# NORTH CAROLINA REGISTER

**VOLUME 37 • ISSUE 09 • Pages 656 – 752**

**November 1, 2022**

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**PUBLISHED BY**
***The Office of Administrative Hearings***
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***Raleigh, NC 27609***
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***Julie Brincefield, Register Drafter***

# Contact List for Rulemaking Questions or Concerns

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

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

Office of Administrative Hearings
Rules Division
1711 New Hope Church Road — 984-236-1850
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## Rule Review and Legal Issues

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Raleigh, North Carolina 27609 — 984-236-1947 FAX

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## Fiscal Notes & Economic Analysis

Office of State Budget and Management
116 West Jones Street
Raleigh, North Carolina 27603-8005
Contact: Carrie Hollis, Economic Analyst — osbmruleanalysis@osbm.nc.gov — 984-236-0689

NC Association of County Commissioners
215 North Dawson Street — 919-715-2893
Raleigh, North Carolina 27603
contact: Amy Bason — amy.bason@ncacc.org

NC League of Municipalities — 919-715-2925
424 Fayetteville Street, Suite 1900
Raleigh, North Carolina 27601
contact: Monica Jackson — mjackson@nclm.org

## Legislative Process Concerning Rulemaking

545 Legislative Office Building
300 North Salisbury Street — 919-733-2578
Raleigh, North Carolina 27611 — 919-715-5460 FAX

Jason Moran-Bates, Staff Attorney
Chris Saunders, Staff Attorney
Aaron McGlothlin, Staff Attorney

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

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

# EXPLANATION OF THE PUBLICATION SCHEDULE

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

## GENERAL

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

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

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

## FILING DEADLINES

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

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

## NOTICE OF TEXT

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

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

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

# State of North Carolina

**ROY COOPER**
GOVERNOR

**September 28, 2022**

**EXECUTIVE ORDER NO. 270**

**DECLARATION OF A STATE OF EMERGENCY AND TEMPORARY WAIVER AND SUSPENSION OF MOTOR VEHICLE REGULATIONS**

**WHEREAS**, Hurricane Ian ("Ian") will likely cause significant impacts to the State of North Carolina; and

**WHEREAS**, Ian could have a significant impact on public and private property and could seriously disrupt essential utility services and systems; and

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

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

**WHEREAS**, the need to prepare for and respond to Ian during the COVID-19 pandemic requires increased planning and preparation to protect public health and public safety in North Carolina; and

**WHEREAS**, N.C. Gen. Stat. § 166A-19.1(3) provides that it is the responsibility of the undersigned, state agencies, and local governments to "provide for the rapid and orderly rehabilitation of persons and restoration of property"; and

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

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

**WHEREAS**, the anticipated impacts from Ian may result in extensive damage, including widespread power outages throughout the state that will require the vehicles bearing equipment and supplies for utility restoration and debris removal to be moved through North Carolina on the interstate and intrastate highways; and

**WHEREAS**, the uninterrupted supply of electricity, fuel oil, diesel oil, gasoline, kerosene, propane, liquid petroleum gas, food, water, and medical supplies to residential and commercial establishments is essential before, during, and after Ian, and any interruption in the delivery of those commodities threatens the public welfare; and

**WHEREAS,** the prompt restoration of utility services is essential to the safety and well-being of the State's residents; and

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

**WHEREAS,** under N.C. Gen. Stat. § 166A-19.30(b)(3) the undersigned, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

**WHEREAS,** under N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a state agency which restricts the immediate relief of human suffering; and

**WHEREAS,** the undersigned has found that residents may suffer losses and further widespread damage within the meaning of N.C. Gen. Stat. §§ 166A-19.3 and 166A-19.21(b); and

**WHEREAS,** 49 C.F.R. § 390.23 allows the Governor of a State to suspend the rules and regulations under 49 C.F.R. Parts 390-399 for up to thirty (30) days if the Governor determines that an emergency condition exists; and

**WHEREAS,** nothing contained in this declaration shall be construed as an exemption from the controlled substances and alcohol use and testing requirements (49 C.F.R. Part 382), the commercial driver's license requirements (49 C.F.R. Part 383), the financial responsibility (insurance) requirements (49 C.F.R. Part 387), operating authority (49 C.F.R. Part 365), applicable size and weight requirements, ill or fatigued operator (49 C.F.R. Part 392.3) or any other portion of the regulations not specifically identified; and

**WHEREAS,** pursuant to N.C. Gen. Stat. § 166A-19.70(g), upon the recommendation of the North Carolina Commissioner of Agriculture and the existence of an imminent threat of severe economic loss of livestock, poultry or crops ready to be harvested, the Governor shall direct the North Carolina Department of Public Safety ("DPS") to temporarily suspend weighing vehicles used to transport livestock, poultry or crops ready to be harvested; and

**WHEREAS,** this suspension does not permit the gross weight of any vehicle or combination to exceed the safe load carrying capacity established by the North Carolina Department of Transportation ("DOT") on any bridge pursuant to N.C. Gen. Stat. § 136-72, or to permit the operation of a vehicle when a law enforcement officer has probable cause to believe the vehicle is creating an imminent hazard to public safety; and

**WHEREAS,** pursuant to N.C. Gen. Stat. § 166A-19.70, the Governor may declare that the health, safety, or economic well-being of persons or property requires that the maximum hours of service for drivers prescribed by N.C. Gen. Stat. § 20-381 should be waived for (1) persons transporting essential fuels, food, water, non-alcoholic beverages, medical supplies, feed for livestock and poultry, (2) persons transporting livestock, poultry, and crops ready to be harvested and (3) vehicles used in the restoration of utility and transportation services; and

**WHEREAS,** the undersigned has sought and obtained concurrence from the Council of State on the provisions of this Executive Order requiring concurrence.

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

**Section 1.**

I hereby declare that a state of emergency, as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19), exists in the State of North Carolina due to the anticipated impacts from Ian.

For purposes of this Executive Order, the emergency area is the entire State of North

Carolina ("the Emergency Area").

**Section 2.**

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

**Section 3.**

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

**Section 4.**

Secretary Buffaloe, as Chief Coordinating Officer for the State of North Carolina, shall exercise the powers prescribed in N.C. Gen. Stat. § 143B-602.

**Section 5.**

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

**Section 6.**

DPS, in conjunction with the North Carolina Department of Transportation ("DOT"), shall waive the maximum hours of service for drivers prescribed by DPS pursuant to N.C. Gen. Stat. § 20-381. In addition, DPS shall, pursuant to N.C. Gen. Stat. § 166A-19.70(g), temporarily suspend weighing pursuant to N.C. Gen. Stat. § 20-118.1 vehicles used to transport livestock, poultry, livestock or poultry feed, or crops ready to be harvested.

**Section 7.**

With concurrence of the Council of State and subject to Section 8 below, DPS, in conjunction with DOT, shall waive enforcement of certain size and weight restrictions and penalties arising under N.C. Gen. Stat. §§ 20-116, 20-118, and 20-119, certain registration requirements and penalties arising under N.C. Gen. Stat. §§ 20-86.1 and 20-382, and certain registration and filing requirements and penalties arising under N.C. Gen. Stat. §§ 105-449.45, 105-449.47, and 105-449.49 for vehicles supporting emergency relief efforts in the Emergency Area.

**Section 8.**

Notwithstanding the waivers set forth above, size and weight restrictions and penalties have not been waived under the following conditions:

a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer ("GVWR") or 90,000 pounds gross weight, whichever is less.

b. When the vehicle weight exceeds a single-axle weight of 22,000 pounds, a tandem-axle weight of 42,000 pounds, or a gross weight of 90,000 pounds.

c. When the vehicle consists of a five or more axle combination vehicle that exceeds a single-axle weight of 26,000 pounds, a tandem-axle weight of 42,000 pounds and a gross weight 90,000 pounds, with a length of at least forty-eight (48) feet between the center of axle one

and the center of the last axle of the vehicle and a minimum of eleven (11) feet between the center of axle one and the center of axle two of the vehicle.

d. When the vehicle consists of a two-axle vehicle that exceeds a gross weight of 37,000 pounds and a single-axle weight of no more than 27,000 pounds, with a length of at least fourteen (14) feet between the center of axle one and the center of axle two of the vehicle.
e. When a vehicle and vehicle combination exceed twelve (12) feet in width and the total overall vehicle combination's length exceeds seventy-five (75) feet from bumper to bumper.

f. Vehicles and vehicle combinations subject to exemptions or permits by authority of this Executive Order shall not be exempt from the requirement of having (A) a yellow banner on the front and rear that is seven (7) feet long and eighteen (18) inches wide and bears the legend "Oversized Load" in ten (10) inch black letters, 1.5 inches wide and (B) red flags measuring eighteen (18) inches square on all sides at the widest point of the load. In addition, when operating between sunset and sunrise, a certified escort shall be required for loads exceeding eight (8) feet six (6) inches in width.

g. Commercial vehicles operating outside the normal weight, height, and length restrictions under the authority of this State of Emergency shall be issued permits by the DOT. Said vehicles shall be subject to any special conditions the DOT and DPS may list on applicable permits. Nothing in this Executive Order shall be construed to allow any vehicle to exceed weight limits posted for bridges and like structures, nor shall anything in this Executive Order be construed to relieve compliance with restrictions other than those specified in this Executive Order or from any statute, rule, order, or other legal requirement not specifically waived herein.

h. Oversize permits may be issued by the DOT, Oversize/Overweight Unit, during normal business hours, Monday through Friday by calling 1-888-221-8166 or contacting them through the online portal at https://connect.ncdot.gov/business/trucking/Pages/overpermits.aspx

**Section 9.**

With Council of State concurrence, vehicles referenced under Sections 7 and 8 of this Executive Order shall be exempt from the following registration requirements, except where otherwise noted below:

a. The requirement to obtain a temporary trip permit in N.C. Gen. Stat. § 105-449.49.
b. The requirement of filing a quarterly fuel tax return.
c. The registration requirements under N.C. Gen. Stat. §§ 20-382.1 and 20-382 concerning interstate for-hire authority; however, vehicles shall maintain the required limits of insurance as required.
d. Non-participants in North Carolina's International Registration Plan and International Fuel Tax Agreement will be permitted to enter North Carolina in accordance with the exemptions identified by this Executive Order.

**Section 10.**

The size and weight exemption for vehicles will be allowed on all DOT designated routes, except those routes designated as light traffic roads under N.C. Gen. Stat. § 20-118. Size and weight exemptions shall not be in effect on bridges posted pursuant to N.C. Gen. Stat. § 136-72.

**Section 11.**

The waiver of regulations under Title 49 of the Code of Federal Regulations does not apply to the Commercial Drivers' License and Insurance Requirements. This waiver shall be in effect for thirty (30) days or the duration of the emergency, whichever is less.

**Section 12.**

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 6 through 11 of this Executive Order in a manner that does not endanger North Carolina motorists.

**Section 13.**

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish that their loads are for use in (1) providing direct assistance supporting emergency relief efforts including transporting essential fuels, food, water, medical supplies, feed for livestock and poultry, (2) transporting livestock, poultry, and crops ready to be harvested, or (3) the restoration of utility and transportation services in response to Ian.

Direct assistance terminates when a driver or commercial motor vehicle is used in intrastate/interstate commerce to transport cargo or provide services that are not in support of emergency relief efforts related to Ian in North Carolina, or when the motor carrier dispatches a driver or commercial motor vehicle to another location to begin operations in commerce. (49 C.F.R. § 390.23(b)).

Upon termination of direct assistance to emergency relief efforts related to Ian in North Carolina or the affected states, the motor carrier and driver are subject to the requirements of 49 C.F.R. Parts 390 through 399, except that a driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with Parts 390 through 399. When a driver is moving from emergency relief efforts to normal operations a 10-hour break is required when the total time a driver operates conducting emergency relief efforts, or a combination of emergency relief and normal operation, equals 14 hours.

**Section 14.**

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

**Section 15.**

Pursuant to N.C. Gen. Stat. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C. Gen. Stat. §§ 75-37 and 75-38 in the Emergency Area.

**Section 16.**

This Executive Order is effective immediately and shall remain in effect for thirty (30) days unless earlier terminated or otherwise extended by the undersigned.

**IN WITNESS WHEREOF,** I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 28th day of September in the year of our Lord two thousand and twenty-two.

Roy Cooper
Governor

**ATTEST:**

Elaine F. Marshall
Secretary of State

North Carolina License and Theft Bureau

PUBLIC NOTICE

This serves as a notice pursuant to G.S. § 20-288 of a license application submission by a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative that has not been previously issued a license by the Division.

**Applicant's Name:** Abba Trailers LLC

**Applicant's Address:** 1932 US 601 Hwy Yadkinville, NC 27055

**Application Date:** 09/30/2022

**Names and titles of any individual listed on the application as an owner, partner, member or officer of the applicant:** Jose Luis Lopez Rosas

North Carolina License and Theft Bureau

PUBLIC NOTICE

This serves as a notice pursuant to G.S. § 20-288 of a license application submission by a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative that has not been previously issued a license by the Division.

Applicant's Name: Kaufman Trailers Group LLC

Applicant's Address: 81 West Fourth St Denton NC 29239

Application Date: 10/4/2022

Names and titles of any individual listed on the application as an owner, partner, member or officer of the applicant: Rachel Prince, Member and Andrew Blackmon, Member

North Carolina License and Theft Bureau

PUBLIC NOTICE

This serves as a notice pursuant to G.S. § 20-288 of a license application submission by a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative that has not been previously issued a license by the Division.

Applicant's Name: BYD Auto LLC

Applicant's Address: 1800 S Figueroa ST

Los Angeles, CA 90015

Application Date: 06/21/2022

Names and titles of any individual listed on the application as an owner, partner, member or officer of the applicant:

BYD Auto Group LLC mgr member

John Zhuang mgr

***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 16 – DEPARTMENT OF PUBLIC INSTRUCTION**

***Notice*** *is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education intends to amend the rule cited as 16 NCAC 06E .0204.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** *https://www.dpi.nc.gov/about-dpi/state-board-education/legal-affairs*

**Proposed Effective Date:** *July 1, 2023*

**Public Hearing:**
**Date:** *November 16, 2022*
**Time:** *9:00 a.m.*
**Location:** *https://ncgov.webex.com/meet/lou.martin 615 950 383 Join by phone +1-415-655-0003 US Toll Access code: 615 950 383*

**Reason for Proposed Action:** *S.L. 2021-184 made substantial changes to the administration of athletic activities in public school units and required the State Board of Education to adopt rules to implement those changes. In response to that legislation, SBE adopted 16 NCAC 06E .0204 Interscholastic Athletics and Administering Organizations for High School Athletics as a temporary rule at its March 3, 2022, meeting. The temporary rule was published in North Carolina Register 37:02, 209-212, July 15, 2022. The proposed permanent rule is identical to the temporary rule except that paragraph (k) is amended to explicitly authorize an administering organization to waive any student eligibility requirement contained in the rule if a waiver is necessary to reasonably accommodate a student's disability, as required under the Americans with Disabilities Act (ADA), 42 U.S.C. §12101 et seq.*

**Comments may be submitted to:** *Thomas Ziko, 6302 Mail Service Center, Raleigh, NC 26799-6301; phone (984) 236-2249; email thomas.ziko@dpi.nc.gov*

**Comment period ends:** *January 3, 2023*

**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 06 - ELEMENTARY AND SECONDARY EDUCATION**

**SUBCHAPTER 06E - STUDENTS**

**SECTION .0200 - SCHOOL ATHLETICS AND SPORTS MEDICINE**

**16 NCAC 06E .0204 INTERSCHOLASTIC ATHLETICS AND ADMINISTERING ORGANIZATIONS FOR HIGH SCHOOL ATHLETICS**

(a) Definitions:
- (1) "Administering organization" is defined in G.S. 115C-407.50(1).
- (2) "Participating school" is defined in G.S. 115C-407.50(7).
- (3) "Public school unit" is defined in G.S. 115C-5(7a).

(b) Public school units (PSUs) are authorized to determine whether and to what extent students in grades 6 through 12 may participate in interscholastic athletics; provided, that students in grade 6 are not eligible to participate in tackle football. This Rule shall not apply to charter school athletic programs in kindergarten through grade 8.

(c) To participate in public school interscholastic athletics, a student shall meet the following requirements:
- (1) A student who attends a school supervised by a local board of education shall only participate in the school to which the student is assigned under G.S. 115C-366. A student enrolled in a charter, regional, statewide public school, or school operated by the University of North Carolina, must meet all the enrollment criteria for that school and attend that school. If a student is over the age requirements, for the school the student attends, the student may participate at the school to which the student

would be assigned or attend at the next higher grade level.

(2) A student shall meet the age requirements at each grade level to participate. PSUs shall determine the age of participating students based on a preponderance of the evidence known to them. A student ineligible to participate at one grade level due to age shall be eligible to participate at the next higher grade level only, provided, no student shall be eligible to participate at the middle school level for a period lasting longer than six consecutive semesters, beginning with the student's entry into grade 6, and no student shall be eligible to participate at the high school level for more than eight consecutive semesters, beginning with the student's first entry into grade ~~nine~~ 9 or participation on a high school team, whichever occurs first.

(A) A student shall not participate on a grade 6, 7, or 8 team if the student becomes 15 years of age on or before August 31 of that school year.

(B) A student shall not participate on a grade 9 through 12 team if the student becomes 19 years of age on or before August 31 of that school year.

(d) To be eligible to participate during any semester in grades 6, 7, or 8, the student shall have passed at least one less course than the number of required core courses the immediate prior semester and meet promotion standards established by the PSU, provided, a student who is promoted from grade 5 to grade 6 shall be deemed to have satisfied the requirement set forth in this Paragraph to participate in the first semester of grade 6. To be eligible to compete during any semester in grades 9 through 12, the student shall have passed at least five courses (or the equivalent for non-traditional school schedules) the immediate prior semester and meet promotion standards established by the PSU, provided, a student who is promoted from grade 8 to grade 9 shall be deemed to have satisfied the requirement set forth in Paragraph to participate in the first semester of grade 9.

(e) To be eligible to participate, a student shall receive a medical examination every 395 days by a licensed physician, nurse practitioner, or physician assistant, subject to the provisions of G.S. 90-9, 90-18.1, and 90-18.2.

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

(1) graduation, except that the student may continue to participate in playoff and state championship contests in spring sports after graduation;

(2) signing a professional athletic contract, except that the student may continue to participate in any sport for which the student has not signed a professional contract;

(3) receiving remuneration as a participant in an athletic contest, except that the student may accept a gift, merchandise, trophy, or other thing of value, provided that:

(A) the value does not exceed two hundred fifty dollars ($250.00) per student per sports season;

(B) the item is totally consumable and nontransferable, or labeled in a permanent manner, for example, monogrammed or engraved items; and

(C) the item is approved by the student's principal and superintendent; or

(4) participating on an all-star team or in an all-star game that is not sanctioned by the administering organization of which the student's school is a member, provided, the student shall be ineligible only for the specific sport involved.

(g) Each PSU shall require the principal of a school that participates in interscholastic athletics to certify a list of eligible students for each sport.

(h) A PSU shall impose at least the following penalties on a student, coach, or school official in grades 6 through 12 who is ejected from an interscholastic athletic contest:

(1) for the first offense, the person shall be reprimanded and suspended from participating in the next game at that level of play (varsity or junior varsity);

(2) for a second offense, the person shall be placed on probation and suspended from participating in the next two games at that level of play (varsity or junior varsity);

(3) for a third offense, the person shall be suspended for one calendar year; and

(4) a coach who is suspended shall not coach any team for any grade level during the period of suspension.

Penalties are cumulative from sport to sport and from sport season to sport season. If no member of the school's coaching staff is present to assume an ejected coach's duties, the contest shall be terminated by a forfeit.

(i) PSUs may allow their schools to belong to an administering organization designated by the State Board of Education.

(j) An administering organization entering into a memorandum of understanding with the State Board of Education for the purpose of administering interscholastic athletics under this Rule must apply and enforce all of the requirements of this Rule.

(k) The State Board of Education may delegate to an administering organization its authority over participating schools to:

(1) waive any student eligibility requirement contained in this Rule, if it finds that the requirement fails to accomplish its purpose, or it works an undue hardship on a student who has lost eligibility due to circumstances that made participation impossible such as prolonged illness or injury or if a waiver is necessary to reasonably accommodate a student's disability, as required under the Americans with Disabilities Act, 42 U.S.C. 12101 et seq.;

(2) adopt, apply, and enforce penalty rules that establish a system of demerits that includes reprimands, probations, suspensions, forfeitures of contests, forfeitures of titles, and disqualifications;
(3) adopt, apply, and enforce administrative rules, as defined in G.S. 115C-407.55(5);
(4) adopt, apply, and enforce gameplay rules, as defined in G.S. 115C-407.55(6); and
(5) establish and collect from all its members a uniform membership fee of either:
(A) one thousand dollars ($1,000) for each participating school, or
(B) one dollar ($1.00) for each student enrolled in a participating school.

(l) An administering organization shall:
(1) enter into a memorandum of understanding with the State Board of Education no later than March 15 prior to the academic year in which it is to begin administering interscholastic athletics and before each subsequent renewal of a memorandum of understanding;
(2) be audited by a reputable independent auditing firm and submit the audit to the State Board of Education no later than March 15 each year;
(3) broadcast the meetings of its membership and board of directors in a manner that is announced on its website and which may be viewed electronically by any member of the public;
(4) provide to the State Board of Education within 30 days any requested organizational records, including but not limited to, financial information, annual audit reports, and any matters related to or impacting participating schools;
(5) enter into written agreements with PSUs that allow their eligible schools to participate in interscholastic sports, which agreements shall include an explanation of the fees to be charged, the obligations of the PSU and participating schools, penalties for the violation of this Rule at the high school level that may be imposed, and an explanation of the process to contest or appeal adverse decisions; and
(6) publish the organization's rules through a link on the first page of its website.

(m) The State Board of Education will appoint an appeals board to hear and act upon appeals from final decisions of an administering organization regarding student eligibility, penalties, fees imposed, retaliation, or discrimination. Panels of no fewer than three members of the appeals board may hear and decide matters on behalf of the board. A PSU aggrieved by a final decision of the administering organization may file an appeal with the State Board of Education's Office of General Counsel within five days after receipt of the administering organization's final decision.
The notice shall be mailed to the Superintendent or board of trustees of the PSU.
(1) The administering organization's notice shall contain:
(A) findings of fact;
(B) conclusions of law, including citation to any rules related to the decision;
(C) a description of any penalties; and
(D) a statement that the PSU may file a notice of appeal within five days of receipt of the administering organization's decision by mailing the notice to the State Board of Education's Office of General Counsel, 301 S. Wilmington Street, Raleigh, N.C. 27601, and emailing a copy of the notice of appeal to Office of General for the State Board of Education.
(2) The PSU's appeal shall:
(A) be in writing;
(B) include a description of the facts of the dispute;
(C) include any evidence submitted to the administering organization; and
(D) present an argument explaining why the PSU believe believes the administering organization's final decision was not based on substantial evidence or affected by an error of law.
(3) The administering organization may file a response to the PSU's submissions within five days. The panel may shorten the time to for filing the administering organization's response if the decision affects a student's or coach's eligibility to participate in an intervening athletic contest.
(4) All documents filed in the appeal shall be simultaneously served on all parties in the manner prescribed in Rule 5 of the North Carolina Rules of Civil Procedure.
(5) Any hearing shall be recorded.
(6) No later than 30 days after the State Board of Education's receipt of the appeal, a panel of the appeals board shall issue its decision. The panel shall affirm the administering organization's final decision unless a majority of the panel determines that the final decision is not supported by substantial evidence or affected by an error of law.
(7) The panel's decision shall be final.

(n) The PSU that has jurisdiction over a school may impose penalties in addition to those imposed by an administering organization. If there is no administering organization governing a group of schools, a PSU may adopt and impose penalties for schools under its jurisdiction.

*Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50, 115C-407.55; 115C-407.60; 115C-407.65; 116-235(b).*

**TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

**CHAPTER 42 – BOARD OF EXAMINERS IN OPTOMETRY**

***Notice*** *is hereby given in accordance with G.S. 150B-21.2 that the Board of Examiners in Optometry intends to amend the rules cited as 21 NCAC 42B .0101, .0303; 42D .0101, .0102; 42M .0101 and .0106.*

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

**Proposed Effective Date:** *March 1, 2023*

**Instructions on How to Demand a Public Hearing**: *(must be requested in writing within 15 days of notice): Contact the Board at info@ncoptometry.org or (910) 285-3160*

**Reason for Proposed Action:**
***21 NCAC 42B .0101*** *- Maintaining a comprehensive list of schools and colleges of optometry in a Rule has proved to be somewhat meaningless as new programs are added frequently and some programs close or change their names. Additionally, for various reasons levels of accreditation can change frequently. Therefore, following the Accreditation Council on Optometric Education's list and status of schools and colleges that is updated frequently is far more relevant.*
***21 NCAC 42B .0303*** *- The current Rule allows a licensee to extend their continuing education requirement deadline out two years. This has proven to be cumbersome and needless. The proposed Rule change allows a one year grace period that is much more manageable and ensures licensees are staying up to date for the welfare of the public. The penalty was increased slightly to encourage compliance with the deadline. The Law (under History Note) allows the Board to waive the penalty for hardship or illness on an individual basis.*
***21 NCAC 42D .0101*** *- The formal classifications of "optometric laboratory assistants", "optometric assistants", and "optometric technicians" are no longer applicable as paraoptometric personnel are now trained on the job rather than through formal training programs. The Optometry Board no longer registers these individuals or charges an annual registration fee; therefore, we have consolidated the classification in the Rules.*
***21 NCAC 42D .0102*** *- The formal classifications of "optometric laboratory assistants", "optometric assistants", and "optometric technicians" are no longer applicable as paraoptometric personnel are now trained on the job rather than through formal training programs. The Optometry Board no longer registers these individuals or charges an annual registration fee; therefore, we have consolidated the classification in the Rules. Also, when the Rules were written and approved, "personal supervision" was meant to say/imply that the optometrist was personally responsible for supervision of the individual described in the respective Rule. However, recently personal supervision was defined under Federal Statute 42 CFR 410.32(b)(3)(iii) to mean that personal supervision has to take place in the same physical location such as in the room together. After an individual is trained, the supervisee functions independently away from the supervisor but still under the supervision. Therefore, the word "personal" needs to be removed from the Rule.*
***21 NCAC 42M .0101 and 21 NCAC 42M .0106*** *- When the Rules were written and approved, "personal supervision" was meant to say/imply that the optometrist was personally responsible for supervision of the individual described in the respective Rule. However, recently personal supervision was defined under Federal Statute 42 CFR 410.32(b)(3)(iii) to mean that personal supervision has to take place in the same physical location, such as in the room together. After an individual is trained, the supervisee functions independently away from the supervisor but still under their supervision. Therefore, the word "personal" needs to be removed from the Rules.*

**Comments may be submitted to:** *Janice Peterson, 521 Yopp Rd., Suite 214 #444, Jacksonville, NC 28540; phone (910) 285-3160; fax (910) 285-4546; email exadm@ncoptometry.org*

**Comment period ends:** *January 3, 2023*

**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 42B - LICENSE TO PRACTICE OPTOMETRY**

**SECTION .0100 - LICENSE BY EXAMINATION**

**21 NCAC 42B .0101 ~~GRADUATE OF~~ APPROVED ~~SCHOOL~~ SCHOOLS OF OPTOMETRY**

(a) The Board may grant recognition and approval ~~to a school or college of optometry~~, deny or rescind recognition and approval, or make any recognition and approval granted by the Board conditional or probational, to any school accredited by the Accreditation Council on Optometric Education. The Board, in its

discretion, may base such determination ~~based on the Board's determination~~ on its assessment of the quality of the educational programs and offerings of each ~~the~~ school or college of optometry. ~~Their optometric educational programs having been accredited by the Accreditation Council on Optometric Education and recommended to the Board by the Association of Regulatory Boards in Optometry as worthy of approval, the following accredited schools and colleges of optometry are recognized and approved in accordance with the provisions of this Rule:~~

~~(1) University of Alabama at Birmingham~~
~~School of Optometry~~
~~1716 University Boulevard~~
~~Birmingham, AL 35294-0010~~

~~(2) University of California, Berkeley~~
~~School of Optometry~~
~~350 Minor Hall MC 2020~~
~~Berkeley, CA 94720-2020~~

~~(3) Southern California College of Optometry~~
~~2575 Yorba Linda Blvd.~~
~~Fullerton, CA 92631~~

~~(4) Ferris State University~~
~~Michigan College of Optometry~~
~~1310 Cramer Circle~~
~~Big Rapids, MI 49307-2738~~

~~(5) University of Houston~~
~~College of Optometry~~
~~505 J. Davis Armistead Bldg.~~
~~Houston, TX 77004-2020~~

~~(6) Illinois College of Optometry~~
~~3241 South Michigan Avenue~~
~~Chicago, IL 60616~~

~~(7) Indiana University~~
~~School of Optometry~~
~~800 East Atwater~~
~~Bloomington, IN 47405-3680~~

~~(8) New England College of Optometry~~
~~424 Beacon Street~~
~~Boston, MA 02115~~

~~(9) State University of New York~~
~~State College of Optometry~~
~~33 West 42nd Street~~
~~New York, NY 10036-8003~~

~~(10) The Ohio State University~~
~~College of Optometry~~
~~338 West Tenth Avenue~~
~~Columbus, OH 43210-1280~~

~~(11) Pacific University~~
~~College of Optometry~~
~~2043 College Way~~
~~Forest Grove, OR 97116~~

~~(12) Pennsylvania College of Optometry~~
~~at Salus University~~
~~Elkins Park Campus~~
~~8360 Old York Road~~
~~Elkins Park, PA 19027~~

~~(13) Southern College of Optometry~~
~~1245 Madison Avenue~~
~~Memphis, TN 38104~~

~~(14) University of Waterloo~~
~~School of Optometry~~
~~200 University Avenue West~~
~~Waterloo, ON N2L 3G1 CANADA~~

~~(15) Inter-American University of Puerto Rico~~
~~School of Optometry~~
~~500 Carretera Dr John Will Harris~~
~~Bayamon, PR 00957~~

~~(16) University of Missouri, St. Louis~~
~~College of Optometry~~
~~One University Blvd.~~
~~331 Marillac Hall~~
~~St. Louis, MO 63121-4400~~

~~(17) University of Montreal~~
~~Ecolo d'Optometrie~~
~~3744 Jean-Brillant, Suite 260-7~~
~~Montreal, QC H3T 1P1 CANADA~~

~~(18) Northeastern State University~~
~~Oklahoma College of Optometry~~
~~1001 N. Grand Avenue~~
~~Tahlequah, OK 74464~~

~~(19) Nova Southeastern University~~
~~College of Optometry~~
~~3200 S. University Drive~~
~~Ft. Lauderdale, FL 33328~~

~~(20) Midwestern University~~
~~Arizona College of Optometry~~
~~19555 N 59th Ave~~
~~Glendale, AZ 85308~~

~~(21) University of the Incarnate Word~~
~~School of Optometry~~
~~4301 Broadway, Box 373~~
~~San Antonio, TX 78209-6397~~

~~(22) Western University of Health Sciences~~
~~College of Optometry~~
~~309 E Second St.~~
~~Pomona, CA 91766-1854~~

(b) The Board may request a copy of the Accreditation Council ~~of~~ on Optometric Education's accreditation report on each school or college recognized and approved by the Board and for each school or college which has requested recognition and approval or for which the Board is considering recognition and approval.

*Authority G.S. 90-117.5; 90-118(a),(b).*

**SECTION .0300 - ANNUAL LICENSE RENEWAL**

**21 NCAC 42B .0303 FAILURE TO MEET ~~CONTINUE~~ CONTINUING EDUCATION REQUIREMENT**

For a first failure to comply with 21 NCAC 42B .0302 ~~the optometrist is subject to disciplinary action by the Board pursuant to G.S. 90-121.2; provided, however, for a first offense~~ the Board may require that the optometrist complete an additional five ~~three~~ hours ~~and for the second offense six additional hours~~ of attendance at approved continuing education programs. In the calendar year following such failure to comply, the optometrist must complete a sufficient number of hours at approved continuing education programs to:

(1) cure the prior year's shortfall;

(2) meet the current year's continuing education obligation, and

(3) meet any penalty imposed as a result of the prior year's shortfall. ~~Any penalty imposed will require that the additional hours be fulfilled in addition to the required hours for the ensuing year.~~ Any subsequent failure to comply with 21 NCAC 42B .0302 may subject the optometrist to disciplinary action under G.S. 90-121.2.

*Authority G.S. 90-117.5; 90-123.1; 90-121.2.*

## SUBCHAPTER 42D - OPTOMETRIC ASSISTANT AND TECHNICIAN

### 21 NCAC 42D .0101 DEFINITIONS

~~(a) Optometric assistants are those paraoptometric~~ Paraoptometric ~~personnel~~ personnel, whether designated as optometric assistants, optometric technicians, or otherwise, are ~~who qualify~~ qualified by training and experience to perform duties of ~~a technical~~ an administrative, technical, or clinical nature when directed and supervised by ~~relating to the assisting of~~ a licensed practitioner. ~~practitioner in a dependent relationship~~.

~~(b) The optometric laboratory assistant is an individual with control of ophthalmic materials used in the optometric practice for lens and frame fabrication, selection and dispensing.~~

~~(c) Optometric technicians are those paraoptometric personnel who have satisfactorily completed programs in optometric technicianry approved by the Board. Technicians are trained in patient handling, ophthalmic laboratory preparation, administration of visual training, contact lens procedures and ophthalmic frame styling.~~

*Authority G.S. 90-115.1(6); 90-117.5.*

### 21 NCAC 42D .0102 FUNCTION

~~(a)~~ Paraoptometric personnel, whether designated as optometric assistants, optometric technicians, or otherwise, perform ~~The optometric technician performs~~ those administrative, technical, and clinical functions within the scope of their ~~his~~ training, as directed by and assigned ~~to him~~ by an optometrist, so long as those functions are at the specific direction and under the ~~personal~~ supervision of the licensee. Such functions include but are not limited to dispensary activities, testing, and optometric procedures.

