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0405 CERTIFICATION STANDARDS

Applicants for certification as a Certified Euthanasia Technician shall be at least 18 years of age at the date they receive certification and shall demonstrate compliance with this Section. Applicants are not eligible for certification if they have been convicted of a felony offense, or a crime or infraction involving animal abuse or neglect.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0406 APPLICATION REQUIREMENTS

An applicant for certification shall:

(1) Submit a completed and signed application which can be obtained by calling the Animal Welfare Section ('AWS') office at (919) 707-3280.

(2) The contents of the applications shall include the following:
  (a) the name, phone number, email address and mailing address for the applicant;
  (b) the name, registration number, and address of the shelter employing the applicant;
  (c) a checkbox to be filled in if the applicant has been convicted of a criminal offense as defined in 02 NCAC 52J .0403(6); and
  (d) a notarized signature of the applicant.

(3) Provide a document from an approved Certified Euthanasia Technician trainer establishing that the applicant has completed an Animal Welfare Section approved course pursuant to 02 NCAC 52J .0407, passed the course written examination and passed a practical examination in the euthanasia by injection (EBI) techniques.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0407 TRAINING AND EXAMINATIONS

(a) Training and examinations for euthanasia certification shall consist of:

(1) Classroom lecture covering the entire list of subjects in Paragraph (b) of this Rule;

(2) A written test provided by the Animal Welfare Section, demonstrating knowledge of the subjects listed in Paragraph (b) of this Rule; and

(3) A pass/fail practical examination in Euthanasia by Injection ('EBI') techniques and the subjects in Paragraph (e) of this Rule.

(b) The Animal Welfare Section shall develop Certified Euthanasia Technician training programs and materials or accredit training programs and materials to be offered by other individuals, schools, agencies or veterinary practices. The programs and materials shall conform to the processes set forth by the American Veterinary Medical Association and/or the Humane Society of the United States and shall include the following topics:

(1) The theory and history of euthanasia methods and practice;

(2) Relevant animal anatomy;

(3) Proper animal restraint, handling and methods for controlling animal stress;

(4) Proper chemical agent dosages, record keeping and usage documentation, chemical agent, instrument and equipment storage, handling and disposal in accordance with rules and the Code of Federal Regulations;

(5) Proper injection techniques;

(6) Proper dosing for the specific route of administration for the Euthanasia by Injection;

(7) Proper and accurate verification of lack of pain perception;

(8) Proper and accurate verification of animal death;

(9) Proper record keeping including documentation of justification for intracardiac and for early euthanasia;

(10) Proper disposal of euthanized animals;

(11) Stress management for euthanasia personnel;

(12) Proper methods and techniques of euthanasia under extraordinary circumstances;

(13) Proper methods, techniques and chemicals inducing anesthesia and sedation in animals prior to euthanasia; and

(14) Proper methods, techniques and chemicals used in the practical examination section for Certified Euthanasia Technician.

(c) The Animal Welfare Section shall prepare written examinations to be given to applicants. Following the classroom training detailed in Paragraph (b) of this Rule, the applicant shall take a written examination provided by the Animal Welfare Section. Notes or other assistance are not allowed during the taking of the written examination. The applicant must achieve a score of at least 80 percent correct to pass the written examination. Those passing the written examination for that classroom training session are eligible to take the practical examination on the EBI techniques. Those failing this written examination shall attend another classroom training session and shall pass a different version of the written examination provided by the Animal Welfare Section before they are eligible to take the practical examination.

(d) The applicant must pass a practical examination on the EBI techniques.

(e) Applicants for certification in Euthanasia by Injection shall demonstrate the following knowledge and competencies to pass the practical examination:

(1) Correctly calculate chemical agent dosage based upon the species, age, weight and condition of the animal and the route of administration;

(2) Correctly complete all required documentation and demonstrate proper technique for scanning an animal for a microchip;

(3) Correctly draw the properly calculated chemical dosage into a syringe and needle of a type and size appropriate for the animal and for the route of administration;

(4) Correctly administer the chemical agent to the animal;

(5) Properly perform intravenous injections on dogs and intravenous or intraperitoneal injections on cats;

(6) Knowledge of the current euthanasia guidelines, medical procedures including lack of pain perception verification and drugs necessary for an animal to be euthanized by cardiac injection;

(7) Demonstrate ability to verify death by a combination of the following:

(A) lack of respiration;

(B) lack of ocular reflexes;

(C) lack of a heartbeat verified by the use of a stethoscope;

(D) greying of mucous membranes;

(E) lack of response to firm toe pinch; and

(F) rigor mortis.

(8) Knowledge about the human health risks associated with the use of chemical agents used for euthanasia including signs and symptoms associated with accidental exposure of the Certified Euthanasia Technician; and

(9) Proper first aid for a person accidentally exposed to chemical agents used for euthanasia.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0409 PROBATIONARY EUTHANASIA TECHNICIANS

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009;
Repealed Eff. September 1, 2022.

02 NCAC 52J .0410 EXAM REQUIRED

An individual who has not passed the written exam and the practical examination may not serve as a Certified Euthanasia Technician.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0411 NEW APPLICATION

The Animal Welfare Section shall deny the application of any applicant who fails the written examination twice or the practical examination twice. If the individual wishes to apply for certification again, the individual shall submit a new application to the Animal Welfare Section, attend a training program, pass the written examination and the practical examination before a certification can be issued.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0412 ISSUANCE OF CERTIFICATION

Upon the receipt of materials specified in this Section the Animal Welfare Section shall issue a Euthanasia Technician Certificate.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0413 LENGTH OF CERTIFICATION

A Euthanasia Technician Certificate issued by the Animal Welfare Section is valid for five years from the date of issuance unless it is revoked pursuant to this Section or upon termination of employment as described in this Section.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0414 TERMINATION OF EMPLOYMENT

Upon termination of employment by voluntary or involuntary separation from the certified facility or closure of the certified facility, a Certified Euthanasia Technician shall not perform animal euthanasia in a certified facility until reinstated by the Animal Welfare pursuant to 02 NCAC 52J .0416. The Certified Euthanasia Technician's certification shall be canceled effectively

upon termination of employment. No later than 10 days from the date of the termination of a Certified Euthanasia Technician's employment from a certified facility the Certified Euthanasia Technician shall notify the Animal Welfare Section of the termination of employment.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0415 NOTICE OF TERMINATION
A certified facility shall notify the Animal Welfare Section of the termination of any Certified Euthanasia Technician within 10 days of the termination. Said notice shall be in writing and mailed to Animal Welfare Section; 1030 Mail Service Center; Raleigh, NC 27699 or emailed to agr.aws@ncagr.gov.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0416 REINSTATEMENT
If a former Certified Euthanasia Technician is employed at a certified facility before the expiration of his or her certification, the employer may request reinstatement of the certification from the Animal Welfare Section ('AWS'). The AWS shall reinstate the Certified Euthanasia Technician if a review of the request shows that the initial certification has not expired and there are no active AWS investigations or suspension or revocation actions pending or active against the certification. The reinstated Certification shall be good for five years from the date of its initial issue. The Certified Euthanasia Technician shall not euthanize animals until the certification has been reinstated by the Animal Welfare Section.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0417 CERTIFICATION RENEWAL
(a) Certifications may be renewed every five years provided that:
- (1) within the 12 months immediately preceding the application for certification renewal the Certified Euthanasia Technician has taken and passed a practical examination in current Euthanasia by Injection ('EBI') techniques pursuant to 02 NCAC 52J .0407;
- (2) the applicant attends a euthanasia re-certification course which reviews the current standards and guidelines on EBI; and
- (3) the applicant attends a training about stress management.

(b) The applicant shall submit an application for certification renewal to the Animal Welfare Section. The application can be obtained by calling the Animal Welfare Section ('AWS') office at (919) 707-3280 and shall include a document from an approved Certified Euthanasia Technician trainer establishing that the applicant has passed a practical examination in the techniques of EBI.

(c) The contents of the application shall include the following:
- (1) the name, phone number, email address, and mailing address for the applicant;
- (2) the name, registration number, and address of the shelter employing the applicant;
- (3) a checkbox to be filled in if the applicant has been convicted of a criminal offense as defined in the 02 NCAC 52J .0403(6); and
- (4) a notarized signature of the applicant.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0501 INTRACARDIAC INJECTION
Intracardiac injection for euthanasia shall only be administered under the following conditions:
- (1) due to injury or other medical condition, the animal is unconscious, or the animal has been rendered unconscious by administration of a general anesthetic;
- (2) due to medical condition of the animal and/or size of the animal, intravenous or intraperitoneal administration is not practical or humane;
- (3) the absence of a pain response has been verified prior to the administration of the intracardiac injection and this verification is documented in the animal's record; and
- (4) the justification for an intracardiac injection rather than an intravenous or intraperitoneal route of administration has been documented in the animal's record.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0701 EUTHANASIA UNDER EXTRAORDINARY CIRCUMSTANCES
For purposes of this Section, an extraordinary circumstance is one in which an animal is offsite from a shelter and is an immediate risk to animals, humans, or public health, or in which it would be inhumane to transport the animal, and no less extreme measure of euthanasia is feasible. It also includes circumstances or situations in which it would be inhumane to transport an animal to another location to perform euthanasia.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0703 METHODS AND STANDARDS
The methods of euthanasia used by a certified facility under an extraordinary circumstance must be a method approved by the American Veterinary Medical Association and/or the Humane Society of the United States for use on that species of animal and must conform to standards set forth by that organization.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0705 REPORTS

A certified facility or registrant shall prepare a report of any euthanasia performed under extraordinary circumstances or situations, and keep the report on file for at least two years. The report shall include the date, time, identification of the animal, the name of the person performing the euthanasia, the method of euthanasia and the reason for euthanasia of the animal as authorized by this Section.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0801 MANUAL REQUIRED

Any certified facility performing euthanasia shall have a current policy and procedure manual about euthanasia.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0802 CONTENTS

The policy and procedure manual shall set forth the shelter's equipment, process, procedures and documentation requirements for the euthanasia of animals pursuant to G.S. 19A 32.1(b)(2) and (g)(ii) and 02 NCAC 52J .0101(4); .0418(1) and (2); and .0501.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0803 ADDITIONAL CONTENTS

A certified facility's policy and procedure manual shall be kept consistent with the publications listed below and reflect the current information for each. The manual shall include:

(1) A copy of the current North Carolina Animal Welfare Act and the rules in this Subchapter;
(2) A copy of the most recent American Veterinary Medical Association ('AVMA') Guidelines for the Euthanasia of Animals and any future revisions, replacements, supplements or changes thereto issued by that organization;
(3) A copy of the most recent Euthanasia Reference Manual of the Humane Society of the United States;
(4) A copy of the facility's policies and/or procedures for euthanasia by injection;
(5) A list of Certified Euthanasia Technicians and the date of certification;
(6) The name, address and contact information for the veterinarian responsible for the written program of veterinary care as described in 02 NCAC 52J .0210(a);
(7) The name, address and contact information for veterinarians responsible for the veterinary medical care of the animals. The contact information shall include telephone numbers for working hours, weekends, nights and holidays;
(8) Euthanasia procedure to use in emergencies, after hours, holidays and weekends;
(9) Procedures to follow if no Certified Euthanasia Technician is present and euthanasia of an animal is necessary;
(10) Procedures to follow including the names(s) of shelter manager designee(s) when the shelter manager is not available to make the decisions necessary and complete the required paperwork when an animal is to be euthanized prior to the end of the 72-hour holding period;
(11) Methods of verifying death of an animal after a euthanasia process is performed;
(12) The name and contact information of the suppliers of:
  (a) Injectable euthanasia solution;
  (b) Tranquilizer, sedation, and anesthetic medications;
(13) Original of U.S. Drug Enforcement Administration certification permitting the use of controlled substances;
(14) Original of the North Carolina Health and Human Services certificate permitting the storage and use of controlled substances;
(15) Material safety data sheets for all chemical, anesthetic, tranquilizing, sedation and euthanasia medications used in that facility;
(16) Information detailing the signs and symptoms associated with human exposure to the agents used for euthanasia at the facility;
(17) Information detailing First Aid for people accidentally exposed to the agents used for euthanasia at the facility; and
(18) Contact information of the physician or medical facility providing medical treatment to employees of the facility. The information shall include the name of the medical facility, the telephone number for both working and after-hours contact and directions to the medical facility from the certified facility including a map. If the medical facility does not provide service after-hours, on weekends or on holidays, there must be contact information as described in this item for the nearest medical facility, urgent care clinic or emergency room that does provide care during that time.

History Note: Authority G.S. 19A-24;
Eff. March 23, 2009;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0901 ELIGIBLE EXPENSES

Eligible expenses include:

(1) Veterinary costs – Reimbursement may be requested for veterinary expenditures incurred

for the assessment, diagnostic and triage evaluation, medical treatment, minor surgical treatment, medications, first aid and minor medical supplies, vaccinations, parasite control/treatment, or euthanasia of animals housed at the shelter at the time of the event or impounded during the interim or transition period.

(2) Sanitation costs – Reimbursement may be requested for expenditures related to sanitation of the affected shelter, including detergent/disinfectant supplies, cleaning supplies, labor costs for the sanitation of the shelter, and waste and carcass disposal costs.

(3) Animal sustenance and supplies – Reimbursement may be requested for expenditures for animal food, provision of water to the shelter, and food and water bowls or buckets, as well as labor costs for the feeding and watering of the shelter animals.

(4) Temporary housing and sheltering of animals – Reimbursement may be requested for expenditures for animal cages and kennels, animal transport carriers, fencing panels for runs, tarps, fencing, dog or cat houses and other construction supplies, as well as labor costs or equipment or facility leasing expenses incurred during the construction or repair of temporary animal housing.

History Note: Authority G.S. 19A-67; 19A-68;
Temporary Adoption Eff. November 29, 2016;
Temporary Adoption Expired Eff. September 11, 2017;
Eff. November 1, 2017;
Readopted Eff. September 1, 2022.

02 NCAC 52J .0902 APPLICATION GUIDELINES

(a) A local government applying for reimbursement from the Fund shall submit the request for reimbursement to the Animal Welfare Section (AWS) of the North Carolina Department of Agriculture and Consumer Services.

(b) The request shall:

(1) be received by AWS by mail, email, or fax within 60 days of the date the eligible expense was incurred;

(2) include a completed "Animal Shelter Support Fund Reimbursement Application" with the county name, tier of county, facility name, facility license number, and contact information. This application can be found on the AWS website (http://www.ncagr.gov/vet/AWS/);

(3) include an itemized listing of eligible expenses for which reimbursement is sought;

(4) include proof that matching funds have been provided; and

(5) include proof of payment of the eligible expense. If the payment of expense occurs after the application was submitted, proof of payment shall be submitted to AWS within 30 days of payment of the expense.

History Note: Authority G.S. 19A-67; 19A-68;
Temporary Adoption Eff. November 29, 2016;
Temporary Adoption Expired Eff. September 11, 2017;
Eff. November 1, 2017;
Readopted Eff. September 1, 2022.

TITLE 04 - DEPARTMENT OF COMMERCE

04 NCAC 06C .0205 LOANS TO CREDIT UNION OFFICIALS

(a) Officials. For purposes of this Rule, an "official" is a member of the board of directors, credit committee, or supervisory committee.

(b) Loans to Officials. A loan or line of credit, including limits of credit cards, extended to an official as the borrower, direct obligor, endorser, cosigner, or guarantor, with direct or indirect pecuniary interest in the loan shall be reviewed by the board of directors, at the next regular meeting following the date of such extension of credit, provided the following computation produces a total amount in excess of fifty thousand dollars ($50,000):

(1) Add:

(A) the loan amount extended for the loan subject to review;

(B) the outstanding balances of loans, including the used portion of an approved line of credit, extended to or endorsed, cosigned or guaranteed by the official; and

(C) the total unused portion of approved lines of credit extended to or endorsed, cosigned, or guaranteed by the official.

(2) Subtract from the above total:

(A) the amount of shares pledged by the official on loans or lines of credit extended to, or endorsed, cosigned, or guaranteed by the official; and

(B) the amount of shares pledged by the official on the current loan or line of credit.

(c) Review of Loans to Officials by Duly Appointed Committee. The board of directors may also appoint a committee to review and report on loans made to officials. All members of the committee shall be on the board of directors. The committee shall meet before the regular monthly board meeting to review all officials' loans that have been approved since the previous meeting. The committee shall make a report to the board that shall consist of the official's loan number, his or her title or position, the amount of the loan, purpose of the loan, aggregate amount of indebtedness to the credit union, and a statement regarding compliance with loan policies. Each credit union's board of directors shall review this loan approval report on a monthly basis. This review shall be done at the regular monthly board meeting. In the event the board does not meet monthly, the manager of the

credit union or their designee shall send a written report to each director on a monthly basis.

(d) Non-preferential treatment. The rates, terms, and conditions on a loan or line of credit made to or endorsed, co-signed, or guaranteed by:

(1) an official;

(2) an immediate family member of an official. For the purpose of this Rule, "immediate family member" means immediate blood relatives and members attained by marriage, spouses, biological children, adopted children, step-children, and domestic partners. For the purpose of this Rule, "domestic partners" means non-marital relationship between two adults that live together; or

(3) any individual having a common ownership, investments, or other pecuniary interest in a business enterprise with an official or with an immediate family member of an official;

shall not be more favorable than the rates, terms and conditions for comparable loans or lines of credit extended to other credit union members.

(e) Indirect Benefits.

(1) No official or employee shall have any interest in nor derive any benefit from the extension of credit, or the sale of credit union real or personal property, unless and until the terms of the loan or sale have been disclosed to and approved by the Board of Directors by a two-thirds vote.

(2) The purchase by a director or employee from the credit union of any savings account or evidence of indebtedness for less than face value is prohibited.

(g) Penalty. A violation of the provisions of this Rule shall be sufficient basis for removal of any official or employee by the Administrator, as set forth in G.S. 54-109.19.

History Note: Authority G.S. 54-109.12; 54-109.19; 54-109.35; 54-109.39;
Eff. February 1, 1976;
Readopted Eff. April 4, 1978;
Amended Eff. March 1, 2015; August 1, 1998; October 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.
Amended Eff. September 1, 2022.

TITLE 12 - DEPARTMENT OF JUSTICE

12 NCAC 09B .0101 MINIMUM STANDARDS FOR LAW ENFORCEMENT OFFICERS

Every law enforcement officer who is employed in or has received a conditional offer of employment for a certified position by an agency in North Carolina shall:

(1) be a citizen of the United States;

(2) be at least 20 years of age;

(3) be a high school graduate, or the equivalent as defined in 12 NCAC 09B .0106;

(4) have been fingerprinted by the employing agency in the manner provided in 12 NCAC 09B .0103;

(5) have had a medical examination as required by 12 NCAC 09B .0104;

(6) have produced a negative result on a drug screen as described in 12 NCAC 09C .0310;

(7) have been administered a psychological screening examination in accordance with G.S. 17C-10(c). The psychological screening shall be valid for a period of one year from the date on which it was administered.

(8) have been interviewed as described in 12 NCAC 09B .0105;

(9) have a background investigation conducted by the employing agency, including a personal interview as required by 12 NCAC 09B .0102;

(10) not have committed or been convicted of a crime or crimes as specified in 12 NCAC 09B .0111;

(11) for personnel who are authorized to carry a firearm in the execution of their duties, satisfactorily complete the employing agency's in-service firearms training program as prescribed in 12 NCAC 09E .0105 and .0106. Such firearms training compliance must have occurred prior to submission of the application for appointment to the Commission and must be completed using the agency approved service handgun(s) and any other weapon(s) that the applicant has been issued or authorized to use by the agency; and

(12) be of good moral character as defined in: : In re Willis, 288 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); In re Legg, 325 N.C. 658, 386 S.E. 2d 174 (1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); In re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and later court decisions.

(13) Make the following notifications:

(a) within five business days of the qualifying event notify the Standards Division and the appointing agency head in writing of all criminal offenses for which the officer is charged, arrested, pleads no contest, pleads guilty, or of which the officer is found guilty. This shall include traffic offenses identified in the Class B Misdemeanor Manual and offenses of driving under the influence (DUI) or driving while impaired (DWI);

(b) within five business days of service, officers shall notify the Standards Division and the appointing agency head of all Domestic Violence

Protective Order (G.S. 50B) and Civil No Contact Orders (G.S. 50C) that are issued by a judicial official against the officer;

(c) within five business days of the date the case was disposed of in court, the agency head, provided he or she has knowledge of the officer's arrests or criminal charges and final dispositions, shall also notify the Standards Division of arrests or criminal charges and final disposition;

(d) within five business days of the issuance of all Domestic Violence Protective Orders (G.S. 50B) and Civil No Contact Orders (G.S. 50C), the agency head, provided he or she has knowledge of the order, shall also notify the Standards Division of these orders.