~~(b) The optometric assistant performs as an assistant to an optometrist and carries out verbal or written instructions in assisting in patient care.~~

~~(c) The optometric laboratory assistant performs at the direction of an optometrist those functions directly related to the fabrication of lenses and frames, frame selection, and the dispensing thereof.~~

*Authority G.S. 90-115.1(6); 90-117.5.*

## SUBCHAPTER 42M - PRECEPTORSHIPS

### 21 NCAC 42M .0101 DEFINITIONS

As used in this Subchapter:

(1) A preceptorship is a course of study in which students enrolled in a school approved pursuant to Rule 21 NCAC 42B .0101 receive part of their clinical training in a private practice setting outside the direct confines of the educational institution and whose training is continuing under the auspices and overall responsibility of the institution in which he is enrolled and under the supervision of a preceptor credentialed by the institution for which he is acting as a preceptor and whose credentials have been approved by the board.

(2) A preceptor is an optometrist, duly licensed in the State of North Carolina, credentialed by the institution(s) for which he is serving as preceptor and who has been approved by the Board to act as such and under whose supervision a preceptee serves.

(3) A preceptee is an individual who is still enrolled as a student in a school or college of optometry approved by the Board and whose clinical training is continuing under the auspices and control of the institution in which he is enrolled and under the ~~personal~~ supervision of the preceptor to which he has been assigned by his institution.

(4) An institution is a school or college of optometry approved by the Board in accordance with Rule 21 NCAC 42B .0101.

*Authority G.S. 90-115.1(3); 90-117.5.*

### 21 NCAC 42M .0106 TERMINATION

(a) Approval and registration of a preceptor shall continue in effect until terminated by the Board, by the institution from whom he received his credentials as a preceptor or until 30 days after written notification of termination is submitted by the preceptor to the Board. The approval and registration of a preceptor may be terminated, after due notice and hearing, for any violation of these Rules.

(b) The approval of a preceptee shall be terminated by the Board no later than 30 days following the date of graduation or when, after due notice and hearing, the Board shall find:

(1) that the preceptee has held himself out or permitted another to represent him as a licensed optometrist;

(2) that the preceptee has in fact performed otherwise than at the direction or under the ~~personal~~ supervision of an optometrist licensed by the Board or has been delegated and preformed a task or tasks beyond his competence;

(3) that the preceptee is a habitual user of intoxicants or drugs to such an extent that he is unable to perform as a preceptee to an optometrist;

(4) that the preceptee has been convicted in any court, state or federal, of any felony or other criminal offenses involving moral turpitude;

(5) that the preceptee has been adjudicated a mental incompetent or whose mental condition renders him unable to safely perform as a preceptee to an optometrist; or

(6) the preceptee otherwise commits any act or omission which would subject him to discipline under G.S. 90-121.2 or under these Rules.

(c) Approval of a preceptorship shall continue in effect until terminated by Board or until 30 days after written notification of termination is submitted by the institution to the Board. A preceptorship may be terminated, after due notice and hearing, for any violation of the rules of this Chapter.

*Authority G. S. 90-115.1(3); 90-117.5; 90-121.2.*

*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 September 15, 2022 Meeting.*

| | | | | | REGISTER CITATION TO THE NOTICE OF TEXT |
|---|---|---|---|---|---|
| **AGRICULTURE, BOARD OF** | | | | | |
| General | 02 NCAC | 52J | .0201* | 36:12 NCR | |
| Feeding | 02 NCAC | 52J | .0205* | 36:12 NCR | |
| Vehicles | 02 NCAC | 52J | .0301* | 36:12 NCR | |
| Trainers | 02 NCAC | 52J | .0408* | 36:12 NCR | |
| Duties | 02 NCAC | 52J | .0418* | 36:12 NCR | |
| Grounds for Discipline - Certified Euthanasia Technicians | 02 NCAC | 52J | .0419* | 36:12 NCR | |
| Gunshot or Other Methods | 02 NCAC | 52J | .0702* | 36:12 NCR | |
| **MEDICAL CARE COMMISSION** | | | | | |
| Qualifications of Activity Director | 10A NCAC | 13F | .0404* | 36:18 NCR | |
| Other Staff Qualifications | 10A NCAC | 13F | .0407* | 36:18 NCR | |
| Personal Care Training and Competency | 10A NCAC | 13F | .0501* | 36:18 NCR | |
| Personal Care Training Content and Instructors | 10A NCAC | 13F | .0502 | 36:18 NCR | |
| Medication Administration Competency | 10A NCAC | 13F | .0503* | 36:18 NCR | |
| Competency Evaluation and Validation for Licensed Health Pro... | 10A NCAC | 13F | .0504* | 36:18 NCR | |
| Assessment Training | 10A NCAC | 13F | .0508* | 36:18 NCR | |
| Activities Program | 10A NCAC | 13F | .0905* | 36:18 NCR | |
| Medication Storage | 10A NCAC | 13F | .1006* | 36:18 NCR | |
| Controlled Substances | 10A NCAC | 13F | .1008* | 36:18 NCR | |
| Pharmaceutical Services | 10A NCAC | 13F | .1010* | 36:18 NCR | |
| Facilities to Report Resident Deaths | 10A NCAC | 13F | .1207 | 36:18 NCR | |
| Qualifications of Activity Director | 10A NCAC | 13G | .0404* | 36:18 NCR | |
| Other Staff Qualifications | 10A NCAC | 13G | .0406* | 36:18 NCR | |
| Personal Care Training and Competency | 10A NCAC | 13G | .0501* | 36:18 NCR | |
| Personal Care Training and Competency Program Approval | 10A NCAC | 13G | .0502 | 36:18 NCR | |
| Medication Administration Competency Evaluation | 10A NCAC | 13G | .0503* | 36:18 NCR | |
| Competency Evaluation and Validation for Licensed Health Pr... | 10A NCAC | 13G | .0504* | 36:18 NCR | |
| Training on Cardio-Pulmonary Resuscitation | 10A NCAC | 13G | .0507 | 36:18 NCR | |
| Assessment Training | 10A NCAC | 13G | .0508* | 36:18 NCR | |
| Licensed Health Professional Support | 10A NCAC | 13G | .0903* | 36:18 NCR | |
| Activities Program | 10A NCAC | 13G | .0905* | 36:18 NCR | |
| Self-Administration of Medications | 10A NCAC | 13G | .1005* | 36:18 NCR | |
| Medication Storage | 10A NCAC | 13G | .1006* | 36:18 NCR | |
| Facilities to Report Resident Deaths | 10A NCAC | 13G | .1208 | 36:18 NCR | |
| **RADIATION PROTECTION COMMISSION** | | | | | |
| Well Logging, Wireline-Service Operations, and Subsurface... | 10A NCAC | 15 | .1301* | 36:19 NCR | |
| Definitions | 10A NCAC | 15 | .1302 | 36:19 NCR | |

| | | | | |
|---|---|---|---|---|
| Written Agreements Required | 10A NCAC | 15 | .1303 | 36:19 NCR |
| Limits on Levels of Radiation | 10A NCAC | 15 | .1304 | 36:19 NCR |
| Storage Precautions | 10A NCAC | 15 | .1305 | 36:19 NCR |
| Transport Precautions | 10A NCAC | 15 | .1306 | 36:19 NCR |
| Radiation Survey Instruments | 10A NCAC | 15 | .1307 | 36:19 NCR |
| Leak Testing of Sealed Sources | 10A NCAC | 15 | .1308 | 36:19 NCR |
| Quarterly Inventory | 10A NCAC | 15 | .1309 | 36:19 NCR |
| Utilization Records | 10A NCAC | 15 | .1310 | 36:19 NCR |
| Design: Performance: and Certification Criteria | 10A NCAC | 15 | .1311 | 36:19 NCR |
| Labeling | 10A NCAC | 15 | .1312 | 36:19 NCR |
| Inspection and Maintenance | 10A NCAC | 15 | .1313 | 36:19 NCR |
| Training Requirements | 10A NCAC | 15 | .1314 | 36:19 NCR |
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**TITLE 02 - DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

**02 NCAC 52J .0201 GENERAL**

(a) Housing facilities for dogs and cats shall be structurally sound and maintained in good repair to protect the animals from injury, contain the animals and restrict the entrance of other animals and people.

(b) All light fixtures and electrical outlets in animal areas shall be in compliance with the State Building Code. Electrical appliances, light fixtures, electrical outlets, and electrical cords shall be located or protected in such a way that animals do not have access to them.

(c) Facilities shall have adequate electric power to comply with the Animal Welfare Act.

(d) Storage of food and bedding:

(1) food and bedding shall be stored in cabinets and/or sealed containers which adequately protect such supplies against infestation or contamination by vermin and insects;

(2) all open bags of food and edible treats shall be stored in airtight containers with lids;

(3) refrigeration shall be provided for supplies of perishable food including opened cans of food;

(4) clean bedding and laundry shall be: stored in cabinets and/or sealed containers; stored separately from soiled laundry and materials; and stored separately from general housing areas for animals; and

(5) in areas housing animals being observed or treated for contagious disease, bedding shall only be stored in sealed cabinets if that clean laundry is dedicated solely for the use for those specific animals.

(e) The facility shall provide for the daily removal and disposal of animal and food waste, soiled bedding and debris from the facility in accordance with local ordinances, to assure the facility will be maintained in a clean and sanitary manner.

(f) Hot and cold running, potable water must be available. Facilities such as a washroom, basin or sink shall be provided to maintain cleanliness among animal caretakers, animals, and animal food and water receptacles.

(g) Each facility shall have the ability to confirm ambient temperature. A functional room thermometer shall be present in each separate area of indoor enclosures, common areas and exercise areas.

(h) A separate five-foot tall perimeter fence is required if any animal(s) has/have unsupervised access to an outdoor primary enclosure, common area, and/or exercise area. Supervision of animals is required for any animal(s) within any outdoor enclosure, common area, or exercise area without a separate five-foot tall perimeter fence.

(i) An adequate drainage system must be provided for the facility.

(j) All areas of a facility are subject to review or inspection by North Carolina Department of Agriculture and Consumer Services ('NCDA&CS') employees during normal business hours (8:00 a.m. through 5:30 p.m. Monday through Friday).

(k) All animals in a facility are subject to the requirements of the Animal Welfare Act, regardless of ownership.

(l) A licensee or registrant shall comply with all federal, state and local laws, rules and ordinances relating to or affecting the welfare of dogs and cats in its facility.

(m) A licensee or registrant and all agents of the facility shall be truthful with NCDA&CS employees during all phases of inspections or investigations.

(n) Neither an applicant for a license or registration nor a licensee or registrant or any agent of a facility may abuse, harass, delay or obstruct any inspector or State official while inspectors or officials are attempting to discharge their official duties. For the purposes of this Rule, the following definitions apply:

(1) "Abuse" means:

(A) Communicating a threat as defined by G.S. 14-277.1;

(B) Using profane, indecent or threatening language to any person over the telephone, annoying or harassing by repeated telephoning or making false statements over the telephone as defined by G.S. 14-196;

(C) Cyberstalking as defined by G.S. 14-196.3;

(D) Stalking as defined by G.S. 14-277.3A; and/or

(E) Disorderly conduct as defined by G.S. 14-288.4.

(2) "Harass" means knowingly conduct, including oral, written or printed communication or transmission, telephone, cellular, or other wireless telephonic communication, facsimile transmission, page messages or transmissions, answering machine or voice mail messages or transmissions, electronic mail messages, or other computerized or electronic transmissions directed at a specific person that torments, terrorizes or terrifies that person and that serves no legitimate purpose.

(o) No dog or cat shall be in a window display except during business hours and then only in compliance with standards set forth in this Section.

(p) Battery operated or electrical behavioral control devices, such as shock collars, shock prods, or electrical fences, as well as pinch-collars and prong-collars, may only be used on an animal in a boarding kennel with the specific written consent of the owner of that animal.

(q) All facilities shall be equipped with an operational smoke alarm and carbon monoxide alarm and shall have a means of fire suppression, such as functional fire extinguishers or a sprinkler system on the premises.

(r) All licensed and registered facilities must develop and maintain a plan of action for the continuity of care and/or evacuation of animals in the event of a natural or manmade disaster.

(s) For the purposes of G.S. 19A-23(5a), written standards for an "approved foster care provider" shall include but not be limited

to: the application process; sanitation protocols; provision of daily observation of the animals; feeding and watering protocols; provision and documentation of veterinary care; provision and documentation of human and same-species daily interaction, exercise, play and environmental enrichment for animals in long term care; requirements for inspection by the shelter; and compliance by the foster care provider with the NC Animal Welfare Act and its rules issued pursuant thereto.
(t) For the purposes of G.S. 19A-23(5b), written standards for an "approved rescue organization" shall include but not be limited to: the application process; sanitation protocols; provision of daily observation of the animals; feeding and watering protocols; provision and documentation of veterinary care of the shelter's animals; provision and documentation of human and same-species daily interaction, exercise, play and environmental enrichment for the shelter's animals in long term care at the rescue; requirements for inspection by the shelter; and compliance by the rescue with the North Carolina Animal Welfare Act and it's rules issued pursuant thereto.

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

**02 NCAC 52J .0205 FEEDING**
(a) Adult dogs and cats and puppies and kittens older than six months shall be fed at least once each 24-hour period.
(b) Puppies and kittens less than six months of age shall be fed at least twice in each 24-hour period. An eight-hour interval between feedings is required if only two feedings are offered in a 24-hour period.
(c) Should a veterinarian prescribe a feeding regime different from the ones described in Paragraphs (a) and (b) of this Rule for a specific animal, documentation of such veterinary care is required and 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 feeding directions;
(5) the origination and review dates of the directive;
(6) the facility shall have the veterinarian review and renew the 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 feeding as prescribed by the veterinarian.

(d) Food shall be commercially prepared food which complies with laws applicable to animal feed or the food shall be provided by the owner.
(e) The food shall be free from contamination, wholesome, palatable, and of sufficient quality and quantity appropriate of the given size, age, and condition of an animal to meet the daily requirements for nutritional value.
(f) Food receptacles shall be accessible to all dogs or cats and shall be located so as to minimize contamination by waste.
(g) For every adult animal, there shall be at least one food receptacle offered. When multiple animals are housed together, caretakers shall observe each animal feeding to ensure that each animal receives adequate feed.
(h) Food receptacles shall be durable and shall be kept clean and sanitized.
(i) Uneaten food within food receptacles shall be discarded within 24 hours or sooner if spoiled or contaminated.
(j) Damaged food receptacles shall be replaced. Disposable food receptacles may be used but shall be discarded after each feeding.
(k) Food and water receptacles in outdoor facilities shall be protected from the elements.
(l) This Rule is applicable only to animals, as defined in G.S. 19A-23(4), subject to the Animal Welfare Act.

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

**02 NCAC 52J .0301 VEHICLES**
(a) Vehicles used in transporting dogs and cats subject to the Animal Welfare Act shall be mechanically sound and equipped to provide fresh air to all animals transported.
(b) The animal cargo space shall be constructed and maintained so as to prevent engine exhaust fumes from entering the animal holding space.
(c) The interior of the animal holding space shall be properly cleaned after the transport of each animal. The holding space shall be sanitized between use for shipments.

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

**02 NCAC 52J .0408 TRAINERS**
(a) Certified Euthanasia Technician training shall be provided by the Animal Welfare Section or by companies or individuals meeting the following criteria:

(1) be a NC licensed veterinarian that has euthanized dogs and cats; or
(2) be a CET formerly or currently registered with the Animal Welfare Section that has a minimum of six months CET experiences.

(b) Information taught shall conform to this Section and the guidelines set forth by the American Veterinary Medical Association Guidelines on Euthanasia or the Humane Society of the United States.
(c) Trainers shall disclose to their students and the Animal Welfare Section any affiliations with suppliers of equipment or supplies used in euthanasia.
(d) The Animal Welfare Section may make unannounced audits of instruction and testing by trainers.
(e) Prior to providing euthanasia training leading to certification as a Euthanasia Technician, the person or company shall obtain approval before each class for its training program from the Animal Welfare Section. The application for the approval of the CET class shall contain:

(1) the name of the trainer;

(2) the contact information for the trainer;
(3) the date and location for the proposed CET class;
(4) an area to initial an agreement that the trainer has read and understood the North Carolina Animal Welfare Act and its associated North Carolina Administrative Code rules, the American Veterinary Medical Association Guidelines on Euthanasia and the Humane Society of the United States Euthanasia Reference Manual;
(5) an area to initial the agreement to:
(A) teach the euthanasia information in accordance with the requirements of this Subchapter;
(B) provide a copy of the class material to the Animal Welfare Section upon request;
(C) allow the Animal Welfare Section to audit the class;
(D) not to copy the answer key or test other than for the purposes of administering the test at the end of the class;
(E) to collect the answer key and all copies of the test and return them to the Animal Welfare Section within 10 calendar days of the administration of the test; and
(F) to grade the tests and return the test results to the Animal Welfare Section within 10 calendar days of the administration of the test.

(f) Trainers shall return to the Animal Welfare Section office copies of the written tests, notification of results for the written examinations and notification of results for the practical examinations within 10 days of the date of the tests. These results shall include all examination outcomes for all applicants.

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

**02 NCAC 52J .0418 DUTIES**

A Certified Euthanasia Technician shall:

(1) Prepare animals for euthanasia in accordance with 02 NCAC 52J .0401;
(2) Scan for a microchip, and attempt to reach the individual(s) or organization associated with the microchip present in the animal unless emergency circumstances preclude such an attempt;
(3) Document the presence or absence of a microchip in the animal and the attempt to contact the individual(s) or organization associated with the microchip or the emergency circumstance that precluded such an attempt. The documentation of the attempt to contact the owner shall include the date and time of phone call and/or email sent to the individual(s) or organization associated with the microchip. If another method was used to attempt to reach the individual(s) or organization associated with the microchip, the method of the attempt shall be documented;
(4) Accurately record the facility's identification number of the animal, its species, sex, breed or breed type, description and date, dosages and route of administration for drugs that are administered for sedation and euthanasia and amounts for drugs wasted;
(5) Order euthanasia supplies;
(6) Maintain the security of all controlled substances and other drugs in accordance with applicable State and federal laws and regulations;
(7) Report to the appropriate government agencies violations or suspicions of a violation of the rules in this Subchapter or any abuse of drugs;
(8) Euthanize animals in accordance with the rules of this Section; and
(9) Dispose of euthanized animals, expired or unwanted chemical agent(s) or the containers, instruments and equipment used in the administration of drugs in accordance with all applicable federal, State and local laws and regulations.

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

**02 NCAC 52J .0419 GROUNDS FOR DISCIPLINE - CERTIFIED EUTHANASIA TECHNICIANS**

The Department may refuse to issue, renew, or reinstate the certification of a Euthanasia Technician, or may deny, revoke, suspend, sanction, place on probation, or impose other forms of discipline upon any Certified Euthanasia Technician for any of the following reasons:

(1) Failure to Carry Out Duties. Failure to carry out the duties of a Certified Euthanasia Technician prescribed in 02 NCAC 52J .0418;
(2) Abuse of Chemical Substances. Improper use of any drug or chemical substance by:
(a) Selling, diverting or giving away drugs or chemical substances;
(b) Stealing drugs or chemical substances;
(c) Misusing chemical substances by using them for any use other than it's intended use as prescribed by the America Veterinary Medical Association Euthanasia Guidelines and the Humane Society of the United States Euthanasia Reference Manual; or
(d) Abetting anyone in the foregoing activities;
(3) Euthanizing animals without supervision as required by this Subchapter;

(4) Enabling or abetting the euthanasia of animals by uncertified individuals except in extraordinary circumstances pursuant to 02 NCAC 52J .0702;
(5) Fraud, misrepresentation, or deception in obtaining certification;
(6) Unethical or Unprofessional Conduct. Unethical or unprofessional conduct includes:
  (a) engaging in fraud, misrepresentation, or deception in the performance of Euthanasia Technician duties;
  (b) working in conjunction with any organization or person illegally practicing as a Certified Euthanasia Technician;
  (c) failing to provide sanitary facilities or apply sanitary procedures for the euthanizing of any animal;
  (d) euthanizing animals in a manner that endangers the health or welfare of the public, for example, improper handling, transport or storage of drugs related to the sedation or euthanasia of animals, or improper handling or disposal of the body of a euthanized animal;
  (e) ignorance or incompetence in the euthanizing of animals;
  (f) intentionally performing a duty, task or procedure involved in the euthanizing of animals for which the individual is not certified;
  (g) swearing falsely in any testimony or affidavits relating to practicing as a Certified Euthanasia Technician; or
  (h) failing to provide requested information or the provision of inaccurate or misleading information during an investigation or inspection by the Animal Welfare Section;
(7) Conviction of a criminal offense;
(8) Improper Record Keeping. Failure to follow proper record keeping procedures as outlined in the rules in this Subchapter and/or entering of inaccurate or misleading information into the records of a certified facility;
(9) Improper Security and Storage for Chemical Agents. Failure to provide and maintain proper security and storage for euthanasia and restraint drugs as established under applicable United States Drug Enforcement Administration and North Carolina Department of Health and Human Services statutes and rules;
(10) Improper Disposal of Chemical Agents and Equipment. Failure to dispose of drugs and the containers, instruments and equipment in a manner permitted by this Subchapter;
(11) Improper Labeling of Approved Chemical Agents. Failure to properly label approved euthanasia and restraint chemical agents;
(12) Revocation, Suspension or Limitation. The revocation, suspension, limitation of a license or certificate or registration or any other disciplinary action by another state or United States jurisdiction or voluntary surrender of a license, certificate or registration by virtue of which one is licensed, certified or registered to practice as a Certified Euthanasia Technician in that state or jurisdiction on grounds other than nonpayment of the renewal fee; and
(13) Failure of any applicant or certificate holder to be truthful with the North Carolina Department of Agriculture and Consumer Services during any investigation or inspection.

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

**02 NCAC 52J .0702 GUNSHOT OR OTHER METHODS**

Under extraordinary circumstances a shelter employee may use gunshot or other extreme method of euthanasia as set forth and in accordance with the American Veterinary Medical Association or the Humane Society of the United States incorporated by reference in 02 NCAC 52J .0401.

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

## TITLE 10A - DEPARTMENT OF HEALTH AND HUMAN SERVICES

**10A NCAC 13F .0404 QUALIFICATIONS OF ACTIVITY DIRECTOR**

Adult care homes shall have an activity director who meets the following qualifications:

(1) The activity director hired after September 30, 2022 shall meet a minimum educational requirement by being a high school graduate or certified under the GED Program.
(2) The activity director hired after September 30, 2022 shall complete, within nine months of employment or assignment to this position, the basic activity course for assisted living activity directors offered by community colleges or a comparable activity course as determined by the Department based on instructional hours and content. An activity director shall be exempt from the required basic activity course if one or more of the following applies:
  (a) be a licensed recreational therapist or be eligible for certification as a therapeutic recreation specialist as

defined by the North Carolina Recreational Therapy Licensure Act in accordance with G.S. 90C;

(b) have two years of experience working in programming for an adult recreation or activities program within the last five years, one year of which was full-time in an activities program for patients or residents in a health care or long term care setting;

(c) be a licensed occupational therapist or licensed occupational therapy assistant in accordance with G.S. 90, Article 18D; or

(d) be certified as an Activity Director by the National Certification Council for Activity Professionals.

*History Note: Authority G.S. 131D-2.16; 131D-4.5; 143B-165;*
*Eff. January 1, 1977;*
*Readopted Eff. October 31, 1977;*
*Amended Eff. April 1, 1987; April 1, 1984;*
*Temporary Amendment Eff. July 1, 2003;*
*Amended Eff. June 1, 2004;*
*Temporary Amendment Eff. July 1, 2004;*
*Amended Eff. July 1, 2005;*
*Readopted Eff. October 1, 2022.*

**10A NCAC 13F .0407 OTHER STAFF QUALIFICATIONS**

(a) Each staff person at an adult care home shall:

(1) have a job description that reflects the position's duties and responsibilities and is signed by the administrator and the employee;

(2) be able to implement all of the adult care home's accident, fire safety, and emergency procedures for the protection of the residents;

(3) be informed of the confidential nature of resident information and shall protect and preserve the information from unauthorized use and disclosure, in accordance with G.S. 131D-21(6) and 131D-21.1;

(4) not hinder or interfere with the exercise of the rights guaranteed under the Declaration of Residents' Rights in G.S. 131D-21;

(5) have no findings listed on the North Carolina Health Care Personnel Registry according to G.S. 131E-256;

(6) have documented annual immunization against influenza virus according to G.S. 131D-9, and exceptions as provided in the law shall be documented in the staff person's personnel record;

(7) have a criminal background check completed in accordance with G.S. 131D-40 and results available in the staff person's personnel file;

(8) have an examination and screening for the presence of controlled substances completed in accordance with G.S. 131D-45 and results available in the staff person's personnel file;

(9) maintain a current driver's license if responsible for transportation of residents; and

(10) be willing to cooperate with state and local inspectors when determining and maintaining compliance with the rules of this Subchapter.

(b) At all times, there shall be at least one staff person in the facility in charge of resident care who shall be 18 years or older.

(c) If licensed practical nurses are employed by the facility and practicing in their licensed capacity as governed by the North Carolina Board of Nursing, there shall be a registered nurse available in accordance with the rules set forth in 21 NCAC 36 .0224 and 21 NCAC 36 .0225, which are hereby incorporated by reference including subsequent amendments.

*History Note: Authority G.S. 131D-2.16; 131D 4.5(4); 143B-165;*
*Eff. January 1, 1977;*
*Readopted Eff. October 31, 1977;*
*Amended Eff. April 1, 1984;*
*Temporary Amendment Eff. September 1, 2003; July 1, 2003.*
*Amended Eff. June 1, 2004;*
*Readopted Eff. October 1, 2022.*

**10A NCAC 13F .0501 PERSONAL CARE TRAINING AND COMPETENCY**

(a) The facility shall assure that staff who provide or directly supervise staff who provide personal care to residents complete an 80-hour personal care training and competency evaluation program established by the Department. For the purpose of this Rule, "directly supervise" means being on duty in the facility to oversee or direct the performance of staff duties. A copy of the 80-hour training and competency evaluation program is available online at https://info.ncdhhs.gov/dhsr/acls/training/index.html#80hr, at no cost. The 80-hour personal care training and competency evaluation program curriculum shall include:

(1) observation and documentation skills;

(2) basic nursing skills, including special health-related tasks;

(3) activities of daily living and personal care skills;

(4) cognitive, behavioral, and social care;

(5) basic restorative services; and

(6) residents' rights as established by G.S. 131D-21.

(b) The facility shall assure that training specified in Paragraph (a) of this Rule is completed within six months after hiring for staff hired after September 30, 2022. Documentation of the successful completion of the 80-hour training and competency evaluation program shall be maintained in the facility and available for review by the Division of Health Service Regulation and the county department of social services.

(c) The facility shall assure that staff who perform or directly supervise staff who perform personal care receive training and supervision on the performance of individual job assignments prior to meeting the training and competency requirements of this Rule. Documentation of training shall be maintained in the facility

and available for review by the Division of Health Service Regulation and the county department of social services.

(d) The Department shall exempt staff from the 80-hour training and competency evaluation program who are:

(1) licensed health professionals;
(2) listed on the Nurse Aide Registry; or
(3) documented as having completed one of the following previously approved training programs:
(A) a 40-hour or 75-hour training and competency evaluation program prior to July 1, 2000; or
(B) a 45-hour or 80-hour training and competency evaluation program for training exemption from July 1, 2000 through August 31, 2003.

*History Note: Authority G.S. 131D-2.16; 131D-4.3; 131D-4.5; 143B-165;*
*Temporary Adoption Eff. January 1, 1996;*
*Eff. May 1, 1997;*
*Temporary Amendment Eff. December 1, 1999;*
*Amended Eff. July 1, 2000;*
*Temporary Amendment Eff. September 1, 2003;*
*Amended Eff. June 1, 2004;*
*Readopted Eff. October 1, 2022.*

**10A NCAC 13F .0502 PERSONAL CARE TRAINING CONTENT AND INSTRUCTORS**

*History Note: Authority G.S. 131D-2.16; 131D-4.3; 131D-4.5; 143B-165;*
*Temporary Adoption Eff. January 1, 1996;*
*Eff. May 1, 1997;*
*Temporary Amendment Eff. December 1, 1999;*
*Amended Eff. July 1, 2000;*
*Temporary Amendment Eff. September 1, 2003;*
*Amended Eff. June 1, 2004;*
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018;*
*Repealed Eff. October 1, 2022.*

**10A NCAC 13F .0503 MEDICATION ADMINISTRATION COMPETENCY**

(a) The competency evaluation for medication administration required in Rule .0403 of this Subchapter shall consist of a written examination and a clinical skills validation to determine competency in the following areas:

(1) medical abbreviations and terminology;
(2) transcription of medication orders;
(3) obtaining and documenting vital signs;
(4) procedures and tasks involved with the preparation and administration of oral (including liquid, sublingual and inhaler), topical (including transdermal), ophthalmic, otic, and nasal medications;
(5) infection control procedures;
(6) documentation of medication administration;
(7) monitoring for reactions to medications and procedures to follow when there appears to be a change in the resident's condition or health status based on those reactions;
(8) medication storage and disposition;
(9) rules pertaining to medication administration in adult care facilities; and
(10) the facility's medication administration policy and procedures.

(b) An individual shall score at least 90% on the written examination which shall be a standardized examination established by the Department.

(c) Verification of an individual's completion of the written examination and results can be obtained at no charge on the North Carolina Adult Care Medication Aide Testing website at https://mats.ncdhhs.gov/test-result.

(d) The clinical skills validation portion of the competency evaluation shall be conducted by a registered nurse or a licensed pharmacist who has a current unencumbered license in North Carolina. The registered nurse or licensed pharmacist shall conduct a clinical skills validation for each medication administration task or skill that will be performed in the facility. Competency validation by a registered nurse is required for unlicensed staff who perform any of the personal care tasks related to medication administration listed in Subparagraphs (a)(4), (a)(7), (a)(11), (a)(14), and (a)(15) as specified in Rule .0903 of this Subchapter.

(e) The Medication Administration Skills Validation Form shall be used to document successful completion of the clinical skills validation portion of the competency evaluation for those medication administration tasks to be performed in the facility employing the medication aide. The form requires the following:

(1) name of the staff and adult care home;
(2) satisfactory completion date of demonstrated competency of task or skill with the instructor's initials or signature;
(3) if staff needs more training on skills or tasks, it should be noted with the instructor's signature; and
(4) staff and instructor signatures and date after completion of tasks.

Copies of this form and instructions for its use may be obtained at no cost on the Adult Care Licensure website, https://info.ncdhhs.gov/dhsr/acls/pdf/medchklst.pdf. The completed form shall be maintained and available for review in the facility and is not transferable from one facility to another.

*History Note: Authority G.S. 131D-2.16; 131D-4.5; 143B-165;*
*Temporary Adoption Eff. January 1, 2000; December 1, 1999;*
*Eff. July 1, 2000;*
*Temporary Amendment Eff. July 1, 2003;*
*Amended Eff. June 1, 2004;*
*Readopted Eff. October 1, 2022.*

**10A NCAC 13F .0504 COMPETENCY EVALUATION AND VALIDATION FOR LICENSED HEALTH PROFESSIONAL SUPPORT TASKS**

(a) When a resident requires one or more of the personal care tasks listed in Subparagraphs (a)(1) through (a)(28) of Rule .0903 of this Subchapter, the task may be delegated to non-licensed staff or licensed staff not practicing in their licensed capacity after a licensed health professional has validated the staff person is competent to perform the task.

(b) The licensed health professional shall evaluate the staff person's knowledge, skills, and abilities that relate to the performance of each personal care task. The licensed health professional shall validate that the staff person has the knowledge, skills, and abilities and can demonstrate the performance of the task(s) prior to the task(s) being performed on a resident.

(c) Evaluation and validation of competency shall be performed by the following licensed health professionals in accordance with his or her North Carolina occupational licensing laws:

(1) A registered nurse shall validate the competency of staff who perform any of the personal care tasks specified in Subparagraphs (a)(1) through (a)(28) of Rule .0903 of this Subchapter;

(2) In lieu of a registered nurse, a licensed respiratory care practitioner may validate the competency of staff who perform personal care tasks specified in Subparagraphs (a)(6), (a)(11), (a)(16), (a)(18), (a)(19), and (a)(21) of Rule .0903 of this Subchapter;

(3) In lieu of a registered nurse, a licensed pharmacist may validate the competency of staff who perform the personal care tasks specified in Subparagraph (a)(8) and (a)(11) of Rule .0903 of this Subchapter. An immunizing pharmacist may validate the competency of staff who perform the personal care task specified in Subparagraph (a)(15) of Rule .0903 of this Subchapter; and

(4) In lieu of a registered nurse, an occupational therapist or physical therapist may validate the competency of staff who perform personal care tasks specified in Subparagraphs (a)(17) and (a)(22) through (a)(27) of Rule .0903 of this Subchapter.

(d) If a physician certifies that care can be provided to a resident in an adult care home on a temporary basis in accordance with G.S. 131D-2.2(a), the facility shall ensure that the staff performing the care task(s) authorized by the physician are competent to perform the task(s) in accordance with Paragraphs (b) and (c) of this Rule. For the purpose of this Rule, "temporary basis" means a length of time as determined by the resident's physician to meet the care needs of the resident and prevent the resident's relocation from the adult care home.

*History Note: Authority G.S. 131D-2.16; 131D-4.5; 143B-165;*
*Temporary Adoption Eff. September 1, 2003;*
*Eff. July 1, 2004;*
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018;*
*Amended Eff. October 1, 2022; July 1, 2021.*

**10A NCAC 13F .0508 ASSESSMENT TRAINING**

The person or persons designated by the administrator to perform resident assessments as required by Rule .0801 of this Subchapter shall read the Resident Assessment Self-Instructional Manual for Adult Care Homes established by the Department and certify completion by signature on the last page of the manual before performing the required resident assessments. Registered nurses are exempt from this requirement. The Resident Assessment Self-Instructional Manual for Adult Care Homes is herein incorporated by reference including subsequent amendments and editions and is available on the Adult Care Licensure website, https://info.ncdhhs.gov/dhsr/acls/pdf/assessmentmanual.pdf, at no cost.