(e) The required notifications in this Rule shall be in writing and shall specify the nature of the offense or order, the court in which the case was handled, the date of the arrest, criminal charge, or service of the order, and the final disposition. The notification shall include a certified copy of the order or court documentation and final disposition from the Clerk of Court in the county of adjudication. The requirements of this Item shall be applicable at all times during which the officer is employed and certified by the Commission and shall also apply to all applicants for certification. Receipt by the Standards Division of a single notification, from the officer or the agency head, shall be sufficient notice for compliance with this Item.

(14) The requirements of this Rule shall apply to all applicants for certification and shall also apply at all times during which the law enforcement officer is certified by the Commission.

History Note: Authority G.S. 17C-6; 17C-10;
Eff. January 1, 1981;
Amended Eff. April 1, 2018; October 1, 2017; September 1, 2001; April 1, 1999; January 1, 1995; November 1, 1993; July 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019;
Amended Eff. October 1, 2020;
Temporary Amendment Eff. February 15, 2022;
Amended Eff. October 1, 2022.

12 NCAC 09B .0103 FINGERPRINT CRIMINAL HISTORY RECORD CHECK

(a) Each applicant for certification shall submit electronic fingerprints in the Statewide Automated Fingerprint Identification System (SAFIS).

(b) The employing agency shall forward the applicant's fingerprints to the North Carolina State Bureau of Investigation for a criminal history record check utilizing fingerprints against State and federal files.

(c) The employing agency will receive a report of the results of the criminal history record check utilizing fingerprints against State and federal files. The employing agency shall retain the results of the criminal history record check utilizing fingerprints in compliance with the North Carolina Department of Natural and Cultural Resources Retention and Disposition Schedule established pursuant to G.S. 121-4 and G.S. 132-8.1. The employing agency shall include the results of the fingerprint criminal history record check with the applications submitted to the Commission.

(d) Pursuant to 12 NCAC 09C .0303(a), an applicant for certification as a law enforcement officer may not perform any action requiring certification by the Commission prior to the date on which the employing agency receives the report of the results of the criminal history record check utilizing fingerprints.

History Note: Authority G.S. 17C-6; 17C-10;
Eff. January 1, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019;
Amended Eff. October 1, 2022.

12 NCAC 09G .0205 PHYSICAL AND MENTAL STANDARDS

(a) Every person employed as a correctional officer or probation/parole officer by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice shall have been examined and certified within one year prior to employment with the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice by a physician, physician's assistant, or nurse practitioner, licensed in North Carolina, to meet the physical requirements to fulfill the officer's particular responsibilities as stated in the essential job functions.

(b) Every person employed as a correctional officer or probation/parole officer by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice shall have been administered a psychological screening examination in accordance with G.S. 17C-10(c). The psychological screening shall be valid for a period of one year from the date on which it was administered.

History Note: Authority G.S. 17C-6; 17C-10;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002;
Amended Eff. January 1, 2015; April 1, 2009; August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019;
Temporary Amendment Eff. February 15, 2022;
Amended Eff. October 1, 2022.

TITLE 15A - DEPARTMENT OF ENVIRONMENTAL QUALITY

15A NCAC 02B .0211 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS C WATERS

In addition to the standards set forth in Rule .0208 of this Section, the following water quality standards shall apply to all Class C waters. Additional standards applicable to other freshwater classifications are specified in Rules .0212, .0214, .0215, .0216, .0218, .0219, .0223, .0224, .0225, and .0231 of this Section.

(1) The best usage of waters shall be aquatic life propagation, survival, and maintenance of biological integrity (including fishing and fish); wildlife; secondary contact recreation; agriculture; and any other usage except for primary contact recreation or as a source of water supply for drinking, culinary, and food processing purposes. All freshwaters shall be classified to protect these uses at a minimum.

(2) The conditions of waters shall be such that waters are suitable for all best uses specified in this Rule. Sources of water pollution that preclude any of these uses on either a short-term or long-term basis shall be deemed to violate a water quality standard;

(3) Chlorine, total residual: 17 ug/l;

(4) Chlorophyll a (corrected): except as specified in Sub-Item (a) of this Item, not greater than 40 ug/l for lakes, reservoirs, and other waters subject to growths of macroscopic or microscopic vegetation not designated as trout waters, and not greater than 15 ug/l for lakes, reservoirs, and other waters subject to growths of macroscopic or microscopic vegetation designated as trout waters (not applicable to lakes or reservoirs less than 10 acres in surface area). The Commission or its designee may prohibit or limit any discharge of waste into surface waters if the surface waters experience or the discharge would result in growths of microscopic or macroscopic vegetation such that the standards established pursuant to this Rule would be violated or the intended best usage of the waters would be impaired;

(a) Site-specific High Rock Lake Reservoir [Index Numbers 12-(108.5), 12-(114), 12-117-(1), 12-117-(3), 12-118.5, and the uppermost portion of 12-(124.5) to the dam of High Rock Lake] Chlorophyll a (corrected): not greater than one exceedance of a growing season geometric mean of 35 ug/L in the photic zone within a three-year period.

(b) For the purpose of Sub-Item (a) of this Item:

(i) The growing season is April 1 through October 31;

(ii) Samples shall be collected in a minimum of five different months within each growing season with a minimum of two growing season geometric means collected in a three-year period;

(iii) The photic zone shall be defined as the surface down to twice the Secchi depth;

(iv) Samples shall be collected as a composite sample of the photic zone; and

(v) Samples that do not satisfy the requirements in Sub-Item (iv) of this Sub-Item shall be excluded from the calculation of the geometric mean.

(5) Cyanide, available or total: 5.0 ug/l;

(6) Dissolved oxygen: not less than 6.0 mg/l for trout waters; for non-trout waters, not less than a daily average of 5.0 mg/l with an instantaneous value of not less than 4.0 mg/l; swamp waters, lake coves, or backwaters, and lake bottom waters may have lower values if caused by natural conditions;

(7) Fecal coliform: shall not exceed a geometric mean of 200/100ml (MF count) based upon at least five samples taken over a 30-day period, nor exceed 400/100ml in more than 20 percent of the samples examined during such period. Violations of this Item are expected during rainfall events and may be caused by uncontrollable nonpoint source pollution. All coliform concentrations shall be analyzed using the membrane filter technique. If high turbidity or other conditions would cause the membrane filter technique to produce inaccurate data, the most probable number (MPN) 5-tube multiple dilution method shall be used.

(8) Floating solids, settleable solids, or sludge deposits: only such amounts attributable to sewage, industrial wastes, or other wastes as shall not make the water unsafe or unsuitable for aquatic life and wildlife or impair the waters for any designated uses;

(9) Fluoride: 1.8 mg/l;

(10) Gases, total dissolved: not greater than 110 percent of saturation;

(11) Metals:

(a) With the exception of mercury, acute and chronic freshwater aquatic life standards for metals shall be based upon measurement of the dissolved fraction of the metal. Mercury water quality standards shall be based upon measurement of the total recoverable metal;

(b) With the exception of mercury, aquatic life standards for metals listed in this Sub-Item shall apply as a function of the pollutant's water effect ratio (WER). The WER shall be assigned a value equal to one unless any person demonstrates to the Division's satisfaction in a permit proceeding that another value is developed in accordance with the "Water Quality Standards Handbook: Second Edition" published by the US Environmental Protection Agency (EPA-823-B-12-002), which is hereby incorporated by reference, including subsequent amendments and editions, and can be obtained free of charge at http://water.epa.gov/scitech/swguidance/standards/handbook/. Alternative site-specific standards may also be developed when any person submits values that demonstrate to the Commission that they were derived in accordance with the "Water Quality Standards Handbook: Second Edition, Recalculation Procedure or the Resident Species Procedure", which is hereby incorporated by reference including subsequent amendments and can be obtained free of charge at http://water.epa.gov/scitech/swguidance/standards/handbook/.

(c) Freshwater metals standards that are not hardness-dependent shall be as follows:

(i) Arsenic, dissolved, acute: WER· 340 ug/l;
(ii) Arsenic, dissolved, chronic: WER· 150 ug/l;
(iii) Beryllium, dissolved, acute: WER· 65 ug/l;
(iv) Beryllium, dissolved, chronic: WER· 6.5 ug/l;
(v) Chromium VI, dissolved, acute: WER· 16 ug/l;
(vi) Chromium VI, dissolved, chronic: WER· 11 ug/l;
(vii) Mercury, total recoverable, chronic: 0.012 ug/l;
(viii) Silver, dissolved, chronic: WER· 0.06 ug/l;

(d) Selenium, chronic: The standard for chronic selenium has the following components: fish egg/ovary tissue, fish whole body or muscle tissue, and water column (lentic and lotic). These components shall be used in the following order of preference provided data is available:

(i) Fish egg/ovary tissue;
(ii) Fish whole body or muscle tissue;
(iii) Water column.

Fish tissue concentrations are determined as dry weight and water column concentrations are based on the dissolved fraction of selenium. Fish tissue components are expressed as steady-state concentrations and provide instantaneous point measurements that reflect integrative accumulation of selenium over time and space in fish populations at a given site. Fish tissue components supersede the water column component when both fish tissue and water concentrations are measured. Egg-ovary tissue results, where available, supersede all other tissue and water column components. The chronic selenium standards are as follows:

Component		Magnitude	Duration
Fish tissue	Fish egg/ovary tissue	15.1 mg/kg	Instantaneous
	Fish whole body or muscle tissue	8.5 mg/kg whole body	Instantaneous
		11.3 mg/kg muscle	Instantaneous
Water column	Lentic or Lotic	1.5 ug/l lentic	30-day average
		3.1 ug/l lotic	30-day average

(e) Hardness-dependent freshwater metals standards shall be derived using the equations specified in Table A: Dissolved Freshwater Standards for Hardness-Dependent Metals. If the actual instream hardness (expressed as $CaCO_3$ or Ca+Mg) is less than 400 mg/l, standards shall be calculated based upon the actual instream hardness. If the instream hardness is greater than 400 mg/l, the maximum applicable hardness shall be 400 mg/l.

Table A: Dissolved Freshwater Standards for Hardness-Dependent Metals
Numeric standards calculated at 25 mg/l hardness are listed below for illustrative purposes.
The Water Effects Ratio (WER) is equal to one unless determined otherwise under Sub-Item (11)(b) of this Rule.

Metal	Equations for Hardness-Dependent Freshwater Metals (ug/l)	Standard at 25 mg/l hardness (ug/l)
Cadmium, Acute	WER·[{1.136672-[ln hardness](0.041838)} · e^{0.9789 [ln hardness]-3.443}]	0.75
Cadmium, Acute, Trout waters	WER·[{1.136672-[ln hardness](0.041838)} · e^{0.9789 [ln hardness]-3.866}]	0.49
Cadmium, Chronic	WER·[{1.101672-[ln hardness](0.041838)} · e^{0.7977[ln hardness]-3.909}]	0.25
Chromium III, Acute	WER· [0.316 · e^{0.8190[ln hardness]+3.7256}]	180
Chromium III, Chronic	WER· [0.860 · e^{0.8190[ln hardness]+0.6848}]	24
Copper, Acute	WER· [0.960 · e^{0.9422[ln hardness]-1.700}] Or, Aquatic Life Ambient Freshwater Quality Criteria-Copper 2007 Revision (EPA-822-R-07-001)	3.6 NA
Copper, Chronic	WER· [0.960 · e^{0.8545[ln hardness]-1.702}] Or, Aquatic Life Ambient Freshwater Quality Criteria-Copper 2007 Revision (EPA-822-R-07-001)	2.7 NA
Lead, Acute	WER· [{1.46203-[ln hardness](0.145712)} · e^{1.273[ln hardness]-1.460}]	14
Lead, Chronic	WER· [{1.46203-[ln hardness](0.145712)} · e^{1.273[ln hardness]-4.705}]	0.54
Nickel, Acute	WER· [0.998 · e^{0.8460[ln hardness]+2.255}]	140
Nickel, Chronic	WER· [0.997 · e^{0.8460[ln hardness]+0.0584}]	16
Silver, Acute	WER· [0.85 · e^{1.72[ln hardness]-6.59}]	0.30
Zinc, Acute	WER· [0.978 · e^{0.8473[ln hardness]+0.884}]	36
Zinc, Chronic	WER· [0.986 · e^{0.8473[ln hardness]+0.884}]	36

(f) Compliance with acute instream metals standards shall only be evaluated using an average of two or more samples collected within one hour. Compliance with chronic instream metals standards, except for selenium shall only be evaluated using an average of a minimum of four samples taken on consecutive days or as a 96-hour average;

(12) Oils, deleterious substances, or colored or other wastes: only such amounts as shall not render the waters injurious to public health, secondary recreation, or to aquatic life and wildlife, or adversely affect the palatability of fish, aesthetic quality, or impair the waters for any designated uses. For the purpose of implementing this Rule, oils, deleterious substances, or colored or other wastes shall include substances that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, as described in 40 CFR 110.3(a)-(b), incorporated by reference including subsequent amendments and editions. This material is available, free of charge, at: http://www.ecfr.gov/;

(13) Pesticides:

(a) Aldrin: 0.002 ug/l;
(b) Chlordane: 0.004 ug/l;
(c) DDT: 0.001 ug/l;
(d) Demeton: 0.1 ug/l;
(e) Dieldrin: 0.002 ug/l;
(f) Endosulfan: 0.05 ug/l;
(g) Endrin: 0.002 ug/l;
(h) Guthion: 0.01 ug/l;
(i) Heptachlor: 0.004 ug/l;

(j) Lindane: 0.01 ug/l;
(k) Methoxychlor: 0.03 ug/l;
(l) Mirex: 0.001 ug/l;
(m) Parathion: 0.013 ug/l; and
(n) Toxaphene: 0.0002 ug/l;

(14) pH: shall be between 6.0 and 9.0 except that swamp waters may have a pH as low as 4.3 if it is the result of natural conditions;

(15) Phenolic compounds: only such levels as shall not result in fish-flesh tainting or impairment of other best usage;

(16) Polychlorinated biphenyls (total of all PCBs and congeners identified): 0.001 ug/l;

(17) Radioactive substances, based on at least one sample collected per quarter:
(a) Combined radium-226 and radium-228: the average annual activity level for combined radium-226 and radium-228 shall not exceed five picoCuries per liter;
(b) Alpha Emitters: the average annual gross alpha particle activity (including radium-226, but excluding radon and uranium) shall not exceed 15 picoCuries per liter;
(c) Beta Emitters: the average annual activity level for strontium-90 shall not exceed eight picoCuries per liter, nor shall the average annual gross beta particle activity (excluding potassium-40 and other naturally occurring radionuclides) exceed 50 picoCuries per liter, nor shall the average annual activity level for tritium exceed 20,000 picoCuries per liter;

(18) Temperature: not to exceed 2.8 degrees C (5.04 degrees F) above the natural water temperature, and in no case to exceed 29 degrees C (84.2 degrees F) for mountain and upper piedmont waters and 32 degrees C (89.6 degrees F) for lower piedmont and coastal plain waters; the temperature for trout waters shall not be increased by more than 0.5 degrees C (0.9 degrees F) due to the discharge of heated liquids, but in no case to exceed 20 degrees C (68 degrees F);

(19) Toluene: 0.36 ug/l in trout classified waters or 11 ug/l in all other waters;

(20) Trialkyltin compounds: 0.07 ug/l expressed as tributyltin;

(21) Turbidity: the turbidity in the receiving water shall not exceed 50 Nephelometric Turbidity Units (NTU) in streams not designated as trout waters and 10 NTU in streams, lakes, or reservoirs designated as trout waters; for lakes and reservoirs not designated as trout waters, the turbidity shall not exceed 25 NTU; if turbidity exceeds these levels due to natural background conditions, the existing turbidity level shall not be increased. Compliance with this turbidity standard shall be deemed met when land management activities employ Best Management Practices (BMPs), as defined by Rule .0202 of this Section, recommended by the Designated Nonpoint Source Agency, as defined by Rule .0202 of this Section.

(22) Toxic Substance Level Applicable to NPDES Permits: Chloride: 230 mg/l. If chloride is determined by the waste load allocation to be exceeded in a receiving water by a discharge under the specified 7Q10 criterion for toxic substances, the discharger shall monitor the chemical or biological effects of the discharge. Efforts shall be made by all dischargers to reduce or eliminate chloride from their effluents. Chloride shall be limited as appropriate in the NPDES permit if sufficient information exists to indicate that it may be a causative factor resulting in toxicity of the effluent.

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1);
Eff. February 1, 1976;
Amended Eff. January 1, 2015; May 1, 2007; April 1, 2003; August 1, 2000; October 1, 1995; August 1, 1995; April 1, 1994; February 1, 1993;
Readopted Eff. November 1, 2019;
Amended Eff. September 1, 2022; June 1, 2022.

15A NCAC 02Q .0103 DEFINITIONS

For the purposes of this Subchapter, the definitions in G.S. 143-212 and G.S. 143-213 and the following definitions apply:

(1) "Administrator" means, when it appears in any Code of Federal Regulation incorporated by reference in 15A NCAC 02Q, the Director of the Division of Air Quality unless:
(a) a specific rule in this Subchapter specifies otherwise, or
(b) the U.S. Environmental Protection Agency in its delegation or approval states that a specific authority of the Administrator of the Environmental Protection Agency is not included in its delegation or approval.

(2) "Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive substance, or matter that is emitted into or otherwise enters the ambient air. Water vapor shall not be considered an air pollutant.

(3) "Allowable emissions" means the maximum emissions allowed by the applicable rules set forth in 15A NCAC 02D or by permit conditions if the permit limits emissions to a lesser amount.

(4) "Alter or change" means to make a modification.

(5) "Applicable requirements" means:
- (a) any requirement of 15A NCAC 02Q .0500;
- (b) any standard or other requirement provided for in the implementation plan approved or promulgated by EPA through rulemaking pursuant to Title I of the federal Clean Air Act, that implements the relevant requirements of the federal Clean Air Act including any revisions to 40 CFR Part 52;
- (c) any term or condition of a construction permit issued to a facility pursuant to 15A NCAC 02D .0530, .0531, or .0532;
- (d) any standard or other requirement pursuant to Section 111 or 112 of the federal Clean Air Act, but not including the contents of any risk management plan required pursuant to Section 112 of the federal Clean Air Act;
- (e) any standard or other requirement pursuant to Title IV of the federal Clean Air Act;
- (f) any standard or other requirement governing solid waste incineration pursuant to Section 129 of the federal Clean Air Act;
- (g) any standard or other requirement pursuant to Section 183(e), 183(f), or 328 of the federal Clean Air Act;
- (h) any standard or requirement pursuant to Title VI of the federal Clean Air Act unless a permit for such requirement is not required pursuant to this Section;
- (i) any requirement pursuant to Section 504(b) or 114(a)(3) of the federal Clean Air Act; or
- (j) any national ambient air quality standard or increment or visibility requirement pursuant to Part C of Title I of the federal Clean Air Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the federal Clean Air Act.

(6) "Applicant" means a person who is applying for an air quality permit from the Division.

(7) "Application package" means all elements or documents required to make an application complete.

(8) "CFR" means the Code of Federal Regulations.

(9) "Construction" means change in the method of operation or any physical change, including on-site fabrication, erection, installation, replacement, demolition, or modification of a source, that results in a change in emissions or affects the compliance status. The following activities shall not be considered construction:
- (a) clearing and grading;
- (b) building access roads, driveways, and parking lots;
- (c) building and installing underground pipe work, including water, sewer, electric, and telecommunications utilities; or
- (d) building ancillary structures, including fences and office buildings that are not a necessary component of an air contaminant source, equipment, or associated air cleaning device for which a permit is required pursuant to G.S. 143-215.108.

(10) "Director" means the Director of the Division of Air Quality.

(11) "Division" means the Division of Air Quality.

(12) "EPA" means the United States Environmental Protection Agency or the Administrator of the Environmental Protection Agency.

(13) "EPA approves" means full approval, interim approval, or partial approval by EPA.

(14) "Equivalent unadulterated fuels" means used oils that have been refined such that the content of toxic additives or contaminants in the oil are no greater than those in unadulterated fossil fuels.

(15) "Facility" means all of the pollutant-emitting activities, except transportation facilities, that are located on one or more adjacent properties under common control.

(16) "Federally-enforceable" means enforceable by EPA, Administrator as defined in Item (1) of this Rule, and citizens under the federal Clean Air Act.

(17) "Fuel combustion equipment" means any fuel burning source covered pursuant to 15A NCAC 02D .0503, .0504, .0536, or 40 CFR Part 60 Subpart D, Da, Db, or Dc.

(18) "Green wood" means wood with a moisture content of 18% or more.

(19) "Hazardous air pollutant" means any pollutant that has been listed pursuant to Section 112(b) of the federal Clean Air Act. Pollutants listed only in 15A NCAC 02D .1104 (Toxic Air Pollutant Guidelines), but not pursuant to Section 112(b), shall not be included in this definition.

(20) "Insignificant activities" means activities defined as insignificant activities because of category or as insignificant activities because of size or production rate pursuant to 15A NCAC 02Q .0503.

(21) "Lesser quantity cutoff" means:
- (a) for a source subject to the requirements of Section 112(d) or (j) of the federal Clean Air Act, the level of emissions of hazardous air

pollutants below which the following are not required:

(i) maximum achievable control technology (MACT) or generally available control technology (GACT), including work practice standards, pursuant to Section 112(d) of the federal Clean Air Act;

(ii) a MACT standard established pursuant to Section 112(j) of the federal Clean Air Act; or

(iii) substitute MACT or GACT adopted pursuant to Section 112(l) of the federal Clean Air Act;

(b) for modification of a source subject to the requirements of Section 112(g) of the federal Clean Air Act, the level of emissions of hazardous air pollutants below which MACT is not required to be applied pursuant to Section 112(g) of the federal Clean Air Act; or

(c) for all other sources, potential emissions of each hazardous air pollutant below 10 tons per year and the aggregate potential emissions of all hazardous air pollutants below 25 tons per year.

(22) "Major facility" means a major source as defined pursuant to 40 CFR 70.2.

(23) "Modification" means any physical change or change in method of operation that results in a change in emissions or affects compliance status of the source or facility.

(24) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, source, or air pollution control equipment.

(25) "Peak shaving generator" means a generator that is located at a facility and is used only to serve that facility's on-site electrical load during peak demand periods for the purpose of reducing the cost of electricity; it does not generate electricity for resale. A peak shaving generator may also be used for emergency backup.

(26) "Permit" means the binding written document, including any revisions thereto, issued pursuant to G.S. 143-215.108 to the owner or operator of a facility or source that emits one or more air pollutants and that allows that facility or source to operate in compliance with G.S. 143-215.108. This document shall specify the requirements applicable to the facility or source and to the permittee.

(27) "Permittee" means the person who has been issued an air quality permit from the Division.

(28) "Potential emissions" means the rate of emissions of any air pollutant that would occur at the facility's maximum capacity to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a facility to emit an air pollutant shall be treated as a part of its design if the limitation is federally enforceable. Such physical or operational limitations shall include air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed. Potential emissions shall include fugitive emissions as specified in the definition of major source in 40 CFR 70.2. Potential emissions shall not include a facility's secondary emissions such as those from motor vehicles associated with the facility and shall not include emissions from insignificant activities because of category as defined in 15A NCAC 02Q .0503. If a rule in 40 CFR Part 63 uses a different methodology to calculate potential emissions, that methodology shall be used for sources and pollutants regulated pursuant to that rule.

(29) "Portable generator" means a generator permanently mounted on a trailer or a frame with wheels.

(30) "Regulated air pollutant" means:

(a) nitrogen oxides or any volatile organic compound as defined pursuant to 40 CFR 51.100;

(b) any pollutant for which there is an ambient air quality standard pursuant to 40 CFR Part 50;

(c) any pollutant regulated pursuant to 15A NCAC 02D .0524, .1110, or .1111; or 40 CFR Part 60, 61, or 63;

(d) any pollutant subject to a standard promulgated pursuant to Section 112 of the federal Clean Air Act or other requirements established pursuant to Section 112 of the federal Clean Air Act, including Section 112(g) for only the facility subject to Section 112(g)(2) of the federal Clean Air Act, (j), or (r) of the federal Clean Air Act; or

(e) any Class I or II substance listed pursuant to Section 602 of the federal Clean Air Act.

(31) "Sawmill" means a place or operation where logs are sawed into lumber consisting of one or more of these activities: debarking, sawing, and sawdust handling. Activities that shall not be considered part of a sawmill include chipping, sanding, planning, routing, lathing, and drilling.

(32) "Source" means any stationary article, machine, process equipment, or other contrivance, or combination thereof, from which air pollutants emanate or are emitted, either directly or indirectly.

(33) "State-enforceable only" means terms and conditions that are not required under the Clean Air Act or under any of its applicable requirements. Terms and conditions designated as State-enforceable only are not subject to the requirements of 40 CFR Part 70.

(34) "Toxic air pollutant" means any of the carcinogens, chronic toxicants, acute systemic toxicants, or acute irritants that are listed in 15A NCAC 02D .1104.

(35) "Transportation facility" shall be considered a complex source as defined in G.S. 143-213(22).

(36) "Unadulterated fossil fuel" means fuel oils, coal, natural gas, or liquefied petroleum gas to which no toxic additives have been added that may result in the emissions of a toxic air pollutant listed pursuant to 15A NCAC 02D .1104.

History Note: Authority G.S. 143-212; 143-213; 143-215.3(a)(1);
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. April 1, 1999; July 1, 1998; July 1, 1996;
Temporary Amendment Eff. December 1, 1999;
Amended Eff. January 1, 2015; December 1, 2005; July 1, 2000;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2022.

15A NCAC 02Q .0503 DEFINITIONS

For the purposes of this Section, the definitions in G.S. 143-212, G.S. 143-213, 15A NCAC 02Q .0103, and the following definitions apply:

(1) "Affected States" means all states or local air pollution control agencies whose areas of jurisdiction are:
  (a) contiguous to North Carolina and located less than D=Q/12.5 from the facility, where:
    (i) Q = emissions of the pollutant emitted at the highest permitted rate in tons per year, and
    (ii) D = distance from the facility to the contiguous state or local air pollution control agency in miles unless the applicant can demonstrate that the ambient impact in the contiguous states or local air pollution control agencies is less than the incremental ambient levels in 15A NCAC 02D .0532(c)(5); or
  (b) within 50 miles of the permitted facility.

(2) "Complete application" means an application that provides all information described in 40 CFR 70.5(c) and such other information that is necessary to determine compliance with all applicable federal and State requirements.

(3) "Draft permit" means the version of a permit that the Division offers for public participation pursuant to 15A NCAC 02Q .0521 or affected state review pursuant to 15A NCAC 02Q .0522.

(4) "Emissions allowable under the permit" means an emissions limit, including a work practice standard, established by a federally enforceable permit term or condition, or a federally enforceable emissions cap that the facility has assumed to avoid an applicable requirement to which the facility would otherwise be subject.

(5) "Final permit" means the version of a permit that the Director issues that has completed all review procedures required pursuant to this Section if the permittee does not file a petition pursuant to Article 3 of G.S. 150B that is related to the permit.

(6) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

(7) "Insignificant activities because of category" means:
  (a) mobile sources;
  (b) air-conditioning units used for human comfort that are not subject to applicable requirements pursuant to Title VI of the federal Clean Air Act and do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;
  (c) ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;
  (d) heating units used for human comfort that have a heat input of less than 10,000,000 Btu per hour and that do not provide heat for any manufacturing or other industrial process;
  (e) noncommercial food preparation;
  (f) consumer use of office equipment and products;
  (g) janitorial services and consumer use of janitorial products;
  (h) internal combustion engines used for landscaping purposes;

(i) new residential wood heaters subject to 40 CFR Part 60, Subpart AAA; and
(j) demolition and renovation activities covered solely pursuant to 40 CFR Part 61, Subpart M.

(8) "Insignificant activities because of size or production rate" means any activity whose emissions would not violate any applicable emissions standard and whose potential emission of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide before air pollution control devices, are each no more than five tons per year and whose potential emissions of hazardous air pollutants before air pollution control devices, are each below 1000 pounds per year.

(9) "Minor facility" means any facility that is not a major facility.

(10) "Operation" means the use of equipment that emits regulated pollutants.

(11) "Permit renewal" means the process by which a permit is reissued at the end of its term.

(12) "Permit revision" means any permit modification pursuant to 15A NCAC 02Q .0515, .0516, or .0517 or any administrative permit amendment pursuant to 15A NCAC 02Q .0514.

(13) "Proposed permit" means the version of a permit that the Director proposes to issue and forwards to EPA for review pursuant to 15A NCAC 02Q .0522.

(14) "Responsible official" means a responsible official as defined in 40 CFR 70.2.

(15) "Section 502(b)(10) changes" means changes that contravene an express permit term or condition. Such changes shall not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring, including test methods, recordkeeping, reporting, or compliance certification requirements.

(16) "Synthetic minor facility" means a facility that would otherwise be required to follow the procedures of this Section except that the potential to emit is restricted by one or more federally enforceable physical or operational limitations, including air pollution control equipment and restrictions on hours or operation, the type or amount of material combusted, stored, or processed, or similar parameters.

(17) "Timely" means:
(a) for a new facility or newly subject facility, 12 months from the date that the facility or source becomes subject to the Title V operating permit program pursuant to 15A NCAC 02Q .0500;
(b) for renewal of a permit previously issued pursuant to this Section, six months before the expiration of that permit;
(c) for a minor modification pursuant to 15A NCAC 02Q .0515, before commencing the modification;
(d) for a significant modification pursuant to 15A NCAC 02Q .0516 where the change would not contravene or conflict with a condition in the existing permit, 12 months after commencing operation;
(e) for reopening for cause pursuant to 15A NCAC 02Q .0517, as specified by the Director in a request for additional information by the Director;
(f) for requests for additional information, as specified by the Director in a request for additional information by the Director; or
(g) for modifications made pursuant to Section 112(j) of the federal Clean Air Act, 18 months after EPA fails to promulgate a standard for that category of source pursuant to Section 112 of the federal Clean Air Act by the date established pursuant to Section 112(e)(1) or (3) of the federal Clean Air Act.

History Note: Authority G.S. 143-212; 143-213; 143-215.3(a)(1);
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. July 1, 1996;
Temporary Amendment Eff. December 1, 1999;
Amended Eff. January 1, 2007; July 1, 2000;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2022.

15A NCAC 02Q .0504 OPTION FOR OBTAINING CONSTRUCTION AND OPERATION PERMIT

(a) Pursuant to 15A NCAC 02Q .0501(b)(2) or (c)(2), the owner or operator of a new or modified facility subject to the requirements of this Section that chooses to obtain a construction and operation permit before the facility is required to obtain a permit pursuant to this Section may file an application pursuant to 15A NCAC 02Q .0300.

(b) The applicant shall state in his or her permit application that he or she wishes to follow the procedures in Paragraph (a) of this Rule.

(c) If the procedures in 15A NCAC 02Q .0300 are followed, the permittee shall have 12 months after the facility or source becomes subject to the permit program in 15A NCAC 02Q .0500 if the permittee is applying for a Title V permit for the first time. Otherwise, the permittee shall have 12 months from the date of

beginning operation of the modified facility or source to file an amended application following the procedures in this Section. The Director shall place a condition in the construction and operation permit stating this requirement.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2022.

15A NCAC 02Q .0505 APPLICATION SUBMITTAL CONTENT

If an applicant does not submit the following information with its application package, the application package shall be returned:

(1) for new facilities and modified facilities:
  (a) an application fee as required pursuant to 15A NCAC 02Q .0200;
  (b) a consistency determination as required pursuant to 15A NCAC 02Q .0507(d)(1);
  (c) the documentation required pursuant to 15A NCAC 02Q .0507(d)(2);
  (d) a financial qualification or substantial compliance statement if required; and
  (e) applications as required pursuant to 15A NCAC 02Q .0507(a) and (e) and signed as required by 15A NCAC 02Q .0520;
(2) for renewals: applications as required pursuant to 15A NCAC 02Q .0507(a) and (e) and signed as required by 15A NCAC 02Q .0520;
(3) for a name change: three copies of a letter signed by a responsible official in accordance with 15A NCAC 02Q .0520 indicating the current facility name, the date on which the name change will occur, and the new facility name;
(4) for an ownership change: an application fee as required pursuant to 15A NCAC 02Q .0200; and three copies of a letter bearing the signature of both the seller and buyer and containing a written agreement with a specific date for the transfer of permit responsibility, coverage, and liability between the current and new permittee; and
(5) for corrections of typographical errors; changes of the name, address, or telephone number of any individual identified in the permit; changes in test dates or construction dates; or similar minor changes: three copies of a letter signed by a responsible official in accordance with 15A NCAC 02Q .0520 describing the proposed change and explaining the need for the proposed change.

History Note: Authority G.S. 143-215.3(a)(1),(1a); 143-215.107(a)(10); 143-215.108;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. April 1, 2004;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2022.

15A NCAC 02Q .0507 APPLICATION

(a) Except for:
(1) minor permit modifications covered pursuant to 15A NCAC 02Q .0515;
(2) significant modifications covered pursuant to 15A NCAC 02Q .0516(c); or
(3) renewals submitted pursuant to 15A NCAC 02Q .0513;

the owner or operator of a source shall have 12 months after the facility or source becomes subject to the Title V operating permit program pursuant to 15A NCAC 02Q .0500 to file a complete application for a permit or permit revision. However, the owner or operator of a source shall not begin construction or operation of a source until he or she has obtained a construction and operation permit pursuant to 15A NCAC 02Q .0501(b) or (c) and 15A NCAC 02Q .0504.

(b) An application shall include all the information described in 40 CFR 70.3(d) and 70.5(c), including a list of insignificant activities because of size or production rate but not including insignificant activities because of category. An application shall be certified by a responsible official for truth, accuracy, and completeness. In an application submitted pursuant to this Rule, the applicant may attach copies of applications submitted pursuant to 15A NCAC 02Q .0400 or 15A NCAC 02D .0530 or .0531 if the information in those applications contains information required in this Section and is current, accurate, and complete.

(c) Application for a permit, permit revision, or permit renewal shall be made in accordance with 15A NCAC 02Q .0104 on forms of the Division and shall include plans and specifications giving all necessary data and information as required by this Rule. If the information provided on these forms does not describe the source or its air pollution abatement equipment to the extent necessary to evaluate the application, the Director shall request that the applicant provide any other information necessary to evaluate the source and its air pollution abatement equipment.

(d) Along with filing a complete application, the applicant shall also file the following:

(1) for a new facility or an expansion of existing facility, a consistency determination in accordance with G.S. 143-215.108(f) that:
  (A) bears the date of receipt entered by the clerk of the local government; or
  (B) consists of a letter from the local government indicating that all zoning or subdivision ordinances are met by the facility;
(2) for a new facility or an expansion of an existing facility in an area without zoning, an affidavit and proof of publication of a legal notice as

required pursuant to 15A NCAC 02Q .0113; and

(3) if required by the Director, information showing that:

(A) the applicant is financially qualified to carry out the permitted activities; or

(B) the applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged and has been in substantial compliance with federal and State environmental laws and rules.

(e) The applicant shall submit copies of the application package as follows:

(1) for sources subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200, five copies plus one additional copy for each affected state that the Director has to notify pursuant to 15A NCAC 02Q .0521 and 15A NCAC 02Q .0522;

(2) for sources not subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200, three copies plus one additional copy for each affected state that the Director has to notify pursuant to 15A NCAC 02Q .0521 and 15A NCAC 02Q .0522.

(f) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date the applicant filed a complete application but prior to release of a draft permit.

(g) The applicant shall submit the same number of copies of additional information as required for the application package.

(h) The submittal of a complete permit application shall not affect the requirement that any facility have a permit pursuant to 15A NCAC 02D .0530, .0531, or .0532 or pursuant to 15A NCAC 02Q .0400.

(i) The Director shall give priority to permit applications containing early reduction demonstrations pursuant to Section 112(i)(5) of the federal Clean Air Act. The Director shall take final action on such permit applications after receipt of the complete permit application.

(j) Except as specified in 15A NCAC 02Q .0203(i), a non-refundable permit application processing fee, defined in 15A NCAC 02Q .0200, shall accompany each application. Each permit application shall be deemed incomplete until the permit application processing fee is received.

(k) The applicant shall retain for the duration of the permit term one complete copy of the application package and all information submitted in support of the application package.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. July 1, 1997; July 1, 1996; February 1, 1995;
Temporary Amendment Eff. December 1, 1999;
Amended Eff. September 1, 2015; April 1, 2004; July 1, 2000;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2022.

15A NCAC 02Q .0508 PERMIT CONTENT

(a) A permit shall specify and reference the origin and authority for each term or condition and shall identify any differences compared to the applicable requirement on which the term or condition is based.

(b) A permit shall specify emission limitations and standards, including operational requirements and limitations, that assure compliance with all applicable requirements at the time of permit issuance.

(c) Where an applicable requirement of the federal Clean Air Act is more stringent than an applicable requirement of rules promulgated pursuant to Title IV, both provisions shall be placed in a permit. A permit shall state that both provisions are enforceable by EPA.

(d) A permit for sources using an alternative emission limit established in 15A NCAC 02D .0501 (d) or 15A NCAC 02D .0952 shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(e) The expiration date of a permit shall be for a fixed term of five years for sources covered by Title IV and for a term of no more than five years from the date of issuance for all other sources including solid waste incineration units combusting municipal waste subject to standards in Section 129(e) of the federal Clean Air Act.

(f) A permit shall contain monitoring and related recordkeeping and reporting requirements as specified in 40 CFR 70.6(a)(3) and 70.6(c)(1), including conditions requiring:

(1) the permittee to submit reports of required monitoring at least every six months. The permittee shall submit reports:

(A) on forms obtained from the Division at the address in 15A NCAC 02Q .0104;

(B) in a manner as specified by a permit condition; or

(C) on other forms that contain the information required by this Subchapter or as specified by a permit condition;

(2) the permittee to report:

(A) malfunctions, emergencies, and other upset conditions as prescribed in 15A NCAC 02D .0524, .0535, .1110, or .1111; and

(B) deviations quarterly from permit requirements not covered by 15A NCAC 02D .0524, .0535, .1110, or .1111. The permittee shall include the probable cause of such deviations and any corrective actions or preventive measures taken; and

(3) the responsible official to certify all deviations from permit requirements.

(g) At the request of a permittee, the Director may allow records to be maintained in electronic form in lieu of maintaining paper records. The Director shall make this decision based on factors such as whether the electronic records contain the same information as the paper records and the availability of the electronic records for inspection to demonstrate compliance.

(h) A permit for facilities covered by 15A NCAC 02D .2100, Risk Management Program, shall contain:

(1) a statement listing 15A NCAC 02D .2100 as an applicable requirement; and

(2) conditions that require the owner or operator of the facility to submit:

(A) a compliance schedule for meeting the requirements of 15A NCAC 02D .2100 by the dates provided in 15A NCAC 02D .2101(a); or

(B) as part of the compliance certification required by Paragraph (n) of this Rule, a certification statement that the source is in compliance with all requirements of 15A NCAC 02D .2100, including the registration and submission of the risk management plan.

The content of the risk management plan need not be incorporated as a permit term or condition.

(i) A permit shall:

(1) contain a condition prohibiting emissions exceeding any allowances that a facility lawfully holds pursuant to Title IV but shall not limit the number of allowances held by a permittee. A permittee shall not use allowances as a defense to noncompliance with any other applicable requirement;

(2) contain a severability clause so that various permit requirements will continue to be valid in the event of a challenge to any other portion of the permit;

(3) state that noncompliance with any condition of the permit constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application;

(4) state that the permittee may not use as a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit;

(5) state that the Director may reopen, modify, revoke and reissue, or terminate the permit for reasons specified in 15A NCAC 02Q .0517 or .0519;

(6) state that the filing of a request by the permittee for a permit revision, revocation and reissuance, termination, notification of planned changes, or anticipated noncompliance does not stay any permit condition;

(7) specify the conditions in which the permit will be reopened before the expiration of the permit;

(8) state that the permit does not convey any property rights of any sort, or any exclusive privileges;

(9) state that the permittee will furnish to the Division, in a timely manner:

(A) any information that the Director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit, and

(B) copies of records required to be kept by the permit when such copies are requested by the Director.

The permit shall also state that for information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality;

(10) contain a provision to ensure that the permittee pays fees required by 15A NCAC 02Q .0200;

(11) contain a condition that authorizes the permittee to make Section 502(b)(10) changes, off-permit changes, or emission trades in accordance with 15A NCAC 02Q .0523;

(12) include all applicable requirements for all sources covered by the permit;

(13) include fugitive emissions in the same manner as stack emissions;

(14) contain a condition requiring annual reporting of actual emissions as required by 15A NCAC 02Q 0207;

(15) include all sources including insignificant activities; and

(16) contain other provisions the Director considers appropriate.