*History Note: Authority G.S. 131D-2.15; 131D-2.16; 131D-4.5; 143B-165;*
*Temporary Adoption Eff. September 1, 2003;*
*Eff. June 1, 2004;*
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018;*
*Amended Eff. October 1, 2022; April 1, 2022.*

**10A NCAC 13F .0905 ACTIVITIES PROGRAM**

(a) Each adult care home shall develop a program of activities designed to promote the residents' active involvement with each other, their families, and the community.

(b) The program shall be designed to promote active involvement by all residents but is not to require any individual to participate in any activity against his or her will. If there is a question about a resident's ability to participate in an activity, the resident's physician shall be consulted to obtain a statement regarding the resident's capabilities.

(c) The activity director shall:

(1) use information on the residents' interests and capabilities as documented upon admission and updated as needed to arrange for or provide planned individual and group activities for the residents, taking into account the varied interests, capabilities, and possible cultural differences of the residents;

(2) prepare a monthly calendar of planned group activities in a format that is legible and shall be posted in a location accessible to residents by the first day of each month, and updated when there are any changes;

(3) involve community resources, such as recreational, volunteer, and religious organizations, to enhance the activities available to residents;

(4) evaluate and document the overall effectiveness of the activities program at least every six months with input from the residents to determine what have been the most valued activities and to elicit suggestions of ways to enhance the program;

(5) encourage residents to participate in activities; and

(6) assure there are, supplies necessary for planned activities, supervision, and assistance to enable each resident to participate. Aides and other facility staff may be used to assist with activities.

(d) There shall be at least 14 hours of a variety of planned group activities per week that include activities that promote socialization, physical interaction, group accomplishment, creative expression, increased knowledge, and learning of new skills.

(e) Residents shall have the opportunity to participate in activities involving one to one interaction and activity by oneself that promote enjoyment, a sense of accomplishment, increased knowledge, learning of new skills, and creative expression.

(f) Each resident shall have the opportunity to participate in at least one outing every other month. Residents interested in being involved in the community more frequently shall be encouraged to do so.

(g) Residents shall have the opportunity to participate in volunteer service activities in the facility or in the community. Participation in volunteer activities shall not be required of residents and shall not involve any duties or responsibilities that are outlined in the job descriptions of facility staff.

*History Note: Authority G.S. 131D-2.16; 131D-4.1; 131D-4.3;*
*Eff. January 1, 1977;*
*Readopted Eff. October 31, 1977;*
*Amended Eff. April 1, 1987; April 1, 1984;*
*Temporary Amendment Eff. July 1, 2003;*
*Amended Eff. July 1, 2004;*
*Temporary Amendment Eff. July 1, 2004 (This temporary amendment replaces the permanent rule approved by RRC on May 20, 2004);*
*Amended Eff. July 1, 2005;*
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018;*
*Amended Eff. October 1, 2022.*

**10A NCAC 13F .1006 MEDICATION STORAGE**

(a) Medications that are self-administered and stored in the resident's room shall be stored in a safe and secure manner as specified by the adult care home's medication storage policy and procedures.

(b) All prescription and non-prescription medications stored by the facility, including those requiring refrigeration, shall be maintained under locked security except when under the direct physical supervision of staff in charge of medication administration.

(c) The medication storage area shall be routinely cleaned, include functional lighting, ventilated to circulate fresh air, large enough to store medications in an orderly manner, and located in areas other than the bathroom, kitchen or utility room. Medication carts shall be routinely cleaned and medications shall be stored in an orderly manner.

(d) Locked storage areas for medications shall only be accessible by staff responsible for medication administration, the administrator, or the administrator-in-charge.

(e) Medications intended for topical or external use, except for ophthalmic, otic, and transdermal medications shall be stored in a designated area separate from the medications intended for oral and injectable use. Ophthalmic, otic, and transdermal medications may be stored with medications intended for oral and injectable use. Medications shall be stored apart from cleaning agents and hazardous chemicals.

(f) Medications requiring refrigeration shall be stored at 36 degrees F to 46 degrees F (2 degrees C to 8 degrees C).

(g) Medications shall not be stored in a refrigerator containing non-medications and non-medication related items, except when stored in a separate container. The container shall be locked when storing medications unless the refrigerator is locked or is located in a locked medication area.

(h) The facility may possess a stock of non-prescription medications or the following prescription legend medications for general or common use in accordance with physicians' orders:

(1) irrigation solutions in single unit quantities exceeding 49 ml. and related diagnostic agents;

(2) diagnostic agents;

(3) vaccines; and

(4) water for injection and normal saline for injection.

(i) First aid supplies shall be immediately available to staff within the facility, stored out of sight of residents and visitors, and stored separately from medications.

*History Note: Authority G.S. 131D-2.16; 131D-4.5; 143B-165;*
*Eff. July 1, 2005;*
*Readopted Eff. October 1, 2022.*

**10A NCAC 13F .1008 CONTROLLED SUBSTANCES**

(a) An adult care home shall assure a record of controlled substances by documenting the receipt, administration, and disposition of controlled substances. These records shall be maintained with the resident's record in the facility and in such an order that there can be accurate reconciliation of controlled substances.

(b) Controlled substances may be stored together in a common location or container. If Schedule II medications are stored together in a common location, the Schedule II medications shall be under double lock.

(c) Controlled substances that are expired, discontinued, or no longer required for a resident shall be returned to the pharmacy within 90 days of the expiration or discontinuation of the controlled substance or following the death of the resident. The facility shall document the resident's name; the name, strength and dosage form of the controlled substance; and the amount returned. There shall also be documentation by the pharmacy of the receipt or return of the controlled substances.

(d) If the pharmacy will not accept the return of a controlled substance, the administrator or the administrator's designee shall destroy the controlled substance within 90 days of the expiration or discontinuation of the controlled substance or following the death of the resident. The destruction shall be witnessed by a

licensed pharmacist, dispensing practitioner, or designee of a licensed pharmacist or dispensing practitioner. The destruction shall be conducted so that no person can use, administer, sell, or give away the controlled substance. Records of controlled substances destroyed shall include the resident's name; the name, strength and dosage form of the controlled substance; the amount destroyed; the method of destruction; and, the signature of the administrator or the administrator's designee and the signature of the licensed pharmacist, dispensing practitioner or designee of the licensed pharmacist or dispensing practitioner.

(e) Records of controlled substances returned to the pharmacy or destroyed by the facility shall be maintained by the facility for three years.

(f) Controlled substances that are expired, discontinued, prescribed for a deceased resident, or deteriorated shall be stored securely in a locked area separately from actively used medications until disposed of.

(g) A dose of a controlled substance accidentally contaminated or not administered shall be destroyed at the facility. The destruction shall be conducted so that no person can use, administer, sell, or give away the controlled substance. The destruction shall be documented on the medication administration record (MAR) or the controlled substance record showing the time, date, quantity, manner of destruction, and the initials or signature of the person destroying the substance.

(h) The facility shall ensure that all known drug diversions are reported to the pharmacy, local law enforcement agency, and Health Care Personnel Registry as required by State law, and that all suspected drug diversions are reported to the pharmacy. There shall be documentation of the contact and action taken.

*History Note: Authority G.S. 131D-2.16; 131D-4.5; 143B-165;*
*Eff. July 1, 2005;*
*Readopted Eff. October 1, 2022.*

**10A NCAC 13F .1010 PHARMACEUTICAL SERVICES**

(a) An adult care home shall allow the residents the right to choose a pharmacy provider as long as the pharmacy provides services that are in accordance with requirements of this Section, all applicable State and federal rules and regulations, and the facility's medication management policies and procedures.

(b) There shall be a current, written agreement with a licensed pharmacist or a prescribing practitioner for pharmaceutical care services in accordance with Rule .1009 of this Section. The written agreement shall include a statement of the responsibility of each party.

(c) The facility shall assure the provision of pharmaceutical services to meet the needs of the residents including procedures that assure the accurate ordering, receiving, and administering of all medications prescribed on a routine, emergency, or as needed basis.

(d) The facility shall assure the provision of medication for residents on temporary leave from the facility or involved in day activities out of the facility. The facility shall have written policies and procedures for a resident's temporary leave of absence. The policies and procedures shall facilitate safe administration by assuring that upon receipt of the medication for a leave of absence the resident or the person accompanying the resident is able to identify the medication, dosage, and administration time for each medication provided for the temporary leave of absence. The policies and procedures shall include the following provisions:

(1) The amount of resident's medications provided shall be sufficient and necessary to cover the duration of the resident's absence. For the purposes of this Rule, sufficient and necessary means the amount of medication to be administered during the leave of absence or only a current dose pack, card, or container if the current dose pack, card, or container has enough medication for the planned absence;

(2) written and verbal instructions for each medication to be released for the resident's absence shall be provided to the resident or the person accompanying the resident upon the medication's release from the facility and shall include:

(A) the name and strength of the medication;

(B) the directions for administration as prescribed by the resident's physician; and

(C) any cautionary information from the original prescription package if the information is not on the container released for the leave of absence;

(3) the resident's medication shall be provided in a capped or closed container that will protect the medications from contamination and spillage; and

(4) labeling of each of the resident's individual medication containers for the leave of absence shall be legible, include at least the name of the resident and the name and strength of the medication, and be affixed to each container.

The facility shall maintain documentation in the resident's record of medications provided for the resident's leave of absence, including the quantity released from the facility and the quantity returned to the facility. The documentation of the quantities of medications released from and returned to the facility for a resident's leave of absence shall be verified by signature of the facility staff and resident or the person accompanying the resident upon the medications' release from and return to the facility.

(e) The facility shall assure that accurate records of the receipt, use, and disposition of medications are maintained in the facility and available upon request for review.

(f) A facility with 12 or more beds shall have a current, written agreement with a pharmacy provider for dispensing services. The written agreement shall include a statement of the responsibility of each party.

*History Note: Authority G.S. 131D-2.16; 131D-4.5; 143B-165;*
*Eff. July 1, 2005;*
*Amended Eff. April 1, 2015;*
*Readopted Eff. October 1, 2022.*

**10A NCAC 13F .1207 FACILTIES TO REPORT RESIDENT DEATHS**

The facility shall report resident deaths to the Division of Health Service Regulation in accordance with G.S. 131D-34.1.

*History Note: Authority G.S. 131D-2.4; 131D-2.16; 131D-34.1; 143B-165;*
*Temporary Adoption Eff. May 1, 2001;*
*Eff. July 18, 2002;*
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018;*
*Amended Eff. October 1, 2022.*

**10A NCAC 13G .0404 QUALIFICATIONS OF ACTIVITY DIRECTOR**

Adult care homes shall have an activity director who meets the following qualifications:

(1) The activity director hired after September 30, 2022 shall meet a minimum educational requirement by being a high school graduate or certified under the GED Program.

(2) The activity director hired after September 30, 2022 shall have complete, within nine months of employment or assignment to this position, the basic activity course for assisted living activity directors offered by community colleges or a comparable activity course as determined by the Department based on instructional hours and content. An activity director shall be exempt from the required basic activity course if one or more of the following applies:

(a) be a licensed recreational therapist or be eligible for certification as a therapeutic recreation specialist as defined by the North Carolina Recreational Therapy Licensure Act in accordance with G.S. 90C;

(b) have two years of experience working in programming for an adult recreation or activities program within the last five years, one year of which was full-time in an activities program for patients or residents in a health care or long term care setting;

(c) be a licensed occupational therapist or licensed occupational therapy assistant in accordance with G.S. 90, Article 18D; or

(d) be certified as an Activity Director by the National Certification Council for Activity Professionals.

*History Note: Authority G.S. 131D-2.16; 131D-4.5; 143B-165;*
*Eff. April 1, 1984;*
*Amended Eff. July 1, 1990; April 1, 1987; January 1, 1985;*
*ARRC Objection Lodged March 18, 1991;*
*Amended Eff. August 1, 1991;*
*Temporary Amendment Eff. July 1, 2004;*
*Amended Eff. July 1, 2005;*
*Readopted Eff. October 1, 2022.*

**10A NCAC 13G .0406 OTHER STAFF QUALIFICATIONS**

(a) Each staff person of a family care home shall:

(1) have a job description that reflects the position's duties, and responsibilities and is signed by the administrator and the employee;

(2) be able to implement all of the family care home's accident, fire safety, and emergency procedures for the protection of the residents;

(3) be informed of the confidential nature of resident information and shall protect and preserve the information from unauthorized use and disclosure, in accordance with G.S. 131D-21(6), and G.S. 131D-21.1;

(4) not hinder or interfere with the exercise of the rights guaranteed under the Declaration of Residents' Rights in G.S. 131D-21;

(5) have no findings listed on the North Carolina Health Care Personnel Registry according to G.S. 131E-256;

(6) have documented annual immunization against influenza virus according to G.S. 131D-9, and exceptions as provided in the law shall be documented in the staff person's personnel record;

(7) have a criminal background check completed in accordance with G.S. 131D-40 and results available in the staff person's personnel file;

(8) have an examination and screening for the presence of controlled substances completed in accordance with G.S. 131D-45 and results available in the staff person's personnel file;

(9) maintain a current driver's license if responsible for transportation of residents; and

(10) be willing to cooperate with state and local inspectors when determining and maintaining compliance with the rules of this Subchapter.

(b) At all times, there shall be at least one staff person in the facility in charge of resident care who shall be 18 years or older.

(c) If licensed practical nurses are employed by the facility and practicing in their licensed capacity as governed by the North Carolina Board of Nursing, there shall be a registered nurse available in accordance with the rules set forth in 21 NCAC 36 .0224 and 21 NCAC 36 .0225, which are hereby incorporated by reference including subsequent amendments.

*History Note: Authority G.S. 131D-2.16; 131D-4.5; 143B-165;*
*Eff. January 1, 1977;*
*Readopted Eff. October 31, 1977;*
*Amended Eff. April 1, 1984;*
*Temporary Amendment Eff. December 1, 1999;*
*Amended Eff. July 1, 2000;*
*Temporary Amendment Eff. September 1, 2003;*
*Amended Eff. June 1, 2004;*

*Readopted Eff. October 1, 2022.*

**10A NCAC 13G .0501 PERSONAL CARE TRAINING AND COMPETENCY**

(a) The facility shall assure that staff who provide or directly supervise staff who provide personal care to residents complete an 80-hour personal care training and competency evaluation program established by the Department. For the purpose of this Rule, "directly supervise" means being on duty in the facility to oversee or direct the performance of staff duties. A copy of the 80-hour training and competency evaluation program is available online at https://info.ncdhhs.gov/dhsr/acls/training/index.html#80hr, at no cost. The 80-hour personal care training and competency evaluation program curriculum shall include:

(1) observation and documentation skills;
(2) basic nursing skills, including special health-related tasks;
(3) activities of daily living and personal care skills;
(4) cognitive, behavioral, and social care;
(5) basic restorative services; and
(6) residents' rights as established by G.S. 131D-21.

(b) The facility shall assure that training specified in Paragraph (a) of this Rule is completed within six months after hiring for staff hired after September 30, 2022. Documentation of the successful completion of the 80-hour training and competency evaluation program shall be maintained in the facility and available for review by the Division of Health Service Regulation and the county department of social services.

(c) The facility shall assure that staff who perform or directly supervise staff who perform personal care receive training and supervision for the performance of individual job assignments prior to meeting the training and competency requirements of this Rule. Documentation of training shall be maintained in the facility and available for review by the Division of Health Service Regulation and the county department of social services.

(d) The Department shall exempt staff from the 80-hour training and competency evaluation program who are:

(1) licensed health professionals;
(2) listed on the Nurse Aide Registry; or
(3) documented as having completed one of the following previously approved training programs:
    (A) a 20-hour or 75-hour training and competency evaluation program prior to July 1, 2000; or
    (B) a 25-hour or 80-hour training and competency evaluation program from July 1, 2000 through September 30, 2017.

*History Note: Authority G.S. 131D-2.16; 131D-4.3; 131D-4.5; 143B-165;*
*Temporary Adoption Eff. January 1, 1996;*
*Eff. May 1, 1997;*
*Temporary Amendment Eff. December 1, 1999;*
*Amended Eff. July 1, 2000;*
*Readopted Eff. October 1, 2022.*

**10A NCAC 13G .0502 PERSONAL CARE TRAINING AND COMPETENCY PROGRAM APPROVAL**

*History Note: Authority G.S. 131D-2.16; 131D-4.3; 131D-4.5; 143B-165;*
*Temporary Adoption Eff. January 1, 1996;*
*Eff. May 1, 1997;*
*Temporary Amendment Eff. December 1, 1999;*
*Amended Eff. July 1, 2000;*
*Repealed Eff. October 1, 2022.*

**10A NCAC 13G .0503 MEDICATION ADMINISTRATION COMPETENCY EVALUATION**

(a) The competency evaluation for medication administration shall consist of a written examination and a clinical skills validation to determine competency in the following areas:

(1) medical abbreviations and terminology;
(2) transcription of medication orders;
(3) obtaining and documenting vital signs;
(4) procedures and tasks involved with the preparation and administration of oral (including liquid, sublingual and inhaler), topical (including transdermal), ophthalmic, otic, and nasal medications;
(5) infection control procedures;
(6) documentation of medication administration;
(7) monitoring for reactions to medications and procedures to follow when there appears to be a change in the resident's condition or health status based on those reactions;
(8) medication storage and disposition;
(9) rules pertaining to medication administration in adult care facilities; and
(10) the facility's medication administration policy and procedures.

(b) An individual shall score at least 90% on the written examination which shall be a standardized examination established by the Department.

(c) Verification of an individual's completion of the written examination and results can be obtained at no charge on the North Carolina Adult Care Medication Aide Testing website at https://mats.ncdhhs.gov/test-result.

(d) The clinical skills validation portion of the competency evaluation shall be conducted by a registered nurse or a licensed pharmacist and who has a current unencumbered license in North Carolina. The registered nurse or licensed pharmacist shall conduct a clinical skills validation for each medication administration task or skill that will be performed in the facility. Competency validation by a registered nurse is required for unlicensed staff who perform any of the personal care tasks related to medication administration listed in Subparagraphs (a)(4), (a)(7), (a)(11), (a)(14), and (a)(15) as specified in Rule .0903 of this Subchapter.

(e) The Medication Administration Skills Validation Form shall be used to document successful completion of the clinical skills validation portion of the competency evaluation for those

medication administration tasks to be performed in the facility employing the medication aide. The form requires the following:

(1) name of the staff and adult care home;
(2) satisfactory completion date of demonstrated competency of task or skill with the instructor's initials or signature;
(3) if staff needs more training on skills or tasks, it should be noted with the instructor's signature; and
(4) staff and instructor signatures and date after completion of tasks.

Copies of this form and instructions for its use may be obtained at no cost on the Adult Care Licensure website, https://info.ncdhhs.gov/dhsr/acls/pdf/medchklst.pdf. The completed form shall be maintained and available for review in the facility and is not transferable from one facility to another.

*History Note: Authority G.S. 131D-2.16; 131D-4.5; 143B-165;*
*Temporary Adoption Eff. January 1, 2000; December 1, 1999;*
*Eff. July 1, 2000;*
*Readopted Eff. October 1, 2022.*

**10A NCAC 13G .0504 COMPETENCY EVALUATION AND VALIDATION FOR LICENSED HEALTH PROFESSIONAL SUPPORT TASKS**

(a) When a resident requires one or more of the personal care tasks listed in Subparagraphs (a)(1) through (a)(28) of Rule .0903 of this Subchapter, the task may be delegated to non-licensed staff or licensed staff not practicing in their licensed capacity after a licensed health professional has validated the staff person is competent to perform the task.

(b) Evaluation and validation of competency shall be performed by the following licensed health professionals in accordance with his or her North Carolina occupational licensing laws:

(1) A registered nurse shall validate the competency of staff who perform any of the personal care tasks specified in Subparagraphs (a)(1) through (a)(28) of Rule .0903 of this Subchapter;
(2) In lieu of a registered nurse, a licensed respiratory care practitioner may validate the competency of staff who perform personal care tasks specified in Subparagraphs (a)(6), (11), (16), (18), (19), and (21) of Rule .0903 of this Subchapter;
(3) In lieu of a registered nurse, a licensed pharmacist may validate the competency of staff who perform the personal care tasks specified in Subparagraph (a)(8) and (11) of Rule .0903 of this Subchapter. An immunizing pharmacist may validate the competency of staff who perform the personal care task specified in Subparagraph (a)(15) of Rule .0903 of this Subchapter; and
(4) In lieu of a registered nurse, an occupational therapist or physical therapist may validate the competency of staff who perform personal care tasks specified in Subparagraphs (a)(17) and (a)(22) through (a)(27) of Rule .0903 of this Subchapter.

(c) If a physician certifies that care can be provided to a resident in a family care home on a temporary basis in accordance with G.S. 131D-2.2(a), the facility shall ensure that the staff performing the care task(s) authorized by the physician are competent to perform the task(s) in accordance with Paragraphs (a) and (b) of this Rule. For the purpose of this Rule, "temporary basis" means a length of time as determined by the resident's physician to meet the care needs of the resident and prevent the resident's relocation from the family care home.

*History Note: Authority G.S. 131D-2.16; 131D-4.5; 143B-165;*
*Temporary Adoption Eff. September 1, 2003;*
*Eff. July 1, 2004;*
*Readopted Eff. October 1, 2022.*

**10A NCAC 13G .0507 TRAINING ON CARDIO-PULMONARY RESUSCITATION**

Each family care home shall have one staff person on the premises at all times who has completed within the last 24 months a course on cardio-pulmonary resuscitation and choking management, including the Heimlich maneuver, provided by the American Heart Association, American Red Cross, National Safety Council, American Safety and Health Institute and Medic First Aid, or by a trainer with documented certification as a trainer on these procedures from one of these organizations. The staff person trained according to this Rule shall have access at all times in the facility to a one-way valve pocket mask for use in performing cardio-pulmonary resuscitation.

*History Note: Authority G.S. 131D-2.16; 131D-4.5; 143B-165;*
*Temporary Adoption Eff. September 1, 2003;*
*Eff. July 1, 2004;*
*Readopted Eff. October 1, 2022.*

**10A NCAC 13G .0508 ASSESSMENT TRAINING**

The person or persons designated by the administrator to perform resident assessments as required by Rule .0801 of this Subchapter shall read the Resident Assessment Self-Instructional Manual for Adult Care Homes established by the Department and certify completion by signature on the last page of the manual before performing the required resident assessments. Registered nurses are exempt from this requirement. The Resident Assessment Self-Instructional Manual for Adult Care Homes is herein incorporated by reference including subsequent amendments and editions and is available on the Adult Care Licensure website, https://info.ncdhhs.gov/dhsr/acls/pdf/assessmentmanual.pdf, at no cost.

*History Note: Authority G.S. 131D-2.16; 131D-4.5; 143B-165;*
*Temporary Adoption Eff. September 1, 2003;*
*Eff. June 1, 2004;*
*Amended Eff. April 1, 2022;*
*Readopted Eff. October 1, 2022.*

**10A NCAC 13G .0903 LICENSED HEALTH PROFESSIONAL SUPPORT**

(a) The facility shall assure that an appropriate licensed health professional participates in the on-site review and evaluation of the residents' health status, care plan, and care provided for residents requiring one or more of the following personal care tasks:

(1) applying and removing ace bandages, TED hose, binders, and braces and splints;
(2) feeding techniques for residents with swallowing problems;
(3) bowel or bladder training programs to regain continence;
(4) enemas, suppositories, break-up and removal of fecal impactions, and vaginal douches;
(5) positioning and emptying of the urinary catheter bag and cleaning around the urinary catheter;
(6) chest physiotherapy or postural drainage;
(7) clean dressing changes, excluding packing wounds and application of prescribed enzymatic debriding agents;
(8) collecting and testing of fingerstick blood samples;
(9) care of well-established colostomy or ileostomy. For the purpose of this Rule, "well-established colostomy or ileostomy" means having a healed surgical site without sutures or drainage;
(10) care for pressure ulcers, up to and including a Stage II pressure ulcer, which is a superficial ulcer presenting as an abrasion, blister, or shallow crater;
(11) inhalation medication by machine;
(12) forcing and restricting fluids;
(13) maintaining accurate intake and output data;
(14) medication administration through a well-established gastrostomy feeding tube. For the purpose of this Rule, "well-established gastrostomy feeding tube" means having a healed surgical site without sutures or drainage and through which a feeding regimen has been successfully established;
(15) medication administration through subcutaneous injection in accordance with Rule .1004(q) except for anticoagulant medications;
(16) oxygen administration and monitoring;
(17) the care of residents who are physically restrained and the use of care practices as alternatives to restraints;
(18) oral suctioning;
(19) care of well-established tracheostomy, not to include endotracheal suctioning. For the purpose of this Rule, "well-established tracheostomy" means the stoma is well-healed and the airway is patent;
(20) administering and monitoring of tube feedings through a well-established gastrostomy feeding tube in accordance with Subparagraph (a)(14) of this Rule;
(21) the monitoring of continuous positive air pressure devices (CPAP and BIPAP);
(22) application of prescribed heat therapy;
(23) application and removal of prosthetic devices except as used in post-operative treatment for shaping of the extremity;
(24) ambulation using assistive devices that requires physical assistance;
(25) range of motion exercises;
(26) any other prescribed physical or occupational therapy;
(27) transferring semi-ambulatory or non-ambulatory residents; or
(28) nurse aide II tasks according to the scope of practice as established in the Nursing Practice Act and rules promulgated under that Act in 21 NCAC 36.

(b) The appropriate licensed health professional, as required in Paragraph (a) of this Rule, is:

(1) a registered nurse licensed under G.S. 90, Article 9A, for tasks listed in Subparagraphs (a)(1) through (28) of this Rule;
(2) an occupational therapist licensed under G.S. 90, Article 18D or physical therapist licensed under G.S. 90-270.90, Article 18E, for tasks listed in Subparagraphs (a)(17) and (a)(22) through (27) of this Rule;
(3) a respiratory care practitioner licensed under G.S. 90, Article 38, for tasks listed in Subparagraphs (a)(6), (11), (16), (18), (19), and (21) of this Rule; or
(4) a registered nurse licensed under G.S. 90, Article 9A, for tasks that can be performed by a nurse aide II according to the scope of practice as established in the Nursing Practice Act and rules promulgated under that Act in 21 NCAC 36.

(c) The facility shall assure that participation by a registered nurse, occupational therapist, respiratory care practitioner, or physical therapist in the on-site review and evaluation of the residents' health status, care plan, and care provided, as required in Paragraph (a) of this Rule, is completed within 30 days after admission or within 30 days from the date a resident develops the need for the task and at least quarterly thereafter, and includes the following:

(1) performing a physical assessment of the resident as related to the resident's diagnosis or current condition requiring one or more of the tasks specified in Paragraph (a) of this Rule;
(2) evaluating the resident's progress to care being provided;
(3) recommending changes in the care of the resident as needed based on the physical assessment and evaluation of the progress of the resident; and
(4) documenting the activities in Subparagraphs (1) through (3) of this Paragraph.

(d) The facility shall follow-up and implement recommendations made by the licensed health professional including referral to the physician or appropriate health professional when indicated. The facility shall document follow-up on all recommendations made by the licensed health professional.

*History Note: Authority G.S. 131D-2.16; 131D-4.5; 143B-165;*
*Temporary Adoption Eff. January 1, 1996;*
*Eff. May 1, 1997;*
*Temporary Amendment Eff. December 1, 1999;*
*Amended Eff. July 1, 2000;*
*Temporary Amendment Eff. September 1, 2003;*
*Amended Eff. June 1, 2004;*
*Readopted Eff. October 1, 2022.*

**10A NCAC 13G .0905 ACTIVITIES PROGRAM**

(a) Each family care home shall develop a program of activities designed to promote the residents' active involvement with each other, their families, and the community.
(b) The program shall be designed to promote active involvement by all residents but is not to require any individual to participate in any activity against his or her will. If there is a question about a resident's ability to participate in an activity, the resident's physician shall be consulted to obtain a statement regarding the resident's capabilities.
(c) The activity director shall:

(1) use information on the residents' interests and capabilities as documented upon admission and updated as needed to arrange for or provide planned individual and group activities for the residents, taking into account the varied interests, capabilities, and possible cultural differences of the residents;
(2) prepare a monthly calendar of planned group activities in a format that is legible and shall be posted in a location accessible to residents by the first day of each month, and updated when there are any changes;
(3) involve community resources, such as recreational, volunteer, and religious organizations, to enhance the activities available to residents;
(4) evaluate and document the overall effectiveness of the activities program at least every six months with input from the residents to determine what have been the most valued activities and to elicit suggestions of ways to enhance the program;
(5) encourage residents to participate in activities; and
(6) assure there are supplies necessary for planned activities, supervision, and assistance to enable each resident to participate. Aides and other facility staff may be used to assist with activities.

(d) There shall be at least 14 hours of a variety of planned group activities per week that include activities that promote socialization, physical interaction, group accomplishment, creative expression, increased knowledge, and learning of new skills.
(e) Residents shall have the opportunity to participate in activities involving one to one interaction and activity by oneself that promote enjoyment, a sense of accomplishment, increased knowledge, learning of new skills, and creative expression.
(f) Each resident shall have the opportunity to participate in at least one outing every other month. Residents interested in being involved in the community more frequently shall be encouraged to do so.
(g) Residents shall have the opportunity to participate in volunteer service activities in the facility or in the community. Participation in volunteer activities shall not be required of residents and shall not involve any duties or responsibilities that are outlined in the job descriptions of facility staff.

*History Note: Authority G.S. 131D-2.16; 131D-4.1; 131D-4.3;*
*Eff. January 1, 1977;*
*Readopted Eff. October 31, 1977;*
*Amended Eff. August 3, 1992; April 1, 1987; April 1, 1984;*
*Temporary Amendment Eff. July 1, 2004;*
*Amended Eff. July 1, 2005;*
*Readopted Eff. October 1, 2022.*

**10A NCAC 13G .1005 SELF-ADMINISTRATION OF MEDICATIONS**

(a) The facility shall permit residents who are competent and physically able to self-administer their medications if the following requirements are met:

(1) the self-administration is ordered by a physician or other person legally authorized to prescribe medications in North Carolina and documented in the resident's record; and
(2) specific instructions for administration of prescription medications are printed on the medication label.

(b) The facility shall notify the physician when:

(1) there is a change in the resident's mental or physical ability to self-administer;
(2) the resident is non-compliant with the physician's orders; or
(3) the resident is non-compliant with the facility's medication policies and procedures.

A resident's right to refuse medications does not imply the inability of the resident to self-administer medications.

*History Note: Authority G.S. 131D-2.16; 131D-4.5; 143B-165;*
*Temporary Adoption Eff. December 1, 1999;*
*Eff. July 1, 2000;*
*Readopted Eff. October 1, 2022.*

**10A NCAC 13G .1006 MEDICATION STORAGE**

(a) Medications that are self-administered and stored in the resident's room shall be stored in a safe and secure manner as specified by the facility's medication storage policy and procedures.

(b) All prescription and non-prescription medications stored by the facility, including those requiring refrigeration, shall be maintained under locked security except when under the direct physical supervision of staff in charge of medication administration.
(c) The medication storage area shall be routinely cleaned, include functional lighting, ventilated to circulate fresh air, large enough to store medications in an orderly manner, and located in areas other than the bathroom, kitchen or utility room. Medication carts shall be routinely cleaned and medications shall be stored in an orderly manner.
(d) Locked storage areas for medications shall only be by staff responsible for medication administration, the administrator, or the administrator-in-charge.
(e) Medications intended for topical or external use, except for ophthalmic, otic, and transdermal medications, shall be stored in a designated area separate from the medications intended for oral and injectable use. Ophthalmic, otic, and transdermal medications may be stored with medications intended for oral and injectable use. Medications shall be stored apart from cleaning agents and hazardous chemicals.
(f) Medications requiring refrigeration shall be stored at 36 degrees F to 46 degrees F (2 degrees C to 8 degrees C).
(g) Medications shall not be stored in a refrigerator containing non-medications and non-medication related items, except when stored in a separate container. The container shall be locked when storing medications unless the refrigerator is locked or is located in a locked medication area.
(h) The facility shall only possess a stock of non-prescription medications or the following prescription legend medications for general or common use in accordance with physicians' orders:

(1) irrigation solutions in single unit quantities exceeding 49 ml. and related diagnostic agents;
(2) diagnostic agents;
(3) vaccines; and
(4) water for injection and normal saline for injection.

(i) First aid supplies shall be immediately available to staff within the facility, stored out of sight of residents and visitors, and stored separately from medications.

*History Note: Authority G.S. 131D-2.16; 131D-4.5; 143B-165;*
*Temporary Adoption Eff. December 1, 1999;*
*Eff. July 1, 2000;*
*Readopted Eff. October 1, 2022.*

**10A NCAC 13G .1208 FACILITIES TO REPORT RESIDENT DEATHS**

The facility shall report resident deaths to the Division of Health Service Regulation, in accordance with G.S. 131D-34.1.

*History Note: Authority G.S. 131D-2.4; 131D-2.16; 131D-34.1; 143B-165;*
*Temporary Adoption Eff. May 1, 2001;*
*Eff. July 18, 2002;*
*Readopted Eff. October 1, 2022.*

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**10A NCAC 15 .1301 WELL LOGGING, WIRELINE-SERVICE OPERATIONS, AND SUBSURFACE TRACER STUDIES: REQUIREMENTS FOR LICENSEES**

(a) Persons using sources of radiation for well logging, wireline-service operations, mineral logging, radioactive markers, or subsurface tracer studies shall comply with the provisions of 10 CFR Part 39, except that 10 CFR 39.5, 39.8, 39.101, and 39.103 shall not apply.
(b) In addition to the terms defined in 10 CFR 39.2, the following definitions shall also apply to this Section:

(1) "Mineral logging" means any logging performed for the purpose of mineral exploration other than oil or gas;
(2) "Well-bore" means a drilled hole in which wireline-service operations and subsurface-tracer studies are performed;
(3) "Wireline" means a cable containing one or more electrical conductors that is used to lower and raise logging tools in the well-bore; and
(4) "Wireline-service operations" means any evaluation or mechanical service that is performed in the well-bore using devices on a wireline.