(j) A permit shall state the terms and conditions for reasonably anticipated operating scenarios identified by the applicant in the application. These terms and conditions shall:

(1) require the permittee, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the operating scenario in which it is operating;

(2) extend the permit shield described in 15A NCAC 02Q .0512 to all terms and conditions in each such operating scenario; and

(3) ensure that each operating scenario meets all applicable requirements of Subchapter 02D of this Chapter and of this Section.

(k) A permit shall identify which terms and conditions are enforceable by the Division only.

(l) A permit shall state that the permittee will allow personnel of the Division to:

(1) enter the permittee's premises where the permitted facility is located or

emissions-related activity is conducted, or where records are kept by the conditions of the permit;

(2) have access to and copy any records that are required to be kept by the conditions of the permit;

(3) inspect any source, equipment, including monitoring and air pollution control equipment, practices, or operations regulated or required by the permit; and

(4) sample or monitor substances or parameters, for the purpose of assuring compliance with the permit or applicable requirements.

(m) When a compliance schedule is required by 40 CFR 70.5(c)(8) or by a rule contained in Subchapter 02D of this Chapter, the permit shall contain the compliance schedule and shall state that the permittee shall submit at least semiannually, or more frequently if specified in the applicable requirement, a progress report. The progress report shall contain:

(1) dates for achieving the activities, milestones, or compliance required in the compliance schedule and dates when such activities, milestones, or compliance were achieved; and

(2) an explanation of why any dates in the compliance schedule were not or will not be met and any preventive or corrective measures adopted.

(n) The permit shall contain requirements for compliance certification with the terms and conditions in the permit that are enforceable by EPA pursuant to Title V of the federal Clean Air Act, including emissions limitations, standards, and work practices. The permit shall specify:

(1) the frequency, not less than annually or more frequently as specified in the applicable requirements, of submissions of compliance certifications;

(2) a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(3) a requirement that the compliance certification include:

(A) the identification of each term or condition of the permit that is the basis of the certification;

(B) the status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the methods or means designated in 40 CFR 70.6(c)(5)(iii)(B). The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance was required and in which an excursion or exceedance as defined in 40 CFR 64 occurred;

(C) whether compliance was continuous or intermittent;

(D) the identification of the methods or other means used by the owner and operator for determining the compliance status with each term and condition during the certification period; these methods shall include the methods and means required in 40 CFR Part 70.6(a)(3). The owner or operator also shall identify any other material information that shall be included in the certification to comply with Section 113(c)(2) of the federal Clean Air Act, which prohibits knowingly making a false certification or omitting material information; and

(E) such other facts as the Director may require to determine the compliance status of the source; and

(4) that all compliance certifications be submitted to EPA as well as to the Division.

History Note: Authority G.S. 143-215.3(a)(1),(2); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108;
Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. July 1, 1996;
Temporary Amendment Eff. December 1, 1999;
Amended Eff. August 1, 2008; June 1, 2008; January 1, 2007; December 1, 2005; April 1, 2001; July 1, 2000;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2022.

15A NCAC 02Q .0509 PERMITTING OF NUMEROUS SIMILAR FACILITIES

(a) The Director shall not issue a single permit to cover numerous similar facilities or sources unless a notice and opportunity for public participation has been provided as required by 15A NCAC 02Q .0521.

(b) The Director shall not issue a single permit for numerous similar facilities and sources pursuant to this Rule unless:

(1) there is no difference between the facilities or sources that would require special permit conditions for any individual facility or source; and

(2) no unique analysis is required for any facility or source covered by the permit.

(c) A permit issued pursuant to this Rule shall comply with all the requirements of this Section.

(d) A permit issued pursuant to this Rule shall identify criteria by which facilities or sources may qualify for the permit. To facilities or sources that qualify, the Director shall grant the terms and conditions of the permit.

(e) The facility or source shall be subject to enforcement action for operating without a permit if the facility or source is later determined not to qualify for the terms and conditions of the permit issued pursuant to this Rule.

(f) Sources subject to Title IV shall not be eligible for a permit issued pursuant to this Rule.
(g) The owner or operator of a facility or source that qualifies for a permit issued pursuant to this Rule shall apply for coverage by the terms of the permit issued pursuant to this Rule or shall apply for a standard permit for each facility or source pursuant to this Section.
(h) The Division need not repeat the public participation procedures pursuant to 15A NCAC 02Q .0521 if it grants a request by a permit applicant to operate by a permit issued pursuant to this Rule, but such a grant shall not be a final permit action for purposes of judicial review.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2022.

15A NCAC 02Q .0514 ADMINISTRATIVE PERMIT AMENDMENTS

(a) An "administrative permit amendment" means a permit revision that:
(1) corrects typographical errors;
(2) identifies a change in the name, address, or telephone number of any individual identified in the permit or provides a similar minor administrative change at the facility;
(3) requires more frequent monitoring or reporting by the permittee;
(4) changes test dates or construction dates provided that no applicable requirements are violated by the change in test dates or construction dates;
(5) removes designation of State-enforceable only from terms and conditions provided that the terms and conditions have become federally enforceable through Section 110, 111, or 112 or other parts of the federal Clean Air Act;
(6) changes the permit number without changing any portion of the permit that would not otherwise qualify as an administrative amendment; or
(7) removes references and non-applicable permit requirements for equipment that has been permanently removed from service.

(b) In making administrative permit amendments, the Director:
(1) shall take final action on a request for an administrative permit amendment within 60 days after receiving such request;
(2) may make administrative amendments without providing notice to the public or any affected states pursuant to 15A NCAC 02Q .0521(a), provided he or she designates any such permit revision as having been made pursuant to this Rule; and
(3) shall submit a copy of the revised permit to EPA.

(c) The permittee may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.
(d) Administrative amendments for sources covered pursuant to Title IV shall be governed by rules in 15A NCAC 02Q .0400.
(e) This Rule shall not apply to the State-enforceable only part of a Title V permit. For the State-enforceable only part of a Title V permit, 15A NCAC 02Q .0316 shall govern administrative permit amendments.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. January 1, 2007; July 1, 1997;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2022.

15A NCAC 02Q .0516 SIGNIFICANT PERMIT MODIFICATION

(a) The procedures set out in this Rule shall apply to applications requesting permit modifications pursuant to this Rule or permit modifications that are not governed by 15A NCAC 02Q .0514, .0515, .0523, or .0524.
(b) An application for a significant permit modification that would contravene or conflict with an existing permit shall be processed following the procedure set out in 15A NCAC 02Q .0501(c).
(c) An application for a significant permit modification that does not contravene or conflict with an existing permit shall be processed following the procedure set out in 15A NCAC 02Q .0501(b).
(d) This Rule shall not preclude the permittee from making changes consistent with this Section that would render existing permit compliance terms and conditions irrelevant.
(e) Except for the State-enforceable only portion of the permit, the procedures set out in 15A NCAC 02Q .0507, .0521, or .0522 shall be followed to revise a permit pursuant to this Rule. If the State-enforceable only portion of the permit is revised, the procedures in 15A NCAC 02Q .0300 shall be followed. The proceedings shall affect only those parts of the permit related to the significant modification.
(f) Significant permit modifications shall be covered by the permit shield in accordance with 15A NCAC 02Q .0512.
(g) Significant permit modifications shall be processed in accordance with 15A NCAC 02Q .0525.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2022.

15A NCAC 02Q .0518 FINAL ACTION

(a) The Director shall:

(1) issue a permit, permit revision, or renewal containing the conditions necessary to carry out the purposes of G.S. 143, Article 21B and the federal Clean Air Act;

(2) rescind a permit upon request by the permittee; or

(3) deny a permit application when necessary to carry out the purposes of G.S. 143, Article 21B and the federal Clean Air Act.

(b) The Director shall not issue a final permit or permit revision, except administrative permit amendments pursuant to 15A NCAC 02Q .0514 and .0524, until 15 days after the end of EPA's 45-day review period or until EPA has notified the Director that EPA will not object to issuance of the permit or permit revision, whichever occurs first.

(c) If EPA objects to a proposed permit, the Director shall respond to EPA's objection within 90 days after receipt of EPA's objection. The Director shall not issue a permit pursuant to this Section over EPA's objection.

(d) If EPA does not object in writing to the issuance of a permit, any person may petition EPA to make such objections by following the procedures and meeting the requirements of 40 CFR 70.8(d).

(e) No permit shall be issued, revised, or renewed pursuant to this Section unless all the procedures set out in this Section have been followed and all the requirements of this Section have been met. The Director shall not issue any permit, permit revision, or permit renewal pursuant to this Section by default.

(f) Notwithstanding the application processing schedules set forth in 15A NCAC 02Q .0514, .0515, and .0524, the Division shall take final action on each permit application, including a request for permit modification or renewal, within 18 months of receipt of a complete application.

(g) Thirty days after issuing a permit, including a permit issued pursuant to 15A NCAC 02Q .0509, that is not challenged by the applicant, the Director shall notice the issuance of the final permit. The notice shall be issued on the North Carolina Division of Air Quality web site at http://deq.nc.gov/about/divisions/air-quality. The notice shall include the name and address of the facility and the permit number.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. January 1, 2010; February 1, 1995;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2022.

15A NCAC 02Q .0521 PUBLIC PARTICIPATION

(a) The Director shall give public notice with an opportunity for comments and a hearing on all draft permits and permit revisions except permit revisions issued pursuant to 15A NCAC 02Q .0514, .0515, and .0524. The Director shall give public notice with an opportunity for comments and a hearing on draft permit revisions issued pursuant to 15A NCAC 02Q .0514, .0515, and .0524 for any source that may be designated by the Director based on public interest relevant to air quality.

(b) Notice of any draft permit for an existing facility for which a public hearing is scheduled or for a new facility shall be given by publication in a newspaper of general circulation in the area where the facility is located, posted on the North Carolina Division of Air Quality web site at http://deq.nc.gov/about/divisions/air-quality for the duration of the public comment period, and emailed to persons who are on the Division's emailing list for air quality permits.

(c) Notice for existing facilities for which a public hearing is not scheduled shall be given by posting the draft permit on the North Carolina Division of Air Quality web site at http://deq.nc.gov/about/divisions/air-quality for the duration of the public comment period and shall be emailed to persons who are on the Division's emailing list for air quality permit notices.

(d) The notice shall identify:

(1) the affected facility;

(2) the name and address of the permittee;

(3) the name and address of the person to whom to send comments and requests for public hearing;

(4) the name, address, and telephone number of Divisional staff from whom interested persons may obtain additional information, including copies of the permit draft, the application, compliance plan, monitoring and compliance reports, all other relevant supporting materials, and all other materials available to Division that are relevant to the permit decision;

(5) the activity or activities involved in the permitted action;

(6) any emissions change involved in any permit modification;

(7) a brief description of the comment procedures;

(8) the procedures to follow to request a hearing unless a hearing has already been scheduled; and

(9) the time and place of all hearing that have already been scheduled.

(e) The Director shall send a copy of the notice to affected states and EPA.

(f) The notice shall allow 30 days for public comments.

(g) Notice of any public hearing shall be given at least 30 days before the hearing.

(h) The Division shall keep a record of the public participation process, including the following:

(1) the names of all commenters;

(2) the issues raised during the public participation process; and

(3) all written comments submitted during the public participation process.

If EPA requests a record of the comments and of the issues raised during the public participation process, the Director shall provide EPA this record.

(i) The Division shall respond in writing to comments raised during the public participation process, including any written comments submitted during the public comment period and any comments raised during any public hearing on the permit. The

response to comments shall be included in the statement of basis and any Hearing Officer's report.
(j) Persons who desire to be placed on the Division's email notification list for air quality permit notices shall subscribe to the permits email list serve at http://deq.nc.gov/about/divisions/air-quality.

History Note: Authority G.S. 143-215.3(a)(1),(3); 143-215.107(a)(10); 143-215.108; 143-215.111(4);
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. January 1, 2010; July 1, 1998;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2022.

15A NCAC 02Q .0522 REVIEW BY EPA AND AFFECTED STATES

(a) The Director shall provide EPA with a copy of each permit application, including any application for permit revision, the statement of basis required under Paragraph (b) of this Rule, each proposed permit, and each final permit issued pursuant to this Section. If EPA has informed the Director that a permit application summary and relevant portion of the permit application and compliance plan are sufficient, the Director may provide these documents instead of the complete application.
(b) The Division shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references for the applicable statutory or regulatory provisions. The Division shall provide this statement to EPA and any other person who requests it.
(c) If comments are received during the public participation process, the written responses shall be provided to EPA through submittal of a statement of basis, required pursuant to 15A NCAC 02Q .0521, with an explanation of how those public comments and the Division's responses are available to the public.
(d) The Division shall retain for five years a copy of all permit applications, permits, and other related material submitted to or issued by the Division pursuant to this Section.
(e) The Director shall provide notice to each affected state of each draft permit at or before the time notice is provided to the public pursuant to 15A NCAC 02Q .0521.
(f) The Director, in writing, shall notify EPA and any affected state of any refusal by the Division to accept all recommendations for the proposed permit that the affected state submitted during the public or affected state review period and shall state the reasons for not accepting any such recommendations.
(g) The information specified in Paragraphs (a) through (c) of this Rule shall be provided to EPA in a computer-readable format compatible with EPA's national database management system.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; 143-215.111(5);
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2022.

15A NCAC 02Q .0525 APPLICATION PROCESSING SCHEDULE

The Division shall adhere to the following schedule in processing permit applications:

(1) The Division shall send written acknowledgment of receipt of an application to the applicant within 10 days of receipt of the application.
(2) The Division shall review all permit applications within 60 days of receipt of the application to determine whether the application is complete or incomplete. A completeness determination shall not be necessary for minor modifications pursuant to 15A NCAC 02Q .0515. The Division shall notify the applicant by letter:
  (a) stating that the application as submitted is complete and specifying the completeness date;
  (b) stating that the application is incomplete, requesting additional information necessary to conduct the technical review of the application, and specifying the date by which the requested information is required to be received by the Division; or
  (c) stating that the application is incomplete and requesting that the applicant rewrite and resubmit the application.

  If the Division does not notify the applicant by letter dated within 60 days of receipt of the application that the application is incomplete, the application shall be deemed complete. A completeness determination shall not prevent the Director from requesting additional information at a later date if such information is necessary to properly evaluate the source, its air pollution abatement equipment, or the facility. If the applicant has not provided the requested additional information by the date specified in the letter requesting additional information, the Director shall cease processing the application until additional information is provided. The applicant may request a time extension for submittal of the requested additional information.
(3) The Division shall complete the technical review of significant modifications received pursuant to 15A NCAC 02Q .0516 in accordance with 40 CFR 70.7(e)(4)(ii).
(4) The Division shall provide for public participation in accordance with 15A NCAC 02Q .0521. If a public hearing is requested and approved by the Director for a draft permit, it shall be held within 45 days of the Director's decision to hold a public hearing.

(5) The Director shall complete the review of the record and send the proposed permit to EPA and affected states in accordance with 15A NCAC 02Q .0522.

(6) Final permit action shall be taken in accordance with 15A NCAC 02Q .0518.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;
Eff. February 1, 1995;
Amended Eff. July 1, 1998;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2022.

15A NCAC 02Q .0526 112(J) CASE-BY-CASE MACT PROCEDURES

(a) An owner or operator of a source required to apply maximum achievable control technology (MACT) pursuant to 15A NCAC 02D .1109 shall follow the permit procedures set out in this Rule.

(b) For the purposes of this Rule, the definitions in 15A NCAC 02D .1109, 40 CFR 63.51, 40 CFR 63.2, and the following definitions apply:

(1) "Equivalent emission limitation" means an emission limitation, established pursuant to Section 112(j) of the federal Clean Air Act, that is equivalent to the MACT standard that EPA would have promulgated pursuant to Section 112(d) or (h) of the federal Clean Air Act.

(2) "Source category schedule for standards" means the schedule for promulgating MACT standards issued pursuant to Section 112(e) of the federal Clean Air Act.

(3) "Title V permit" means a permit issued pursuant to this Section.

(c) Except as provided for in Paragraph (d) or (e) of this Rule, the owner or operator of a source required to apply MACT pursuant to 15A NCAC 02D .1109 shall submit an application for a permit or for a significant permit revision, as applicable pursuant to this Section.

(d) Approval process for new and existing affected sources that are subject to Section 112(j) as of the Section 112(j) deadline. The requirements of Subparagraphs (d)(1) and (2) of this Paragraph shall apply to major sources that include, as of the Section 112(j) deadline, one or more sources in a category or subcategory for which the EPA has failed to promulgate an emission standard pursuant to 40 CFR Part 63 on or before an applicable Section 112(j) deadline. Existing source MACT requirements, including relevant compliance deadlines, as specified in a Title V permit issued to the facility pursuant to the requirements of 40 CFR Part 63, Subpart B, shall apply to such sources.

(1) The owner or operator shall submit an application for a permit or for a revision to an existing Title V permit issued or a pending Title V permit that meets the requirements of Subparagraph (m)(1) of this Rule by the Section 112(j) deadline if the owner or operator can reasonably determine that one or more sources at the facility belong in a category or subcategory subject to Section 112(j) of the federal Clean Air Act.

(2) The owner or operator of a source that does not submit an application pursuant to Subparagraph (d)(1) of this Rule and is notified in writing by the Division that one or more sources at the facility belong to a category or subcategory subject to Section 112(j) of the federal Clean Air Act shall submit an application for a Title V permit or for a revision to an existing Title V permit that meets the requirements of Paragraph (m)(1) of this Rule within 30 days after being notified in writing by the Division. The Division shall not be required to make this notification.

(3) The requirements in Parts (A) and (B) of this Subparagraph shall apply if the owner or operator has obtained a Title V permit that incorporates a Section 112(g) case-by-case MACT determination by the Division pursuant to 15A NCAC 02D .1112, but has not submitted an application for a Title V permit revision that addresses the emission limitation requirements of Section 112(j) of the federal Clean Air Act.

(A) If the owner or operator has a Title V permit that incorporates a Section 112(g) case-by-case MACT determination pursuant to 15A NCAC 02D .1112, the owner or operator shall submit an application that meets the requirements of Paragraph (m)(1) of this Rule for a Title V permit revision within 30 days of the Section 112(j) deadline or within 30 days of being notified in writing by the Division that one or more sources at the major facility belong in such category or subcategory. The Division shall use the procedures in 40 CFR 63.52(e) to determine whether the emission limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations that Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question. If the Division determines the previously adopted 112(g) emission limitations are substantially as effective, then the Division shall retain the existing limitations in the permit to effectuate Section 112(j) of the federal Clean Air Act. If the Division does not retain the previously adopted 112(g) emission limitations, the MACT requirements of this Rule shall be satisfied upon issuance of a revised Title V permit incorporating

any additional Section 112(j) requirements.

(B) If the owner or operator has submitted a Title V permit application that incorporates a Section 112(g) case-by-case MACT determination by the Division pursuant to 15A NCAC 02D .1112, but has not received the permit incorporating the Section 112(g) requirements, the owner or operator shall continue to apply for a Title V permit that addresses the requirements of Section 112(g) of the federal Clean Air Act. The owner or operator shall submit a permit application meeting the requirements of Paragraph (m)(1) of this Rule within 30 days of issuance of that Title V permit. The Division shall use the procedures in 40 CFR 63.52(e) to determine whether the emissions limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations that the Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question. If the Division determines that the previously adopted 112(g) emission limitations are substantially as effective, then the Director shall retain the existing emission limitations to effectuate Section 112(j) of the federal Clean Air Act and revise the permit accordingly. If the Division does not retain the previously adopted 112(g) emission limitations, the MACT requirements of this Rule shall be satisfied upon issuance of a revised Title V permit incorporating any additional Section 112(j) requirements.

(e) Sources that become subject to Section 112(j) of the federal Clean Air Act after the Section 112(j) deadline and that do not have a Title V permit addressing Section 112(j) requirements. The requirements of this Paragraph shall apply to sources that do not meet the criteria in Paragraph (d) of this Rule on the Section 112(j) deadline and are not subject to Section 112(j) of the federal Clean Air Act on that date, but subsequent to the Section 112 (j) deadline the source becomes subject to the requirements of this Rule and the source does not have a Title V permit that addresses the requirements of Section 112(j) of the federal Clean Air Act.

(1) If one or more sources in a category or subcategory subject to the requirements of this Rule are installed at a major source or result in the source becoming a major source due to the installation, and the installation does not invoke Section 112(g) requirements in 15A NCAC 02D .1112, the owner or operator shall submit an application meeting the requirements of Paragraph (m)(1) of this Rule within 30 days of startup of the source. Existing source MACT requirements (including relevant compliance deadlines), as specified in a Title V permit issued pursuant to the requirements of this Rule, shall apply to such sources. The Division shall use the procedures in 40 CFR 63.52(e) to determine whether the emissions limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations that the Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question. If the Division determines the previously adopted 112(g) emission limitations are substantially as effective, then the Division shall retain the existing emission limitations to effectuate Section 112(j) of the federal Clean Air Act and revise the permit accordingly. If the Division does not retain the previously adopted 112(g) emission limitations, the MACT requirements of this Rule shall be satisfied upon issuance of a revised Title V permit incorporating any additional Section 112(j) requirements.

(2) If one or more sources in a category or subcategory subject to 112(j) requirements are installed at a major source or result in the source becoming a major source due to the installation, and the installation requires 112(g) emission limitations to be established and permitted pursuant to 15A NCAC 02Q .0528 and the owner or operator has not submitted an application for a Title V permit revision that addresses the emission limitation requirements of Section 112(j) of the federal Clean Air Act, the owner or operator shall apply for and obtain a Title V permit that addresses the emission limitation requirements of Section 112(g) of the federal Clean Air Act. Within 30 days of issuance of that Title V permit, the owner or operator shall submit an application that meets the requirements of Paragraph (m)(1) of this Rule for a revision to the existing Title V permit. The Division shall determine whether the emissions limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations that the Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question. If the Division determines the previously adopted 112(g) emission limitations are substantially as effective, then the Division shall retain the existing emission limitations to effectuate Section 112(j) of the federal Clean Air Act and revise the permit accordingly. If the

Division does not retain the previously adopted 112(g) emission limitations, the permit shall be revised to incorporate any additional Section 112(j) requirements.

(3) The owner or operator of an area source that, due to a relaxation in any federally enforceable emission limitation, such as a restriction on hours of operation, increases its potential to emit hazardous air pollutants such that the source becomes a major source that is subject to this Rule, shall submit an application meeting the requirements of Paragraph (m)(1) of this Rule within 30 days after the date that such source becomes a major source. The Director shall use the procedures in Paragraph (n) of this Rule in reviewing the application. The existing source MACT requirements, including relevant compliance deadlines, shall apply to such sources.

(4) If EPA establishes a lesser quantity emission rate pursuant to Section 112(a)(1) of the Federal Clean Air Act that results in an area source becoming a major source that is subject to this Rule, then the owner or operator of such a major source shall submit an application that meets the requirements of Paragraph (m)(1) of this Rule on or before the date six months after the date that such source becomes a major source. Existing source MACT requirements, including relevant compliance deadlines, as specified in a Title V permit issued pursuant to the requirements of this Rule, shall apply to such sources.

(f) Sources that have a Title V permit addressing Section 112(j) requirements. The requirements of this Paragraph apply to major sources that include one or more sources in a category or subcategory for which EPA fails to promulgate an emission standard on or before the Section 112(j) deadline, the owner or operator has a permit meeting the Section 112(j) requirements, and if changes occur at the major source to equipment, activities, or both subsequent to the Section 112(j) deadline.

(1) If the Title V permit already provides the requirements that address the events described in this Paragraph subsequent to the Section 112(j) deadline, then the source shall comply with the applicable new source MACT or existing source MACT requirements as specified in the permit, and the Section 112(j) requirements shall be deemed satisfied.

(2) If the Title V permit does not contain the requirements that address the events described in this Paragraph subsequent to the Section 112(j) deadline, then the owner operator shall submit an application for a revision of the existing Title V permit that meets the requirements of Paragraph (m)(1) of this Rule within 30 days of beginning construction. Existing source MACT requirements, including relevant compliance deadlines, as specified in a Title V permit issued pursuant to the requirements of this Rule, shall apply to such sources.

(g) Requests for applicability determination. An owner or operator who is unsure of whether one or more sources at a major source belong in a category or subcategory for which EPA has failed to promulgate an emission standard pursuant to 40 CFR Part 63 may, on or before an applicable Section 112(j) deadline, request an applicability determination from the Division by submitting an application that meets the requirements of Paragraph (m)(1) of this Rule by the applicable deadlines specified in Paragraphs (d), (e), or (f) of this Rule.

(h) An owner or operator who submits a Part 1 MACT application that meets the requirements of Paragraph (m)(1) of this Rule shall submit a Part 2 MACT application that meets the requirements of Paragraph (m)(2) of this Rule no later than the applicable date specified in 40 CFR 63 Subpart B Table 1. The submission date specified in 40 CFR 63 Subpart B Table 1 for Miscellaneous Organic Chemical Manufacturing shall apply to sources in each of the source categories listed in 40 CFR 63 Subpart B Table 2. If an owner or operator is required by 15A NCAC 02D .1109 and this Rule to submit an application meeting the requirements of Paragraph (m)(1) of this Rule by a date that is after the date for a Part 2 MACT application for sources in the category or subcategory in question established by 40 CFR 63 Subpart B Table 1, the owner or operator shall submit a Part 2 MACT application meeting the requirements of Paragraph (m)(2) of this Rule within 60 additional days after the applicable deadline for submission of the Part 1 MACT application. The Part 2 applications shall be reviewed by the Division according to the procedures established in 40 CFR 63.55.

(1) Any owner or operator who submitted a request for an applicability determination on or before May 15, 2002, that remained pending as of May 30, 2003, and who still wishes to obtain such a determination shall resubmit that request by the date that is 60 days after the Administrator publishes in the Federal Register a proposed standard pursuant to Section 112(d) or 112(h) of the Clean Air Act for the category or subcategory in question. Such a resubmitted request shall be supplemented to discuss the relation between the sources in question and the applicability provision in the proposed standard for the category or subcategory in question, and to explain why there may still be uncertainties that require a determination of applicability. The Director shall take action on each supplemented and resubmitted request within an additional 60 days after the applicable deadline for the resubmitted request. If more than three years remain on the current Title V permit, the owner or operator shall submit an application for a Title V permit revision to make any conforming changes in the permit required to adopt the existing emission limitations as the Section 112(j) MACT emission limitations. If less than three years remain on the current Title V permit, any

required conforming changes shall be made when the permit is renewed. If the applicability determination is positive, the owner or operator shall submit a Part 2 MACT application meeting the requirements of Paragraph (m)(2) of this Rule by the date specified for the category or subcategory in question in 40 CFR 63 Subpart B Table 1. If the applicability determination is negative, no further action by the owner or operator shall be necessary.

(2) An owner or operator who has submitted an application that meets the requirements of Paragraph (m)(1) of this Rule may request a determination of whether emission limitations adopted pursuant to a prior case-by-case MACT determination pursuant to Section 112(g) that apply to one or more sources in a relevant category or subcategory are substantially as effective as the emission limitations that the Division would otherwise adopt pursuant to this Rule for the source in question. Such a request must be submitted by the date for the category or subcategory in question specified in 40 CFR 63 Subpart B Table 1. Each request for a determination pursuant to this Paragraph shall be construed as a complete application for an equivalent emission limitation pursuant to this Rule. If the Director determines that the emission limitations in the prior case-by-case MACT determination are substantially as effective as the emission limitations the Director would otherwise adopt pursuant to this Rule, then the Director shall adopt the existing emission limitations in the permit as the emission limitations to effectuate Section 112(j) for the source in question. If the Director determines that the emission limitations in the prior case-by-case MACT determination pursuant to Section 112(g) are not substantially as effective as the emission limitations that the Director would otherwise adopt for the source in question pursuant to this Rule, the Director shall make a new MACT determination and adopt a Title V permit incorporating an appropriate equivalent emission limitation pursuant to this Rule. The Division shall use the procedures in 40 CFR 63.52(e) to determine whether the emission limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations which Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question.

(i) If the Director disapproves a permit application submitted pursuant to this Rule or determines that the application is incomplete, the owner or operator shall revise and resubmit the application to meet the Director's objections not later than six months after first receiving notification that the application has been disapproved or is incomplete.

(j) If the owner or operator of a source subject to this Rule has submitted a timely and complete application for a permit, significant permit revision, or administrative amendment required by this Rule, any failure to have this permit shall not be a violation of the requirements of this Rule unless the delay in final action is due to the failure of the applicant to submit, in a timely manner, information required or requested to process the application.

(k) The permit shall contain the items specified in 40 CFR 63.52 including:

(1) specification of the affected source and the new affected source;

(2) emission limitations or emission standards equivalent to existing source MACT and emission limitations equivalent to new source MACT for control of emissions of hazardous air pollutants for that category or subcategory determined according to 40 CFR 63.55(a) on a case-by-case basis;

(3) emission limits, production limits, operational limits, or other terms and conditions necessary to ensure practicable enforceability of the MACT emission limitation;

(4) notification, operation and maintenance, performance testing, monitoring, reporting, and recordkeeping requirements; and

(5) compliance dates by which the owner or operator of an existing source is required to be in compliance with the MACT emission limitation and all other applicable terms and conditions of the permit, not to exceed three years from the date of issuance of the permit. The owner or operator of a new affected source shall comply with a new source MACT level of control immediately upon startup.

(l) Early reductions made pursuant to Section 112(i)(5)(A) of the federal Clean Air Act shall be achieved not later than the date on which the relevant standard should have been promulgated according to the source category schedule for standards.

(m) A permit application for a MACT determination shall consist of two parts.

(1) The Part 1 application shall contain the information required by 40 CFR 63.53(a) and shall be submitted by the applicable deadline specified in Paragraph (d), (e), or (f) of this Rule.

(2) The Part 2 application shall contain the information required by 40 CFR 63.53(b) and shall be submitted no later than the deadline in 40 CFR 63 Subpart B Table 1.

(n) Permit application review. The Director shall follow 40 CFR 63.55(a) in reviewing permit applications for MACT. The resulting MACT determination shall be incorporated into the facility's Title V permit according to the procedures established in this Section. Following submittal of a Part 1 or Part 2 MACT application, the Director may request, pursuant to 15A NCAC 02Q .0507(c) and .0525(a), additional information from the owner or operator; and the owner or operator shall submit the requested

information within 30 days. A Part 2 MACT application shall be deemed complete if it is sufficient to begin processing the application for a Title V permit addressing Section 112(j) requirements. If the Division disapproves a permit application or determines that the application is incomplete, the owner or operator shall revise and resubmit the application to meet the objections of the Division within the time period specified by the Division, which shall not exceed six months from the date that the owner or operator is first notified that the application has been disapproved or is incomplete. After receipt of a complete Part 2 MACT application that is subsequently approved by the Division, the Director shall issue a Title V permit that meets Section 112(j) requirements, following the schedule in 15A NCAC 02Q .0525.

(o) The following requirements shall apply to case-by-case determinations of equivalent emission limitations when a MACT standard is subsequently promulgated:

(1) If EPA promulgates an emission standard that is applicable to one or more sources within a major facility before the date a proposed permit pursuant to this Rule is approved, the permit shall contain the promulgated standard rather than the emission limitation determined pursuant to 15A NCAC 02D .1109, and the owner or operator of the source shall comply with the promulgated standard by the compliance date in the promulgated standard.

(2) If EPA promulgates an emission standard that is applicable to a source after the date that a permit is issued pursuant to this Rule, the Director shall revise the permit on its next renewal to reflect the promulgated standard. Subparagraph (a)(1) of 15A NCAC 02Q .0517 shall not apply to requirements established pursuant to this Rule. The Director shall establish a compliance date in the revised permit that assures that the owner or operator complies with the promulgated standard within a reasonable time, but no longer than eight years after such standard is promulgated or eight years after the date by which the owner or operator was first required to comply with the emission limitation established by permit, whichever is earlier. The period for compliance for existing sources shall not be shorter than that provided for existing sources in the promulgated standard.

(3) Notwithstanding the requirements of Subparagraphs (1) or (2) of this Paragraph, if EPA promulgates an emission standard that is applicable to a source after the date a proposed permit is approved, the Director shall not be required to change the emission limitation in the permit to reflect the promulgated standard if the level of control required by the emission limitation in the permit is as effective as that required by the promulgated standard. If EPA promulgates an emission standard that is applicable to an affected source after the date a permit application is approved and the level of control required by the promulgated standard is less stringent than the level of control required by an emission limitation in the prior MACT determination, the Division shall not be required to incorporate a less stringent emission limitation of the promulgated standards after considering the effects on air quality. The Division may consider any more stringent provision of the MACT determination to be applicable legal requirements, as necessary to protect air quality, when issuing or revising such a Title V permit.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;
Eff. July 1, 1996;
Amended Eff. February 1, 2004;
Readopted Eff. April 1, 2018;
Amended Eff. August 1, 2022.

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15A NCAC 03Q .0101 SCOPE AND PURPOSE

The rules in this Section pertain to the classification of the waters of North Carolina as coastal fishing waters, inland fishing waters, and joint fishing waters. These rules are adopted jointly by the Marine Fisheries Commission and the Wildlife Resources Commission. In addition to the classification of the waters of the State, these joint rules set forth guidelines to determine which fishing activities in joint fishing waters are regulated by the Marine Fisheries Commission and which are regulated by the Wildlife Resources Commission. Finally, the joint rules set forth special fishing regulations applicable in joint fishing waters that can be enforced by officers of the Division of Marine Fisheries and the Wildlife Resources Commission. These regulations do not affect the jurisdiction of the Marine Fisheries Commission and the Wildlife Resources Commission in any matters other than those specifically set out.

History Note: Authority G.S. 113-132; 113-134; 143B-289.52;
Eff. January 1, 1991;
Readopted Eff. September 1, 2022.

15A NCAC 03Q .0102 INLAND FISHING WATERS

Inland fishing waters are all inland waters except private ponds and all waters connecting with or tributary to coastal sounds or the ocean extending inland from the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission. All waters that are tributary to inland fishing waters and not otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are inland fishing waters. The regulation and licensing of fishing in inland fishing waters is under the jurisdiction of the Wildlife Resources Commission. Regulations and laws administered by the Wildlife Resources Commission regarding fishing in inland fishing waters are enforced by wildlife officers.

History Note: Authority G.S. 113-132; 113-134; 143B-289.52;
Eff. January 1, 1991;
Readopted Eff. September 1, 2022.

15A NCAC 03Q .0103 COASTAL FISHING WATERS

Coastal fishing waters are the Atlantic Ocean, the various coastal sounds, and estuarine waters up to the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission. All waters that are tributary to coastal fishing waters and not otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are coastal fishing waters. The regulation and licensing of fishing in coastal fishing waters is under the jurisdiction of the Marine Fisheries Commission; except that inland game fish exclusive of spotted seatrout, red drum, flounder, white perch, yellow perch, weakfish, and striped bass are subject to regulations by the Wildlife Resources Commission in coastal fishing waters. Regulations and laws administered by the Marine Fisheries Commission regarding fishing in coastal fishing waters are enforced by marine fisheries inspectors. Regulations regarding inland game fish in coastal fishing waters are enforced by wildlife officers unless otherwise agreed to by the Wildlife Resources Commission.

History Note: Authority G.S. 113-132; 113-134; 143B-289.52;
Eff. January 1, 1991;
Readopted Eff. September 1, 2022.

15A NCAC 03Q .0104 JOINT FISHING WATERS

Joint fishing waters are those coastal fishing waters denominated by agreement of the Marine Fisheries Commission and the Wildlife Resources Commission pursuant to G.S. 113-132(e) as joint fishing waters. All waters that are tributary to joint fishing waters and not otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are classified as joint fishing waters.

History Note: Authority G.S. 113-132; 113-134; 143B-289.52;
Eff. January 1, 1991;
Readopted Eff. September 1, 2022.

15A NCAC 03Q .0105 POSTING DIVIDING LINES

The dividing lines of all major bodies of water and watercourses which are divided by the agreement of the Marine Fisheries Commission and the Wildlife Resources Commission so that portions of the same are constituted inland fishing waters, coastal fishing waters, or joint fishing waters shall be marked with signs insofar as may be practicable. Unmarked and undesignated tributaries shall have the same classification as the designated waters to which they connect or into which they flow. No unauthorized removal or relocation of any such marker shall have the effect of changing the classification of any body of water or portion thereof, nor shall any such unauthorized removal or relocation or the absence of any marker affect the applicability of any regulations pertaining to any such body of water or portion thereof.

History Note: Authority G.S. 113-132; 113-134; 143B-289.52;
Eff. January 1, 1991;
Readopted Eff. September 1, 2022.

15A NCAC 03Q .0106 APPLICABILITY OF RULES: JOINT FISHING WATERS

(a) All coastal fishing laws and regulations administered by the Department of Environmental Quality and the Marine Fisheries Commission apply to joint fishing waters except as otherwise provided in this Section and shall be enforced by marine fisheries inspectors.

(b) The following inland fishing laws and regulations administered by the Wildlife Resources Commission apply to joint fishing waters and shall be enforced by wildlife officers:

(1) all laws and regulations pertaining to inland game fishes;
(2) all laws and regulations pertaining to inland fishing license requirements for hook and line fishing; and
(3) all laws and regulations pertaining to hook and line fishing except as hereinafter provided.

History Note: Authority G.S. 113-132; 113-134; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. July 1, 1999;
Readopted Eff. September 1, 2022.

15A NCAC 03Q .0107 SPECIAL REGULATIONS: JOINT FISHING WATERS

The following shall supersede any inconsistent rules of the Marine Fisheries Commission or the Wildlife Resources Commission that would otherwise be applicable in joint fishing waters under the provisions of 15A NCAC 03Q .0106:

(1) Striped Bass
  (a) It is unlawful to possess any striped bass or striped bass hybrid that is less than 18 inches total length.
  (b) It is unlawful to possess striped bass or striped bass hybrids between 22 and 27 inches total length in joint fishing waters of the Central Southern Management Area as designated in 15A NCAC 03R .0201.
  (c) It is unlawful to possess striped bass or striped bass hybrids May through September in the joint fishing waters of the Central Southern Management Area and the Albemarle Sound Management Area.
  (d) It is unlawful to possess striped bass or striped bass hybrids taken from the joint fishing waters of the Cape Fear River.

(e) It is unlawful to possess more than one daily creel limit of striped bass or striped bass hybrids, in the aggregate, per person per day, regardless of the number of management areas fished.

(f) Possession of fish shall be assessed for the creel and size limits of the management area in which the individual is found to be fishing, regardless of the size or creel limits for other management areas visited by that individual in a given day.

(g) It is unlawful to engage in net fishing for striped bass or striped bass hybrids in joint fishing waters except as authorized by rules of the Marine Fisheries Commission as set forth in 15A NCAC 03M .0201, .0202, .0204, .0205, and .0512.

(2) Lake Mattamuskeet:

(a) It is unlawful to set or attempt to set any gill net in Lake Mattamuskeet canals designated as joint fishing waters.

(b) It is unlawful to use or attempt to use any trawl net or seines in Lake Mattamuskeet canals designated as joint fishing waters.

(3) Cape Fear River. It is unlawful to use or attempt to use any net, net stakes, or electrical fishing device within 800 feet of the dam at Lock No.1 on the Cape Fear River.

(4) Shad: It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per person per day taken by hook-and-line.

History Note: Authority G.S. 113-132; 113-134; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. July 1, 1993; November 1, 1991;
Temporary Amendment Eff. May 1, 2000;
Amended Eff. July 1, 2008; September 1, 2005; April 1, 2001; August 1, 2000;
Readopted Eff. (Pending legislative review pursuant to S.L. 2019-198).

15A NCAC 03Q .0108 MANAGEMENT RESPONSIBILITY FOR ESTUARINE STRIPED BASS IN JOINT FISHING WATERS

(a) The management areas for estuarine striped bass fisheries in coastal North Carolina are designated in 15A NCAC 03R .0201.

(b) In order to effectively manage the recreational hook and line harvest in joint fishing waters of the Albemarle Sound-Roanoke River stock of striped bass, the Marine Fisheries Commission and the Wildlife Resources Commission deem it necessary to establish two management areas: the Albemarle Sound Management Area and the Roanoke River Management Area as designated in 15A NCAC 03R .0201. The Wildlife Resources Commission shall have principal management responsibility for the stock when it is in the joint and inland fishing waters of the Roanoke River Management Area. The Marine Fisheries Commission shall have principal management responsibility for the stock in the coastal, joint, and inland fishing waters of the Albemarle Sound Management Area. The annual quota for recreational harvest of the Albemarle Sound-Roanoke River striped bass stock shall be divided equally between the two management areas. Each commission shall implement management actions for recreational harvest within their respective management areas that will be consistent with the North Carolina Estuarine Striped Bass Fishery Management Plan.