(c) Applications required by 10 CFR 39.11 shall be made on forms provided by the agency, and the payment of fees required by 10 CFR Part 170 shall not apply. One copy of the application and supporting material shall be submitted to the agency by e-mail at Licensing.RAM@dhhs.nc.gov, or at the address shown in Rule .0111 of this Chapter in lieu of the NRC:

(1) Persons applying for new radioactive materials licenses, or for the renewal of existing radioactive materials licenses, shall submit an Application for Radioactive Materials License. Items one through five on the application form shall be completed by the applicant, using additional sheets as necessary. The following information shall appear on the application:
    (A) legal business name and mailing address;
    (B) physical address(es) where radioactive material shall be used or possessed. The application shall indicate if radioactive materials shall be used at temporary jobsites;
    (C) the name, telephone number, and e-mail address of the Radiation Safety Officer;
    (D) the name, telephone number, and e-mail address of the individual to be contacted about the application. If this individual is same as the Radiation Safety Officer, the application may so state;
    (E) the application shall indicate if the application is for a new license or for the renewal of an existing license by marking the corresponding check box;

(F) if the application is for the renewal of an existing license, the license number shall be provided on the application;
(G) applicants shall indicate the type and category of license as shown on the form by marking the corresponding check box; and
(H) the printed name, title, and signature of the certifying official. The certifying official shall be an individual employed by the business or licensee, who is authorized by the licensee to sign license applications on behalf of the business or licensee.

(2) Persons applying for an amendment to an existing license shall submit an Application for Amendment of Radioactive Materials and Accelerator Licenses. Items one through seven on the application form shall be completed by the applicant, using additional sheets as necessary. The following information shall appear on the application:
(A) the license number;
(B) amendment number of the current license;
(C) expiration date of the license;
(D) licensee name as it currently appears on the license;
(E) the name, telephone number, and e-mail address of the Radiation Safety Officer;
(F) the name, telephone number, and e-mail address of the individual to be contacted about the application. If this individual is same as the Radiation Safety Officer, item 5b on the application may be left blank;
(G) applicants shall provide a description of the action requested by marking the corresponding checkbox in item 6a. If the check box next to "Other" is marked in item 6a, provide a brief description of the action requested in the space provided in item 6b;
(H) explanation of the action requested; and
(I) the printed name, title, and signature of the certifying official. The certifying official shall be an individual employed by the business or licensee who is authorized by the licensee to sign license applications on behalf of the business or licensee.

(3) Applications specified in this Rule are available free of charge at: www.ncradiation.net/rms/rmsforms2.htm(Rev 01).htm.

(d) Persons conducting subsurface tracer studies using unsealed sources of radiation shall obtain agency approval prior to injecting licensed material into the subsurface. Agency approval shall be obtained by submitting a license application to the agency in accordance with Paragraph (c) of this Rule.

(e) Notifications, authorization requests, and reports required by 10 CFR 39.77 shall be made to the agency at the address shown in Rule .0111 of this Chapter in lieu of the NRC.

(f) Applications for exemptions to this Rule shall be submitted to the agency at the address shown in Rule .0111 of this Chapter in lieu of the NRC.

(g) The regulations cited in this Rule from 10 CFR Part 39 are hereby incorporated by reference, including subsequent amendments and editions. Copies of these regulations are available free of charge at https://www.nrc.gov/reading-rm/doc-collections/cfr/part039/.

*History Note: Authority G.S. 104E-3; 104E-7;*
*Eff. June 1, 1989;*
*Amended Eff. January 1, 1994;*
*Transferred and Recodified from 15A NCAC 11 .1301 Eff. February 1, 2015;*
*Readopted Eff. October 1, 2022.*

**10A NCAC 15 .1302 DEFINITIONS**
**10A NCAC 15 .1303 WRITTEN AGREEMENTS REQUIRED**
**10A NCAC 15 .1304 LIMITS ON LEVELS OF RADIATION**
**10A NCAC 15 .1305 STORAGE PRECAUTIONS**
**10A NCAC 15 .1306 TRANSPORT PRECAUTIONS**
**10A NCAC 15 .1307 RADIATION SURVEY INSTRUMENTS**
**10A NCAC 15 .1308 LEAK TESTING OF SEALED SOURCES**
**10A NCAC 15 .1309 QUARTERLY INVENTORY**
**10A NCAC 15 .1310 UTILIZATION RECORDS**
**10A NCAC 15 .1311 DESIGN: PERFORMANCE: AND CERTIFICATION CRITERIA**
**10A NCAC 15 .1312 LABELING**
**10A NCAC 15 .1313 INSPECTION AND MAINTENANCE**
**10A NCAC 15 .1314 TRAINING REQUIREMENTS**
**10A NCAC 15 .1315 OPERATING AND EMERGENCY PROCEDURES**
**10A NCAC 15 .1316 PERSONNEL MONITORING**
**10A NCAC 15 .1317 SECURITY**
**10A NCAC 15 .1318 HANDLING TOOLS**
**10A NCAC 15 .1319 SUBSURFACE-TRACER STUDIES**
**10A NCAC 15 .1320 PARTICLE ACCELERATORS**
**10A NCAC 15 .1321 RADIATION SURVEYS**
**10A NCAC 15 .1322 DOCUMENTS AND RECORDS REQUIRED AT FIELD STATIONS**
**10A NCAC 15 .1323 DOCUMENTS AND RECORDS REQUIRED AT TEMPORARY JOBSITES**
**10A NCAC 15 .1324 NOTIFICATION OF INCIDENTS: ABANDONMENT: AND LOST SOURCES**
**10A NCAC 15 .1325 SUBJECTS IN TRAINING COURSES FOR LOGGING SUPERVISORS**

*History Note: Authority G.S. 20-167.1; 104E-7; 104E-10(b); 104E-12(a); 104E-12(a)(1); 104E-12(a)(2); 104E-15(a); 10 C.F.R. Chapter 1, Commission Notices, Policy Statements, Agreement States, 46 F.R. 7540;*
*Eff. June 1, 1989;*
*Amended Eff. January 1, 2005; January 1, 1994; May 1, 1993; May 1, 1992; November 1, 1989;*
*Transferred and Recodified from 15A NCAC 11 .1302 - .1325 Eff. February 1, 2015;*
*Repealed Eff. October 1, 2022.*

**10A NCAC 15 .1326 ENERGY COMPENSATION SOURCES**
**10A NCAC 15 .1327 TRITIUM NEUTRON GENERATOR TARGET SOURCES**

*History Note: Authority G.S. 104E-7;*
*Eff. January 1, 2005;*
*Transferred and Recodified from 15A NCAC 11 .1326 - .1327 Eff. February 1, 2015;*
*Repealed Eff. October 1, 2022.*

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**10A NCAC 41A .0107 REPORTING OF COVID-19 DIAGNOSTIC TEST RESULTS**

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

(1) "COVID-19 diagnostic test" means any nucleic acid or antigen test that identifies SARS-CoV-2, the virus that causes COVID-19.

(2) "Electronic laboratory reporting" means the automated messaging of laboratory reports sent to the Division of Public Health using a machine-readable electronic communication protocol.

(3) "Healthcare provider" means a healthcare provider as defined in G.S. 130A-476(g)(1).

(4) "Laboratory" means a facility that performs testing on specimens obtained from humans for the purpose of providing information for health assessment and for the diagnosis, prevention, or treatment of disease and is certified by the United States Department of Health and Human Services under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) at P.L. 100-578 and implementing regulations at 42 C.F.R. 493, which are hereby incorporated by reference, including any subsequent amendments or editions, and available free of charge at https://www.congress.gov/public-laws/ and http://ecfr.gov/, respectively. This definition includes a healthcare provider who performs testing in an on-site facility that meets these requirements.

(b) Each person in charge of a laboratory providing diagnostic service in this State shall report the results of COVID-19 diagnostic tests to the Division of Public Health using electronic laboratory reporting. For purposes of COVID-19, a novel coronavirus under Rule .0101(c)(1) of this Section, the required method of reporting set out in Rules .0101(c) and .0102(d)(3) of this Section shall not apply. Reports shall be made in compliance with the requirements for laboratories by entity and type of testing and minimum data elements as set forth in the United States Department of Health and Human Services' COVID-19 Pandemic Response, Laboratory Data Reporting: CARES Act Section 18115 guidance, which is hereby incorporated by reference, including any subsequent amendments and editions, and available free of charge at https://www.hhs.gov/sites/default/files/covid-19-laboratory-data-reporting-guidance.pdf.

(c) The requirements set forth in Paragraph (b) of this Rule shall be considered met if a laboratory:

(1) submits a COVID-19 Laboratory Data Automation Registration form to the Division of Public Health and acts to onboard to electronic laboratory reporting. This form shall be submitted within seven calendar days of the date the laboratory starts performing COVID-19 diagnostic testing and shall contain the following elements:
  (A) the name, address, phone number, and CLIA number of the laboratory;
  (B) the name, address, and phone number of the person in charge of the laboratory or that person's designee;
  (C) the type of test performed, testing capacity, and whether the laboratory will use a third-party laboratory to perform part or all of the testing; and
  (D) if the laboratory will use a third-party laboratory to perform part or all of the testing, the information in Parts (A)-(B) of this Subparagraph for the third-party laboratory; and

(2) until onboarding to electronic laboratory reporting is complete, reports the results of positive COVID-19 diagnostic tests to the Division of Public Health, including all elements required in Paragraph (b) of this Rule, by telefacsimile.

(d) The requirements set forth in Paragraph (b) of this Rule shall be considered met if a laboratory that completes fewer than 50 total COVID-19 diagnostic tests per week submits results as set out in Subparagraph (c)(2) of this Rule.

(e) Laboratories that are required to report under this Rule shall report positive COVID-19 diagnostic test results immediately upon receiving the result and negative COVID-19 diagnostic test results, as required by Paragraph (b) of this Rule, within 24 hours of receiving the result.

*History Note: Authority G.S. 130A-134; 130A-139; 130A-141; 130A-141.1;*
*Emergency Adoption Eff. September 25, 2020;*
*Temporary Adoption Eff. December 1, 2020;*
*Eff. October 1, 2021;*
*Amended Eff. October 1, 2022.*

## TITLE 12 - DEPARTMENT OF JUSTICE

### 12 NCAC 09A .0103 DEFINITIONS

The following definitions apply throughout Subchapters 12 NCAC 09A through 12 NCAC 09F, except as modified in 12 NCAC 09A .0107 for the purpose of the Commission's rule-making and administrative hearing procedures:

(1) "Active Duty Military" means, for the purpose of determining eligibility for certification pursuant to 12 NCAC 09B .0401 and 12 NCAC 09B .0403, full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance while in the active military service at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.

(2) "Agency" or "Criminal Justice Agency" means those state and local agencies identified in G.S. 17C-2(2).

(3) "Alcohol Law Enforcement Agent" means a law enforcement officer appointed by the Secretary of the Department of Public Safety as authorized by G.S. 18B-500.

(4) "Chief Court Counselor" means the person responsible for administration and supervision of juvenile intake, probation, and post-release supervision in each judicial district, operating under the supervision of the Department of Public Safety, Division of Adult Correction and Juvenile Justice.

(5) "Commission of an offense" means a finding by the North Carolina Criminal Justice Education and Training Standards Commission or equivalent regulating body from another state that a person performed the acts necessary to satisfy the elements of a specified criminal offense.

(6) "Convicted" or "Conviction" means the entry of:
   (a) a plea of guilty;
   (b) a verdict or finding of guilt by a jury, judge, magistrate, or other adjudicating body, tribunal, or official, either civilian or military; or
   (c) a plea of no contest, nolo contendere, or the equivalent.

(7) "Criminal Justice Officer(s)" means those officers identified in G.S. 17C-2(3).

(8) "Criminal Justice System" means the whole of the State and local criminal justice agencies described in Item (2) of this Rule.

(9) "Agency Head" means the chief administrator of any criminal justice agency, and specifically includes any chief of police or agency director. "Agency Head" also includes a designee appointed in writing by the Agency Head.

(10) "Director" means the Director of the Criminal Justice Standards Division of the North Carolina Department of Justice.

(11) "Educational Points" means points earned toward the Professional Certificate Programs for studies completed, with passing scores achieved, for semester hour or quarter hour credit hours awarded from colleges or universities accredited by the Department of Education of the state in which the institution is located, from an accredited body recognized by either the U.S. Department of Education or the Council for Higher Education Accreditation, or from the state university of the state in which the institution is located. Each semester hour of college credit equals one educational point and each quarter hour of college credit equals two-thirds of an educational point.

(12) "Enrolled" means that an individual is currently actively participating in an on-going presentation of a Commission-certified basic training course that has not concluded on the day probationary certification expires. The term "currently actively participating" as used in this definition means:
   (a) for law enforcement officers, that the officer is attending an approved course presentation averaging a minimum of 12 hours of instruction each week; and
   (b) for Department of Public Safety, Division of Adult Correction and Juvenile Justice personnel, that the officer is attending the last or final phase of the approved training course necessary for satisfying the total course completion requirements.

(13) "High School" means an educational program that meets the compulsory attendance requirements in the jurisdiction in which the school is located.

(14) "In-Service Training" means all training prescribed in 12 NCAC 09E .0105 that must be completed, with passing scores achieved, by all certified law enforcement officers during each full calendar year of certification.

(15) "In-Service Training Coordinator" means the person designated by a Criminal Justice Agency head to administer the agency's In-Service Training program.

(16) "Lateral Transfer" means the employment of a criminal justice officer by a Criminal Justice Agency based upon the officer's special qualifications or experience, without following the usual selection process established by the agency for basic officer positions.

(17) "Law Enforcement Code of Ethics" means the code adopted by the Commission on September 19, 1973, that reads as follows:

As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice.

I will keep my private life unsullied as an example to all, and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will never engage in acts or corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.

I will constantly strive to achieve these objectives and ideals, dedicating myself before God or by affirmation to my chosen profession law enforcement.

(18) "Juvenile Court Counselor" means a person responsible for intake services and court supervision services to juveniles under the supervision of the Chief Court Counselor.

(19) "Juvenile Justice Officer" means a person designated by the Secretary of the Department of Public Safety, Division of Adult Correction and Juvenile Justice to provide for the care and supervision of juveniles placed in the physical custody of the Department.

(20) "Law Enforcement Officer" means an appointee of a Criminal Justice Agency, an agency of the State, or of any political subdivision of the State who, by virtue of his or her office, is empowered to make arrests for violations of the laws of this State. Specifically excluded from the title "Law Enforcement Officer" are sheriffs and their sworn appointees with arrest authority who are governed by the provisions of G.S. 17E.

(21) "Law Enforcement Training Points" means points earned toward the Law Enforcement Officers' Professional Certificate Program by successful completion of Commission-approved law enforcement training courses. Twenty classroom hours of Commission-approved law enforcement training equals one law enforcement training point.

(22) "LIDAR" is an acronym for "Light Detection and Ranging" and means a speed-measuring instrument that electronically computes, from transmitted infrared light pulses, the speed of a vehicle under observation.

(23) "Local Confinement Personnel" means any officer, supervisor, or administrator of a local confinement facility in North Carolina as defined in G.S. 153A-217; any officer, supervisor, or administrator of a county confinement facility in North Carolina as defined in G.S. 153A-218; or any officer, supervisor, or administrator of a district confinement facility in North Carolina as defined in G.S. 153A-219.

(24) "Misdemeanor" means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses are classified by the Commission as follows:

(a) "Class A Misdemeanor" means a misdemeanor committed or omitted in violation of any common law, duly-enacted ordinance, or criminal statute of this State that is not classified as a Class B Misdemeanor pursuant to Sub-item (24)(b) of this Rule. Class A Misdemeanor also includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of not more than six months. Excluded from "Class A Misdemeanor" criminal offenses for jurisdictions other than North Carolina are motor vehicle or traffic offenses designated as misdemeanors under the laws of other jurisdictions or duly enacted ordinances of an authorized governmental entity, with the exception of the offense of impaired driving that is included herein as a Class A Misdemeanor if the offender could have been sentenced for a term of not more than six months. Also included herein as a Class A

Misdemeanor is the offense of impaired driving, if the offender was sentenced under punishment level three G.S. 20-179(i), level four G.S. 20-179(j), or level five G.S. 20-179(k). Class A Misdemeanor shall also include acts committed or omitted in North Carolina prior to October 1, 1994, in violation of any common law, duly enacted ordinance, or criminal statute of this State for which the maximum punishment allowable for the designated offense included imprisonment for a term of not more than six months.

(b) "Class B Misdemeanor" means an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this State that is classified as a Class B Misdemeanor as set forth in the Class B Misdemeanor Manual as published by the North Carolina Department of Justice, incorporated herein by reference, and shall include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. The publication is available from the Commission's website:
http://www.ncdoj.gov/getdoc/60bb12ca-47c0-48cb-a0e3-6095183c4c2a/Class-B-Misdemeanor-Manual-2005.aspx.
Class B Misdemeanor also includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years. Excluded from this grouping of "Class B Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as being misdemeanors under the laws of other jurisdictions with the following exceptions: Class B Misdemeanor includes the following:

(i) either first or subsequent offenses of driving while impaired if the maximum allowable punishment is for a term of more than six months but not more than two years;

(ii) driving while license permanently revoked or permanently suspended;

(iii) those traffic offenses occurring in other jurisdictions which are comparable to the traffic offenses specifically listed in the Class B Misdemeanor Manual; and

(iv) an act committed or omitted in North Carolina prior to October 1, 1994, in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of this State for which the maximum punishment allowable for the designated offense included imprisonment for a term of more than six months but not more than two years.

(25) "Qualified Assistant" means an additional staff person designated by the School Director to assist in the administration of a course when an institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of a certified course.

(26) "Radar" means a speed-measuring instrument that transmits microwave energy in the 10,500 to 10,550 MHZ frequency (X) band, the 24,050 to 24,250 MHZ frequency (K) band, or the 33,400 to 36,000 MHZ (Ka) band and operates in either the stationary or moving mode.

(27) "Resident" means any youth committed to a facility operated by the Department of Public Safety, Division of Adult Correction and Juvenile Justice.

(28) "School" or "criminal justice school" means an institution, college, university, academy, or agency that offers criminal justice, law enforcement, or traffic control and enforcement training for criminal justice officers or law enforcement officers. "School" includes the criminal justice training course curriculum, instructors, and facilities.

(29) "School Director" means the person designated by the sponsoring institution or agency to administer the criminal justice school.

(30) "Speed-Measuring Instruments" (SMI) means those devices or systems, including RADAR, Time-Distance, and LIDAR, approved under authority of G.S. 17C-6(a)(13) for use in North

Carolina in determining the speed of a vehicle under observation and particularly includes all devices or systems described or referenced in 12 NCAC 09C .0601.

(31) "Standards Division" means the Criminal Justice Standards Division of the North Carolina Department of Justice.

(32) "Time-Distance" means a speed-measuring instrument that electronically computes, from measurements of time and distance, the average speed of a vehicle under observation.

*History Note: Authority G.S. 17C-2; 17C-6; 17C-10; 153A-217;*
*Eff. January 1, 1981;*
*Amended Eff. November 1, 1981; August 15, 1981;*
*Readopted Eff. July 1, 1982;*
*Temporary Amendment Eff. December 14, 1983 for a period of 120 days to expire on April 12, 1984;*
*Amended Eff. November 1, 1993; March 1, 1990; July 1, 1989;*
*Temporary Amendment Eff. October 1, 1994 for a period of 180 days to expire on April 1, 1995;*
*Amended Eff. August 1, 2000; April 1, 1999; August 1, 1998; January 1, 1995;*
*Temporary Amendment Eff. January 1, 2001;*
*Amended Eff. August 1, 2002; April 1, 2001;*
*Temporary Amendment Eff. April 15, 2003;*
*Amended Eff. January 1, 2017; February 1, 2016; January 1, 2015; January 1, 2006; June 1, 2005; April 1, 2004;*
*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 09B .0102 BACKGROUND INVESTIGATION**

(a) Prior to employment, an agency shall complete a background investigation on all applicants for certification. The investigation shall examine the applicant's character traits and habits relevant to performance as a law enforcement officer and shall determine whether the applicant is of good moral character. This examination includes completion of Commission forms Personal History Statement Form (F-3) and Mandated Background Investigation Form (F-8), ensuring the proper certification and criminal history record check required by each.

(b) Prior to the investigation, the applicant shall complete the Commission's Personal History Statement Form (F-3) to provide a basis for the investigation. The agency shall certify that the results of the background investigation are consistent with the information provided by the applicant on the Personal History Statement Form (F-3) and give the applicant the opportunity to update the Personal History Statement Form (F-3) prior to submission to the Division.

(c) The agency shall utilize an investigator with prior experience or training in conducting background investigations. The investigator shall document the results of the investigation on the Mandated Background Investigation Form (F-8) and shall include in the report of investigation:

(1) biographical data;
(2) family data;
(3) scholastic data;
(4) employment data;
(5) criminal history data;
(6) interviews with the applicant's references; and
(7) a summary of the investigator's findings and conclusions regarding the applicant's moral character known to the agency or listed on the applicant's Personal History Statement (F-3). This documentation shall be included with all other documentation required in 12 NCAC 09C .0307.

(d) The employing agency shall include a signed and notarized Release Authorization Form that authorizes the Division staff to obtain documents and records pertaining to the applicant for certification that may be required in order to determine whether certification may be granted.

(e) The employing agency shall provide to the Division staff the results of a completed and processed form AOC-CR-280, Law Enforcement Application for Verification of Expunction under G.S. 15A-145.4, 15A-145.5, 15A-145.6, 15A-145.8A or 15A-146, for each applicant presented for certification. The AOC-CR-280 form is available on the Commission's website at no cost https://ncdoj.gov/law-enforcement-training/criminal-justice/forms-and-publications/.

*History Note: Authority G.S. 17C-6;*
*Eff. January 1, 1981;*
*Amended Eff. August 1, 2002; August 1, 1998; July 1, 1989;*
*Temporary Amendment Eff. April 15, 2003;*
*Amended Eff. April 1, 2004;*
*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 09B .0104 MEDICAL EXAMINATION**

(a) Each applicant for certification or enrollment in a basic law enforcement training course shall complete, sign, and date the Commission's Medical History Statement Form (F-1) and shall be examined by either a surgeon, physician, physician assistant, or nurse practitioner who is licensed to practice in North Carolina or authorized to practice medicine in the United States Armed Forces, as outlined in 10 U.S. Code 1094, to help determine his or her fitness to carry out the physical requirements of the . position of law enforcement officer.

(b) Prior to being examined, the applicant shall provide the examining surgeon, physician, physician or nurse practitioner with:

(1) the Medical History Statement Form (F-1), which must be read, completed, and signed; and
(2) the Instructions to Agency and Examiner for Completion of Medical Examination Report (F-2A) Form attached to the Medical Examination Report Form (F-2).

(c) The "Medical Screening Guidelines for the Certification of Criminal Justice Officers in North Carolina" as published by the North Carolina Department of Justice may be obtained for use by the examining physician, surgeon,
physician's assistant, or nurse practitioner, at no cost, at https://ncdoj.gov/law-enforcement-training/criminal-justice/.

(d) The examining physician, surgeon, physician's assistant, nurse practitioner, shall record the results of the examination on the Medical Examination Report Form (F-2) and shall sign and date the form.
(e) The Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) shall be valid for one year after the date the examination was conducted and shall be completed prior to:

(1) the applicant's beginning the Basic Law Enforcement Training Course; and
(2) the agency submission of application for certification to the Commission.

*History Note: Authority G.S. 17C-6; 17C-10;*
*Eff. January 1, 1981;*
*Amended Eff. April 1, 2018; October 1, 2017; November 1, 1993; February 1, 1991; March 1, 1990; April 1, 1985;*
*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 09B .0105 EMPLOYMENT INTERVIEW**

(a) Prior to employment, the employing agency shall conduct an interview of the applicant to evaluate the applicant's knowledge, skills, and abilities for success as a law enforcement officer.
(b) The Agency head may conduct the interview personally or delegate the responsibility to a qualified staff member or panel, who is competent, whether by education, training, or experience, to conduct the employment interview. The respective agency head identifies those individuals he or she deems qualified.

*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 09B .0106 DOCUMENTATION OF EDUCATIONAL REQUIREMENTS**

(a) Each applicant for certification as a law enforcement officer shall furnish documentary evidence of high school, college, or university graduation to the employing agency. Documentary evidence of high school graduation consists of diplomas or transcripts from public schools or private schools which meet standards adopted by either the North Carolina Department of Public Instruction, the Division of Non-Public Instruction, or a comparable out of state agency; or such documentation as described in Paragraphs (b), (c), (d), and (e) of this Rule. Documentary evidence of college or university graduation consists of diplomas or transcripts from colleges or universities accredited as such by the Department of Education of the state in which the institution is located, an accredited body recognized by either the U.S. Department of Education or Council for Higher Education Accreditation, or the state university of the state in which the institution is located.
(b) High school diplomas earned through home school programs must be accompanied by a true and accurate or certified transcript and must meet the requirements of Part 3 of Article 39 of Chapter 115C of the North Carolina General Statutes, or a comparable out-of-state statute.
(c) Diplomas earned from high schools or equivalent institutions outside of the United States must be translated into English and be accompanied by an authentic transcript. The Division's staff shall evaluate the transcripts to ensure they are scholastically comparable to United States curriculum requirements.
(d) The Division's staff shall evaluate high school diplomas earned through on-line or correspondence courses on a case by case basis. Such diplomas must meet state and local requirements for the jurisdiction from which the diploma was issued.
(e) Documentary evidence of having earned a High School Equivalency (HSE) diploma shall be satisfied by a certified copy of a high school equivalency credential or an adult high school diploma, both of which must be recognized by the U.S. Department of Education, the state Department of Education, or educational agency that is authorized in the state to issue High School Equivalency (HSE) diplomas.
(f) Documentary evidence of the attainment of satisfactory scores on any military high school equivalency examination is acceptable as evidence of high school graduation if verified by a true copy of the veteran's DD214, Certificate of Release from Active Duty.

*History Note: Authority G.S. 17C-6; 17C-10;*
*Eff. January 1, 1981;*
*Amended Eff. April 1, 2018; February 1, 2016; November 1, 2015; June 1, 2012; August 1, 2000;*
*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 09B .0111 CRIMINAL HISTORY RECORD**

(a) Consistent with and subject to the requirements of 12 NCAC 09A .0204, every law enforcement officer employed or certified in North Carolina shall not have committed or been convicted by a local, state, federal, or military court of:

(1) a felony;
(2) a crime for which the punishment could have been imprisonment for more than two years;
(3) a crime or unlawful act defined as a "Class B misdemeanor" within the five year period prior to the date of certification ;
(4) a crime or unlawful act defined as a "Class B Misdemeanor" occurring after the date of certification;
(5) four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the date of conviction;
(6) four or more crimes or unlawful acts defined as "Class A misdemeanors" except the applicant may be employed if the last conviction occurred more than two years prior to the date of certification or
(7) a combination of four or more Class A Misdemeanor or Class B Misdemeanor regardless of the date;
(8) for personnel who are authorized to carry a firearm in the execution of their duties, an

offense that, pursuant to 18 USC 922(g)(8), would prohibit the possession of a firearm or ammunition.

(b) 12 NCAC 09A .0103(5) defines "Commission of an offense" as a finding by the North Carolina Criminal Justice Education and Training Standards Commission or equivalent regulating body from another state that a person performed the acts necessary to satisfy the elements of a specified criminal offense.

(c) The requirements of this Rule shall be applicable at all times during which the officer is certified by the Commission and shall also apply to all applications for certification.

*History Note: Authority G.S. 17C-6; 17C-10;*
*Eff. January 1, 1981;*
*Amended Eff. November 1, 2015; April 1, 2009; August 1, 1998; December 1, 1987; October 1, 1985; January 1, 1985; January 1, 1983;*
*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 09B .0114 MINIMUM STANDARDS FOR LOCAL CONFINEMENT PERSONNEL**

(a) Every officer, supervisor, or administrator employed by a local confinement facility 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 examination 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) 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.
(12) Make the following notifications:
  (A) within five 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 or arrested. 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 days of the qualifying event, notify the Standards Division and the appointing agency head in writing of all criminal offenses for which the officer 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);
  (C) within five days of service, officers shall notify the Standards Division 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;
  (D) within five 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; and
  (E) within five 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.
(13) 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.

(b) The word "officer" as identified in Paragraph (a) of this Rule, means those officers identified in G.S. 17C-2(3).

(c) 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. June 1, 1986;*
*Amended Eff. November 1, 2015; December 1, 1987;*
*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 09B .0116 MINIMUM STANDARDS FOR JUVENILE COURT COUNSELORS AND CHIEF COURT COUNSELORS**

(a) Every Juvenile Court Counselor and Chief Court Counselor employed by the North Carolina Department of Juvenile Justice and Delinquency Prevention shall:

(1) be a citizen of the United States;

(2) be at least 20 years of age;

(3) have attained a bachelor's degree as described in 12 NCAC 09B .0106(b);

(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 results 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 examination 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) use the method of documenting the results of the background investigation it deems most appropriate to its needs in accordance with the Commission form. However, the Commission's Mandated Background Investigation Form (F-8) must be used as a guide of minimum information to be collected and recorded by the investigator for all other law enforcement officer applicants that are regulated by the Commission;

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

(11) 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.

(12) Make the following notifications:

(A) within five 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 or arrested. 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 days of the qualifying event, notify the Standards Division and the appointing agency head in writing of all criminal offenses for which the officer 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);

(C) within five days of service, officers shall notify the Standards Division 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;

(D) within five 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; and

(E) within five 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.

(13) 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.

(b) 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;*
*Temporary Adoption Eff. April 15, 2003;*
*Eff. April 1, 2004;*
*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 09B .0117 MINIMUM STANDARDS FOR JUVENILE JUSTICE OFFICERS**

(a) Every Juvenile Justice Officer employed by the North Carolina Department of Juvenile Justice and Delinquency Prevention 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 results 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 examination 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 documented background investigation conducted by the agency using the method the agency deems most appropriate to its needs in accordance with the Commission form. However, the Commission's Mandated Background Investigation Form (F-8) must be used as a guide of minimum information to be collected and recorded by the investigator for all other law enforcement officer applicants that are regulated by the Commission;
(10) not have committed or been convicted of a crime or crimes as specified in 12 NCAC 09B .0111;
(11) 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,
(12) Make the following notifications:
  (A) within five 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 or arrested. 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 days of the qualifying event, notify the Standards Division and the appointing agency head in writing of all criminal offenses for which the officer 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);
  (C) within five days of service, officers shall notify the Standards Division 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;
  (D) within five 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;
  (E) within five 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.
(13) 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 Subparagraph.

(b) 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-2; 17C-6; 17C-10;*
*Temporary Adoption Eff. April 15, 2003;*
*Eff. April 1, 2004;*
*Amended Eff. November 1, 2015;*
*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 09B .0314 CERTIFICATION OF DIVERSION INVESTIGATORS AND SUPERVISORS**

(a) The diversion training courses for investigators and supervisors shall provide the trainee with the skills and knowledge to perform the duties of a law enforcement Diversion Investigator or Supervisor. The diversion training course for investigators shall be 20 classroom hours delivered utilizing the Prescription Drug Diversion Investigator Certification Course developed by the North Carolina State Bureau of Investigation and North Carolina Justice Academy. The diversion training course for supervisors shall be administered in a four hour online training course utilizing the Prescription Drug Diversion Supervisor Certification Course developed by the North Carolina State Bureau of Investigation and North Carolina Justice Academy. To be certified as a Diversion Investigator or Diversion Supervisor the trainee shall complete the respective diversion training course and achieve a minimum score of 70 percent on the comprehensive written or online examination. The examination shall be an objective test covering the topic areas contained in the accredited course curriculum.

(b) Applications for Diversion Investigator or Diversion Investigator Supervisor Certification shall be submitted to the Standards Division within 60 days of the date the applicant passed the State comprehensive examination administered at the conclusion of the Commission-accredited diversion training program. Persons having completed the Commission-accredited diversion training course and not having submitted the application within 60 days of the date the applicant passed the State comprehensive examination shall complete a subsequent Commission-accredited diversion training course in its entirety.

(c) Only a Sheriff, deputy sheriff, or law enforcement officer certified or appointed through the North Carolina Criminal Justice Education and Training Standards or North Carolina Sheriffs' Education and Training Standards Commissions and employed by a law enforcement agency shall be enrolled in a diversion training course. A trainee shall not be certified as a Diversion Investigator or Diversion Supervisor until the Basic Law Enforcement Training course, pursuant to Rule .0205 of this Subchapter, has been completed with passing scores and probationary or general law enforcement certification has been granted as outlined in 12 NCAC 09C .0303, 12 NCAC 09C .0304, 12 NCAC 10B .0403 or 12 NCAC 10B .0404. Sheriffs and appointed deputy sheriffs shall be allowed to participate in the diversion training courses on a space available basis at the discretion of the Diversion Training Course School Director without having enrolled in, or having completed with passing scores, the Basic Law Enforcement Training course, pursuant to Rule .0205 of this Subchapter and 12 NCAC 09G .0411 and without being currently certified in a probationary status or holding justice officer certification.

(d) Special Agents with the North Carolina State Bureau of Investigation deemed Diversion Investigators as of July 1, 2019, shall be automatically granted certification under this Rule for a period of three years.

(e) The term of certification as a Diversion Investigator or Supervisor shall be three years. An application for renewal shall be received by the Criminal Justice Standards Division within 60 days prior to the current certification date and shall include the following:

(1) proof that the applicant completed the one hour Diversion Investigator or Diversion Supervisor refresher training as provided by the North Carolina Justice Academy, and
(2) a completed Diversion Investigator/Supervisor Application, Form F-22(LE).