History Note: Authority G.S. 113-132; 113-134; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. October 1, 2004; September 1, 1991;
Readopted Eff. September 1, 2022.

15A NCAC 03Q .0109 IMPLEMENTATION OF ESTUARINE STRIPED BASS MANAGEMENT PLANS: RECREATIONAL FISHING

The Marine Fisheries and Wildlife Resources Commissions shall implement their respective striped bass management plans for recreational fishing pursuant to their respective rule-making powers. To preserve jurisdictional authority of each Commission, the following means are established through which management measures can be implemented by a single instrument in the following management areas:

(1) In the Roanoke River Management Area, the exclusive authority to open and close seasons and areas and establish size and creel limits, whether inland or joint fishing waters, shall be vested in the Wildlife Resources Commission. An instrument closing any management area in joint fishing waters shall operate as and shall be a jointly-issued instrument opening or closing seasons or areas to harvest in the Roanoke River Management Area.

(2) In the Albemarle Sound Management Area, the exclusive authority to open and close seasons and areas and establish size and creel limits, whether coastal or joint fishing waters, shall be vested in the Marine Fisheries Commission. The season shall close by proclamation if the quota is about to be exceeded. In the Albemarle Sound Management Area administered by the Marine Fisheries Commission, a proclamation affecting the harvest in joint and coastal fishing waters, excluding the Roanoke River Management Area, shall automatically be implemented and effective as a Wildlife Resources Commission action in the inland fishing waters and tributaries to the waters affected.

History Note: Authority G.S. 113-132; 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;

Amended Eff. October 1, 2004; September 1, 1991;
Readopted Eff. September 1, 2022.

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15A NCAC 07H .1805 SPECIFIC CONDITIONS

(a) The area where beach bulldozing 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) 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.

(e) In order to minimize adverse impacts to 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, 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.

(f) 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 and approved by the Division of Energy, Mineral, and Land Resources, or local government having jurisdiction. This plan must be approved prior to commencing the land disturbing activity.

History Note: Authority G.S. 113-229(c1); 113A-107; 113A-113(b); 113A-118.1;
Eff. December 1, 1987;
Temporary Amendment Eff. September 2, 1998;
Amended Eff. September 1, 2016; August 1, 2012 (see S.L. 2012-143, s.1.(f)); August 1, 2000;
Readopted Eff. April 1, 2022;
Amended Eff. September 1, 2022.

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15A NCAC 10C .0101 SCOPE AND PURPOSE

The following rules pertain to the classification of the waters of North Carolina as coastal fishing waters, inland fishing waters, and joint fishing waters. These rules are adopted jointly by the Marine Fisheries Commission and the Wildlife Resources Commission. In addition to the classification of the waters of the State, these joint rules set forth guidelines to determine which fishing activities in joint fishing waters are regulated by the Marine Fisheries Commission and which are regulated by the Wildlife Resources Commission. Finally, the joint rules set forth special fishing regulations applicable in joint fishing waters that can be enforced by officers of the Division of Marine Fisheries and the Wildlife Resources Commission. These regulations do not affect the jurisdiction of the Marine Fisheries Commission and the Wildlife Resources Commission in any matters other than those specifically set out.

History Note: Authority G.S. 113-132; 113-134; 113-136;
Eff. February 1, 1976;
Amended Eff. January 1, 1977;
Readopted Eff. September 1, 2022.

15A NCAC 10C .0102 INLAND FISHING WATERS

Inland fishing waters are all inland waters except private ponds and all waters connecting with or tributary to coastal sounds or the ocean extending inland from the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission. All waters that are tributary to inland fishing waters and that are not otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are inland fishing waters. The regulation and licensing of fishing in inland fishing waters is under the jurisdiction of the Wildlife Resources Commission. Regulations and laws administered by the Wildlife Resources Commission regarding fishing in inland fishing waters are enforced by wildlife officers.

History Note: Authority G.S. 113-129; 113-132; 113-134;
Eff. February 1, 1976;
Amended Eff. January 1, 1977;
Readopted Eff. September 1, 2022.

15A NCAC 10C .0103 COASTAL FISHING WATERS

Coastal fishing waters are the Atlantic Ocean, the various coastal sounds, and estuarine waters up to the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission. All waters that are tributary to coastal fishing waters that are not otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are coastal fishing waters. The regulation and licensing of fishing in coastal fishing waters is under the jurisdiction of the Marine Fisheries Commission; except that inland game fish exclusive of spotted seatrout, red drum, flounder, white perch, yellow perch, weakfish, and striped bass are subject to regulations by the Wildlife Resources Commission in coastal fishing waters. Regulations and laws administered by the Marine Fisheries Commission regarding fishing in coastal fishing waters are enforced by marine fisheries inspectors. Regulations regarding inland game fish in coastal fishing waters are enforced by wildlife officers, unless otherwise agreed to by the Wildlife Resources Commission.

History Note: Authority G.S. 113-129; 113-132; 113-134; 113-292;
Eff. February 1, 1976;
Amended Eff. July 1, 1991; January 1, 1977;

Readopted Eff. September 1, 2022.

15A NCAC 10C .0104 JOINT FISHING WATERS

Joint fishing waters are those coastal fishing waters, denominated by agreement of the Marine Fisheries Commission and the Wildlife Resources Commission pursuant to G.S. 113-132(e) as joint fishing waters. All waters that are tributary to joint fishing waters and not otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are classified as joint fishing waters.

History Note: Authority G.S. 113-132; 113-134; 113-292;
Eff. February 1, 1976;
Amended Eff. January 1, 1977;
Readopted Eff. September 1, 2022.

15A NCAC 10C .0105 POSTING DIVIDING LINES

The dividing lines of all major bodies of water and watercourses which are divided by the agreement of the Marine Fisheries Commission and the Wildlife Resources Commission so that portions of the same are constituted inland fishing waters, coastal fishing waters, or joint fishing waters shall be marked with signs insofar as may be practicable. Unmarked and undesignated tributaries shall have the same classification as the designated waters to which they connect or into which they flow. No unauthorized removal or relocation of any such marker shall have the effect of changing the classification of any body of water or portion thereof, nor shall any such unauthorized removal or relocation or the absence of any marker affect the applicability of any regulations pertaining to any such body of water or portion thereof.

History Note: Authority G.S. 113-132; 113-134;
Eff. January 1, 1977;
Readopted Eff. September 1, 2022.

15A NCAC 10C .0106 APPLICABILITY OF RULES: JOINT FISHING WATERS

(a) All coastal fishing laws and regulations administered by the Department of Environmental Quality and the Marine Fisheries Commission apply to joint fishing waters except as otherwise provided in this Section and shall be enforced by marine fisheries inspectors.

(b) The following inland fishing laws and regulations administered by the Wildlife Resources Commission apply to joint fishing waters and shall be enforced by wildlife officers:

(1) all laws and regulations pertaining to inland game fishes;
(2) all laws and regulations pertaining to inland fishing license requirements for hook and line fishing; and
(3) all laws and regulations pertaining to hook and line fishing except as hereinafter provided.

History Note: Authority G.S. 113-132; 113-134; 113-271; 113-275; 113-182; 113-292; 113-333;
Eff. January 1, 1977;
Amended Eff. April 1, 1990; April 15, 1979;
Readopted Eff. September 1, 2022.

15A NCAC 10C .0107 SPECIAL REGULATIONS: JOINT FISHING WATERS

The following shall supersede any inconsistent rules of the Marine Fisheries Commission or the Wildlife Resources Commission that would otherwise be applicable in joint fishing waters under the provisions of 15A NCAC 10C .0106:

(1) Striped Bass
  (a) It is unlawful to possess any striped bass or striped bass hybrid that is less than 18 inches total length.
  (b) It is unlawful to possess striped bass or striped bass hybrids between 22 and 27 inches total length in joint fishing waters of the Central Southern Management Area as designated in 15A NCAC 03R .0201.
  (c) It is unlawful to possess striped bass or striped bass hybrids May through September in the joint fishing waters of the Central Southern Management Area and the Albemarle Sound Management Area.
  (d) It is unlawful to possess striped bass or striped bass hybrids taken from the joint fishing waters of the Cape Fear River.
  (e) It is unlawful to possess more than one daily creel limit of striped bass or striped bass hybrids, in the aggregate, per person per day, regardless of the number of management areas fished.
  (f) Possession of fish shall be assessed for the creel and size limits of the management area in which the individual is found to be fishing, regardless of the size or creel limits for other management areas visited by that individual in a given day.
  (g) It is unlawful to engage in net fishing for striped bass or their hybrids in joint fishing waters except as authorized by rules of the Marine Fisheries Commission as set forth in 15A NCAC 03M .0201, .0202, .0204, .0205, and .0512.
(2) Lake Mattamuskeet
  (a) It is unlawful to set or attempt to set any gill net in Lake Mattamuskeet canals designated as joint fishing waters.
  (b) It is unlawful to use or attempt to use any trawl net or seines in Lake Mattamuskeet canals designated as joint fishing waters.
(3) Cape Fear River. It is unlawful to use or attempt to use any net, net stakes, or electrical fishing device within 800 feet of the dam at Lock No. 1 on the Cape Fear River.

(4) Shad: It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per person per day taken by hook-and-line.

History Note: Authority G.S. 113-132; 113-134; 113-138; 113-182; 113-292;
Eff. January 1, 1977;
Amended Eff. July 1, 2008; May 1, 2005; August 1, 2000; July 1, 1993; November 1, 1991; January 1, 1991; August 1, 1985;
Readopted Eff. September 1, 2022.

15A NCAC 10C .0108 SPECIFIC CLASSIFICATION OF WATERS

The several sounds and estuarine and tributary waters all or portions of which are specifically classified as inland, joint, or coastal fishing waters by agreement of the Marine Fisheries Commission and the Wildlife Resources Commission are listed in the regulations of the Marine Fisheries Commission under 15A NCAC 3Q .0200 and such list and classification is incorporated by reference, including subsequent amendments and editions.

History Note: Authority G.S. 113-129; 113-132; 113-134;
Eff. January 1, 1977;
Amended Eff. July 1, 1993; January 1, 1981; January 1, 1978;
Readopted Eff. September 1, 2022.

15A NCAC 10C .0109 PROTECTION OF SEA TURTLES

Pursuant to a cooperative agreement entered into on the fifth day of February 1979, by the Department of Environmental Quality, the Marine Fisheries Commission, and the Wildlife Resources Commission, the Wildlife Resources Commission shall exercise regulatory jurisdiction over any species of sea turtles, and their eggs and nests, consistent with designation of such species as endangered or threatened by the U.S. Fish and Wildlife Service. As provided by said agreement, the law enforcement officers of both the Marine Fisheries Commission and the Wildlife Resources Commission shall have jurisdiction to enforce any state laws and regulations, including those contained in 15A NCAC 10I, relating to endangered or threatened species of sea turtles and their eggs and nests.

History Note: Authority G.S. 113-132; 113-134; 113-138; 113-181; 113-182; 113-224; 113-305;
Eff. April 29, 1979;
Amended Eff. April 1, 1990;
Readopted Eff. September 1, 2022.

15A NCAC 10C .0110 MANAGEMENT RESPONSIBILITY FOR ESTUARINE STRIPED BASS IN JOINT FISHING WATERS

(a) The management areas for estuarine striped bass fisheries in coastal North Carolina are designated in 15A NCAC 03R .0201.

(b) In order to effectively manage the recreational hook and line harvest in joint fishing waters of the Albemarle Sound-Roanoke River stock of striped bass, the Marine Fisheries Commission and the Wildlife Resources Commission deem it necessary to establish two management areas: the Albemarle Sound Management Area and the Roanoke River Management Area as designated in 15A NCAC 03R .0201. The Wildlife Resources Commission shall have principal management responsibility for the stock when it is in the joint and inland fishing waters of the Roanoke River Management Area. The Marine Fisheries Commission shall have principal management responsibility for the stock in the coastal, joint, and inland fishing waters of the Albemarle Sound Management Area. The annual quota for recreational harvest of the Albemarle Sound-Roanoke River striped bass stock shall be divided equally between the two management areas. Each Commission shall implement management actions for recreational harvest within their respective management areas that shall be consistent with the North Carolina Estuarine Striped Bass Fishery Management Plan.

History Note: Authority G.S. 113-132; 113-134; 113-138; 113-182; 113-292;
Eff. January 1, 1991;
Amended Eff. June 1, 2005;
Readopted Eff. September 1, 2022.

15A NCAC 10C .0111 IMPLEMENTATION OF ESTUARINE STRIPED BASS MANAGEMENT PLANS: RECREATIONAL FISHING

The Marine Fisheries and Wildlife Resources Commissions shall implement their respective striped bass management plans for recreational fishing pursuant to their respective rulemaking powers. To preserve jurisdictional authority of each Commission, the following means are established through which management measures can be implemented by a single instrument in the following management areas:

(1) In the Roanoke River Management Area, the exclusive authority to open and close seasons and areas and establish size and creel limits, whether inland or joint fishing waters, shall be vested in the Wildlife Resources Commission. An instrument closing any management area in joint fishing waters shall operate as a jointly-issued instrument opening or closing seasons or areas to harvest in the Roanoke River Management Area.

(2) In the Albemarle Sound Management Area, the exclusive authority to open and close seasons and areas and establish size and creel limits, whether coastal or joint fishing waters, shall be vested in the Marine Fisheries Commission. The season shall close by Marine Fisheries Commission proclamation if the quota is about to be exceeded. In the Albemarle Sound Management Area administered by the Marine Fisheries Commission, a proclamation affecting the harvest in joint and coastal fishing waters, excluding the Roanoke River Management Area, shall automatically be implemented and effective as a Wildlife Resources Commission action in the inland fishing waters and tributaries to the waters affected.

History Note: Authority G.S. 113-132; 113-134; 113-138; 113-292;
Eff. January 1, 1991;
Amended Eff. June 1, 2005;
Readopted Eff. September 1, 2022.

15A NCAC 10D .0201 ALLIGATOR RIVER GAME LAND IN TYRELL COUNTY

Alligator River game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(2) Bear may only be taken the first Saturday, Monday, and Tuesday of the November Bear Season and the second Saturday, Monday, and Tuesday of the December Bear Season.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0202 ANGOLA BAY GAME LAND IN DUPLIN AND PENDER COUNTIES

Angola Bay game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(2) Target shooting is prohibited.
(3) Bear shall not be harvested on Sunday.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0203 BACHELOR BAY GAME LAND IN BERTIE AND WASHINGTON COUNTIES

(a) Bachelor Bay game land is a Seven Days per Week Area.
(b) In this game land, deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0206 BRINKLEYVILLE GAME LAND IN HALIFAX COUNTY

Brinkleyville game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
(2) Horseback riding is prohibited.
(3) Target shooting is prohibited.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0208 BUCKRIDGE GAME LAND IN TYRELL COUNTY

Buckridge game land is a Three Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(2) Bear may only be taken the first Saturday, Monday, and Tuesday of the November Bear Season and the second Saturday, Monday, and Tuesday of the December Bear Season.
(3) Target shooting is prohibited.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0209 BUFFALO COVE GAME LAND IN CALDWELL AND WILKES COUNTIES

Buffalo Cove game land is a Seven Days per Week Area. The following shall apply:

(1) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving Day through the third Saturday after Thanksgiving. Deer of either sex may be taken with archery equipment on open days beginning the Saturday on or nearest September 10 through the Sunday immediately preceding the Blackpowder Firearms Season described in this rule and the Sunday immediately following the closing of Blackpowder Firearms Season described in this rule through the Sunday before Thanksgiving Day. Deer with visible antlers may be taken with archery equipment the Sunday immediately following the closing of the Deer With Visible Antlers Season, as described in this Part, through January 1. Deer of either sex may be taken with blackpowder firearms on open days beginning the Monday on or nearest October 1 through the Saturday of the second week thereafter.
(2) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season.
(3) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
(4) Target shooting is prohibited.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0210 BULLARD AND BRANCH HUNTING PRESERVE GAME LANDS IN ROBESON COUNTY

Bullard and Branch Hunting Preserve game land is a Four Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(2) Bear shall not be harvested on Sunday.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0213 CAPE FEAR RIVER WETLANDS GAME LAND IN PENDER COUNTY

Cape Fear River Wetlands game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(2) Turkey Hunting is by permit only on that portion known as the Roan Island Tract.
(3) The use of dogs for hunting deer is prohibited on the portion of the game land that is west of the Black River, north of Roan Island, east of Lyon Swamp Canal to Canetuck Road, and south of NC 210 to the Black River.
(4) Target shooting is prohibited.
(5) Bear shall not be harvested on Sunday.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0214 CARTERET COUNTY GAME LAND IN CARTERET COUNTY

Carteret County game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
(2) The use of dogs for hunting deer is prohibited.
(3) Bear hunting on the Salters Creek Tract is by permit only.
(4) Bear shall not be harvested on Sunday.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0215 R. WAYNE BAILEY-CASWELL GAME LAND IN CASWELL COUNTY

R. Wayne Bailey-Caswell is a Three Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Wednesday thereafter.
(2) Horseback riding, including all equine species, is allowed seven days per week from May 16 through August 31, and on Sundays only, September 1 through May 15. Horseback riding is allowed only on roads opened to vehicular traffic and on those gated roads and trails that are posted for equestrian use. People age 16 or older horseback riding on this game land shall possess a Game Lands license as required by G.S. 270.3(b)(3).
(3) The area encompassed by the following roads is permit-only for all quail and woodcock hunting and all bird dog training: From Yanceyville south on NC 62 to the intersection of SR 1746, west on SR 1746 to the intersection of SR 1156, south on SR 1156 to the intersection of SR 1783, east on SR 1783 to the intersection of NC 62, north on NC 62 to the intersection of SR 1736, east on SR1736 to the intersection of SR 1730, east on SR 1730 to NC 86, north on NC 86 to NC 62.
(4) On the posted waterfowl impoundment, waterfowl hunting is by permit only after November 1.
(5) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and March 31 through May 14.
(6) Target shooting is prohibited, except at the R. Wayne Bailey-Caswell Shooting Range.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0216 CHATHAM GAME LAND IN CHATHAM COUNTY

Chatham game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
(2) Horseback riding, including all equine species, is allowed seven days per week from May 16 through August 31, and on Sundays only September 1 through May 15.
(3) Target shooting is prohibited.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0217 CHOWAN GAME LAND IN CHOWAN COUNTY

Chowan game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken on all the open days of the applicable Deer With Visible Antlers Season.

(2) Bear shall not be harvested on Sunday.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0218 CHOWAN SWAMP GAME LAND IN BERTIE, GATES, AND HERTFORD COUNTIES

Chowan Swamp game land is a Six Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken on all the open days of the applicable Deer With Visible Antlers Season.
(2) Bear hunting is restricted to the first Saturday, Monday, and Tuesday of the November bear season and the second Saturday, Monday, and Tuesday of the December bear season except in that portion of Chowan Swamp Game Land in Gates County that is east of Highway 158/13, south of Highway 158, west of Highway 32, and north of Catherine Creek and the Chowan River where the bear season is the same as the season dates for the Gates County bear season.
(3) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
(4) Horseback riding is prohibited except during May 16 through August 31 and on Sundays only September 1 through May 15 on those roads that are open to vehicular traffic and on those gated roads and trails posted for equestrian use.
(5) Target shooting is prohibited.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0219 COLD MOUNTAIN GAME LAND IN HAYWOOD COUNTY

Cold Mountain game land is a Seven Days per Week Area, in which the following applies:

(1) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
(2) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0220 COLUMBUS COUNTY GAME LAND IN COLUMBUS COUNTY

Columbus County game land is a Four Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken on all the open days of the applicable Deer With Visible Antlers Season.
(2) Deer hunting on the Campbell Tract shall be by permit only.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0221 CROATAN GAME LAND IN CARTERET, CRAVEN, AND JONES COUNTIES

Croatan game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken on all the open days of the applicable Deer With Visible Antlers Season.
(2) Waterfowl shall be taken only on the following days:
    (a) the opening and closing days of the applicable waterfowl seasons;
    (b) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
    (c) Tuesdays and Saturdays of the applicable waterfowl seasons.
(3) Beginning on the first open waterfowl day in October through the end of all waterfowl seasons, waterfowl hunting from designated Disabled Sportsmen blinds on the Catfish Lake Waterfowl Impoundment is by permit only.
(4) Dove hunting is by permit only for the first two open days of dove season on posted areas. During the rest of dove season, no permit is required to hunt doves.
(5) Bear shall not be harvested on Sunday.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0222 CURRITUCK BANKS GAME LAND IN CURRITUCK COUNTY

Currituck Banks game land is a Seven Days per Week Area, in which the following applies:

(1) Permanent waterfowl blinds in Currituck Sound on these game lands shall be hunted by permit only from November 1 through the end of all waterfowl seasons.
(2) Licensed hunting guides may accompany the permitted individual or party provided the guides do not use a firearm.
(3) The boundary of the game land shall extend five yards from the edge of the marsh or shoreline.
(4) Dogs are allowed only for waterfowl hunting by permitted waterfowl hunters on the day of their hunt.
(5) No screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.

(6) Deer of either sex may be taken on all the days of the applicable Deer With Visible Antlers season.
(7) Bear shall not be harvested on Sunday.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0224 DARE GAME LAND IN DARE AND HYDE COUNTIES

Dare game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the first Friday thereafter.
(2) No hunting is allowed on posted parts of bombing range.
(3) The use and training of dogs is prohibited from March 1 through June 30.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0226 DUPONT STATE FOREST GAME LANDS IN HENDERSON AND TRANSYLVANIA COUNTIES

Dupont State Forest game land is hunting by permit only. The following shall apply:

(1) The training and use of dogs for hunting is prohibited except by special hunt permit holders during scheduled permit hunts.
(2) Target shooting is prohibited.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0227 ELK KNOB GAME LAND IN WATAUGA COUNTY

(a) Elk Knob game land is a Seven Days per Week Area.
(b) At this game land deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the first Friday thereafter.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0228 EMBRO GAME LAND IN HALIFAX AND WARREN COUNTIES

Embro game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
(2) Horseback riding is prohibited.
(3) Target Shooting is prohibited.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0229 GOOSE CREEK GAME LAND IN BEAUFORT AND PAMLICO COUNTIES

Goose Creek game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken on all the open days of the applicable Deer With Visible Antlers Season.
(2) Except as provided in 15A NCAC 10D .0103(d)(2), waterfowl in posted waterfowl impoundments shall be taken only on the following days:
    (a) the opening and closing days of the applicable waterfowl seasons;
    (b) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
    (c) Tuesdays and Saturdays of the applicable waterfowl seasons.
(3) Beginning on the first open waterfowl season day in October through the end of all waterfowl seasons, waterfowl hunting is by permit only on the following waterfowl impoundments: Pamlico Point, Campbell Creek, Hunting Creek, Spring Creek, Smith Creek, and Hobucken.
(4) On Spring Lake, Pamlico Point, and Campbell Creek Waterfowl Impoundments, all activities, except waterfowl hunting on designated waterfowl hunting days and trapping during the trapping season, are restricted to the posted Scouting-only Zone during the period November 1 through March 15.
(5) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
(6) Hunting and vehicular access on the Parker Farm Tract is restricted from September 1 through January 1 and April 1 through May 15 to individuals that possess a valid hunting opportunity permit.
(7) Pursuing or chasing deer or bear with dogs for the purposes of training or hunting is prohibited on the Beaufort County portion north of NC 33 except for that portion east of Smith Creek and south of Campbell Creek.
(8) Bear shall not be harvested on Sunday.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. Pending Legislative Review.

15A NCAC 10D .0230 GREEN RIVER GAME LAND IN HENDERSON AND POLK COUNTIES

Green River is a Six Days per Week Area. The following shall apply:

(1) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season.
(2) Horseback riding is prohibited.
(3) Target shooting is prohibited.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0232 GULL ROCK GAME LAND IN HYDE COUNTY

Gull Rock is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(2) Waterfowl on posted waterfowl impoundments shall be taken only on the following days:
  (a) the opening and closing days of the applicable waterfowl seasons;
  (b) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
  (c) Tuesdays and Saturdays of the applicable waterfowl season.
(3) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas designated and posted as camping areas.
(4) Bear may only be taken the first Saturday, Monday, and Tuesday of the November Bear Season and the second Saturday, Monday, and of the December Bear Season.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0233 HARRIS GAME LAND IN CHATHAM, HARNETT, AND WAKE COUNTIES

Harris game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
(2) Waterfowl on posted waterfowl impoundments shall be taken only on the following days:
  (a) the opening and closing days of the applicable waterfowl seasons;
  (b) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
  (c) Tuesdays and Saturdays of the applicable waterfowl season.
(3) The use or construction of permanent hunting blinds shall be prohibited.
(4) Wild turkey hunting is by permit only, except on those areas posted as an archery zone.
(5) Target shooting is prohibited.
(6) Horseback riding is prohibited.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0237 HYCO GAME LAND IN PERSON COUNTY

Hyco game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
(2) Target shooting is prohibited.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0239 JOHNS RIVER GAME LAND IN BURKE COUNTY

Johns River game land is hunting by permit only. The following shall apply:

(1) During permitted deer hunts, deer of either sex may be taken by permit holders.
(2) The construction of permanent hunting blinds is prohibited.
(3) Camping and the presence of campers and tents in designated Hunter Camping Areas is limited to August 31 through the last day of February and March 31 through May 14.
(4) Target shooting is prohibited.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0240 JORDAN GAME LAND IN CHATHAM, DURHAM, ORANGE, AND WAKE COUNTIES

Jordan game land is a Six Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken on all the open days of the applicable Deer With Visible Antlers Season.
(2) Waterfowl may be taken only on:
  (a) Mondays, Wednesdays, and Saturdays of the applicable waterfowl seasons;
  (b) Thanksgiving, Christmas, and New Year's Days; and
  (c) the opening and closing days of the applicable waterfowl seasons.
(3) Horseback riding, including all equine species, is allowed only on those areas posted as American Tobacco Trail and other areas posted for equestrian use. Unless otherwise posted, horseback riding is permitted on posted portions of the American Tobacco Trail anytime the trail is open for use. On all other trails posted for equestrian use, horseback riding is allowed seven days per week from

May 16 through August 31, and on Sundays only from September 1 through May 15. People age 16 or older shall obtain a game land license prior to engaging in horseback riding on any area other than the American Tobacco Trail.

(4) Target shooting is prohibited.

(5) Wild turkey hunting is by permit only, except on those areas posted as an Archery Zone.

(6) The use of bicycles is restricted to designated areas, except that this restriction does not apply to hunters engaged in the act of hunting during the open days of the applicable seasons for game birds and game animals.

(7) Camping and the presence of campers and tents in designated and posted Hunter Camping Areas are limited to September 1 through the last day of February and March 31 through May 14.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. Pending Legislative Review.

15A NCAC 10D .0241 JUNIPER CREEK GAME LAND IN BRUNSWICK AND COLUMBUS COUNTIES

(a) Juniper Creek game land is a Seven Days per Week Area. The following applies:

(1) Deer of either sex may be taken on all the open days of the Deer With Visible Antlers Season.

(2) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.

(3) Bear shall not be harvested on Sunday.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0243 KINGS CREEK GAME LAND IN CALDWELL AND WILKES COUNTIES

Kings Creek game land is a Six Days per Week Area, in which the following applies:

(1) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving Day through the third Saturday after Thanksgiving. Deer of either sex may be taken with archery equipment on open days beginning the Saturday on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving Day. Deer with visible antlers may be taken with archery equipment the Monday immediately following the closing of the Deer With Visible Antlers Season, as described in this Part, through January 1. Deer of either sex may be taken with blackpowder firearms on open days beginning the Monday on or nearest October 1 through the Saturday of the second week thereafter.

(2) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0245 LEE GAME LAND IN LEE COUNTY

Lee game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.

(2) Target shooting is prohibited.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0246 LIGHT GROUND POCOSIN GAME LAND IN PAMLICO COUNTY

Light Ground Pocosin game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken on all the open days of the applicable Deer With Visible Antlers Season.

(2) Bear shall not be harvested on Sunday.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0247 LINWOOD GAME LAND IN DAVIDSON COUNTY

(a) Linwood game land is a Seven Days per Week Area.

(b) At this game land deer of either sex may be taken on all the open days of the applicable Deer With Visible Antlers Season.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0248 LOWER FISHING CREEK GAME LAND IN EDGECOMBE AND HALIFAX COUNTIES

Lower Fishing Creek game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.

(2) Horseback riding is prohibited.

(3) The use of dogs for hunting deer is prohibited.

(4) Target Shooting is prohibited.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0249 MAYO GAME LAND IN PERSON COUNTY

Mayo game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
(2) Waterfowl shall be taken only on:
  (a) Tuesdays, Thursdays, and Saturdays applicable waterfowl seasons;
  (b) Christmas and New Year's Days; and
  (c) the opening and closing days of the applicable waterfowl seasons.
(3) Target shooting is prohibited.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0250 MITCHELL RIVER GAME LAND IN SURRY COUNTY

Mitchell River game land is a Four Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Tuesday thereafter.
(2) Horseback riding is prohibited except on designated trails May 16 through August 31, and all horseback riding is prohibited from September 1 through May 15.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0251 NANTAHALA GAME LAND IN CHEROKEE, CLAY, GRAHAM, JACKSON, MACON, SWAIN, AND TRANSYLVANIA COUNTIES

(a) Nantahala game land is a Seven Days per Week Area.
(b) In this game land Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season in that portion located in Transylvania County.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0252 NEEDMORE GAME LAND IN MACON AND SWAIN COUNTIES.

Needmore game land is a Seven Days per Week Area, in which the following applies:

(1) Horseback riding is prohibited except on designated trails May 16 through August 31, and all horseback riding is prohibited from September 1 through May 15.
(2) On posted dove fields, dove hunting on the opening day of dove season is by permit only.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0254 NEW LAKE GAME LAND IN HYDE AND TYRRELL COUNTIES

New Lake game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(2) Bear shall not be harvested on Sunday.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0255 NICHOLSON CREEK GAME LAND IN HOKE COUNTY

Nicholson Creek game land is a Three Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken with archery equipment on open hunting days from the Saturday on or nearest September 10 through the fourth Friday before Thanksgiving Day.
(2) Deer of either sex may be taken with blackpowder firearms on open hunting days beginning the fourth Saturday before Thanksgiving Day through the Wednesday of the second week thereafter.
(3) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving Day through the third Saturday after Thanksgiving Day.
(4) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season.
(5) The use of dogs for hunting deer is prohibited.
(6) Wild turkey hunting is by permit only.
(7) On Lake Upchurch, the following activities are prohibited:
  (a) Operating any vessel or vehicle powered by an internal combustion engine; and
  (b) Swimming.
(8) Target shooting is prohibited.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0256 NORTH RIVER GAME LAND IN CAMDEN AND CURRITUCK COUNTIES

North River game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(2) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
(3) Hunting on the posted waterfowl impoundment is by permit only.
(4) Bear shall not be harvested on Sunday.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0257 NORTHWEST RIVER MARSH GAME LAND IN CURRITUCK COUNTY

Northwest River Marsh game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(2) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
(3) Bear shall not be harvested on Sunday.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0258 PEE DEE RIVER GAME LAND IN ANSON, MONTGOMERY, RICHMOND, AND STANLY COUNTIES

Pee Dee River game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
(2) Use of centerfire rifles is prohibited in that portion in Anson and Richmond counties North of US-74.
(3) Target shooting is prohibited.
(4) Horseback riding is allowed seven days per week from May 16 through August 31, and on Sundays only September 1 through May 15 only on roads opened to vehicular traffic and gated roads and trails posted for equestrian use.
(5) Pursuing or chasing deer or bear with dogs for the purposes of training or hunting shall be prohibited on that portion south of US-74.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0259 PERKINS GAME LAND IN DAVIE COUNTY

Perkins game land is a Four Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season through the second Tuesday thereafter.
(2) Horseback riding is prohibited from November 1 through January 1.
(3) Target Shooting is prohibited.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0260 PISGAH GAME LAND IN AVERY, BUNCOMBE, BURKE, CALDWELL, HAYWOOD, HENDERSON, MADISON, MCDOWELL, MITCHELL, TRANSYLVANIA, WATAUGA, AND YANCEY COUNTIES

Pisgah game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season.
(2) Horseback riding is prohibited on the Black Bear (McDowell County), Linville River (Burke County), and Little Tablerock Tracts (Avery, McDowell, and Mitchell counties).
(3) The use of bicycles shall be restricted to designated trails on the Linville River Tract (Burke County). Persons engaged in the act of hunting on the Linville River Tract during any open day of an applicable season for game birds or game animals shall be exempt from this restriction.
(4) Alcohol and fires are prohibited in the Wilson Creek portion of Pisgah Game Land (Caldwell County)
(5) Target shooting is prohibited on the Black Bear (McDowell County), Linville River (Burke County), and Little Tablerock Tracts (Avery, McDowell, and Mitchell counties).

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0261 POND MOUNTAIN GAME LAND IN ASHE COUNTY

Pond Mountain game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the first Friday thereafter.
(2) Horseback riding is prohibited except on designated trails from May 16 through August 31 and Sundays from September 1 through October 31. All horseback riding is prohibited from November 1 through May 15.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0267 ROBESON GAME LAND IN ROBESON COUNTY

Robeson game land is a Four Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(2) Bear shall not be harvested on Sunday.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0270 SAMPSON GAME LAND IN SAMPSON COUNTY

Sampson game land is a Four Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(2) Target shooting is prohibited.
(3) Bear shall not be harvested on Sunday.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0271 SANDHILLS GAME LAND IN HOKE, MOORE, RICHMOND, AND SCOTLAND COUNTIES

Sandhills game land is a Three Days per Week Area, in which the following applies:

(1) Hunting is prohibited on the J. Robert Gordon Field Trial Grounds from October 22 through March 31 except as follows:
  (a) deer of either-sex may be taken with archery equipment on all the open days of the archery season through the fourth Friday before Thanksgiving Day; with blackpowder firearms and archery equipment all the open days of the blackpowder firearms season through the third Wednesday before Thanksgiving Day; and only deer with visible antlers may be taken with all legal weapons from the second Saturday before Thanksgiving Day through the Saturday following Thanksgiving Day;
  (b) dove may be taken all open days from the opening day of the dove season through the third Saturday thereafter;
  (c) gray and fox squirrel may be taken all the open days from the second Saturday before Thanksgiving Day through the Saturday following Thanksgiving Day;
  (d) rabbit may be taken all open days from the second Saturday preceding Thanksgiving Day through the Saturday following Thanksgiving Day;
  (e) waterfowl may be taken on open days during any waterfowl season;
  (f) wild animals and wild birds may be taken as part of a Disabled Sportsmen Program Permit Hunt; and
  (g) raccoon and opossum may be taken on open days from sunrise Monday on or nearest October 15 through the last day of February.
(2) The Deer With Visible Antlers season is the open hunting days from the second Saturday before Thanksgiving Day through the third Saturday after Thanksgiving Day except on the J. Robert Gordon Field Trial Grounds.
(3) The archery season is all open days from the Saturday on or nearest to Sept. 10 to the fourth Friday before Thanksgiving Day and, except on the J. Robert Gordon Field Trial Grounds, the third Monday after Thanksgiving Day through January 1. Deer of either sex may be taken with archery equipment on all open hunting days during the archery season, by permit during the Deer with Visible antlers season, and the blackpowder firearms season as stated in this Subparagraph. Only deer with visible antlers may be taken from the third Monday after Thanksgiving Day through January 1.
(4) Blackpowder firearms season is all the open days from the fourth Saturday preceding Thanksgiving Day through the Wednesday of the second week thereafter and, except on the J. Robert Gordon Field Trial Grounds, the third Monday after Thanksgiving Day through January 1. Deer of either sex may be taken with blackpowder firearms on all open hunting days during the blackpowder firearms season and by permit during the Deer With Visible Antlers season. Only deer with visible antlers may be taken from the third Monday after Thanksgiving Day through January 1.
(5) Either-sex deer hunting during the Deer With Visible Antlers Season is by permit only.
(6) In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.
(7) Wild turkey hunting is by permit only.
(8) Horseback riding on field trial grounds from October 22 through March 31 is prohibited unless participating in authorized field trials. Horseback riding is allowed on the remainder of the Sandhills Game Land seven days per

week on roads that are open to vehicular traffic and gated roads and trails posted for equestrian use.

(9) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and March 31 through May 14.

(10) Target shooting is prohibited, except at the John F. Lentz Hunter Education Complex.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0272 SANDY CREEK GAME LAND IN NASH AND FRANKLIN COUNTIES

Sandy Creek game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.

(2) Horseback riding is prohibited.

(3) The use of dogs for hunting deer is prohibited.

(4) Target Shooting is prohibited.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0275 SHOCCO CREEK GAME LAND IN FRANKLIN, HALIFAX, NASH, AND WARREN COUNTIES

Shocco Creek game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.

(2) Horseback riding is prohibited.

(3) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.

(4) Target Shooting is prohibited.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0276 SOUTH MOUNTAINS GAME LAND IN BURKE, CLEVELAND, MCDOWELL, AND RUTHERFORD COUNTIES

South Mountains game land is a Seven Days per Week Area, in which the following applies:

(1) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving Day through the third Saturday after Thanksgiving. Deer of either sex may be taken with archery equipment on open days beginning the Saturday on or nearest September 10 through the Sunday immediately preceding the Blackpowder Firearms Season described in this rule and the Sunday immediately following the closing of Blackpowder Firearms Season described in this rule through the Sunday before Thanksgiving Day. Deer with visible antlers may be taken with archery equipment the Sunday immediately following the closing of the Deer With Visible Antlers Season, as described in this Part, through January 1. Deer of either sex may be taken with blackpowder firearms on open days beginning the Monday on or nearest October 1 through the Saturday of the second week thereafter.

(2) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season.

(3) Horseback riding is prohibited except on designated trails during the following dates:

(a) January 2 through March 31;

(b) May 16 through August 31;

(c) Sundays only - April 1 through May 15; and

(d) Sundays only - September 1 through January 1.

(4) Target shooting is prohibited.

(5) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.

(6) The maximum period of consecutive overnight camping at any posted and designated camping area is 14 days within any 30-day period.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0277 STONES CREEK GAME LAND IN ONSLOW COUNTY

Stones Creek game land is a Six Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

(2) The use of dogs for hunting deer is prohibited on Mondays, Wednesdays, and Fridays.

(3) Swimming in all lakes is prohibited.

(4) Waterfowl may be taken only on the following days:

(a) the opening and closing days of the applicable waterfowl seasons;

(b) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and

(c) Tuesdays and Saturdays of the applicable waterfowl seasons.

(5) Target shooting is prohibited.

(6) Geocaching is restricted to closed days for taking bear, deer, turkey, and waterfowl.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0279 SUGGS SUTTON LAKE GAME LAND IN NEW HANOVER AND BRUNSWICK COUNTIES

Suggs Sutton Lake game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the first Friday thereafter.
(2) Target shooting is prohibited.
(3) Bear shall not be harvested on Sunday.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0282 THREE TOP MOUNTAIN GAME LAND IN ASHE COUNTY

Three Top Mountain game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the first Friday thereafter.
(2) Horseback riding is prohibited.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0283 THURMOND CHATHAM GAME LAND IN ALLEGHANY AND WILKES COUNTIES

Thurmond Chatham game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
(2) Horseback riding is prohibited except on designated trails May 16 through August 31, and all horseback riding is prohibited from September 1 through May 15. People age 16 or older horseback riding on this game land shall possess a Game Lands license as required by G.S. 270.3(b)(3).
(3) The maximum period of consecutive overnight camping at any designated campground is 14 days within any 30 day period from May 1 through August 31. After 14 consecutive days of camping all personal belongings must be removed from the game land.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0284 TILLERY GAME LAND IN HALIFAX COUNTY

Tillery game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
(2) Horseback riding is prohibited.
(3) The use of dogs for hunting deer is prohibited.
(4) Wild turkey hunting is by permit only.
(5) Target Shooting is prohibited.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0285 TOXAWAY GAME LAND IN JACKSON AND TRANSYLVANIA COUNTIES

Toxaway game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season.
(2) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0286 UWHARRIE GAME LAND IN DAVIDSON, MONTGOMERY, AND RANDOLPH COUNTIES

Uwharrie game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
(2) On the posted waterfowl impoundment, waterfowl may be taken only on the following days:
    (a) the opening and closing days of the applicable waterfowl seasons;
    (b) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
    (c) Mondays, Wednesdays and Saturdays of the applicable waterfowl seasons.
(3) Target shooting is prohibited, except at the Flintlock Valley Shooting Range.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0288 VAN SWAMP GAME LAND IN BEAUFORT AND WASHINGTON COUNTIES

Van Swamp game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

(2) Bear may only be taken the first Saturday, Monday, and Tuesday of the November Bear Season and the second Saturday, Monday, and Tuesday of the December Bear Season.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0292 WILLIAM H. SILVER GAME LAND IN HAYWOOD COUNTY

(a) William H. Silver game land is a Seven Days per Week Area.
(b) In this game land deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

15A NCAC 10D .0293 YADKIN RIVER GAME LAND IN DAVIDSON, DAVIE, MONTGOMERY, ROWAN, AND STANLY COUNTIES

Yadkin River game land is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter in that portion in Montgomery county, and deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season in those portions in Davidson, Davie, Rowan, and Stanly counties.