(f) The "Diversion Training Courses" required for certification, authored by the North Carolina State Bureau of Investigation and published by the North Carolina Justice Academy, shall include the topic areas as outlined in G.S. 17C-6(a)(19) and is to be applied as the basic curriculum for the Diversion Training Courses for Diversion Investigator and Diversion Supervisors as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tyron Park Drive
Post Office Drawer 149
Raleigh, North Carolina 27602

and obtained at cost from the Academy at the following address:

North Carolina Justice Academy
Post Office Box 99
Salemburg, North Carolina 28385

*History Note: Authority G.S. 17C-6; 17E-4; 90-113.74E;*
*Eff. February 1, 2020;*
*Amended Eff. October 1, 2022; January 1, 2021.*

**12 NCAC 09B .0701 MILITARY TRANSFEREES**

(a) Pursuant to G.S. 17C-10.1, a current or honorably-discharged former military police officer seeking certification as a law enforcement officer shall submit to the Criminal Justice Standards Division a completed Form F-21, Request for Military Evaluation for Basic Law Enforcement Training, and copies of the individual's military law enforcement training and personnel records and Certificate of Release or Discharge documentation from Military Service. Form F-21 is located on the agency's website: http://www.ncdoj.gov/getdoc/f7c44036-d56a-4c12-90a3-d73a8806493f/F-21_Military-EvalCJ_6-8-15.aspx.

(b) Upon receipt of the documentation prescribed in Paragraph (a) of this Rule, the Standards Division shall evaluate the applicant's combined training and experience pursuant to G.S. 93B-15.1 to determine if the applicant's combined training and experience is substantially equivalent to or exceeds the minimum requirements for employment as a law enforcement officer as prescribed in Rules 09B .0101, 09B .0111, and 09B .0403 of this Subchapter.

(c) The Division shall issue probationary certification pursuant to Rule 09C .0303 of this Chapter to an applicant who meets the following requirements:

(1) has completed a formal military basic training program and been awarded a military police occupational specialty rating;

(2) has performed military police officer duties in any of the branches of military service, active or reserve, or the National Guard for not less than two of the five years preceding the date of application for certification as a law enforcement officer; and

(3) whose combined training and experience is determined to be substantially equivalent to or exceeds the minimum expectations for employment as a law enforcement officer as prescribed in Rules .0101, .0111, and .0403(2) of this Subchapter.

(d) Within one year of being issued certification pursuant to Paragraph (c) of this Rule, an applicant shall complete, with passing scores pursuant to Rule .0405(b) of this Subchapter, the following:

(1) the Basic Law Enforcement Training topics pursuant to Rule .0205(b)(1) and (b)(6)(A) of this Subchapter; and

(2) the Basic Law Enforcement Training comprehensive written exam pursuant to Rule .0406(d) of this Subchapter.

(e) An applicant certified pursuant to Paragraph (c) of this Rule shall complete the in-service Firearms Training and Qualification course pursuant to 12 NCAC 09E .0106 prior to beginning employment with the hiring agency.

(f) The Division shall issue probationary certification to a current or honorably discharged military police officer whose combined training and experience is not substantially equivalent to or does not exceed the minimum requirements for employment as a law enforcement officer, as specified in Rule .0403 of this Subchapter, if the applicant meets the following requirements:

(1) completed a formal military basic training program and been awarded a military police occupational specialty rating;

(2) performed military police officer duties in any of the branches of military service, active or reserve, or the National Guard for not less than two of the five years preceding the date of application for certification as a law enforcement officer; and

(3) meets the minimum standards for law enforcement officers as prescribed in Rule .0101 and Rule .0111 of this Subchapter;

(g) Within one year of being issued certification pursuant to Paragraph (f) of this Rule, an applicant shall complete, with passing scores pursuant to Rule .0405(b) of this Subchapter, the following:

(1) the Basic Law Enforcement Training topics pursuant to Rule .0205(b)(1), (b)(2)(F), (b)(3)B), (b)(3)(D), (b)(4)(E), (b)(5)(C), (b)(5)(G), (b)(6)(A), and (b)(7) of this Subchapter; and

(2) the Basic Law Enforcement Training comprehensive written examination pursuant to Rule .0406(d) of this Subchapter.

(h) The Division shall waive any training topic in Paragraph (g)(1) of this Rule if the applicant provides documentation indicating he or she has completed substantially equivalent combined military training and experience in that topic.

(i) Members of the Air National Guard, Army National Guard, and Military Reserve Components who have performed as a military police officer for not less than 1,040 hours during the five years preceding the date of application for certification shall be deemed to satisfy the requirements of Paragraph (c)(2) and Paragraph (f)(2) of this Rule.

(j) An applicant who, after completing the required training in Paragraph (d)(1) or (g)(1) of this Rule, fails to achieve a passing score on the Basic Law Enforcement Training comprehensive written exam may be retested in each unit the applicant failed. An applicant who fails three or more units must enroll in and complete with passing scores a subsequent delivery of the Basic Law Enforcement Training course in its entirety in order to be eligible for certification.

(k) An active duty military police officer who obtains certification while on active duty may retain the certification under this Rule for the duration of active duty provided the officer continues to perform military police officer duties and complies with the in-service training requirements, as specified in 12 NCAC 09E .0105. An active duty military police officer who is unable to complete annual in-service requirements due to deployment or overseas assignment shall have 12 months from the time the officer returns to the United States in which to complete the in-service training requirements, as specified in Rule .0105 of this Chapter for each year he or she was unable to complete due to oversees assignment. The officer shall retain the certification for a period of one year following separation from active duty.

(l) When completing the required training topics specified in Paragraph (d)(1) or Paragraph (g)(1) of this Rule, the individual shall meet all requirements specified in Rule .0203 and Rule .0405 of this Subchapter.

*History Note: Authority G.S. 17C-2; 17C-6; 17C-10; 93B-15.1;*
*Eff. July 1, 2016;*
*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 09C .0310 AGENCY REPORTING OF DRUG SCREENING RESULTS**

(a) Every law enforcement officer shall produce a negative result on a drug screen administered according to the following specifications:

(1) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other initial and confirmatory tests authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs;

(2) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen. If the specimen is handled only by a medical professional or a third party provider and the laboratory utilizes federally mandated chain of custody procedures, then the agency does not need an inter-agency chain of custody procedure. If agency staff will be handling the urine specimen at any point, then agency staff shall document the collection, storage, and processing of the specimen for testing purposes.

(3) the drug screen shall test for the presence of at least cannabis, cocaine, phencyclidine (PCP), opiates, and amphetamines or their metabolites; and

(4) the test threshold values meet the requirements established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs, as found in 82 FR 7920 (2017) incorporated by reference, including later amendments and editions found at no cost at https://www.federalregister.gov/documents/2017/01/23/2017-00979/mandatory-guidelines-for-federal-workplace-drug-testing-programs;

(5) conduct the test within 90 days of certification;

(6) the laboratory conducting the test shall be certified for federal workplace drug testing programs, and shall adhere to applicable federal rules, regulations, and guidelines pertaining to the handling, testing, storage, and preservation of samples.

(b) Each agency shall report in writing to the Criminal Justice Standards Division all refusals and all positive results of required drug screening obtained from applicants and lateral transfers. If the positive result were explained by the applicant or lateral transfer to the satisfaction of the agency's Medical Review Officer, who shall be a licensed physician, the positive results are not required to be reported.

(c) Each agency, if it conducts a drug screen for in-service officers, shall report in writing positive results or refusals to submit to an in-service drug screening to the Criminal Justice Standards Division within 30 days of the positive result or refusal, unless the officer has explained the positive result to the satisfaction of the agency's Medical Review Officer, who shall be a licensed physician, to the extent the drug screen conducted conforms to the specifications of this Rule.

(d) For reporting purposes, a result is considered "positive" only in those cases where the drug screen reveals the presence of an illegal drug at a level equal to or greater than the threshold value as established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs and incorporated by reference in this Rule.

(e) For reporting purposes, a result is considered "negative" only in those cases where the drug screen reveals the presence of an illegal drug at a level less than the threshold value as established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs and incorporated by reference in this Rule.

(f) All written reports required to be submitted to the Criminal Justice Standards Division by this Rule shall contain the individual's name, date of birth, either the date the test was administered or the date of the refusal, and a copy of the drug screen panel with the results of the medical officer review.

*History Note: Authority G.S. 17C-6; 17C-10;*
*Eff. July 1, 1990;*
*Amended Eff. October 1, 2018; May 1, 2009;*
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019;*
*Amended Eff. October 1, 2022.*

## TITLE 14B - DEPARTMENT OF PUBLIC SAFETY

**14B NCAC 16 .0806 RENEWAL OF ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT**

(a) Each applicant for renewal of an armed security guard firearm registration permit identification card or his or her employer shall complete an online form on the website provided by the Board. This online form shall be submitted not more than 90 days prior to expiration of the applicant's current armed registration and shall be accompanied by:

(1) one head and shoulders color digital photograph of the applicant in JPG, JPEG, or PNG format of sufficient quality for identification, taken within six months prior to online application and submitted by uploading the photograph online with the application submission;

(2) upload online a statement of the results of a statewide criminal history search obtained by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 12 months;

(3) the applicant's renewal fee, along with the four dollar ($4.00) convenience fee and credit card transaction fee;

(4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of

Investigation, collected online by the Private Protective Services Board;

(5) a statement signed by a certified trainer that the applicant has successfully completed the training requirements of Rule .0807 of this Section; and

(6) a completed affidavit form and public notice statement form.

(b) If there is a criminal charge pending against the applicant for renewal that constitutes a deniable offense under G.S. 74C-8(d)(2), consideration of the application shall be deferred until the criminal charge is adjudicated.

(c) The employer of each applicant for a registration renewal shall give the applicant a copy of the online application and a copy of the completed affidavit form to serve as a record of application for renewal and shall retain a copy of the application, including the affidavit in the guard's personnel file in the employer's office.

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

(e) A registered armed security guard may utilize a dedicated light system or gun-mounted light for requalification.

(f) During a national or State declared state of emergency that restricts or prohibits a registered armed security guard from requalifying, the Board shall, upon written request to the Director by the licensee, extend the deadline for requalification up to 90 days beyond the effective period of the state of emergency. Any registration renewed pursuant to this Paragraph shall be issued conditionally and shall automatically expire on the 90th day if requalification requirements have not been met.

*History Note: Authority G.S. 74C-5;G.S. 74C-8.1; G.S. 74C-9; 74C-13;*
*Eff. June 1, 1984;*
*Amended Eff. May 1, 2012; October 1, 2010; December 1, 1995; February 1, 1990; December 1, 1985;*
*Transferred and Recodified from 12 NCAC 07D .0806 Eff. July 1, 2015;*
*Amended Eff. January 1, 2018; November 1, 2017;*
*Readopted Eff. November 1, 2019;*
*Amended Eff. March 1, 2020;*
*Emergency Amendment Eff. May 6, 2020;*
*Temporary Amendment Eff. July 24, 2020;*
*Temporary Amendment Expired Eff. May 14, 2021;*
*Amended Eff. July 1, 2022; January 1, 2022;*
*Amended Eff. October 1, 2022.*

**14B NCAC 16 .0904 RENEWAL OF A FIREARMS TRAINER CERTIFICATE**

(a) Each applicant for renewal of a firearms trainer certificate shall complete an online renewal form on the website provided by the Board. This form shall be submitted online not less than 30 days prior to the expiration of the applicant's current certificate and shall be accompanied by:

(1) uploaded online a certificate of successful completion of a firearms trainer refresher course approved by the Board and the Secretary of Public Safety consisting of a minimum of eight hours of classroom and practical range training in safety and maintenance of the applicable firearm (i.e. handgun, shotgun, or rifle), range operations, control and safety procedures, and methods of firing. This training shall be completed within 180 days of the submission of the renewal application;

(2) uploaded online a statement of the results of a criminal history records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 48 months; and

(3) the applicant's renewal fee, along with the four dollar ($4.00) convenience fee and credit card transaction fee.

(b) If there is a criminal charge pending against the applicant for renewal that constitutes a deniable offense under G.S. 74C-8(d)(2), consideration of the application shall be deferred until the criminal charge is adjudicated.

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

(d) Any firearms trainer who fails to qualify with the minimum score during the refresher course shall not continue to instruct during the period between the failure to qualify and the expiration of his or her permit.

(e) The holder of a firearms trainer certificate may utilize a dedicated light system or gun mounted light for personal requalification.

(f) During a national or State declared state of emergency that restricts or prohibits a certified firearms trainer from requalifying, the Board shall, upon written request to the Director by the licensee, extend the deadline for requalification up to 90 days beyond the effective period of the state of emergency. Any certificate renewed pursuant to this Paragraph shall be issued conditionally and shall automatically expire on the 90th day if requalification requirements have not been met.

*History Note: Authority G.S. 74C-5; 74C-8.1(a); 74C-9; 74C-13;*
*Eff. June 1, 1984;*
*Amended Eff. January 1, 2013; October 1, 2010; June 1, 2009; December 1, 1995; December 1, 1985;*
*Transferred and Recodified from 12 NCAC 07D .0904 Eff. July 1, 2015;*
*Amended Eff. November 1, 2017; February 1, 2016; October 1, 2015;*
*Readopted Eff. November 1, 2019;*

*Amended Eff. March 1, 2020;*
*Emergency Amendment Eff. May 6, 2020;*
*Temporary Amendment Eff. July 24, 2020;*
*Temporary Amendment Expired Eff. May 14, 2021;*
*Amended Eff. July 1, 2022; January 1, 2022;*
*Amended Eff. October 1, 2022.*

**14B NCAC 16 .0911 RENEWAL OF AN UNARMED TRAINER CERTIFICATE**

(a) Each applicant for renewal of an unarmed trainer certificate shall complete an online renewal form on the website provided by the Board. This form shall be submitted online not less than 30 days prior to the expiration of the applicant's current certificate. In addition, the applicant shall include the following:

(1) the renewal fee set forth in Rule .0903(a)(3) of this Section and collected online as part of the application process;
(2) a certificate of completion of a minimum of 16 hours of Board developed armed or unarmed instruction performed during the current unarmed trainer certification period;
(3) a statement verifying the classes taught during the current unarmed trainer certification period on a form provided by the Board as part of the online application process; and
(4) uploaded online a statement of the results of a criminal history records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 24 months.

(b) If there is a criminal charge pending against the applicant for renewal that constitutes a deniable offense under G.S. 74C-8(d)(2), consideration of the application shall be deferred until the criminal charge is adjudicated.
(c) If there is a criminal charge pending against the applicant for renewal that constitutes a deniable offense under G.S. 74C-8(d)(2), consideration of the application shall be deferred until the criminal charge is adjudicated.
(d) Members of the armed forces whose certification is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the certification renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.
(e) During a national or State declared state of emergency that restricts or prohibits an unarmed trainer from performing the instruction required by Subparagraph (a)(2) of this Rule, the Board shall, upon written request to the Director by the licensee, extend the deadline for renewal up to 90 days beyond the effective period of the state of emergency. Any certificate renewed pursuant to this Paragraph shall be issued conditionally and shall automatically expire on the 90th day if instruction requirements have not been met.

*History Note: Authority G.S. 74C-8; 74C-9; 74C-11; 74C-13;*
*Eff. August 1, 2004;*
*Amended Eff. January 1, 2013; October 1, 2010; January 1, 2008;*
*Transferred and Recodified from 12 NCAC 07D .0911 Eff. July 1, 2015;*
*Readopted Eff. March 1, 2020;*
*Amended Eff. July 1, 2022;*
*Amended Eff. October 1, 2022.*

## TITLE 15A - DEPARTMENT OF ENVIRONMENTAL QUALITY

**15A NCAC 02P .0101 GENERAL**

(a) This Subchapter establishes criteria and procedures for the reimbursement of costs incurred by owners, operators, and landowners from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.
(b) The Underground Storage Tank (UST) Section, hereafter referred to as "the Section," of the Division of Waste Management of the Department of Environmental Quality (DEQ), hereafter referred to as "the Department," shall administer the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund for the State of North Carolina.
(c) The Department may engage in the activities described in G.S. 143-215.94G in accordance with 15A NCAC 02L and subject to the availability of resources, as determined by the Department.

*History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94G; 143-215.94L; 143-215.94T; 143B-282;*
*Eff. February 1, 1993;*
*Amended Eff. September 1, 1993;*
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018;*
*Amended Eff. October 1, 2022.*

**15A NCAC 02P .0102 COPIES OF RULES INCORPORATED BY REFERENCE**

*History Note: Authority G.S. 12-3.1(c); 143-215.3; 143-215.94L; 143-215.94T; 143B-282; 150B-21.6;*
*Eff. February 1, 1993;*
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018;*
*Repealed Eff. October 1, 2022.*

**15A NCAC 02P .0103 FALSE OR MISLEADING INFORMATION**

If any owner, operator, landowner, or authorized agent knowingly submits any false or misleading information with regard to the rules of this Subchapter, and if the false or misleading information results in delay of any efforts to stop the discharge or release, results in delay of detection of any portion of the discharge or release, or results in delay of investigatory or remedial activities, then that owner, operator, landowner, or authorized agent shall be considered to be contributing to a discharge or release, interfering with the mitigation of a discharge or release, or preventing the early detection of a discharge or release pursuant to G.S. 143-215.94E(g)(1).

*History Note: Authority G.S. 143-215.3; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282;*
*Eff. February 1, 1993;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 02P .0201 APPLICABILITY**

(a) This Subchapter shall apply to the disbursement of funds from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and to the collection of annual operating fees.

(b) Any portions of this Subchapter which concern annual tank operating fees apply to all owners and operators of Commercial Underground Storage Tanks that are or have been in use in North Carolina at any time on or after January 1, 1989.

(c) This Subchapter shall apply to discharges or releases from commercial underground storage tank systems, regardless of whether such systems are regulated under 15A NCAC 02N.

*History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94C; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282;*
*Eff. February 1, 1993;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 02P .0202 DEFINITIONS**

(a) The definitions in 15A NCAC 02N .0203 apply for purposes of this Subchapter, except the definition of "Underground Storage Tank" shall be as defined in Subparagraph (b)(12) of this Rule.

(b) The following terms are defined for use in this Subchapter:

(1) "Annual operating fee" means the annual fee established in G.S. 143-215.94C that is required to be paid to the Department by the owner or operator of each commercial underground storage tank, as defined in G.S. 143-215.94A, in use on or after January 1, 1989.

(2) "Commission" means the Environmental Management Commission as organized under Chapter 143B of the General Statutes.

(3) "Department" means Department of Environmental Quality.

(4) "Discovered release" means a release that an owner or operator, or its employee or agent, has been made aware of, has been notified of, or has a reasonable basis for knowing has occurred.

(5) "Landowner" means any record fee owner of real property that contains or contained a commercial underground storage tank of which he or she does not qualify as an owner or operator pursuant to G.S. 143-215.94A.

(6) "Notice of Residual Petroleum" means the recordation of residual petroleum from underground storage tanks in accordance with G.S. 143B-279.11.

(7) "Reasonable and necessary expenditures" means expenditures for the assessment and remediation of environmental damage performed in accordance with applicable environmental laws, regulations, and rules that are necessary to determine the extent of contamination, remediate or respond to a release, or compensate third-parties for bodily injury and property damage resulting from the release. The Commission shall consider such expenditures reasonable and necessary to the extent that they are supported by the documentation required by Rule .0404 of this Subchapter, are performed in an efficient manner considering comparable costs for labor, equipment, and materials, and utilize cost-efficient methods.

(8) "Reasonable Rate Document" means the schedule of costs that the Department has determined to be reasonable and necessary costs for specific tasks pursuant to G.S. 143-215.94E(e5)(3).

(9) "Tank in operation" means an underground storage tank into which product is added or from which product is removed for purposes other than closure.

(10) "Tank in use" means an underground storage tank intended for the containment or dispensing of petroleum product.

(11) "Underground storage tank" means any Commercial Underground Storage Tank as defined in G.S. 143-215.94A.

*History Note: Authority G.S. 143-215.3; 143-215.94A; 143-215.94B; 143-215.94C; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282;*
*Eff. February 1, 1993;*
*Amended Eff. September 1, 1993;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 02P .0301 FEES AND PAYMENT**

The owner or operator of each commercial underground storage tank shall pay all annual operating fees due for that commercial underground storage tank in accordance with G.S. 143-215.94C. Unpaid operating fees attach to the tanks, notwithstanding the ownership of the tanks.

*History Note: Authority G.S. 143-215.3; 143-215.94C; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282;*
*Eff. February 1, 1993;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 02P .0302 NOTIFICATION**

Any person acquiring ownership of an existing commercial underground storage tank shall provide written notification to the Department of this action within 30 days of the date of transfer. This notification shall indicate the following:

(1) name and address of the previous owner and the new owner;

(2) name, identification number, and street address of the facility;

(3) date of transfer;

(4) signatures of the transferring owner and the new owner or their authorized representatives;

(5) proof of placement of a Notice of Residual Petroleum for any known release at the site at the time of the transfer of the property;
(6) statement of intent of whether the new owner intends to accept eligibility of any previous release from the tank or tanks just acquired; and
(7) copy of ownership transfer documents.

*History Note: Authority G.S. 143-215.3; 143-215.94L; 143-215.94T; 143B-282;*
*Eff. February 1, 1993;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 02P .0401 ELIGIBILITY OF OWNER OR OPERATOR**

(a) Date of Release.
(1) An owner, operator, or landowner of a commercial underground storage tank is not eligible for reimbursement of costs from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund related to releases which were discovered prior to June 30, 1988.
(2) In the case of multiple releases that commingle into one plume, the deductible is established under the date of first release.
(3) Only the currently approved eligible party, determined in accordance with Paragraphs (b) through (d) of this Rule, may be reimbursed from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.
(4) After the Department has notified the eligible party that no further action is required for a discharge or release pursuant to 15A NCAC 02L, eligibility may be reapplied for by either the current owner, operator, or landowner or former eligible party as applicable and upon receiving eligibility, said party shall be credited for all prior reimbursable cleanup costs subject to G.S. 143-215.94E(j) and G.S. 143-215.94E(k).

(b) An owner or operator of a commercial underground storage tank is not eligible for reimbursement for costs related to releases if any annual operating fees due have not been paid in accordance with Rule .0301 of this Subchapter prior to discovery of a release from the tank. A previous owner or operator of a commercial underground storage tank may be eligible for reimbursement of costs for cleanup of a release discovered after he or she ceases owning or operating the underground storage tank if all fees due during his or her period of ownership and operation have been paid prior to discovery of the release. A landowner is eligible for reimbursement of costs without regard to the payment of fees as long as the property has not been transferred to circumvent liability in accordance with this Paragraph.

(c) An owner, operator, or landowner of a commercial underground storage tank is not eligible for reimbursement of any expenditures that are:
(1) in excess of the amount determined reasonable in accordance with Rule .0402 of this Section;
(2) not necessary in performing cleanup of environmental damage and in compensating third-parties for bodily injury and property damage; and
(3) less than any deductible established for the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.

(d) An owner, operator, or landowner of a commercial underground storage tank, who is eligible for reimbursement under the rules of this Section, may be reimbursed for eligible costs only after submittal of a written application of eligibility to the Department, on forms provided by the Department, which are located at 217 West Jones Street, Raleigh, NC 27603 and on the Department's website, and which includes information and documentation necessary to determine eligibility. An application of eligibility shall include:
(1) contact information for the applicant, including contact name, address, phone number, and email address;
(2) site information, including tenant information if applicable;
(3) inventory of all tanks ever installed on the property;
(4) release discovery and reporting information;
(5) a disclosure of any past enforcement initiated against the applicant pursuant to G.S. 143-215.94W through 143-215.94Z;
(6) a certification as required by G.S. 143-215.94E(f1);
(7) scaled site map showing location of all tanks and releases;
(8) tank upgrade information;
(9) property deeds and bills of sale that verify that the applicant was the owner, operator, or landowner at the time of the release;
(10) any UST Section inspection records; and
(11) a notarized affidavit from the applicant verifying compliance with the rules of this Subchapter and with 15A NCAC 02N and 02O, G.S. 143-215.94A, 143-215.94B, 143-215.94C, and 143-215.94E.

(e) An owner or operator of a commercial underground storage tank shall not be eligible for reimbursement for costs related to releases if any of the conditions set forth in G.S. 143-215.94E(g)(1) apply.

(f) The release response and corrective action requirements of any rules of the Commission and of any statute administered by the Department shall not be construed as limited by, or contingent upon, any reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.

*History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94L; 143-215.94N; 143-215.94T; 143B-282;*
*Eff. February 1, 1993;*
*Amended Eff. September 1, 1993;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 02P .0402 CLEANUP COSTS**

(a) In determining whether costs expended by an owner, operator, or landowner are reasonable and necessary, the Department shall consider the following:

(1) adequacy and cost-effectiveness of any work performed, and technical activity utilized by the owner, operator, or landowner in performing release response, site assessment, and corrective action;

(2) industry rates of engineering, geological, or other environmental consulting firms providing similar services in the State as determined by the Department;

(3) industry rental rates for any equipment, not to exceed the purchase price, as determined by the Department;

(4) industry rates of any other service, labor, or expense; and

(5) whether costs expended for corrective action were required by 15A NCAC 02L.

(b) Expenditures not eligible for reimbursement shall include the following:

(1) costs that are not eligible to be reimbursed pursuant to G.S. 143-215.94B, and any costs associated with noncommercial underground storage tanks;

(2) costs of the replacement of any underground storage tank, piping, fitting, or ancillary equipment required to operate and maintain a UST system;

(3) costs incurred in preparation of any proposals by a provider of service for the purpose of soliciting or bidding for the opportunity to perform an environmental investigation or cleanup, even if that provider is selected to provide the service solicited;

(4) interest of any kind;

(5) expenses charged by the owner, operator, or landowner in the processing and management of a reimbursement application or subsequent claims;

(6) attorney's fees;

(7) penalties, fees, and fines assessed by any court or agency;

(8) loss of profits, fees, and wages incurred by the owner, operator, or landowner;

(9) costs for which pre-approval is required as set forth in G.S. 143-215.94E(e5)(1) and (2), and was not obtained;

(10) any other expenses not specifically related to environmental cleanup, or implementation of a cost-effective environmental cleanup, or third-party bodily injury or property damage; and

(11) for any task for which a maximum rate is established in the Reasonable Rate Document, costs in excess of that maximum rate shall not be eligible for reimbursement without prior written pre-approval by the Department.

(c) When preapproval of costs is required and is obtained from the Department, the preapproval is valid for one year from the date fully executed.

*History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94L; 143-215.94T; 143-215.94V; 143B-282;*
*Eff. February 1, 1993;*
*Amended Eff. September 1, 1993;*
*Temporary Amendment Eff. January 2, 1998; January 2, 1996;*
*Amended Eff. October 29, 1998 (SB 1598);*
*Temporary Amendment Eff. October 1, 1999;*
*Amended Eff. August 1, 2000;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 02P .0403 THIRD-PARTY CLAIMS**

(a) An owner, operator, or landowner seeking reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund for any third-party claim for bodily injury or property damage shall notify the Department of any such claim in accordance with G.S. 143-215.94E(e3). The owner, operator, or landowner shall provide the Department with all pleadings and other documents filed in support of a claim for third-party bodily injury or property damage, if a lawsuit for third-party bodily injury or property damage has been filed. Prior to entry into any settlement agreement or consent judgement, Departmental approval is required pursuant to G.S. 143-215.94E(e3). The owner, operator, or landowner shall provide to the Department copies of any medical reports, statements, investigative reports, or certifications from licensed professionals necessary to prove that third-party bodily injury or property damage costs are reimbursable pursuant to G.S. 143-215.94A and 143-215.94B.

(b) The terms "third-party," "third-party bodily injury," and "third-party property damage" mean the terms as defined in G.S. 143-215.94A.

(c) Third-party property damage shall be reimbursed from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund based on the rental costs of comparable property during the period of loss of use up to a maximum amount equal to the fair market value. In the case of property that is destroyed as a result of a petroleum release, reimbursement shall be at an amount necessary to replace or repair the destroyed property.

*History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282;*
*Eff. February 1, 1993;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 02P .0404 REQUESTS FOR REIMBURSEMENT**

(a) An owner, operator, or landowner may make a request for reimbursement only after the Department has determined that they are eligible for reimbursement. The reimbursement request shall include the following information, submitted on templates found on the Department's website at https://deq.nc.gov/about/divisions/waste-management/ust/trust-fund:

(1) notarized certification of the costs;

(2) notarized certification of payment to subcontractors, if applicable;
(3) summary of work performed;
(4) reimbursement payment information;
(5) certification of remediation system installation, if applicable;
(6) itemized breakdown of the requested reimbursement; and
(7) supporting documentation of the itemized costs, such as the following:
(A) subcontractor invoices;
(B) correspondence from regulatory agencies;
(C) invoices;
(D) bills of lading;
(E) per diem receipts;
(F) field logs; and
(G) reports.

(b) Proof of completion of work and payment shall accompany any request for reimbursement, except when reimbursement is made jointly to the owner, operator, or landowner and either a provider of service or a third-party claimant.
(c) A request for reimbursement may be returned or additional information requested by the Department, if it is found to be incomplete.
(d) The Department shall reimburse an eligible owner, operator, or landowner for expenses following completion of any phase of cleanup work in accordance with the schedule allowed by G.S. 143-215.94E(e2).
(e) If any amount approved for reimbursement is less than the amount of reimbursement requested, the Department shall issue a written explanation of why the amount requested was not approved.

*History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94G; 143-215.94L; 143-215.94T; 143B-282;*
*Eff. February 1, 1993;*
*Amended Eff. September 1, 1993;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 02P .0405 METHOD OF REIMBURSEMENT**

(a) Reimbursement for cleanup costs shall be made only to an eligible owner, operator, or landowner of a petroleum underground storage tank, or jointly to an owner, operator, or landowner and a provider of service.
(b) Reimbursement of cleanup costs to the owner, operator, or landowner shall be made only after proof of completion of work and payment for such costs has been received by the Department.
(c) Joint reimbursement of cleanup costs shall be made to an owner, operator, or landowner and a provider of service only upon receipt of a written agreement acknowledged by both parties. Any reimbursement check shall be sent directly to the owner, operator, or landowner.
(d) Payment of third-party claims shall be made to the owner or operator, or jointly to the owner or operator and the third-party claimant.
(e) Any request for reimbursement that has not been returned to the owner, operator, or landowner, or reimbursed to the owner, operator, or landowner within 90 days of submittal of such a request may be considered by the owner, operator, or landowner as having been denied by the Department in accordance with G.S. 143-215.94E(e2).

*History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282;*
*Eff. February 1, 1993;*
*Amended Eff. September 1, 1993;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 02P .0406 APPORTIONMENT**

(a) If any of the underground storage tanks at a single facility contributing to a discharge or release which resulted in a single plume of soil, surface water, or groundwater contamination pursuant to G.S. 143-215.94B(b1) are not eligible for reimbursement, reimbursement shall be made at a rate equal to the number of tanks contributing to the discharge or release that are eligible for reimbursement divided by the total number of tanks contributing to the discharge or release.
(b) If multiple underground storage tanks at a single facility are contributing to a single discharge or release which resulted in a single plume of soil, surface water, or groundwater contamination, and the tanks are owned or operated by different persons, reimbursement may be made to any of the owners or operators as if the discharge or release were caused entirely by that person's underground storage tanks.
(c) If above ground and underground storage tanks at a single facility are both contributing to a single discharge or release which resulted in a single plume of soil, surface water, or groundwater contamination, reimbursement shall be apportioned based upon the volume of eligible tanks divided by the total volume of all tanks contributing to the release.
(d) Where multiple discharges or releases at a single facility which resulted in separate plume of soil, surface water, or groundwater contamination pursuant to G.S. 143-215.94B(b1) are addressed in a single cleanup action, expenses shall be reimbursed based on apportionment among the discharges or releases. The method of apportionment shall be as follows:
(1) expenses related to a particular discharge or release shall be applied only to that discharge or release; or
(2) expenses that are related to more than one discharge or release shall be apportioned on a pro rata basis among the discharges or releases.

*History Note: Authority G.S. 143-215.3; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282;*
*Eff. February 1, 1993;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 02P .0407 APPEAL RIGHTS**

(a) The Director, Underground Storage Tank Section Chief, or Trust Fund Branch Head of the Division of Waste Management shall make the agency decision on a written application for eligibility for reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund. The

Director, Underground Storage Tank Section Chief, or Trust Fund Branch Head shall make the agency decision on any written claim for reimbursement once an applicant has been granted eligibility.
(b) An owner, operator, or landowner who has not received a written notification of decision of eligibility to or for reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund within 90 days of submittal of a written application in accordance with the rules of this Subchapter may elect to consider the application to have been denied and may file an appeal in accordance with G.S. 143-215.94E(e2).
(c) An owner, operator, or landowner who has received a written notification of eligibility to or for reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund after submittal of a written application in accordance with the rules of this Subchapter and disagrees with the notification may elect to file an informal appeal supplying additional information. Following review of the additional information, the Director, Underground Storage Tank Section Chief, or Trust Fund Branch Head shall issue a written agency decision. If the written decision by the Director, Underground Storage Tank Section Chief, or Trust Fund Branch Head does not change the original decision of eligibility to or for reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund, the Department shall notify the owner, operator, or landowner of the right to petition for a contested case in the Office of Administrative Hearings in accordance with G.S. 150B-23.
(d) An owner, operator, or landowner who has received a written notification of eligibility to or for reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund after submittal of a written application in accordance with the rules of this Subchapter and disagrees with the notification may elect to file a petition for a contested case in the Office of Administrative Hearings in accordance with G.S. 150B-23 without providing any additional information.

*History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282; 150B-23;*
*Eff. February 1, 1993;*
*Amended Eff. September 1, 1993;*
*Readopted Eff. October 1, 2022.*

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**15A NCAC 07H .1301 PURPOSE**
A person requesting the construction of boat ramps along estuarine and public trust shorelines and into Estuarine and Public Trust Waters AECs shall apply for a General Permit according to the rules in this Section. This permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjacent Ocean Erodible Area.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
*Eff. March 1, 1984;*
*Amended Eff. April 1, 2003; August 1, 2000;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .1302 APPROVAL PROCEDURES**
(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at the Regional Office indicated on the map located at https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51 and request approval for development as defined in G.S. 113A-130(5).
(b) The applicant shall provide:
(1) the site location, dimensions of the project area, and his or her name and address; and
(2) confirmation that a written statement has been obtained, signed by the adjacent riparian property owners, indicating that they have no objections to the proposed work; or
(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing to the Division of Coastal Management within ten days of receipt of the notice and indicate that no response by the adjacent property owners shall be interpreted as the adjacent property owners having no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.
(c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. A permit to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction permitted under this Section shall be completed within 120 days of permit issuance or such permit shall expire. If the applicant seeks a new permit under this Section, the Division of Coastal Management shall re-examine the proposed development to determine if the General Permit may be reissued.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
*Eff. March 1, 1984;*
*Amended Eff. August 1, 2007; September 1, 2006; January 1, 1990;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .1303 PERMIT FEE**
The applicant shall pay a permit fee of two hundred dollars ($200.00) by check or money order payable to the Department of Environmental Quality.