(2) On the Lick Creek Tract, deer and bear hunting is archery only.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;
Eff. October 1, 2022.

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15A NCAC 13B .0535 APPLICATION REQUIREMENTS FOR C&DLF FACILITIES

(a) New permit as defined in G.S. 130A-294(a3)(1)a, c, d, and e. An applicant for a new C&DLF permit as defined in G.S. 130A-294(a3)(1)a, c, d, and e shall meet the requirements of Rule .0536 of this Section prior to submitting an application for a permit to construct.

(1) Permit to Construct. An application for a permit to construct for a new permit as defined in G.S. 130A-294(a3)(1)a, c, d, and e shall contain the following:

(A) a facility plan that describes the comprehensive development of the C&DLF facility prepared in accordance with Rule .0537 of this Section;

(B) a design hydrogeologic report prepared in accordance with Rule .0538(b) of this Section;

(C) an engineering plan for the initial phase of landfill development prepared in accordance with Rule .0539 of this Section;

(D) a construction quality assurance plan prepared in accordance with Rule .0541 of this Section;

(E) an operation plan prepared in accordance with Rule .0542 of this Section;

(F) a closure and post-closure plan prepared in accordance with Rule .0543 of this Section;

(G) monitoring plans prepared in accordance with Rule .0544 of this Section;

(H) an environmental compliance history for the applicant in accordance with G.S. 130A-295.3; and

(I) for an applicant that is not a federal, State, or local government, an organization chart showing the ownership structure of the applicant.

(2) Permit to Operate. The owner and operator shall meet the pre-operative requirements of the permit to construct to qualify the constructed C&DLF unit for a permit to operate.

(b) New permit as defined in G.S. 130A-294(a3)(1)b. An application for a new C&DLF permit as defined in G.S. 130A-294(a3)(1)b shall contain:

(1) a facility plan that describes the comprehensive development of the C&DLF facility prepared in accordance with Rule .0537 of this Section;

(2) local government approval in accordance with Rule .0536(c)(11) of this Section;

(3) an environmental compliance history for the applicant in accordance with G.S. 130A-295.3; and

(4) for an applicant that is not a federal, State, or local government, an organization chart showing the ownership structure of the applicant.

(c) Amendment to the permit.

(1) An application for an amendment to the permit for a subsequent stage of landfill development in accordance with Rule .0533(a)(2)(A) of this Section shall contain the following:

(A) an updated design hydrogeologic report prepared in accordance with Rule .0538(b) of this Section;

(B) an updated engineering plan prepared in accordance with Rule .0539 of this Section;

(C) an updated construction quality assurance plan prepared in accordance with Rule .0541 of this Section;

(D) an updated operation plan prepared in accordance with Rule .0542 of this Section;

(E) an updated closure and post-closure plan prepared in accordance with Rule .0543 of this Section;

(F) an updated monitoring plan prepared in accordance with Rule .0544 of this Section;

(G) an updated environmental compliance history for the applicant in accordance with G.S. 130A-295.3; and

(H) for an applicant that is not a federal, State, or local government, an updated organization chart showing the ownership structure of the applicant.

(2) An application for an amendment to the permit for a change in ownership or corporate structure in accordance with Rule .0533(a)(2)(B) of this Section shall contain the following:

(A) a description of the proposed ownership change including affected facilities and permit numbers, the schedule for the change in ownership or corporate structure, and contact name and information for the applicant;

(B) any changes to the facility name, property owner, facility operator, or billing contact names and contact information;

(C) if the property owner changes, a copy of the recorded property deed for the new property owner;

(D) for an applicant that is not a federal, State, or local government, an organization chart showing the ownership structure of the applicant, which shall be a business entity registered with the NC Secretary of State;

(E) an environmental compliance history for the applicant in accordance with G.S. 130A-295.3;

(F) any documentation that the Division may request to determine compliance with the requirements for financial responsibility for the applicant in accordance with G.S. 130A-295.2 and Section .1800 of this Subchapter, including an executed financial assurance mechanism for the applicant;

(G) any updates to the cost estimates required to be submitted in accordance with Section .1800 of this Subchapter;

(H) any modifications to the plans incorporated into the permit if changes are proposed by the applicant, or to correct any information included in the plans that has changed because of the change in ownership or corporate structure, such as the owner or operator names and contact information;

(I) for any plans for which no changes or corrections are being made, a statement that the applicant shall continue to comply with the plans incorporated into the existing permit, which shall be identified in the statement by the date they were incorporated, and the file identification number assigned by the Division to the file containing the incorporated plan;

(J) copies of any federal, State, or local government permits or approvals that were required for the facility permit approval to operate, and that have been revised because of the change to ownership or corporate structure, or a statement that these documents have not changed; and

(K) any additional information that the Division may request if it is necessary to determine whether any additional changes to the permit are necessary to comply with the rules of this Section.

(d) Modifications to the permit. The owner or operator may propose to modify plans that were prepared and approved in accordance with the requirements set forth in Rules .0531 through .0546 of this Section. A complete application shall identify the requirement(s) proposed for modification and provide information that demonstrates compliance with Rules .0531 through .0546 of this Section.

History Note: Authority G.S. 130A-294;
Eff. January 1, 2007;
Readopted Eff. September 16, 2021;
Amended Eff. Pending Legislative Review.

15A NCAC 13B .1617 APPLICATION REQUIREMENTS FOR MSWLF FACILITIES

(a) New permit as defined in G.S. 130A-294(a3)(1)a, c, d, and e. An applicant for a new MSWLF permit as defined in G.S. 130A-294(a3)(1)a, c, d, and e shall meet the requirements of Rule .1618 of this Section prior to submitting an application for a permit to construct.

(1) Permit to Construct. A complete application for a permit to construct for a new permit as

defined in G.S. 130A-294(a3)(1)a, c, d, and e shall contain the following:

(A) a facility plan that describes comprehensive development of the MSWLF facility prepared in accordance with Rule .1619 of this Section;

(B) an engineering plan that is prepared for the initial phase of landfill development prepared in accordance with Rule .1620 of this Section;

(C) a construction quality assurance plan prepared in accordance with Rule .1621 of this Section;

(D) an operation plan prepared in accordance with Rule .1625 of this Section;

(E) a closure and post-closure plan prepared in accordance with Rule .1629 of this Section;

(F) the design hydrogeologic report and monitoring plans prepared in accordance with Rule .1623(b) of this Section;

(G) an environmental compliance history for the applicant in accordance with G.S. 130A-295.3; and

(H) for an applicant that is not a federal, State, or local government, an organization chart showing the ownership structure of the applicant.

(2) Permit to Operate. The owner or operator shall meet the pre-operative requirements of the permit to construct to qualify the constructed MSWLF unit for a permit to operate.

(b) New permit as defined in G.S. 130A-294(a3)(1)b. A complete application for a new MSWLF permit as defined in G.S. 130A-294(a3)(1)b shall contain:

(1) a facility plan that describes the comprehensive development of the MSWLF facility prepared in accordance with Rule .1619 of this Section;

(2) local government approval in accordance with Rule .1618(c)(6) of this Section;

(3) an environmental compliance history for the applicant in accordance with G.S. 130A-295.3; and

(4) for an applicant that is not a federal, State, or local government, an organization chart showing the ownership structure of the applicant.

(c) Amendment to the permit.

(1) An application for an amendment to the permit for a subsequent stage of landfill development in accordance with Rule .1603(a)(2)(A) of this Section shall contain the following:

(A) an updated engineering plan prepared in accordance with Rule .1620 of this Section;

(B) an updated construction quality assurance plan prepared in accordance with Rule .1621 of this Section;

(C) an updated operation plan prepared in accordance with Rule .1625 of this Section;

(D) an updated closure and post-closure plan prepared in accordance with Rule .1629 of this Section;

(E) an updated design hydrogeologic report and monitoring plans prepared in accordance with Rule .1623(b) of this Section;

(F) an updated environmental compliance history for the applicant in accordance with G.S. 130A-295.3; and

(G) for an applicant that is not a federal, State, or local government, an updated organization chart showing the ownership structure of the applicant.

(2) An application for an amendment to the permit for a change in ownership or corporate structure in accordance with Rule .1603(a)(2)(B) of this Section shall contain the following:

(A) a description of the proposed ownership change including affected facilities and permit numbers, the schedule for the change in ownership or corporate structure, and contact name and information for the applicant;

(B) any changes to the facility name, property owner, facility operator, or billing contact names and contact information;

(C) if the property owner changes, a copy of the recorded property deed for the new property owner;

(D) for an applicant that is not a federal, State, or local government, an organization chart showing the ownership structure of the applicant, which shall be a business entity registered with the NC Secretary of State;

(E) an environmental compliance history for the applicant in accordance with G.S. 130A-295.3;

(F) any documentation that the Division may request to determine compliance with the requirements for financial responsibility for the applicant in accordance with G.S. 130A-295.2 and Section .1800 of this Subchapter, including an executed financial assurance mechanism for the applicant;

(G) any updates to the cost estimates required to be submitted in accordance with Section .1800 of this Subchapter;

(H) any modifications to the plans incorporated into the permit if changes are proposed by the applicant, or to correct any information included in the plans that has changed because of the change in ownership or corporate structure, such as the owner or operator names and contact information;

(I) for any plans for which no changes or corrections are being made, a statement that the applicant shall continue to comply with the plans incorporated into the existing permit, which shall be identified in the statement by the date they were incorporated, and the file identification number assigned by the Division to the file containing the incorporated plan;

(J) copies of any federal, State, or local government permits or approvals that were required for the facility permit approval to operate, and that have been revised because of the change to ownership or corporate structure, or a statement that these documents have not changed; and

(K) any additional information that the Division may request if it is necessary to determine whether any additional changes to the permit are necessary to comply with the rules of this Section.

(d) Modifications to the permit. The owner or operator may propose to modify plans that were prepared and approved in accordance with the requirements set forth in this Section. A complete application shall identify the requirement(s) proposed for modification and provide information that demonstrates compliance with the rules of this Section.

History Note: Authority G.S. 130A-294;
Eff. October 9, 1993;
Readopted Eff. September 16, 2021;
Amended Eff. Pending Legislative Review.

TITLE 19A - DEPARTMENT OF TRANSPORTATION

19A NCAC 02D .0803 ADVERTISEMENT AND INVITATIONS FOR BIDS

(a) All projects shall be advertised by the Department of Transportation in newspapers having general circulation in the State of North Carolina four weeks prior to the bid opening as set forth in G.S. 143-129(b).

(b) On the date of advertisement, an invitation to bid shall be made available on the Department's website at connect.ncdot.gov/letting.

(c) The invitation to bid shall state the contract identification number and description of the projects to be let to contract, a general summary of the items and approximate quantities of work to be performed, and the time and place for the public opening and reading of the bids received. Information concerning the cost and the availability of bid documents shall also be provided in the invitation to bid.

(d) As a prerequisite for submitting a bid, prospective bidders shall sign up for the Interested Parties List for each project they intend to submit a bid on by providing their firm name, a contact name, and contact information via the Department's website at connect.ncdot.gov/letting. Only prospective bidders that have prequalified status pursuant to Rule .0801 of this Section and who sign up for the Interested Parties List will be eligible to bid.

History Note: Authority G.S. 136-28.1; 143-129;
Eff. April 3, 1981;
Amended Eff. February 1, 2008; December 1, 1993; November 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;
Amended Eff. September 1, 2022.

This Section contains information for the meeting of the Rules Review Commission October 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)
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

Brian Liebman	984-236-1948
Lawrence Duke	984-236-1938
William W. Peaslee	984-236-1939

RULES REVIEW COMMISSION MEETING DATES

October 20, 2022 December 15, 2022
November 17, 2022 January 19, 2023

AGENDA
RULES REVIEW COMMISSION
Thursday, October 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. Board of Agriculture - 02 NCAC 52B .0212, .0214; 61 .0101, .0102, .0104, .0106, .0109, .0111 (Peaslee)
- B. Board of Agriculture - 02 NCAC 52J .0208, .0704 (Peaslee)
- C. State Board of Elections - 08 NCAC 04 .0308, .0309 (Peaslee)
- D. Medical Care Commission - 10A NCAC 13B .3801, .3903, .4103, .4104, .4106, .4305, .4603, .4801, .4805, .5102, .5105, .5406, .5408, .5411 (Liebman)
- E. Sheriffs' Education and Training Standards Commission – 12 NCAC 10B .0704 (Peaslee)
- F. Environmental Management Commission - 15A NCAC 02B .0208, .0212, .0214, .0215, .0216, .0218 (Duke)
- G. Environmental Management Commission - 15A NCAC 02H .1301, .1401, .1402, .1403, .1404, .1405 (Liebman)
- H. Coastal Resources Commission - 15A NCAC 07H .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0601, .0603, .0604; 07I .0406, .0504, .0506, .0508, .0511, .0602, .0702; 07J .0203, .0204, .0206, .0207, .0208, .0210, .0312 (Liebman)
- I. Coastal Resources Commission - 15A NCAC 07H .2305 (Duke)
- J. Coastal Resources Commission - 15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0503, .0601, .0603, .0701, .0703, .0704, .0801, .0802, .1001, .1002, .1101, .1102, .1201, .1202 (Peaslee)
- K. Commission for Public Health - 15A NCAC 18A .1301, .1302, .1304, .1305, .1306, .1307, .1308, .1309, .1310, .1311, .1312, .1313, .1314, .1315, .1316, .1317, .1318, .1319, .1320, .1321, .1323, .1324, .1327 (Liebman)

IV. Review of Filings (Permanent Rules) for rules filed between August 23, 2022 through September 20, 2022
- Commission for Mental Health/DD/SAS (Liebman)
- Sheriffs' Education and Training Standards Commission (Liebman)
- Alarm Systems Licensing Board (Duke)
- Board of Dietetics/Nutrition (Duke)
- Board of Electrolysis Examiners (Duke)

V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting

VI. Existing Rules Review

VII. Commission Business
- Pre-review Discussion
  - Next meeting: November 17, 2022

Commission Review

Log of Permanent Rule Filings
August 23, 2022 through September 20, 2022

MENTAL HEALTH/DD/SAS, COMMISSION FOR

The rules in Chapter 26 are general mental health rules.

The rules in Subchapter 26E concern the manufacture, distribution, and dispensing of controlled substances including general provisions and registration (.0100); labeling, packaging, and record keeping (.0200); prescriptions (.0300); some miscellaneous provisions (.0400); administrative functions, practices, and procedures (.0500); and controlled substance reporting system (.0600); and intractable epilepsy alternative treatment pilot study (.0700).

Definitions Amend*	10A NCAC 26E .0602
Reporting Requirements Adopt*	10A NCAC 26E .0604
Penalties Adopt*	10A NCAC 26E .0605

The rules in Chapter 27 concern mental health community facilities and services.

The rules in Subchapter 27G are from either the department or the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services including general information (.0100); operation and management rules (.0200); physical plant rules (.0300); facility licensing procedures (.0400); area program requirements (.0500); area authority or county program monitoring of facilities and services (.0600); waivers and appeals (.0800); general rules for infants and toddlers (.0900); partial hospitalization for individuals who are mentally ill (.1100); psychological rehabilitation facilities for individuals with severe and persistent mental illness (.1200); residential treatment for children and adolescents who are emotionally disturbed or who have a mental illness (.1300); day treatment for children and adolescents with emotional or behavioral disturbances (.1400); residential treatment staff secure facilities for children or adolescents (.1700); psychiatric residential treatment facilities for children and adolescents (.1900); specialized community residential centers for individuals with developmental disabilities (.2100); before/after school and summer developmental day services for children with or at risk for developmental delays or disabilities, or atypical development (.2200); adult developmental and vocational programs for individuals with developmental disabilities (.2300); developmental day services for children with or at risk for developmental delays or disabilities, or atypical development (.2400); nonhospital medical detoxification for individuals who are substance abusers (.3100); social setting detoxification for substance abuse (.3200); outpatient detoxification for substance abuse (.3300); residential treatment/rehabilitation for individuals with substance abuse disorders (.3400); outpatient facilities for individuals with substance abuse disorders (.3500); outpatient opioid treatment (.3600); day treatment facilities for individuals with substance abuse disorders (.3700); substance abuse services for DWI offenders (.3800); drug education schools (DES) (.3900); treatment alternatives to street crimes (TASC) (.4000); substance abuse primary prevention services (.4200); therapeutic community (.4300); facility based crises services for individual of all disability groups (.5000); community respite services for individuals of all disability groups (.5100); residential therapeutic (habilitative) camps for children and adolescents of all disability groups (.5200); day activity for individuals of all disability groups (.5400); sheltered workshops for individuals of all disability groups (.5500); supervised living for individuals of all disability groups (.5600); assertive community treatment service (.5700); supportive employment for individuals of all disability groups (.5800); case management for individuals of all disability groups (.5900); inpatient hospital treatment for individuals who have mental illness or substance abuse disorders (.6000); emergency services for individuals of all disability groups (.6100); outpatient services for individuals of all disability groups (.6200); companion respite services for individuals of all disability groups (.6300); personal assistants for individuals of all disabilities groups (.6400); employment assistance

programs (.6500); specialized foster care services (.6600); forensic screening and evaluation services for individuals of all disability groups (.6700); prevention services (.6800); consultation and education services (.6900); local management entity response to complaints (.7000); and target population (.7100).

Emergency Plans and Supplies 10A NCAC 27G .0207
Readopt without Changes*

Staff 10A NCAC 27G .2202
Readopt without Changes*

SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

The rules in Subchapter 10B govern the commission organization and procedure (.0100); enforcement rules (.0200); minimum standards for employment as a justice officer (deputy or jailer) (.0300); certification of justice officers (.0400); standards and accreditation for justice officers schools, training programs, and the instructors (.0500-.0900); certificate and awards programs for sheriffs, deputies, justice officers, jailers, reserve officers, and telecommunicators (.1000-.1700); in-service training (.2000); and firearms in-service training and re-qualification (.2100).

Period of Suspension: Revocation: or Denial 12 NCAC 10B .0205
Amend*

Minimum Standards for Justice Officers 12 NCAC 10B .0301
Amend*

Documentation of Educational Requirement 12 NCAC 10B .0302
Amend*

Fingerprint Criminal History Records Check 12 NCAC 10B .0303
Amend*

Medical Examination 12 NCAC 10B .0304
Amend*

Background Investigation 12 NCAC 10B .0305
Amend*

Employment Interview 12 NCAC 10B .0306
Amend*

Criminal History Record 12 NCAC 10B .0307
Amend*

Verification of Records to the Division 12 NCAC 10B .0408
Amend*

Agency Reporting of Drug Screening Results 12 NCAC 10B .0410
Amend*

ALARM SYSTEMS LICENSING BOARD

The rules in Chapter 17 are from the N.C. Alarm Systems Licensing Board and cover the organization and general provisions (.0100); provisions for licensees (.0200); provisions for registrants (.0300); the recovery fund (.0400); and continuing education for licensees (.0500).

Renewal or Reinstatement of License 14B NCAC 17 .0204
Amend*

DIETETICS/NUTRITION, BOARD OF

The rules in Chapter 17 are from the Board of Dietetics/Nutrition. The rules cover the general provisions of licensure (.0100); weight control programs (.0200); dietetic/nutrition students or trainees (.0300); and unlicensed individuals and those who aid in the practice of dietetics/nutrition (.0400).

Fees Amend*	21	NCAC 17	.0113

ELECTROLYSIS EXAMINERS, BOARD OF

The rules in Chapter 19 are from the Board of Electrolysis Examiners and include general provisions (.0100); application procedures (.0200); administrative law procedures (.0300); sanitation, equipment, and supplies (.0400); schools (.0600); and continuing education (.0700).

Definitions Repeal*	21	NCAC 19	.0103
Definitions and Overview Amend*	21	NCAC 19	.0404
Continuing Education Requirements, License Renewal, Reins... Amend*	21	NCAC 19	.0701
Board Approval of Courses Amend*	21	NCAC 19	.0702
Computation of Continuing Education Units Amend*	21	NCAC 19	.0703
Time Limits on Credit Amend*	21	NCAC 19	.0704
Application for Approval of Continuing Education Adopt*	21	NCAC 19	.0705
Waiver Adopt*	21	NCAC 19	.0706