*History Note: Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113A-119.1; 113A-124;*
*Eff. March 1, 1984;*
*Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .1304 GENERAL CONDITIONS**

(a) Structures authorized by this permit shall be non-commercial boat ramps constructed of acceptable material and conforming to the standards herein.
(b) Permittees shall allow authorized representatives of the Department of Environmental Quality to make inspections at any time in order to ensure that the activity being performed under authority of the General Permit set forth in this Section is in accordance with the terms and conditions prescribed herein.
(c) There shall be no interference with navigation or use of the waters by the public through the existence of boat ramps.
(d) The permit set forth in this Section shall not be applicable to proposed construction where the Department has determined based on an initial review of the application that notice and review pursuant to G.S. 113A-119 is required because there are unresolved questions concerning the proposed activity's impact on Areas of Environmental Concern.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
*Eff. March 1, 1984;*
*Amended Eff. May 1, 1990;*
*RRC Objection due to ambiguity Eff. May 19, 1994;*
*Amended Eff. August 1, 1998; July 1, 1994;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .1305 SPECIFIC CONDITIONS**

(a) Boat ramps shall be no wider than 15 feet and shall not extend more than 20 feet waterward of the normal high water level or normal water level.
(b) Excavation and ground disturbing activities above and below the normal high water level or normal water level will be limited to that necessary to establish ramp slope and provide a ramp no greater in size than specified by this general permit.
(c) Placement of fill materials below normal high water level, or normal water level, will be limited to the ramp structure and any associated riprap groins. Boat ramps may be constructed of concrete, wood, steel, clean riprap, marl, or any other suitable equivalent materials approved by the Division of Coastal Management. No coastal wetland vegetation shall be excavated or filled at any time during construction.
(d) The permit set forth in this Section allows for up to a six-foot wide launch access dock, fixed or floating, immediately adjacent to a new or existing boat ramp. The length shall be limited to the length of the permitted boat ramp with a maximum length of 20 feet waterward of the normal high water level or normal water level. No permanent slips are authorized by this permit.
(e) Groins shall be allowed as a structural component on one or both sides of a new or existing boat ramp to reduce scouring. The groins shall be limited to the length of the permitted boat ramp with a maximum length of 20 feet waterward of the normal high water level or normal water level.
(f) The height of sheetpile groins shall not exceed one foot above normal high water level or normal water level and the height of riprap groins shall not exceed two feet above normal high water level or normal water level.
(g) Riprap groins shall not exceed a base width of five feet.
(h) Material used for groin construction shall be free from loose dirt or any other pollutant. Riprap material must be of sufficient size to prevent its movement from the approved alignment by wave action or currents.
(i) "L" and "T" sections shall not be allowed at the end of groins.
(j) Groins shall be constructed of granite, marl, concrete without exposed rebar, timber, vinyl sheet pile, steel sheet pile, or other suitable equivalent materials approved by the Division of Coastal Management.
(k) Boat ramps and their associated structures authorized under this permit shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the boat ramp or associated structures and the adjacent property owners' areas of riparian access. The minimum setbacks provided in the rule may be waived by the written agreement of the adjacent riparian owners, or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the boat ramp or associated structures commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of the boat ramp or associated structures authorized under this permit.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
*Eff. March 1, 1984;*
*Amended Eff. August 1, 2014;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .1401 PURPOSE**

A person requesting the construction of groins in the Estuarine and Public Trust Waters AECs shall apply for a General Permit according to the rules in this Section. This general permit shall not apply to the oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjacent Ocean Erodible Area.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124(c);*
*Eff. March 1, 1984;*
*Temporary Amendment Eff. December 1, 2002;*
*Amended Eff. February 1, 2009; August 1, 2004; April 1, 2003;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .1402 APPROVAL PROCEDURES**

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at the Regional Office indicated on the map located at https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?i

d=1a5881ec85ca40679988982e02665b51 and request approval for development as defined in G.S. 113A-130(5).

(b) The applicant shall provide:

(1) the site location, dimensions of the project area, and his or her name and address; and

(2) confirmation that a written statement has been obtained, signed by the adjacent riparian property owners, indicating that they have no objections to the proposed work; or

(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing to the Division of Coastal Management within 10 days of receipt of the notice and shall indicate that no response by the adjacent property owners shall be interpreted as the adjacent property owners having no objection. Division staff of Coastal Management shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

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

(d) Any modification or addition to the authorized project shall require approval from the Division of Coastal Management in accordance with 15A NCAC 07J .0405.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
*Eff. March 1, 1984;*
*Amended Eff. February 1, 2009; October 1, 2007; August 1, 2004; May 1, 1990; January 1, 1990;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .1403 PERMIT FEE**

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

*History Note: Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113A-119.1; 113A-124;*
*Eff. March 1, 1984;*
*Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .1404 GENERAL CONDITIONS**

(a) Structures authorized by a General Permit in this Section shall be timber, sheetpile, or riprap groins.

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

(c) The placement of groins authorized in this Rule shall not interfere with the established or traditional rights of navigation of the waters by the public.

(d) The permit set forth in this Section shall not be applicable to proposed construction where the Department has determined based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is required because there are unresolved questions concerning the proposed activity's impact on Areas of Environmental Concern.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
*Eff. March 1, 1984;*
*Amended Eff. May 1, 1990;*
*RRC Objection due to ambiguity Eff. May 16, 1994;*
*Amended Eff. August 1, 1998; July 1, 1994;*
*Temporary Amendment Eff. December 1, 2002;*
*Amended Eff. February 1, 2009; August 1, 2004;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .1405 SPECIFIC CONDITIONS**

(a) Groins shall be perpendicular to the shoreline and shall not extend more than 25 feet waterward of the normal high water or normal water level.

(b) Riprap groins shall not exceed a base width of 10 feet.

(c) Groins shall be set back at least 15 feet from the riparian access dividing line as measured from the closest point of the structure. This setback may be waived by written agreement of the adjacent riparian owners or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of the groin.

(d) The height of sheetpile groins shall not exceed one foot above normal high water or the normal water level and the height of riprap groins shall not exceed two feet above normal high water or the normal water level.

(e) Material used for groin construction shall be free from loose dirt. Groin material must be of sufficient size to prevent its movement from the site by wave action or currents.

(f) Structure spacing shall be two times the groin length as measured from the centerline of the structure. Spacing may be less than two times the groin length around channels, docking facilities, boat lifts, or boat ramps and when positioned to prevent sedimentation or accretion around channels, docking facilities, boat lifts, or boat ramps.

(g) "L" and "T" sections shall not be allowed at the end of groins.

(h) Groins shall be constructed of granite, marl, concrete without exposed rebar, timber, vinyl sheet pile, steel sheet pile, or other suitable equivalent materials approved by the Division of Coastal Management.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
*Eff. March 1, 1984;*
*Temporary Amendment Eff. December 1, 2002;*
*Amended Eff. February 1, 2009; August 1, 2004;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .1501 PURPOSE**

A person requesting excavation within or connecting to existing canals, channels, basins, or ditches in Estuarine Waters, Public Trust Waters, and Coastal Shorelines AECs for the purpose of maintaining water depths and creating new boat basins from non-wetland areas that will be used for private, non-commercial activities shall apply for a General Permit according to the rules of this Section.

*History Note: Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(c1);*
*Eff. July 1, 1984;*
*Amended Eff. July 1, 2015; December 1, 1987;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .1502 APPROVAL PROCEDURES**

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at the Regional Office indicated on the map located at https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51 and request approval for development as defined in G.S. 113A-130(5).

(b) The applicant shall provide:

(1) the site location, dimensions of the project area, and his or her name and address; and

(2) confirmation that a written statement has been obtained, signed by the adjacent riparian property owners, indicating that they have no objections to the proposed work; or

(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing to the Division of Coastal Management within ten days of receipt of the notice and indicate that no response by the adjacent property owners will be interpreted as the adjacent property owners having no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

(c) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. A Permit to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction permitted under this Section shall be completed within 120 days of the date of permit issuance or such permit shall expire. If the applicant seeks a new permit under this Section, the Division of Coastal Management shall re-examine the proposed development to determine if the General Permit may be reissued.

*History Note: Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(c1);*
*Eff. July 1, 1984;*
*Amended Eff. July 1, 2015; January 1, 1990; December 1, 1987;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .1503 APPLICATION FEE**

The applicant shall pay a permit fee of two hundred dollars ($200.00) for maintenance excavation of 100 cubic yards or less or four hundred dollars ($400.00) for maintenance excavation of 100 to 1,000 cubic yards. Permit fees shall be paid by check or money order payable to the Department of Environmental Quality.

*History Note: Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113A-119.1; 113A-124;*
*Eff. July 1, 1984;*
*Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .1504 GENERAL CONDITIONS**

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

(b) The permit set forth in this Section shall not be applicable to proposed construction where the Department has determined based on an initial review of the application that notice and review pursuant to G.S. 113A-119 is required because there are unresolved questions concerning the proposed activity's impact on Areas of Environmental Concern.

(c) No new basins shall be allowed that result in closure of shellfish waters according to the closure policy of the Division of Marine Fisheries, 15A NCAC 18A .0911.

*History Note: Authority G.S. 113A-107(a),(b); G.S. 113A-108; 113A-113(b); 113A-118.1; 113-229(c1);*
*Eff. July 1, 1984;*
*Amended Eff. May 1, 1990; December 1, 1987;*
*RRC Objection due to ambiguity Eff. May 19, 1994;*
*Amended Eff. July 1, 2015; August 1, 1998; July 1, 1994;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .1505 SPECIFIC CONDITIONS**

Proposed maintenance excavation shall meet each of the following specific conditions to be eligible for authorization by this general permit.

(1) New basins shall be allowed only when they are located entirely in highground and join existing man-made canals or basins.

(2) New basins shall be no larger than 50 feet in either length or width and no deeper than the waters they join.

(3) New basins shall be for the private non-commercial use of the land owner.

(4) Maintenance excavation shall involve the removal of no more than 1,000 cubic yards of material as part of a single and complete project.

(5) All excavated material shall be placed entirely on high ground above the mean high tide or ordinary high water line, and above any marsh, or other wetland.

(6) All spoil material shall be stabilized or retained so as to prevent any excavated material from re-entering the surrounding waters, marsh, or other wetlands.

(7) The proposed project shall not involve the excavation of any marsh, submerged aquatic vegetation as defined at 15A NCAC 03I .0101 by the Marine Fisheries Commission, or other wetlands.

(8) Maintenance excavation shall not exceed the original dimensions of the canal, channel, basin, or ditch and in no case be deeper than 6 feet below mean low water or ordinary low water, nor deeper than connecting channels.

(9) Proposed excavation in existing channels and basins shall not allow for a public or commercial use.

(10) Maintenance excavation as well as excavation of new basins shall not be allowed within or with connections to primary nursery areas without prior approval from the Division of Marine Fisheries or Wildlife Resources Commission.

(11) Bulkheads shall be allowed as a structural component on one or more sides of the permitted basin to stabilize the shoreline from erosion.

(12) The bulkhead shall not exceed a distance of two feet waterward of the normal high water or normal water level at any point along its alignment.

(13) Bulkheads shall be constructed of vinyl or steel sheet pile, concrete, stone, timber, or other materials approved by the Division of Coastal Management.

(14) All backfill material shall be obtained from an upland source pursuant to 15A NCAC 07H .0208. The bulkhead shall be constructed prior to any backfilling activities and shall be constructed so as to prevent seepage of backfill materials through the structure.

(15) Construction of bulkhead authorized by this general permit in conjunction with bulkhead authorized under 15A NCAC 07H .1100 shall be limited to a combined maximum shoreline length of 500 feet.

*History Note: Authority G.S. 113A-107(a),(b); 113A-108; 113A-113(b); 113A-118.1; 113-229(c1);*
*Eff. July 1, 1984;*
*Amended Eff. July 1, 2015; September 1, 1988; December 1, 1987;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .1601 PURPOSE**

A person requesting the installation of utility lines both aerially and subaqueously in the Coastal Wetland, Estuarine Waters, Public Trust Areas, and Estuarine and Public Trust Shoreline AECs shall apply for a General Permit according to rules in this Section. This general permit shall not apply to the ocean hazard AECs.

*History Note: Authority G.S. 113A-107(a)(b); 113A-113(b); 113A-118.1; 113-229(c1);*
*Eff. March 1, 1985;*
*Amended Eff. August 1, 2000; August 1, 1998;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .1602 APPROVAL PROCEDURES**

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at the Regional Office indicated on the map located at https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51 and request approval for development as defined in G.S. 113A-130(5).

(b) The applicant shall provide:

(1) the site location, dimensions of the project area, and his or her name and address; and

(2) confirmation that a written statement has been obtained, signed by the adjacent riparian property owners, indicating that they have no objections to the proposed work; or

(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing to the Division of Coastal Management within ten days of receipt of the notice and indicate that no response by the adjacent property owners will be interpreted as the adjacent property owners having no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review,

the Division shall notify the applicant that he or she must submit an application for a major development permit.

(c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. A Permit to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction permitted under this Section shall begin within twelve months of the date of permit issuance or such permit shall expire. If the applicant seeks a new permit under this Section, the Division of Coastal Management shall re-examine the proposed development to determine if the General Permit may be reissued.

*History Note: Authority G.S. 113A-107(a)(b); 113A-113(b); 113A-118.1; 113-229(c1);*
*Eff. March 1, 1985;*
*Amended Eff. January 1, 1990;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .1603 PERMIT FEE**

The applicant shall pay a permit fee of four hundred dollars ($400.00) by check or money order payable to the Department of Environmental Quality.

*History Note: Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113A-119.1; 113-229(c1);*
*Eff. March 1, 1985;*
*Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .1604 GENERAL CONDITIONS**

(a) Utility lines for the purpose of this General Permit are any pipes or pipelines for the transportation of potable water, domestic sanitary sewage, natural gas, and any cable, line, or wire for the transmission, of electrical energy, telephone and telegraph messages, and radio and television communication.

(b) There shall be no alteration of preconstruction bottom contours. Fill authorized by a permit set forth in this Section shall include only that necessary to backfill or bed the utility line. Any excess material shall be removed to an upland disposal area.

(c) The utility line crossing shall not adversely affect a public water supply intake.

(d) The utility line route or construction method shall not disrupt the movement of those species of aquatic life indigenous to the waterbody.

(e) Permittees shall allow authorized representatives of the Department of Environmental Quality to make inspections at any time to ensure that the activity being performed under authority of the General Permit set forth in this Section is in accordance with the terms and conditions prescribed herein.

(f) The permit set forth in this Section shall not be applicable to proposed construction where the Department has determined based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is required because there are unresolved questions concerning the proposed activity impact on Areas of Environmental Concern.

*History Note: Authority G.S. 113A-107(a)(b); 113A-113(b); 113A-118.1; 113-229(c1);*
*Eff. March 1, 1985;*
*Amended Eff. May 1, 1990;*
*RRC Objection due to ambiguity Eff. May 19, 1994;*
*Amended Eff. August 1, 1998; July 1, 1994;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .1605 SPECIFIC CONDITIONS**

Proposed utility line installations shall meet each of the following specific conditions to be eligible for authorization by this General Permit:

(1) All domestic sanitary sewer line requests must be accompanied by a statement of prior approval from the NC Division Water Quality.
(2) All spoils which are permanently removed must be placed on a high ground disposal site and stabilized so as not to return to waters, marsh, or other wetlands.
(3) Any additional backfill material required shall consist of sand or rock and not contain organic matter.
(4) Finished grades or subaqueous or wetland crossing must be returned to preproject contours.
(5) There can be no work within any productive shellfish beds.
(6) No excavation or filling activities will be permitted between April 1 and September 30 of any year within any designated primary nursery area.
(7) Subaqueous lines must be placed at a depth of six feet below the project depth of federal projects. For non-federal projects, subaqueous lines shall be installed at a minimum depth of two feet below the bottom contour.
(8) The minimum clearance for aerial communication lines or any lines not transmitting electricity shall be 10 feet above the clearance required for bridges in the vicinity.
(9) The minimum clearance for aerial electrical transmission lines shall be consistent with those established by the US Army Corps of Engineers and US Coast per 33 CFR 322.5 (i).
(10) The installation of a utility line on pipe bents or otherwise above the elevation of mean high or mean ordinary water must be of sufficient height to allow for traditional navigation in the water body. The utility line shall not interfere with the waterflow of normal or flood waters.
(11) Natural gas lines shall not exceed 11 inches in diameter.

*History Note: Authority G.S. 113A-107(a)(b); 113A-113(b); 113A-118.1; 113-229(c1);*
*Eff. March 1, 1985;*
*Amended Eff. August 1, 1998;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2001 PURPOSE**

A person requesting reconfiguration, minor modifications, repair, or improvements to existing pier and mooring facilities in estuarine waters and public trust areas shall apply for a General Permit according to the rules in this Section. This permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjacent Ocean Erodible Area. A Division of Coastal Management representative will make the determination whether the site features characteristics of the Estuarine Shoreline at the time of permit application.

*History Note: Authority G.S. 113A-107; 113A-118.1;*
*Eff. October 1, 1993;*
*Amended Eff. April 1, 2003;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2002 APPROVAL PROCEDURES**

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at the Regional Office indicated on the map located at https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51 and request approval for development as defined in G.S. 113A-130(5).

(b) The applicant shall provide:

(1) information on site location, dimensions of the project area, and his or her name and address; and

(2) confirmation that a written statement has been obtained, signed by the adjacent riparian property owners, indicating that they have no objections to the proposed work; or

(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice and indicate that no response by the adjacent property owners will be interpreted as the adjacent property owners having no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

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

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

*History Note: Authority G.S. 113A-107; 113A-118.1;*
*Eff. January 1, 1994;*
*Amended Eff. August 1, 2007;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2003 PERMIT FEE**

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

*History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119.1;*
*Eff. October 1, 1993;*
*Amended Eff. September 1, 2006; August 1, 2000;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2004 GENERAL CONDITIONS**

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

(b) There shall be no interference with navigation or use of the waters by the public by the existence of piers or mooring pilings.

(c) The permit set forth in this Section shall not be applicable to proposed construction where the Department has determined based on an initial review of the application that notice and review pursuant to G.S. 113A-119 is required because there are unresolved questions concerning the proposed activity's impact on Areas of Environmental Concern.

(d) This permit shall not be applicable where the Department determines that the proposed modification will result in closure of waters to shellfishing under rules adopted by the Commission for Public Health.

*History Note: Authority G.S. 113A-107; 113A-118.1;*
*Eff. January 1, 1994;*
*Amended Eff. August 1,1998;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2005 SPECIFIC CONDITIONS**

(a) All proposed work must be carried out within the existing footprint of the development with no increase in the number of slips and no change in the existing use. "Existing footprint" is defined as the area delineated by the outer most line of tie pilings, ends of piers, and upland basin or area within an enclosing breakwater, whichever is greater.

(b) Modifications to piers and mooring facilities shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier or pilings and the adjacent property lines extended into the water at the

points that they intersect the shoreline. The minimum setbacks provided in the rule may be waived by the written agreement of the adjacent riparian owners, or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier or pilings commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to a line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this rule to the maximum extent practicable.

*History Note: Authority G.S. 113A-107; 113A-118.1;*
*Eff. October 1, 1993;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2101 PURPOSE**

Persons seeking to construct offshore parallel sheetpile sills constructed from timber, vinyl, or steel sheetpiles for shoreline protection in conjunction with existing or created coastal wetlands shall apply for a general permit under this Section. This permit shall only be applicable in Estuarine Waters and Public Trust Areas. This permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in adjoining Ocean Erodible Area. A Division of Coastal Management representative will make the determination whether the site features characteristics of the Estuarine Shoreline at the time of permit application.

*History Note: Authority G.S. 113A-107; 113A-118.1;*
*Eff. June 1, 1994;*
*Amended Eff. February 1, 2009; April 1, 2003; August 1, 2000;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2102 APPROVAL PROCEDURES**

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at the Regional Office indicated on the map located at https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51 and request approval for development as defined in G.S. 113A-130(5).

(b) The applicant shall provide:

(1) information on site location, dimensions of the project area, and his or her name and address; and

(2) confirmation that a written statement has been obtained, signed by the adjacent riparian property owners, indicating that they have no objections to the proposed work; or

(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing to the Division of Coastal Management within 10 days of receipt of the notice and indicate that no response by the adjacent property owners shall be interpreted as the adjacent property owners having no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

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

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

*History Note: Authority G.S. 113A-107; 113A-118.1; 113A-118.1(a)(4);*
*Eff. June 1, 1994;*
*Amended Eff. February 1, 2009; October 1, 2007; September 1, 2006; August 1, 2000;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2103 PERMIT FEE**

The applicant shall pay a permit fee of two hundred dollars ($200.00). This fee shall be paid by check or money order made payable to the Department of Environmental Quality.

*History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119.1;*
*Eff. June 1, 1994;*
*Amended Eff. September 1, 2006; August 1, 2000;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2104 GENERAL CONDITIONS**

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

(b) The placement of sills authorized in this Rule shall not interfere with the established or traditional rights of navigation of the water by the public.

(c) The permit set forth in this Section shall not be applicable to proposed construction where the Department has determined based on an initial review of the application that notice and review pursuant to G.S. 113A-119 is required because there are unresolved questions concerning the proposed activity's impact on Areas of Environmental Concern.

*History Note: Authority G.S. 113A-107; 113A-118.1;*
*RRC Objection due to ambiguity Eff. May 19, 1994;*
*Eff. July 1, 1994;*
*Amended Eff. February 1, 2009; August 1, 1998;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2105 SPECIFIC CONDITIONS**

(a) The sill shall be positioned no more than 20 feet waterward of the normal high water or normal water level or 20 feet waterward of the waterward edge of existing wetlands at any point along its alignment. For narrow waterbodies (canals, creeks, etc.), the sheet pile sill shall not be positioned offshore more than one sixth (1/6) the width of the waterbody at any point along its alignment.
(b) Sills authorized under this General Permit shall be allowed only in waters that average less than three feet in depth along the proposed alignment as measured from the normal high water or normal water level.
(c) Construction authorized by this General Permit shall be limited to a maximum length of 500 feet.
(d) The sill shall be constructed with an equal gap between each sheathing board totaling at least one inch of open area every linear foot of sill. The sill shall have at least one five-foot opening at every 100 feet. The sill sections shall be staggered and overlap as long as the five-foot separation between sections is maintained. Overlapping sections shall not overlap more than 10 feet.
(e) The height of the sill shall not exceed six inches above normal high water or the normal water level.
(f) Offshore sill sections shall be set back 15 feet from the riparian access dividing line. The line of division of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The set back may be waived by written agreement of the adjacent riparian owner(s) or when the two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the sill begins, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any construction of the sill.
(g) Sills shall be marked at 50-foot intervals with yellow reflectors extending at least three feet above mean high water.
(h) No backfill of the sill or any other fill of wetlands, estuarine waters, public trust areas, or highground is authorized by this general permit.
(i) No excavation of the shallow water bottom, any wetlands, or high ground is authorized by this general permit.
(j) The sill shall be constructed of vinyl or steel sheet pile, formed concrete, timber, or other suitable equivalent materials approved by the Division of Coastal Management.
(k) Perpendicular sections, return walls, or sections that would enclose estuarine waters or public trust areas shall not be allowed under this permit.
(l) The permittee will maintain the sill in conformance with the terms and conditions of this permit or the remaining sill structure shall be removed within 90 days of notification from the Division of Coastal Management.

*History Note: Authority G.S. 113A-107; 113A-108; 113A-118.1;*
*Eff. June 1, 1994;*
*Amended Eff. February 1, 2009; August 1, 2000;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2201 PURPOSE**

Persons wishing to place freestanding moorings or bird nesting poles in the Estuarine Waters and Public Trust Areas AECs shall apply for a General Permit according to the rules in this Section. This permit shall not apply to waters adjacent to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjacent Ocean Erodible Area. A Division of Coastal Management representative will make the determination whether the site features characteristics of the Estuarine Shoreline at the time of permit application.

*History Note: Authority G.S. 113A-107; 113A-118.1;*
*Eff. February 1, 1996;*
*Amended Eff. January 1, 2018; April 1, 2003;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2202 APPROVAL PROCEDURES**

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at the Regional Office indicated on the map located at https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51 and request approval for development as defined in G.S. 113A-130(5).
(b) The applicant shall provide:

(1) information on site location, dimensions of the project area, and his or her name and address; and
(2) confirmation that a written statement has been obtained, signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing to the Division of Coastal Management within 10 days of receipt of the notice and indicate that no response by the adjacent property owners shall be interpreted as the adjacent property owners having no objection. Division staff shall review all comments and

determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

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

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

*History Note: Authority G.S. 113A-107; 113A-118.1;*
*Eff. February 1, 1996;*
*Amended Eff. January 1, 2018; August 1, 2007;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2203 PERMIT FEE**

The applicant shall pay a permit fee of two hundred dollars ($200.00). This fee shall be paid by check or money order made payable to the Department of Environmental Quality.

*History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119; 113A-119.1;*
*Eff. February 1, 1996;*
*Amended Eff. September 1, 2006; August 1, 2000;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2204 GENERAL CONDITIONS**

(a) A "freestanding mooring" is any means to attach a ship, boat, vessel, floating structure, or other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling (as long as the piling is not associated with an existing or proposed pier, dock, or boathouse).

(b) A "bird nesting pole" is any pole or piling erected, with a platform on top, for the purpose of attracting birds for nesting.

(c) Freestanding moorings and bird nesting poles authorized by this permit shall be for the exclusive use of the riparian landowner(s) in whose name the permit is issued and shall not provide either leased or rented moorings or any other commercial services.

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

(e) Freestanding moorings or bird nesting poles authorized by this permit shall not interfere with navigation or use of the waters by the public.

(f) The permit set forth in this Section may not be applicable to proposed construction when the Department has determined that based on an initial review of the application that notice and review pursuant to G.S. 113A-119 is required because there are unresolved questions concerning the proposed activity's impact on Areas of Environmental Concern.

*History Note: Authority G.S. 113A-107; 113A-118.1;*
*Eff. February 1, 1996;*
*Amended Eff: January 1, 2018;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2205 SPECIFIC CONDITIONS**

(a) Freestanding moorings and bird nesting poles may be located up to a maximum of 400 feet from the mean high water line or the normal water line.

(b) Freestanding moorings in no case shall extend more than 1/4 the width of a natural water body or man-made canal or basin.

(c) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing including the vessel to be moored. Moorings and the attached vessel shall not interfere with the access to any riparian property, and shall have a minimum setback of 15 feet from the adjacent property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided in this Rule may be waived by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of freestanding moorings. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge.

(d) The total number of docking or mooring facilities to be authorized by this General Permit shall not exceed two per property.

(e) Bird nesting poles shall be limited to one per property. Any proposal to change the location of a permitted bird nesting pole shall require additional authorization from the Division of Coastal Management.

(f) Freestanding moorings and bird nesting poles shall not interfere with shellfish franchises or leases. Applicants for authorization to construct freestanding moorings and bird nesting poles shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed installation would extend.

(g) Freestanding moorings shall not be constructed in a designated Primary Nursery Area as defined in 15A NCAC 07H .0208(a)(4) with less than two feet of water at normal low water level or normal water level under the General Permit set forth in this Section without prior approval from the Division of Marine Fisheries or the Wildlife Resources Commission.

(h) Freestanding moorings located over shellfish beds or submerged aquatic vegetation as defined by the Marine Fisheries Commission may be constructed without prior consultation from

the Division of Marine Fisheries or the Wildlife Resources Commission if the following two conditions are met:

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

(2) the freestanding mooring is located to minimize the area of submerged aquatic vegetation or shellfish beds impacted under the structure as determined by the Division of Coastal Management.

(i) Freestanding moorings and bird nesting poles shall not be established in submerged utility crossing areas or in a manner that interferes with the operation of an access through any bridge.

(j) Freestanding moorings and bird nesting poles shall be marked or colored for the life of the moorings and poles in compliance with G.S. 75A-15 and the applicant shall contact the U.S. Coast Guard and N.C. Wildlife Resources Commission to ensure compliance. Permanent reflectors shall be attached to the structure in order to make it more visible during hours of darkness or inclement weather.

(k) Freestanding moorings shall bear owner's name, vessel State registration numbers, or U.S. Customs Documentation numbers. Required identification shall be legible for the life of the moorings.

(l) The type of material used to anchor a proposed mooring buoy shall be non-polluting and of sufficient weight and design to anchor the buoy and vessel.

(m) Mooring buoys authorized by this General Permit shall be a minimum 12" in diameter or otherwise be designed to be recognized and not present a hazard to navigation.

(n) The platform located at the apex of the bird nesting pole shall not exceed three feet by three feet and shall not have sides.

(o) This permit does not relieve the permit holder of the responsibility to ensure that all other State and Federal permit requirements are met prior to implementation of the project, including G.S. 113A-107(a), G.S. 113A-118(d)(1) or G.S. 113A-120(b1)(4).

*History Note: Authority G.S. 113A-107; 113A-118.1;*
*Eff. February 1, 1996;*
*Amended Eff. January 1, 2018;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2301 PURPOSE**

A person wishing to replace existing bridges and culverts in estuarine waters, estuarine and public trust shorelines, public trust areas, and coastal wetlands AECs, shall apply for a General Permit pursuant to the rules in this Section.

*History Note: Authority G.S. 113A-107; 113A-118.1; 113A-124;*
*Eff. June 1, 1996;*
*Amended Eff. August 1, 2000;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2302 APPROVAL PROCEDURES**

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at the Regional Office indicated on the map located at https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51 and request approval for development as defined in G.S. 113A-130(5).

(b) The applicant shall provide:

(1) the site location, dimensions of the project area, and his or her name and address; and

(2) confirmation that a written statement has been obtained, signed by the adjacent riparian property owners, indicating that they have no objections to the proposed work; or

(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing to the Division of Coastal Management within 10 days of receipt of the notice and indicate that no response by the adjacent property owners will be interpreted as the adjacent property owners having no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

(c) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. A permit to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction permitted under this Section shall be completed within 120 days of permit issuance or such permit shall expire. If the applicant seeks a new permit under this Section, the Division of Coastal Management shall re-examine the proposed development to determine if the General Permit may be reissued. Pursuant to G.S. 136-44.7B, permits issued to the North Carolina Department of Transportation for projects identified in the Transportation Improvement Program shall not expire.

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

*History Note: Authority G.S. 113A-107; 113A-118.1; 113A-124;*
*Eff. June 1, 1996;*
*Amended Eff. May 1, 2010;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2303 PERMIT FEE**

The applicant shall pay a permit fee of four hundred dollars ($400.00). This fee shall be paid by inter-departmental fund transfer, check, or money order made payable to the Department of Environmental Quality.

*History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119; 113A-119.1; 113A-124;*
*Eff. June 1, 1996;*
*Amended Eff. May 1, 2010; September 1, 2006; August 1, 2000;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2304 GENERAL CONDITIONS**

(a) Projects authorized by this permit shall be demolition, removal, and replacement of existing bridges and culverts along the existing alignment and conforming to the standards in this Rule. This permit shall be applicable only to single bridge and culvert projects and shall not authorize temporary fill causeways or temporary bridges that may be associated with bridge replacement projects.

(b) The permittee shall allow authorized representatives of the Department of Environmental Quality to make inspections at any time in order to ensure that the activity being performed under authority of this General Permit is in accordance with the terms and conditions prescribed herein.

(c) The permit set forth in this Section shall not be applicable to proposed construction where the Department determined based on an initial review of the application that notice and review pursuant to G.S. 113A-119 is required because there are unresolved questions concerning the proposed activity's impact on Areas of Environmental Concern.

(d) Review of individual project requests shall be coordinated with the Division of Marine Fisheries (DMF) and the Wildlife Resources Commission (WRC). This may result in a construction moratorium during periods of significant biological productivity or critical life stages as determined by the WRC and DMF.

(e) Development under this permit shall be carried out within Department of Transportation (DOT) right-of-ways or on lands under the ownership of the applicant in the case of a non-DOT project.

(f) Bridge and culvert replacements shall be designed to minimize any adverse impacts to potential navigation or use of the waters by the public.

*History Note: Authority G.S. 113A-107; 113A-118.1; 113A-124;*
*Eff. June 1, 1996;*
*Amended Eff. May 1, 2010;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2401 PURPOSE**

Persons wishing to construct riprap revetments for wetland protection in estuarine and public trust waters, immediately adjacent to and waterward of the wetland toe, shall apply for a General Permit under this Section. This permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those portions of shoreline that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area.

*History Note: Authority G.S. 113A-107; 113A-118.1;*
*Eff. August 1, 2000;*
*Amended Eff. February 1, 2009; April 1, 2003;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2402 APPROVAL PROCEDURES**

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at the Regional Office indicated on the map located at https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51 and request approval for development as defined in G.S. 113A-130(5).

(b) The applicant shall provide:

(1) the site location, dimensions of the project area, and his or her name and address; and

(2) confirmation that a written statement has been obtained, signed by the adjacent riparian property owners, indicating that they have no objections to the proposed work; or

(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing to the Division of Coastal Management within 10 days of receipt of the notice and indicate that no response by the adjacent property owners shall be interpreted as the adjacent property owners having no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

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

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

*History Note: Authority G.S. 113A-107; 113A-118.1;*
*Eff. August 1, 2000;*
*Amended Eff. February 1, 2009; October 1, 2007;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2403 PERMIT FEE**

The applicant shall pay a permit fee of two hundred dollars ($200.00). This fee shall be paid by check or money order made payable to the Department of Environmental Quality.

*History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119.1;*
*Eff. August 1, 2000;*
*Amended Eff. September 1, 2006;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2404 GENERAL CONDITIONS**

(a) This permit authorizes only the construction of wetland protection structures conforming to the standards herein.
(b) Permittees shall allow authorized representatives of the Department of Environmental Quality to make inspections at any time in order to ensure that the activity being performed under authority of this General Permit set forth in this Section is in accordance with the terms and conditions prescribed herein.
(c) The placement of riprap revetments authorized in this Rule shall not interfere with the established or traditional rights of navigation of the waters by the public.
(d) This permit shall not be applicable to proposed construction where the Division of Coastal Management has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is required because there are unresolved questions concerning the proposed activity's impact on Areas of Environmental Concern.

*History Note: Authority G.S. 113A-107; 113A-118.1;*
*Eff. August 1, 2000;*
*Amended Eff. February 1, 2009;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2405 SPECIFIC CONDITIONS**

(a) This General Permit shall only be applicable along shorelines possessing wetlands, which exhibit an identifiable escarpment.
(b) The structure shall be constructed of granite, marl, riprap, concrete without exposed rebar, or other suitable equivalent materials approved by the Division of Coastal Management.
(c) The height of the erosion escarpment shall not exceed three feet.
(d) The riprap shall be placed immediately waterward of the erosion escarpment.
(e) The riprap revetment shall be positioned so as not to exceed a maximum of six feet waterward of the erosion escarpment at any point along its alignment with a slope no flatter than three feet horizontal per one foot vertical and no steeper than one and one half feet horizontal per one foot vertical.
(f) The riprap shall be positioned so as not to exceed a maximum of six inches above the elevation of the adjacent wetland substrate or escarpment.
(g) Construction authorized by this general permit will be limited to a maximum length of 500 feet.
(h) No backfill or any other fill of wetlands, submerged aquatic vegetation, estuarine waters, public trust areas, or highground areas is authorized by this general permit.
(i) No excavation of the shallow water bottom, any wetlands, or high ground is authorized by this general permit.
(j) Riprap material used for revetment construction shall be free from loose dirt or any pollutant and be of a size sufficient to prevent its movement from the site by wave action or currents.
(k) If the crossing of wetlands with mechanized or non-mechanized construction equipment is necessary, temporary construction mats shall be utilized for the area to be crossed. The temporary mats shall be removed immediately upon completion of construction of the riprap structure.
(l) The permittee shall maintain the structure in conformance with the terms and conditions of this permit or the remaining riprap revetment shall be removed within 90 days of notification from the Division of Coastal Management.

*History Note: Authority G.S. 113A-107; 113A-107; 113A-108; 113A-118.1;*
*Eff. August 1, 2000;*
*Amended Eff. February 1, 2009;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2601 PURPOSE**

Persons seeking to construct mitigation banks and in-lieu fee mitigation projects shall apply for a General Permit according to the rules in this Section. This permit shall be applicable only for activities resulting in net increases in aquatic resource functions and services per 73 FR 19670 and federal Clean Water Act, at 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; and Pub. L. 108-136. These activities include:

(1) restoration;
(2) enhancement;
(3) establishment of tidal and non-tidal wetlands and riparian areas;
(4) restoration and enhancement of non-tidal streams and other non-tidal open waters; and
(5) rehabilitation or enhancement of tidal streams, tidal wetlands, and tidal open waters.

This permit shall not apply within the Ocean Hazard System of Areas of Environmental Concern (AEC) or waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area. A Division of Coastal Management representative will make the determination whether the site features characteristics of the Estuarine Shoreline at the time of permit application.

*History Note: Authority G.S. 113A-107; 113A-118.1;*
*Eff. October 1, 2004;*
*Amended Eff. October 1, 2014;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2602 APPROVAL PROCEDURES**

(a) The applicant shall contact the Division of Coastal Management at the Regional Office indicated on the map located at
https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51 and request approval for development as defined in G.S. 113A-130(5).
(b) The applicant shall provide:

(1) the site location, dimensions of the project area, and his or her name and address; and
(2) confirmation that a written statement has been obtained, signed by the adjacent riparian

property owners, indicating that they have no objections to the proposed work; or

(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for to the Division of Coastal Management within 10 days of receipt of the notice and indicate that no response by the adjacent property owners will be interpreted as the adjacent property owners having no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

(c) No work shall begin until a meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. A permit to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction of the mitigation site permitted under this Section shall start within 365 days of permit issuance or such permit shall expire. If the applicant seeks a new permit under this Section, the Division of Coastal Management shall re-examine the proposed development to determine if the General Permit shall be reissued.
(d) Any modification or addition to the permitted project shall require approval from the Division of Coastal Management.

*History Note: Authority G.S. 113A-107; 113A-118.1;*
*Eff. October 1, 2004;*
*Amended Eff. October 1, 2014;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2603 PERMIT FEE**

The applicant shall pay a permit fee of four hundred dollars ($400.00). This fee shall be paid by check or money order made payable to the Department of Environmental Quality.

*History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119.1;*
*Eff. October 1, 2004;*
*Amended Eff. September 1, 2006;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2604 GENERAL CONDITIONS**

(a) The permit in this Section authorizes only those activities associated with the construction of mitigation banks and in-lieu fee mitigation projects.
(b) Permittees shall allow representatives of the Department of Environmental Quality to make inspections at any time in order to ensure that the activity being performed under authority of this General Permit set forth in this Section is in accordance with the terms and conditions prescribed herein.
(c) There shall be no interference with navigation or use of the waters by the public. No attempt shall be made by the permittee to prevent the use by the public of all navigable waters at or adjacent to the development authorized pursuant to the rules of this Section.
(d) This permit shall not be applicable to proposed construction where the Division of Coastal Management has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is required because there are unresolved questions concerning the proposed activity's impact on Areas of Environmental Concern.
(e) At the discretion of the Division of Coastal Management, review of individual project requests shall be coordinated with the Department of Environmental Quality to determine if a construction moratorium during periods of significant biological productivity or critical life stages of fisheries resources is necessary to protect those resources.

*History Note: Authority G.S. 113A-107; 113A-118.1;*
*Eff. October 1, 2004;*
*Amended Eff. October 1, 2014;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2605 SPECIFIC CONDITIONS**

(a) The General Permit in this Section shall be applicable only for the construction of mitigation banks or in-lieu fee mitigation projects.
(b) No excavation or filling of any submerged aquatic vegetation shall be authorized by this general permit.
(c) The crossing of wetlands in transporting equipment shall be avoided or minimized to the maximum extent practicable. If the crossing of wetlands with mechanized or non-mechanized construction equipment is necessary, track and low-pressure equipment or temporary construction mats shall be utilized for the area to be crossed. The temporary mats shall be removed immediately upon completion of construction.
(d) No permanent structures shall be authorized by this general permit, except for signs, fences, water control structures, or those structures needed for site monitoring or shoreline stabilization.
(e) The use of any portion of the site as compensatory mitigation for future projects shall be determined in accordance with applicable regulatory policies and procedures.
(f) The development authorized pursuant to this general permit shall result in a net increase in aquatic resource functions and services per 73 FR 19670 and federal Clean Water Act, at 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; and Pub. L. 108-136.
(g) The entire mitigation bank or in-lieu fee project site shall be protected in perpetuity in its mitigated state through conservation easement, deed restriction, or other appropriate instrument attached to the title for the subject property and shall be owned by the permittee or its designee.
(h) The Division of Coastal Management shall be provided copies of all monitoring reports prepared by the permittee or its designee for the authorized mitigation bank or in-lieu fee project site.
(i) If water control structures or other hydrologic alterations are proposed, such activities shall not increase the likelihood of flooding any adjacent property.
(j) Appropriate sedimentation and erosion control devices, measures, or structures such as silt fences, diversion swales or

berms, and sand fences shall be implemented to ensure that eroded materials do not enter adjacent wetlands, watercourses, and property.

(k) If one or more contiguous acre of property is to be graded, excavated, or filled, the applicant shall submit an erosion and sedimentation control plan with the Division of Energy, Mineral, and Land Resources, Land Quality Section. The plan shall be approved prior to commencing the land-disturbing activity.

*History Note: Authority G.S. 113A-107; 113A-118.1;*
*Eff. October 1, 2004;*
*Amended Eff. October 1, 2014; August 1, 2012 (see S.L. 2012-143, s.1.(f));*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2701 PURPOSE**

Persons seeking to construct marsh sills for wetland enhancement and shoreline stabilization in estuarine and public trust waters shall apply for a General Permit according to the rules in this Section. Marsh sills are defined as sills that are shore-parallel structures built in conjunction with existing, created, or restored wetlands. This general permit shall not apply within the Ocean Hazard System AECs or waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area. A Division of Coastal Management representative will make the determination whether the site features characteristics of the Estuarine Shoreline at the time of permit application.

*History Note: Authority G.S. 113A-107; 113A-118.1;*
*Temporary Adoption Eff. June 15, 2004;*
*Eff. April 1, 2005;*
*Temporary Amendment Eff. April 1, 2019;*
*Amended Eff. July 1, 2019;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2702 APPROVAL PROCEDURES**

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at the Regional Office indicated on the map located at https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51 and request approval for development as defined in G.S. 113A-130(5).

(b) The applicant shall provide:

(1) the site location, dimensions of the project area, and his or her name and address; and

(2) confirmation that a written statement has been obtained, signed by the adjacent riparian property owners, indicating that they have no objections to the proposed work; or

(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration to the Division of Coastal Management within 10 days of receipt of the notice and indicate that no response by the adjacent property owners will be interpreted as the adjacent property owners having no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

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

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

*History Note: Authority G.S. 113A-107; 113A-118.1;*
*Temporary Adoption Eff. June 15, 2004;*
*Eff. April 1, 2005;*
*Amended Eff. October 1, 2007;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2703 PERMIT FEE**

The applicant shall pay a permit fee of two hundred dollars ($200.00). This fee shall be paid by check or money order made payable to the Department of Environmental Quality.

*History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119.1;*
*Temporary Adoption Eff. June 15, 2004;*
*Eff. April 1, 2005;*
*Amended Eff. September 1, 2006;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2704 GENERAL CONDITIONS**

(a) Permittees shall allow authorized representatives of the Department of Environmental Quality (DEQ) to make inspections at any time in order to ensure that the activity being performed under authority of this General Permit set forth in this Section is in accordance with the terms and conditions prescribed herein.

(b) The placement of marsh sills authorized in these Rules shall not interfere with the established or traditional rights of navigation of the waters by the public.

(c) The permit set forth in this Section shall not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is because there are unresolved

questions concerning the proposed activity's impact Areas of Environmental Concern.

*History Note: Authority G.S. 113A-107; 113A-118.1;*
*Temporary Adoption Eff. June 15, 2004;*
*Eff. April 1, 2005;*
*Temporary Amendment Eff. April 1, 2019;*
*Amended Eff. July 1, 2019;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07H .2705 SPECIFIC CONDITIONS**

(a) A General Permit issued pursuant to this Section shall be applicable only for the construction of marsh sill structures built in conjunction with existing, created, or restored wetlands. Planted wetland vegetation shall consist only of native species per G.S. 113A-113(b)(1).
(b) The landward edge of the sill shall be positioned no greater than 30 feet waterward of the normal high water or normal water level or five feet waterward of the existing wetlands, whichever distance is greater.
(c) The permittee shall maintain the authorized sill, including wetlands and tidal inundation, in conformance with the terms and conditions of this permit, or the remaining sill structures shall be removed within 90 days of notification of noncompliance from the Division of Coastal Management.
(d) The height of sills shall not exceed 12 inches above normal high water, normal water level, or the height of the adjacent wetland substrate, whichever is higher.
(e) Sill construction authorized by this permit shall be limited to a maximum length of 500 feet.
(f) The sills shall have at least one five-foot opening every 100 feet and may be staggered, overlapped, or left open as long as the five-foot separation between sections is maintained. Overlapping sections shall not overlap more than 10 feet.
(g) The sill structure shall not exceed a slope of a one and a half foot horizontal distance over a one foot vertical rise. The width of the structure on the bottom shall not exceed 12 feet.
(h) For water bodies narrower than 150 feet, no portion of the structures shall be positioned offshore more than one sixth (1/6) the width of the waterbody at any point along its alignment.
(i) The sill shall not be within a navigation channel or associated setbacks marked or maintained by a state or federal agency.
(j) The sill shall not interfere with leases or franchises for shellfish culture.
(k) All structures shall have a minimum setback distance of 15 feet between any parts of the structure and the adjacent property owner's riparian access corridor, unless either a signed waiver statement is obtained from the adjacent property owner or the portion of the structure within 15 feet of the adjacent riparian access corridor is located no more than 25 feet from the normal high or normal water level. The riparian access corridor line is determined by drawing a line parallel to the channel, then drawing a line perpendicular to the channel line that intersects with the shore at the point where the upland property line meets the water's edge, as illustrated in 15A NCAC 07H .1205(t). Additionally, the sill shall not interfere with the exercise of riparian rights by adjacent property owners, including access to navigation channels from piers, or other means of access.
(l) Sills shall be marked at 50-foot intervals with yellow reflectors extending at least three feet above normal high water or normal water level and shall be maintained for the life of the structure.
(m) If the crossing of wetlands with mechanized construction equipment is necessary, temporary construction mats shall be utilized for the areas to be crossed. The temporary mats shall be removed upon completion of the construction of the sill structure. Material used to construct the sill shall not be stockpiled on existing wetlands or in open water unless contained in a containment structure supported by construction mats.
(n) Sedimentation and erosion control measures shall be implemented to ensure that eroded materials do not enter adjacent wetlands or waters.
(o) No excavation or filling, other than that necessary for the construction and bedding of the sill structure, is authorized by this general permit.
(p) Sills shall not be constructed within any native submerged aquatic vegetation. If submerged aquatic vegetation is present within a project area, a submerged aquatic vegetation survey shall be completed during the growing season of April 1 through September 30. All sills shall have a minimum setback of 10 feet from any native submerged aquatic vegetation as defined by the N.C. Marine Fisheries Commission.
(q) Sills shall not be constructed within any habitat that includes oyster reefs or shell banks. All sills shall have a minimum setback of 10 feet from any oysters, oyster beds, or shell banks.
(r) No excavation of the shallow water bottom or any wetland is authorized by this general permit.
(s) The sill material shall consist of clean rock, marl, oyster shell, or masonry materials such as granite or broken concrete, or other similar materials that are approved by the N.C. Division of Coastal Management. Sill material shall be free of loose sediment or exposed rebar. The sill material shall be of sufficient size and slope to prevent its movement from the approved alignment by wave or current action.

*History Note: Authority G.S. 113A-107; 113A-113(b)(1); 113A-118.1;*
*Temporary Adoption Eff. June 15, 2004;*
*Eff. April 1, 2005;*
*Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f));*
*Temporary Amendment Eff. April 1, 2019;*
*Amended Eff. July 1, 2019;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07I .0204 LOCAL ORDINANCE REQUIRED**

Each local government applying for an implementation and enforcement plan grant shall have adopted local ordinance(s) necessary to give effect to the local implementation and enforcement plan that has been approved by the Commission for its jurisdiction.

*History Note: Authority G.S. 113A-112; 113A-124; 113A-117;*
*Eff. December 10, 1977;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07I .0302 APPLICATION PROCESS**

(a) An application form is not required for local governments having entered into previous agreements with the Department for reimbursement under this Rule. Local governments intending to establish local implementation and enforcement programs without previous agreements shall contact the Division of Coastal Management at 400 Commerce Avenue, Morehead City, NC 28557.

(b) The geographic jurisdiction shall be the same as identified in the local Implementation and Enforcement Program. Where two or more local governments are combined for grant administration, a written statement to this effect shall be submitted to the Division of Coastal Management and signed by local officials authorized to enter into such agreements.

(c) Based on the availability of State or federal funds, agreements shall be renewed on an annual basis. The grant year runs from July 1 through June 30, and local governments may receive amendments to their contracts after the end of each grant year updating the previous agreements.

*History Note: Authority G.S. 113A-112; 113A-124;*
*Eff. December 10, 1977;*
*Amended Eff. June 1, 2005; October 1, 1988; October 1, 1982; May 20, 1980;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07I .0305 GRANT ADMINISTRATION**

(a) Reimbursement shall be made quarterly upon submittal of composite records after the last day of the last month of the quarter. Composite records will include each minor permit applicant's name, the date of the application, the date of public notice, the AEC type, the permit decision, the decision date, and any vouchers for training expenses, or other documents as required by the contract between the locality and the Department of Environmental Quality.

(b) Grant Contract. Prior to the disbursement of funds, the locality and the Department shall become parties to a contract in accordance with 15A NCAC 07I .0306.

*History Note: Authority G.S. 113A-112; 113A-124;*
*Eff. August 1, 1978;*
*Amended Eff. June 1, 2006; May 1, 1990; November 1, 1984; October 1, 1982; May 20, 1980;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07I .0306 GRANT CONDITIONS**

(a) All contracts shall provide notice of any conditions which affect the quarterly grant payments.

(b) The following conditions shall apply:

(1) Per permit reimbursements shall only be made after certification is received by the Secretary (from the local permit officer) that all CAMA standards have been observed when the permitted activity is completed;

(2) Final quarterly payment for a given fiscal year shall be withheld pending receipt by the Secretary of an annual permit summary, said summary to consist of a description of all permits processed in the locality by the minor permit applicant's name, address, date of application, AEC type, permit decision, and decision date;

(3) Quarterly verification from the Division of Coastal Management district office field representative specified in the contract that the following permit information has been received for each permit processed in the quarter:

(A) one copy of the permit application mailed to the field representative or Division of Coastal Management district office within five business days of acceptance by the local government,

(B) one copy of the legal notice associated with the application,

(C) one copy of the final decision and any associated permit conditions;

(c) No quarterly payment shall be made until all applicable grant conditions are met. Local governments not meeting the timetable specified in Subparagraph (b)(3) of this Rule shall not be reimbursed for the permits in question.

*History Note: Authority G.S. 113A-124;*
*Eff. May 20, 1980;*
*Amended Eff. May 1, 1990; June 12, 1981;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07I .0401 PROGRAM COSTS**

(a) Costs associated with the management of a local Implementation and Enforcement Program shall be recovered on a per permit basis unless specified elsewhere in this Section.

(b) The per permit reimbursement rate has been set in consideration of local costs, such as salaries, office supplies, copying, mailing and telephone use, and funds made available to the Division of Coastal Management. These rates are set as follows:

(1) All county permit-letting authorities are eligible to receive seventy-five dollars ($75.00) for each processed permit.

(2) All municipal permit-letting authorities are eligible to receive fifty-five dollars ($55.00) for each processed permit.

(3) For multi-unit programs involving a county and a municipality, the higher county rate applies; however, programs involving two or more municipalities shall use the municipal rate.

(4) Follow-up inspections are required when the permitted activity is completed, and such inspections shall be documented on a form provided by the Division; the follow-up inspection fee received by all local governments is set at forty dollars ($40.00).

(c) Training costs for Local Permit Officers at the Department of Environmental Quality annual training session are limited to a maximum two hundred dollars ($200.00/LPO) for up to three LPOs per local government upon submittal of proper receipts. No funds shall be provided for attendance at Coastal Resources Commission meetings.

*History Note: Authority G.S. 113A-112; 113A-124;*
*Eff. December 10, 1977;*
*Amended Eff. July 1, 2013; May 1, 1990; October 1, 1982; May 20, 1980; August 1, 1978;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07I .0402 INELIGIBLE ACTIVITIES**

(a) Costs not associated with CAMA permit letting are ineligible for reimbursement.

(b) The following costs are not ineligible:

(1) the costs of local appeal,
(2) attorneys fees,
(3) bookkeeping or accountant costs,
(4) fines and penalties.

*History Note: Authority G.S. 113A-112; 113A-124;*
*Eff. December 10, 1977;*
*Amended Eff. August 1, 1978;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07I .0505 CONTENT OF PLAN**

(a) The plan for the local implementation and enforcement program shall include the following elements:

(1) the geographic extent of jurisdiction of the local management program;
(2) a description of the criteria to be used in choosing the local permit officer;
(3) methods of permit processing and coordinating procedures;
(4) methods for identifying and taking into account projects and impacts of regional, State, and national concern;
(5) a copy of all existing or proposed local ordinances relating to zoning and land use in areas of environmental concern or any other subject in order that the Commission may determine:
(A) whether there is sufficient authority to enforce the program described in the local implementation and enforcement plan;
(B) whether any local ordinances are inconsistent with the approved land use plan. No implementation and enforcement plan shall be approved for any county or city if the Commission determines either that the local government unit lacks sufficient authority to enforce the program or that the local government unit has an ordinance or ordinances inconsistent with its land use plan.

(b) The plan may also include the following elements for the remainder of the zoning jurisdiction of the county or city:

(1) a copy of all local ordinances relating to land use or any other subject relevant to land use;
(2) procedures for assuring consistency of governmental actions with the approved land use plan for the entire jurisdiction.

*History Note: Authority G.S. 113A-117; 113A-124(c);*
*Eff. November 1, 1984;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07I .0507 LOCAL PERMIT OFFICER**

(a) The local implementation and enforcement plan shall designate an existing local official or create a new position for an official who shall receive, review, and take all appropriate action as to applications for minor development permits. The locality shall inform the Department of all Local Permit Officers (LPO) who will implement or enforce the local implementation and enforcement plan.

(b) The implementation and enforcement plan shall specify the job requirements of the LPO as mandated by this Section.

(c) The LPO shall attend the Department's training course within one year of appointment. The LPO shall also attend those regular regional work sessions held by the Department to inform and coordinate the activities of the LPOs in each region.

(d) In order to continue to process permits in a timely fashion, eligible permit-letting agencies shall immediately notify the Commission in writing when the LPO resigns or is for any reason unable to perform their duties.

(e) This notice shall indicate the method or methods by which the locality will continue to process permits in a timely fashion. Such methods may include, but are not limited to, the following:

(1) The appointment of a temporary (LPO) until such time as a permanent replacement is selected.
(2) The appointment of one or more LPO(s).
(3) Evidence that an agreement exists between the locality and another agency for the assumption of the implementation and enforcement program.
(4) A formal request that the Secretary assume the permit function for the locality.

(f) From date of receipt and acceptance of application and/or decision on an application, the LPO shall within five business days mail and submit copies of same to the field representative or the nearest district office of the Division of Coastal Management.

(g) The LPO shall, on a quarterly basis, summarize for the Commission the receipt and disposition of all permit applications for the immediately preceding quarter.

*History Note: Authority G.S. 113A-117; 113A-121(b); 113A-124;*
*Eff. November 1, 1984;*
*Amended Eff. May 1, 1990;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07I .0509 NOTICE OF CIVIL ACTION**

Local Permit Officers shall notify the Division of Coastal Management of any civil action undertaken by or against them under the Coastal Area Management Act as soon as they become aware of such action.

*History Note: Authority G.S. 113A-117; 113A-126(b);*
*Eff. November 1, 1984;*
*Amended Eff. June 1, 2006; May 1, 1990;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07I .0510 COMMISSION REVIEW AND ACCEPTANCE OF THE LOCAL IMPLEMENTATION AND ENFORCEMENT PLAN**

The local implementation and enforcement plan adopted by any local permit-letting agency shall be submitted to the Commission for review. The Commission shall evaluate the proposed local implementation and enforcement plan as required in G.S. 113A-117(c) and shall assess the plan in terms of the local land use plan, the CAMA Land Use Planning Guidelines described in 15A NCAC 7B .0100, and the Coastal Area Management Act.

*History Note: Authority G.S. 113A-117(c); 113A-124;*
*Eff. November 1, 1984;*
*Amended Eff. October 1, 1988;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07I .0601 NOTICE AND PUBLIC HEARING REQUIREMENT**

Amendment of the local implementation and enforcement plan shall follow the notice and public hearing requirements set forth in the Coastal Area Management Act and rules of this Section pertaining to the adoption of the original program.

*History Note: Authority G.S. 113A-117(b);*
*Eff. November 1, 1984;*
*Amended Eff. December 1, 1991;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07I .0701 SANCTION FOR VIOLATIONS BY THE LOCAL PERMIT-LETTING AGENCY**

(a) When the local permit-letting agency fails to administer or enforce the local implementation and enforcement plan submitted to and approved by the Commission, the Commission shall:

(1) notify the local permit-letting agency in writing that it is in violation of the provisions of its local implementation and enforcement plan and specify the grounds for such charges of violations;

(2) inform the local permit-letting agency of specific deficiencies in administration and enforcement;

(3) inform the local permit-letting authority of its opportunity to request a hearing before the Commission at which time it may make any presentation or present any arguments relevant to the issue raised in the Commission letter to the local agency. The Commission may at its sole discretion allow for public comment at the hearing.

(b) If the deficiencies in administration and enforcement are not remedied or corrected within 90 days after receipt of Commission notification of such violation, the Commission shall assume the duties of the local permit-letting agency until the local permit-letting agency indicates to the Commission in writing its willingness and ability to perform in conformance with its approved local implementation and enforcement plan. Any changes in circumstances affecting the agency's willingness and ability to properly administer the local implementation and enforcement plan also shall be substantiated in writing to the Commission.

*History Note: Authority G.S. 113A-117(d); 113A-124;*
*Eff. November 1, 1984;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07J .0102 GENERAL DEFINITIONS**

The following definitions apply whenever these words are used in this Subchapter:

(1) "Areas of Environmental Concern" (AECs) means geographic areas within the coastal area which the Coastal Resources Commission chooses to designate for special environmental and land use regulations. The types of areas which may be designated as AECs are described in G.S. 113A-113. Areas which have already been designated are defined in 15A NCAC 07H, "State Guidelines for Areas of Environmental Concern."

(2) "Department" (DEQ) means the North Carolina Department of Environmental Quality.

(3) "Excavation Project" means any moving, digging, or exposing of bottom materials, marshland substrate, or root or rhizome matter in the estuarine waters, tidelands, marshlands and State-owned lakes, regardless of the equipment or method used.

(4) "Filling Project" means the placing of any materials in estuarine waters, tidelands, marshlands, and State-owned lakes so as to raise the elevation of the area upon which the material is placed. Structure placement does not constitute a filling or excavation project. The placement of shell material specifically for the purpose of oyster culture also shall not be considered a filling project.

(5) "Local Management Program" means the local implementation and enforcement program of a coastal city or county that has undertaken to administer a permit program for minor development in areas of environmental concern located within such city or county.

(6) "Local Permit Officer" refers to the locally designated official who will administer and enforce the minor development permit program in areas of environmental concern and all parts of the land use plan which the local government may wish to enforce over the entire planning area.

(7) "Division" means the Division of Coastal Management.

(8) "Permit" refers to CAMA major development permits, CAMA minor development permits and dredge and fill permits unless the context clearly indicates otherwise.

(9) "Secretary" refers to the Secretary of Environment and Natural Resources.

*History Note: Authority G.S. 113-229; 113A-116; 113A-117; 113A-118;*
*Eff. March 15, 1978;*
*Amended Eff. June 1, 2006; April 1, 1997; May 1, 1990; November 1, 1984;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07J .0201 PERMIT REQUIRED**

After March 1, 1978, every person wishing to undertake any development in an area of environmental concern shall obtain a permit from the Department, in the case of a major development or dredge and fill permit, or from the local permit officer, in the case of a minor development permit, unless such development is exempted by the Commission.

*History Note: Authority G.S. 113-229; 113A-118; 113A-124;*
*Eff. March 15, 1978;*
*Amended Eff. November 1, 1984;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07J .0209 ISSUANCE OF PERMITS**

(a) The Commission hereby delegates to the Department the authority to issue or deny CAMA permits. The decision to issue or deny the permit will be based on the criteria set forth in G.S. 113A-120, the standards for development set forth in 15A NCAC, Subchapters 7H and 7M, and any other applicable rules adopted by the Commission. The Department may condition issuance of permits on such conditions as are considered necessary to ensure compliance with these criteria and standards. The Department's decisions to grant or deny CAMA permits may be appealed as provided in G.S. Chapter 150B, G.S. 113A-121.1, and 15A NCAC 7J Section .0300.

(b) The Department will make a final decision with respect to a dredge and fill permit application as provided in G.S. 113-229(e) upon considering the field investigation report, the comments of all interested state agencies, the comments of adjacent riparian landowners and the comments of other interested parties. The Department's decisions to grant or deny dredge and fill permits may be appealed as provided in G.S. Chapter 150B, G.S. 113-229, and 15A NCAC 7J Section .1000.

(c) In cities and counties that have developed local management programs, applications for minor development permits shall be considered by the local permit officer. The decision to issue or deny the permit will be based on the applicable criteria set forth in G.S. 113A-120, the applicable standards for development set forth in 15A NCAC, Subchapters 7H and 7M, and any other applicable rules adopted by the Commission. The local permit officer may condition issuance of a permit on such conditions as are considered necessary to ensure compliance with criteria and standards. A city's or county's decision to grant or deny a CAMA minor development permit may be appealed as provided in G.S. Chapter 150B, G.S. 113A-121.1, and 15A NCAC 7J Section .0300.

*History Note: Authority G.S. 113-229; 113A-118(c); 113A-122(c); 113A-124;*
*Eff. March 15, 1978;*
*Amended Eff. October 1, 1988; November 1, 1984; September 6, 1979; March 5, 1979;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07J .0211 NON-CONFORMING DEVELOPMENT**

A non-conforming structure is any structure within an AEC other than Ocean Hazard and Inlet Hazard AECs that is inconsistent with current CRC rules, and was built prior to the effective date(s) of the rule(s) with which it is inconsistent. Replacement of such structures shall be allowed when all of the following criteria are met:

(1) the structure shall not be enlarged beyond its original dimensions;
(2) the structure shall serve the same or similar use;
(3) there are no alternatives for replacing the structure to provide the same or similar benefits to the structure owner in compliance with current rules; and
(4) the structure will be rebuilt so as to comply with current rules to the maximum extent possible.

*History Note: Authority G.S. 113A-107(a),(b);*
*Eff. July 1, 1990;*
*Amended Eff. December 1, 1991;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07J .0301 WHO IS ENTITLED TO A CONTESTED CASE HEARING**

Under G.S. 113A-121.1(b), persons other than those entitled to a contested case hearing on a permit decision under Paragraph (a) of this Rule may file a request for such a hearing and with the Director, Division of Coastal Management, Department of Environmental Quality (DEQ), 400 Commerce Avenue, Morehead City, NC 28557, and a copy shall be filed with the Attorney General's Office, 9001 Mail Service Center, Raleigh, NC 27699-9001. The Commission hereby delegates to the Chair the authority to determine whether persons other than those entitled to a hearing shall be granted a hearing.

*History Note: Authority G.S. 113-229; 113A-118(a); 113A-121.1; 113A-124;*
*Eff. March 15, 1978;*
*Amended Eff. July 1, 1990; October 1, 1988; November 1, 1984;*
*RRC Objection due to lack of Statutory Authority Eff. February 20, 1992;*
*Amended Eff. March 31, 1992;*
*RRC Objection due to lack of Statutory Authority Eff. March 19, 1992;*
*Amended Eff. June 1, 2005; April 1, 1992;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07J .0302 PETITION FOR CONTESTED CASE HEARING**

(a) Any petition shall conform to the requirements of G.S. 150B-23. A copy of the petition shall be served on the Director, Division of Coastal Management, 400 Commerce Avenue, Morehead City NC 28557, and on the Attorney General's Office, 9001 Mail Service Center, Raleigh, NC 27699-9001. If a minor development permit is appealed, a copy of the petition shall also be served on the local permit officer. Failure to file any petition

within the time period in G.S. 113A-121.1 (a) and (b) constitutes a waiver of the opportunity for a contested case hearing.
(b) Upon the request of the Director, the local permit officer shall submit a certified copy of the entire record of any minor permit decision which is being appealed to the Director. The record shall include the elements indicated in 15A NCAC 07I .0508(c).

*History Note: Authority G.S. 113-229; 113A-118(a); 113A-121.1; 113A-124;*
*Eff. March 15, 1978;*
*Amended Eff. July 1, 1990; October 1, 1988; November 1, 1984; July 1, 1982;*
*RRC Objection due to lack of Statutory Authority Eff. February 20, 1992;*
*Amended Eff. March 31, 1992;*
*RRC Objection due to lack of Statutory Authority Eff. March 19, 1992;*
*Amended Eff. June 1, 2005; April 1, 1992;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07J .0602 PROCEDURE FOR REQUESTING DECLARATORY RULINGS**

(a) All requests for a declaratory ruling shall be filed with the Director, Division of Coastal Management, Department of Environmental Quality (DEQ), 400 Commerce Avenue, Morehead City NC 28557, and also the Attorney General's Office, 9001 Mail Service Center, Raleigh NC 27699-9001. All requests shall include the following: the aggrieved person's name and address; the rule, statute or order for which a ruling is desired; and a statement as to whether the request is for a ruling on the validity of a rule or on the applicability of a rule, order or statute; and certified mail receipts showing the request was sent to the owners of property adjacent to the property that is the subject of the declaratory ruling.
(b) A request for a ruling on the applicability of a rule, order, or statute shall include a description of the factual situation on which the ruling is to be based. A request for a ruling on the validity of a Commission rule shall state the aggrieved person's reasons for questioning the validity of the rule. A person may ask for both types of rulings in a single request. A request for a ruling shall include or be accompanied by:

(1) a statement of facts proposed for adoption by the Commission; and
(2) a draft of the proposed ruling.

*History Note: Authority G.S. 113A-124; 150B-4;*
*Eff. June 1, 1979;*
*Amended Eff. June 1, 2005; October 1, 1992; November 1, 1991; July 1, 1990; May 1, 1990;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07J .0603 PROCEDURES: CONSIDERING REQUESTS FOR DECLARATORY RULINGS**

(a) The Commission hereby delegates to the Chairman the authority to grant or deny requests for declaratory rulings and to determine whether notice of the declaratory ruling request should be provided to anyone other than the adjacent property owners. The Division of Coastal Management shall review each request for a declaratory ruling and shall prepare a recommendation for the Chairman as to whether the Commission should consent to issue a ruling or whether for good cause the request for a declaratory ruling should be denied. The Chairman shall deny a request for declaratory ruling on finding that:

(1) the requesting party and the Division of Coastal Management cannot agree on a set of stipulated facts to support a ruling;
(2) the matter is the subject of a pending contested case hearing; or
(3) no genuine controversy exists as to the application of a statute or rule to a proposed project or activity.

(b) After consenting to issue a ruling, the Commission shall place the declaratory ruling on the agenda for its next regularly scheduled meeting. The Commission shall provide notice of the declaratory ruling proceeding to the requesting party, the adjacent property owners, and other persons to whom the Commission decides to give notice no less than 10 days before the date for which the declaratory ruling is set. The requesting party and other persons to whom the Commission decides to give notice shall be allowed to submit written comments concerning the proposed declaratory ruling.
(c) If a ruling is to be issued, the Chairman shall decide whether notice should be given to persons other than the party requesting the ruling and the adjacent property owners. In making such a decision, the Commission shall consider such factors as: whether additional public participation would aid the Commission in reaching a decision; whether any persons have requested in writing to be notified of proposed declaratory rulings; whether the property or personal rights of other persons might be directly affected by the requested ruling; and whether the proposed ruling would affect the application and interpretation of a rule in which other persons might be interested. All persons receiving notice of the declaratory ruling, including all members of the public who respond to a published notice of the proposed ruling, may submit written comments to the Commission concerning the proposed declaratory ruling pursuant to Paragraph (b) of this Rule at least five days prior to the date of the proposed ruling; all such comments shall be provided to the Commission and shall be included in the record of the declaratory ruling.
(d) Unless the Department waives the opportunity to be heard, it shall be a party to any request for declaratory ruling. The requesting party and the Department shall each be allowed 30 minutes to present oral arguments to the Commission. Neither party may offer testimony or conduct cross-examination before the Commission. The declaratory ruling shall be determined on the basis of the statement of undisputed facts submitted by the parties.
(e) The Commission will keep a record of each declaratory ruling, which will include at a minimum the following items:

(1) the request for a ruling;
(2) any written comments by interested parties;
(3) the statement of undisputed facts on which the ruling was based;
(4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;
(5) any other matter considered by the Commission in making the decision; and

(6) the declaratory ruling together with the reasons therefore.

(f) A declaratory ruling is binding on the Commission and the person requesting it unless it is altered or set aside by the court. The Commission may not retroactively change a declaratory ruling, but nothing in this Section prevents the Commission from prospectively changing a ruling.

(g) A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case. Unless the requesting party consents to the delay, failure of the Commission to issue a ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

*History Note: Authority G.S. 113A-124; 150B-4;*
*Eff. June 1, 1979;*
*Amended Eff. October 1, 1992; October 1, 1988;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07J .0605 PETITIONS FOR RULEMAKING**

(a) Any person wishing to request the adoption, amendment, or repeal of a rule shall make this request in a petition addressed to the Division of Coastal Management. The petition shall specify it is filed pursuant to G.S. 150B-20 and shall contain the following information:

(1) either a draft of the proposed rule or a summary of its contents;
(2) a statement of reasons for adoption of the proposed rule(s);
(3) a statement of the effect on existing rules or orders;
(4) any data in support of the proposed rule(s);
(5) a statement of the effect of the proposed rule on existing practices; and
(6) the name and address of the petitioner.

(b) The petition will be placed on the agenda for the next regularly scheduled commission meeting, if received at least four weeks prior to the meeting, and the director shall prepare a recommended response to the petition for the Commission's consideration. Petitions will be considered in accordance with the requirements of G.S. 150B-20.

*History Note: Authority G.S. 113A-124; 150B-20;*
*Eff. January 1, 1989;*
*Amended Eff. October 1, 1992;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07J .0701 VARIANCE PETITIONS**

(a) Any person whose application for a CAMA major or minor development permit has been denied or issued with condition(s) that the person does not agree with may petition for a variance from the Commission by means of the procedure described in this Section. Before filing a petition for a variance from a rule of the Commission, the person must seek relief from local requirements restricting use of the property, and there must not be pending litigation between the petitioner and any other person which may make the request for a variance moot.

(b) The procedure in this Section shall be used for all variance petitions except when:

(1) the Commission determines that more facts are necessary; or
(2) there are controverted facts that are necessary for a decision on the variance petition.

(c) Variance petitions shall be submitted on forms provided by the Department of Environmental Quality. The following information shall be submitted before a variance petition is considered complete:

(1) the case name and location of the development as identified on the denied permit application;
(2) a copy of the deed to the property on which the proposed development would be located;
(3) a copy of the permit application and denial for the development in question;
(4) the date of the petition, and the name, address, and phone number of the petitioner and his or her attorney, if applicable;
(5) a complete description of the proposed development, including a site drawing with topographical and survey information;
(6) a stipulation that the proposed project is inconsistent with the rule from which the petitioner seeks a variance;
(7) notice of the variance petition sent via certified mail, return receipt requested to the adjacent property owners and persons who submitted written comments to the Division of Coastal Management or the Local Permit Officer during the permit review process and copies of the documents which indicate that the certified mail notices were received or that deliveries were attempted;
(8) an explanation of why the petitioner believes that the Commission should make the following findings, all of which are necessary for a variance to be granted:
    (A) that unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;
    (B) that such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property;
    (C) that such hardships did not result from actions taken by the petitioner; and
    (D) that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, standards or orders; will secure the public safety and welfare; and will preserve substantial justice.
(9) a proposed set of stipulated facts, for staff's consideration, containing all of the facts relied upon in the petitioner's explanation as to why he meets the criteria for a variance; and

(10) proposed documents, for the staff's consideration, that the petitioner wants the Commission to consider.

(d) Petitions shall be mailed to the Director of the Division of Coastal Management, Department of Environmental Quality, 400 Commerce Avenue, Morehead City NC 28557 and to Air and Natural Resources Section, Environmental Division, Attorney General's Office, 9001 Mail Service Center, Raleigh, NC 27699-9001.

(e) A variance petition shall be considered by the Commission at a scheduled meeting. Petitions shall be scheduled in chronological order based upon the date of receipt of a complete variance petition by the Division of Coastal Management. A complete variance petition, as described in Paragraph (c) of this Rule, shall be received by the Division of Coastal Management at least six weeks in advance of a scheduled Commission meeting to be considered by the Commission at that meeting. If the petitioner seeks to postpone consideration of his or her variance request, the request shall be treated as though it was filed on the date petitioner requested postponement and scheduled for hearing after all then pending variance requests.

(f) Written notice of a variance hearing or Commission consideration of a variance petition shall be provided to the petitioner and the permit officer making the initial permit decision.

*History Note: Authority G.S. 113A-120.1; 113A-124;*
*Eff. December 12, 1979;*
*Amended Eff. December 1, 1991; May 1, 1990; March 1, 1988, February 1, 1983;*
*Temporary Amendment Eff. December 20, 2001;*
*Temporary Amendment Expired October 12, 2002;*
*Temporary Amendment Eff. December 1, 2002;*
*Amended Eff. March 1, 2009; June 1, 2005; August 1, 2004;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07J .0702 STAFF REVIEW OF VARIANCE PETITIONS**

(a) The Division of Coastal Management, as staff to the Commission, shall review petitions to determine whether they are complete according to the requirements set forth in Rule .0701. Incomplete petitions and a description of the deficiencies shall be returned to the petitioner. Complete variance petitions shall be scheduled within two Commission meetings.

(b) The staff and the petitioner shall determine the facts that are relevant to the Commission's consideration of the variance petition. For all facts upon which staff and the petitioner agree, a document entitled Stipulated Facts shall be prepared and signed by both parties.

(c) After the facts agreed upon by the petitioner and staff, the staff shall prepare a written recommendation which shall be submitted to the Commission before the petition is considered. The staff recommendation shall include:

(1) a description of the property in question;
(2) a description of how the use of the property is restricted or otherwise affected by the applicable rules;
(3) the Stipulated Facts;
(4) staff's position on whether the petition meets or does not meet each of the requirements for a variance; and
(5) petitioner's position on each of the variance criteria.

Copies of the staff recommendation shall be provided to the petitioner and the permit officer making the initial permit decision at the same time as it is provided to the Commission. If the Stipulated Facts are not agreed upon at least four weeks prior to a scheduled Coastal Resources Commission meeting, the variance petition shall be considered at the next scheduled Commission meeting.

(d) If the staff determines that agreement cannot be reached on sufficient facts on which to base a variance decision, the petition shall be considered by means of an administrative hearing to determine the relevant facts.

*History Note: Authority G.S. 113A-120.1; 113A-124;*
*Eff. December 12, 1979;*
*Amended Eff. December 1, 1991; May 1, 1990; October 1, 1988; March 1, 1988;*
*Temporary Amendment Eff. December 20, 2001;*
*Temporary Amendment Expired October 12, 2002;*
*Temporary Amendment Eff. December 1, 2002;*
*Amended Eff. July 3, 2008; August 1, 2004;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07J .0703 PROCEDURES FOR DECIDING VARIANCE PETITIONS**

(a) The Commission may review the variance petition and staff recommendation and hear oral presentation by the petitioner, if any, in full session or may appoint a member or members to do so. In cases where a member or members are appointed, they shall report a summary of the facts and a recommended decision to the Commission.

(b) The Commission or its appointed member or members shall be provided with copies of the petition, the stipulated facts, and the staff recommendation before considering the petition.

(c) At the Commission's request, staff shall orally describe the petition to the Commission or its appointed member(s) and shall present comments concerning whether the Commission should make the findings necessary for granting the variance. The petitioner shall also be allowed to present oral arguments concerning the petition. The Commission may set time limits on such oral presentations.

(d) The final decision of the Commission may be made at the meeting at which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by certified mail, return receipt requested within 30 days of the meeting at which the Commission reached its decision. In the event that the Commission cannot reach a final decision because it determines that more facts are necessary, it shall remand the matter to staff and the petitioner with instructions for the parties to either agree to the necessary fact(s) or to request a hearing in the Office of Administrative Hearings.

(e) Final decisions concerning variance petitions shall be made by concurrence of a majority of a quorum of the Commission.

*History Note: Authority G.S. 113A-120.1; 113A-124;*

*Eff. December 12, 1979;*
*Amended Eff. December 1, 1991; March 3, 1981;*
*Temporary Amendment Eff. December 20, 2001;*
*Temporary Amendment Expired October 12, 2002;*
*Temporary Amendment Eff. December 1, 2002;*
*Amended Eff. March 1, 2009; August 1, 2004;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07M .0702 DEFINITIONS**

For the purposes of this Subchapter, mitigation is defined as the enhancement, creation, or restoration of coastal resources to maintain the characteristics and processes of coastal ecosystems such as natural biological productivity, habitat and species diversity, physical integrity, water quality and aesthetics.

*History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124;*
*Eff. January 1, 1984;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 07M .0705 REVIEW PROCEDURES**

Initial denials of mitigation projects, pursuant to the procedures of 15A NCAC 7M .0703(c), and permit denials, based on inconsistency with 15A NCAC 7H .0208, which are to be offset by mitigation proposals shall be reviewed by the CRC through the appeal procedures set forth in 15A NCAC 7J .0300.

*History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124;*
*Eff. January 1, 1984;*
*Amended Eff. November 1, 1984;*
*Readopted Eff. October 1, 2022.*

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**15A NCAC 10A .1502 REPLACEMENT COSTS OF WILDLIFE**

(a) For the purpose of this Rule, "replacement cost" means the monetary amount to replace a specimen of wildlife that has been taken, injured, removed, harmfully altered, damaged, or destroyed. As specified in G.S. 113-267, this term shall be broadly construed to include indirect costs of replacement if direct stocking or replacement is not feasible, including the costs of habitat improvement or restoration, the establishment of sanctuaries, and any other recognized conservation technique.

(b) The following factors shall be considered when determining replacement costs:

(1) whether the species has a season for take;
(2) whether the species is classified as endangered, threatened, or special concern;
(3) the relative frequency of species occurrence in the State;
(4) the extent of existing suitable habitat for the species within the State;
(5) the unique habitat requirements of the species;
(6) the cost of acquiring, by purchase or long-term lease, lands and waters for habitat development;
(7) the cost of improving and maintaining suitable habitat for the species on lands and waters owned or acquired by the Commission;
(8) the cost of live-trapping the species in areas of adequate populations and transplanting them to areas of suitable habitat with low populations;
(9) the availability of replacement specimens and the cost of acquisition for restocking species in the wild;
(10) the cost of propagating and rearing the species in captivity or a hatchery and the cost of transporting them to an area with suitable habitat;
(11) the ratio between the natural life expectancy of the species and the period of its probable survival in the wild when having been reared in captivity;
(12) the consumer price index; and
(13) any other factor that gives value to the species.

(c) Based on the factors in Paragraph (b) of this Rule, the following scheduled amounts shall represent the estimated replacement cost of an individual wildlife specimen. Replacement costs are per individual for wildlife species and per inch for fish species unless otherwise noted:

| Species | | Replacement Cost |
|---|---|---|
| Birds | | |
| | Crow | 4.00 |
| | Dove | 13.00 |
| | Duck | |
| | American black duck | 125.00 |
| | Canvasback | 125.00 |
| | Gadwall | 125.00 |
| | Long-tailed duck | 125.00 |
| | White-winged scoter | 125.00 |
| | All other ducks | 41.00 |
| | Goose (includes Brant and Snow) | 125.00 |
| | Grouse | 125.00 |
| | Pheasant | 37.00 |
| | Quail | 125.00 |
| | Rail | |
| | Clapper, king, and Virginia | 125.00 |
| | Coot, Gallinule, Moorhen, and Sora | 37.00 |
| | Snipe | 26.00 |
| | Swan, tundra | 1078.00 |
| | Woodcock | 125.00 |
| Big Game | | |
| | Bear, black | 2232.00 |
| | Deer | 602.00 |
| | Turkey, wild | 525.00 |
| Small Game | | |
| | Beaver | 104.00 |
| | Bobcat | 647.00 |
| | Fox | 88.00 |
| | Mink | 75.00 |
| | Muskrat | 19.00 |
| | Opossum | 6.00 |

| | |
|---|---|
| Otter | 647.00 |
| Rabbit | 13.00 |
| Raccoon | 58.00 |
| Skunk | 19.00 |
| Squirrel, fox | 54.00 |
| Squirrel, gray and red | 17.00 |
| Weasel | 11.00 |
| Reptiles | |
| Kingsnake, scarlet | 100.00 |
| Milksnake, coastal plain | 200.00 |
| Milksnake, eastern | 100.00 |
| Snake, eastern hognose | 100.00 |
| Turtle, eastern box | 150.00 |
| Turtle, spotted | 150.00 |
| Elk | 2500.00 |
| Any other species with no open season | 54.00 |
| Endangered Species | 4960.00 |
| Threatened Species | 4313.00 |
| Special Concern Species | 3000.00 |
| Fish Species | |
| Bass | |
| Alabama Bass | 0.80 |
| Hybrid (Bodie) Bass | 1.27 |
| Largemouth Bass | 0.80 |
| Redeye Bass | 0.80 |
| Smallmouth Bass | 2.34 |
| Spotted Bass | 0.80 |
| Striped Bass | 1.27 |
| White | 0.25 |
| Bullhead | |
| Black Bullhead | 1.72/fish |
| Brown Bullhead | 1.72/fish |
| Flat Bullhead | 1.72/fish |
| Snail Bullhead | 1.72/fish |
| Yellow Bullhead | 1.72/fish |
| Catfish | |
| Blue Catfish | 0.61 |
| Channel Catfish | 0.61 |
| Flathead Catfish | 0.61 |
| White Catfish | 0.61 |
| Crappie | 0.48 |
| Kokanee Salmon | 0.71 |
| Muskellunge | 9.99 |
| Pickerel | |
| Chain Pickerel | 0.99 |
| Redfin Pickerel | 0.99 |
| Sauger | 0.92 |
| Shad | |
| American Shad | 1.40/fish |
| Hickory Shad | 1.40/fish |
| Sunfish | |
| Bluegill Sunfish | 2.65/fish |
| Flier Sunfish | 2.65/fish |
| Green Sunfish | 2.65/fish |
| Pumpkinseed Sunfish | 2.65/fish |
| Redbreast (Robin) | 2.65/fish |
| Redear (Shellracer) | 2.65/fish |
| Roanoke Bass | 2.65/fish |
| Rock Bass Sunfish | 2.65/fish |
| Warmouth Sunfish | 2.65/fish |
| Trout | |
| Brook Trout | 0.71 |
| Brown Trout | 0.71 |
| Rainbow Trout | 0.71 |
| Walleye | 0.92 |
| White Perch | 0.25 |
| Yellow Perch | 0.92 |
| All other game fish | 0.76/fish |
| All other nongame fish | 1.87/fish |
| Endangered, Threatened, Special Concern | |
| Mussels | 50.54/mussel |
| Crayfish | 50.00/crayfish |
| Finfish | 157.54/fish |

(d) The following factors shall be considered when determining the costs of an investigation conducted pursuant to G.S. 143-215.3(a)(7) or by court order for the purpose of determining the cost of replacement of wildlife:

(1) the time expended by the employee conducting or involved in the investigation, including travel time between the place of usual employment and the site of the investigation, and the time required in formulating and rendering the report;

(2) the total compensation cost of service to the state for each employee involved, including annual salary, total insurance, and the state's contribution to social security taxes and to the applicable retirement system;

(3) subsistence costs for the investigating personnel, including meals, reasonable gratuities, and lodging, when required;

(4) the cost of all necessary transportation;

(5) the use or rental equipment or vehicles, when required;

(6) the cost of cleaning, repairing, or replacing any clothing damaged, soiled, or contaminated by conducting the investigation; and

(7) any other expense directly related to and necessitated by the investigation.

(e) In assessing the cost of time expended in completing the investigation, the time expended by each person required to take part in the investigation shall be recorded in hours, the value of which shall be computed according to the ratio between the annual costs of service of the employee and his or her total annual working hours 2087 hours reduced by holidays, annual leave entitlement, and earned sick leave. Other costs shall be assessed as follows:

(1) the actual cost of meals, reasonable gratuities, and lodging away from home, not to exceed the current maximum per diem for state employees at the time of the investigation;

(2) total mileage by motor vehicle multiplied by:

(A) the then current rate per mile for travel by state-owned vehicle; or
(B) the then current rate per mile for travel by privately owned vehicle, if applicable;
(3) ten dollars ($10.00) per hour for boat and motor use;
(4) uniform and clothing cleaning and repair cost; and
(5) any other expense directly related to and necessitated by the investigation.

*History Note: Authority G.S. 113-134; 113-267; 143-215.3; Eff. Pending consultation pursuant to G.S. 12-3.1.*

**15A NCAC 10B .0101 IMPORTATION OF WILD ANIMALS, BIRDS, AND NATIVE REPTILES AND AMPHIBIANS**

(a) Before any live wild bird, wild animal, or any native reptile or amphibian, is imported into North Carolina for any purpose, a permit shall be obtained from the Executive Director of the North Carolina Wildlife Resources Commission authorizing the importation, using application forms provided by the Commission, available at ncwildlife.org, and from the North Carolina Department of Agriculture and Consumer Services pursuant to 02 NCAC 52B .0200, if applicable.

(b) Domestically raised game birds, chukars, and Hungarian partridges imported into North Carolina shall be accompanied by a certificate or label showing the name and address of the shipper and the National Poultry Improvement plan (NPIP) Disease Program Status of the flock of origin pursuant to 02 NCAC 52B .0603. If the source birds are not part of NPIP, they must be tested pullorum-typhoid and avian influenza negative by NPIP standards within 21 days prior to entry into North Carolina. Health certificates for imported waterfowl shall be available for inspection by authorized Commission personnel upon request.

*History Note: Authority G.S. 106.549.97; 113-134; 113-272.6; 113-274; 113-291.3;*
*Eff. February 1, 1976;*
*Temporary Amendment Eff. October 8, 2002; May 17, 2002;*
*Amended Eff. August 1, 2010; May 1, 2010; June 1, 2005; August 1, 2004;*
*Readopted Eff. August 1, 2022;*
*Amended Eff. October 1, 2022.*

**15A NCAC 10B .0106 WILDLIFE TAKEN FOR DEPREDATIONS**

(a) Depredation permits shall authorize the taking, destruction, transfer, removal, transplanting, or driving away of undesirable, destructive, or excess wildlife or wildlife resources as specified in this Rule.

(b) Depredation permits shall not be required for the owner or lessee of a property to take wildlife while committing depredations to that property; however, the manner of take, disposition of dead wildlife, and reporting requirements specified in this Rule shall apply.

(c) No permit shall be issued to take endangered or threatened species of wildlife listed under 15A NCAC 10I, except alligators, by reason of depredations to property. Only the Executive Director or his or her designee may issue depredation permits for Special Concern species listed in 15A NCAC 10I .0105 and for alligators.

(d) An individual may take an endangered or threatened species in immediate defense of his or her own life or of the lives of others without a permit. Any endangered or threatened species that may constitute a demonstrable but non-immediate threat to human safety shall be reported to a state or Federal conservation Officer or employee who is designated by their agency, who, upon verification of the report, may take or remove the specimen as provided by 15A NCAC 10I .0102(c)(2).

(e) No permit may be issued for the taking of migratory birds and other federally-protected animals unless a current Federal Depredation Order applies to a species or a corresponding, valid U.S. Fish and Wildlife Service depredation permit, if required, has been issued.

(f) Depredation permits may be issued for taking of wildlife resources in circumstances of overabundance or when the wildlife resources present a danger to human safety. Cities, as defined in G.S. 160A-1(2), seeking a depredation permit pursuant to these circumstances shall submit to the Commission the following information:

(1) the name and location of the city;
(2) the acreage of the affected property;
(3) a map of the affected property;
(4) the signature of an authorized city representative;
(5) the nature of the overabundance or the threat to public safety; and
(6) a description of previous actions taken by the city to ameliorate the problem.

(g) Depredation permits for other species may be issued for taking wildlife that is or has been damaging or destroying property, provided there is evidence of property damage.

(h) Depredation Permits shall:

(1) be prepared on a form supplied by the Commission;
(2) only be issued by authorized employees of the Commission or licensed Wildlife Control Agents (WCA);
(3) have an expiration date;
(4) name the species allowed to be taken;
(5) include limitations on age, sex, type of depredation, location of animal or damage, and local laws;
(6) be issued to a landholder or an authorized representative of a unit of local government for depredations on public property;
(7) be used only be individuals named on the permit;
(8) authorize the possession of wildlife resources taken under the authority of the permit; and
(9) be retained as long as the wildlife resource is in the authorized individual's possession.

(i) Individuals taking wildlife resources under the authority of a depredation permit shall comply with the conditions of the permit and the requirements specified in this Rule.

(j) The following shall apply to manner of take:

(1) Wildlife taken without a permit while committing depredations to property may, during the open season for the species, be taken by the landholder by any lawful method. During the closed season, such depredating wildlife may be taken without a permit only by use of firearms or archery equipment as defined in 15A NCAC 10B .0116.

(2) Wildlife taken under a depredation permit may be taken only by the method or methods authorized by the permit. When trapping is authorized, in order to limit the taking to the intended purpose, the permit may specify a reasonable distance from the property sought to be protected, within which the traps shall be set. The Executive Director, Commission employee, or WCA may also state in a permit authorizing trapping whether or not bait or lure may be used and the type of bait or lure that is authorized based upon factors such as type of depredation, locations of animal or damage, and local laws. In addition to any trapping restrictions that may be contained in the permit, the method of trapping shall be in accordance with the requirements and restrictions imposed by G.S. 113-291.6 and other local laws passed by the General Assembly. No depredation permit shall authorize the use of poisons or pesticides in taking wildlife except in accordance with the provisions of the North Carolina Pesticide Law of 1971, G.S. 143, Article 52, the Structural Pest Control Act of 1955, G.S. 106, Article 4C, and G.S. 113, Article 22A. No depredation permit shall authorize the taking of wildlife by any method by any landholder upon the lands of another except when the individual is listed as a second party on a depredation permit.

(3) Any landholder, with or without a depredation permit, or second party on a depredation permit shall not intentionally wound a wild animal in a manner that will not cause its immediate death as suddenly and humanely as the circumstances permit.

(k) The following shall apply to the disposition of wildlife taken:

(1) Except as provided by Subparagraphs (2) through (7) of this Paragraph, any wildlife killed without a permit while committing depredations shall be buried or disposed of in a safe and sanitary manner on the property where taken. Wildlife killed under a depredation permit shall be buried or otherwise disposed of as stated on the permit.

(2) Wildlife killed under a depredation permit may be transported to an alternate disposal site. Anyone in possession of carcasses of animals being transported under a depredation permit shall have a copy of the depredation permit in his or her possession.

(3) The edible portions of feral swine and deer may be retained by landholder for consumption but shall not be transported from the property where the depredations took place without a valid depredation permit. The landholder may give a second party the edible portions of feral swine or deer taken under a depredation permit. The receiver of the edible portions shall hold a copy of the depredation permit. The nonedible portions of any deer carcass, including head, hide, feet, and antlers, shall be disposed of as specified in Subparagraph (1) or (2) of this Paragraph or turned over to a Commission employee for disposition.

(4) Any fox killed under a depredation permit may be disposed of as described in Subparagraph (1) or (2) of this Paragraph or, upon compliance with the fur tagging requirements of 15A NCAC 10B Section .0400, the carcass or pelt may be sold to a licensed fur dealer.

(5) The carcass or pelt of any furbearing animal killed during their open season for control of depredations to property, whether with or without a permit, may be sold to a licensed fur dealer provided that the person offering such carcass or pelt for sale has a valid hunting or trapping license. Bobcats and otters may only be sold upon compliance with any required fur tagging requirement set forth in 15A NCAC 10B .0400.

(6) Wild animals in the order Carnivora, armadillos, groundhogs, nutria, and beaver shall be humanely euthanized either at the site of capture or at a facility designed to humanely handle the euthanasia, or such wild animals must be released on the property where captured with permission from the landholder. Feral swine shall be euthanized while still in the trap in accordance with G.S. 113-291.12. Animals transported or held for euthanasia shall be euthanized within 12 hours of possession. Anyone in possession of live animals being transported for relocation or euthanasia under a depredation permit shall have a copy of the depredation permit in his or her possession. When the relocation site is public property, written permission shall be obtained from the local, State, or federal official authorized to manage the property before any animal may be released.

(7) The edible portions of bear may only be retained by the landholder for consumption but shall not be transported from the property where the depredations took place without a valid depredation permit. The landholder may give a second party the edible portions of a bear taken under a valid depredation permit. The receiver of the edible portions shall hold a copy of the depredation permit. The complete carcass

of a bear taken without a depredation permit and nonedible portions of any bear carcass, including head, hide, feet, claws, and internal organs, from a bear taken under a valid depredation permit shall be disposed of as specified in Subparagraph (1) or (2) of this Paragraph or turned over to a Commission employee for disposition.

(l) Any landholder who kills an alligator; coyote in the counties of Beaufort, Dare, Hyde, Tyrrell, or Washington; deer; Canada goose; bear; elk; or wild turkey under a valid depredation permit shall report the number and species of animal killed upon the expiration date of the depredation permit to the Wildlife Resources Commission on the form provided with the permit, or through the website link provided on the permit.

(m) Any landholder shall report the killing and method of disposition of every alligator; coyote in the counties of Beaufort, Dare, Hyde, Tyrrell, and Washington; bear; or elk taken without a permit to the Wildlife Resources Commission within 24 hours following the killing.

(n) Animal Control Officers, as defined by G.S. 130A-184(1) when in the performance of official duties, shall be exempt from obtaining a depredation permit when taking wild animals that:

(1) exhibit visible signs of rabies;
(2) exhibit unprovoked aggression that may be associated with rabies;
(3) are suspected to be rabid; or
(4) have or may have exposed humans, pets, or livestock to rabies.

*History Note: Authority G.S. 113-134; 113-273; 113-274; 113-291.4; 113-291.6; 113-300.1; 113-300.2; 113-307; 113-331; 113-333; 113-334(a); 113-337;*
*Eff. February 1, 1976;*
*Amended Eff. August 1, 2013; January 1, 2012; August 1, 2010; July 1, 2010; May 1, 2008; August 1, 2002; July 1, 1997; July 1, 1995; January 1, 1995; January 1, 1992; August 1, 1990;*
*Temporary Amendment Eff. August 1, 2014 and shall remain in effect until amendments expire as specified in G.S. 150B-21.1(d) or the United States District Court for the Eastern District of North Carolina's court order number 2:13-CV-60-BOs signed on May 13, 2014 is rescinded, whichever date is earlier. The court order is available at www.ncwildlife.org;*
*Temporary Amendment Eff. February 27, 2015;*
*Amended Eff. May 1, 2021; October 1, 2019; December 1, 2016; July 1, 2016; May 1, 2016;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 10B .0107 BLACK BEAR**

It is unlawful to take or possess a female bear with a cub or cubs at its side, or to take or possess a cub bear, unless authorized by a valid captivity license, depredation permit, or scientific collection license issued by the Commission. For the purpose of this Rule, cub bear is defined as specified in G.S. 113-291.7(b).

*History Note: Authority G.S. 113-134; 113-291.2; 113-291.7; Eff. February 1, 1976;*
*Amended Eff. August 1, 2016; June 1, 2005; July 1, 1985;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 10B .0109 CHASING DEER BY DOGS IN CERTAIN COUNTIES**

(a) Allowing dogs to run or chase deer or to attempt to take deer with dogs at any time in and west of the following counties or parts of counties is prohibited:

(1) Alamance County south of I-85;
(2) Anson County west of NC 742;
(3) Chatham;
(4) Guilford;
(5) Lee;
(6) Montgomery;
(7) Orange County south of I-85;
(8) Randolph;
(9) Rockingham;
(10) Stanly;
(11) Union; and
(12) Wake south of NC 98.

(b) For counties and parts of counties east of those listed in Paragraph (a) of this Rule, local laws may restrict the taking of deer with dogs.

*History Note: Authority G.S. 113-134; 113-291.5;*
*Eff. February 1, 1976;*
*Amended Eff. July 1, 1999; July 1, 1991; August 1, 1980; August 1, 1978; August 1, 1977;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 10B .0117 REPLACEMENT COSTS OF WILDLIFE RESOURCES**

*History Note: Authority G.S. 113-134; 113-267;*
*Eff. October 1, 1980;*
*Amended Eff. August 1, 2002; December 1, 1993; October 1, 1989.*
*Repealed Eff. October 1, 2022.*

**15A NCAC 10B .0118 SALE OF WILDLIFE**

(a) The carcasses, parts, or pelts of bobcats, opossums, and raccoon that have been lawfully taken and tagged in accordance with 15A NCAC 10B .0402 may be sold. The sale of carcasses or pelts of bobcats, opossums, and raccoon killed accidentally or taken by hunting for control of depredations shall be permitted under the conditions set forth in 15A NCAC 10B .0106 and 15A NCAC 10B .0127.

(b) The sale of lawfully acquired game birds and game animals or their parts is prohibited, except that processed non-edible products may be sold except as otherwise provided in this Rule or by statute.

(c) The dressed pelt or feathers of deer, elk, fox, pheasant, quail, rabbit, or fox and gray squirrel may be bought or sold for the purpose of making fishing flies provided that the source of these animals may be documented as being legally obtained from out of state sources or from lawfully operated commercial breeding facilities. The buying and selling of migratory game birds shall be in accordance with 50 C.F.R. 20.91 which is hereby incorporated by reference, including subsequent amendments and editions, and can be obtained at no cost at https://www.gpo.gov/fdsys/granule/CFR-2000-title50-vol1/CFR-2000-title50-vol1-sec20-91.

(d) The Executive Director or his designee may issue Trophy Wildlife Sale permits as authorized in G.S. 113-274 for the sale of lawfully taken and possessed individual dead wildlife specimens or their parts that are mounted, stuffed, or otherwise permanently preserved that may be sold under G.S. 113-291.3. A copy of the permit shall be retained with the specimen.
(e) Raw hides from any lawfully-taken or possessed white-tailed deer may be sold.

*History Note: Authority G.S. 113-134; 113-273; 113-274; 113-276.2; 113-291.3; 113-337; 50 C.F.R. 20.91;*
*Eff. November 9, 1980;*
*Amended Eff. May 1, 2014; August 1, 2002; April 1, 1991; February 1, 1990;*
*Temporary Amendment Eff. February 27, 2015;*
*Temporary Amendment Expired Eff. December 11, 2015;*
*Amended Eff. May 1, 2016;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 10B .0120 TAKING OF WILDLIFE WITH HANDGUNS**

Unless otherwise prohibited by law, handguns of any type may be used to take game, fur-bearing, and nongame birds and animals as defined in G.S. 113-129 during the established open season for take with firearms or trapping for each species. Ammunition of any type may be used unless otherwise prohibited by state or federal law.

*History Note: Authority G.S. 113-134; 113-291.1;*
*Eff. October 1, 1983;*
*Amended Eff. August 1, 2014; June 1, 2005.*
*Readopted Eff. October 1, 2022.*

**15A NCAC 10B .0126 STATE HUNTING LICENSE EXEMPTIONS**

(a) Any governmental or non-profit entity conducting an organized hunting event may obtain from the Executive Director or his designee, subject to the requirements in Paragraph (b) of this Rule, an exemption which allows all participants in the event to hunt without first obtaining hunting licenses, but the participants must:

(1) comply with the hunter safety requirements of G.S. 113-270.1A or be accompanied by a properly licensed adult who maintains a proximity to the license exempt individual which enables the adult to monitor the activities of, and communicate with, the individual at all times;
(2) report all big game harvested as proscribed in Rule .0113 of this Section;
(3) obtain a certificate of participation in federal Harvest Information Program, if hunting migratory game birds; and
(4) obtain a federal Migratory Bird Hunting and Conservation Stamp, if the participant is 16 years of age or older and hunting waterfowl.

(b) The governmental or non-profit entity requesting a state hunting license exemption shall apply using a form provided by the Commission and submit that form to the Chief of the Division of Wildlife Management not less than 21 days prior to the organized hunting event. A statement of purpose for the event must be attached to the completed form. The Executive Director or his designee shall deny any request with a statement of purpose that is inconsistent with the mission of the Wildlife Resources Commission or is for a purpose other than to promote hunting to youth, individuals with disabilities, novice hunters, or lapsed hunters.
(c) The person in charge of the event must be on-site at all times and have a copy of the exemption available for inspection on request by Commission personnel. The exemption is limited to the immediate location of the event and shall remain in effect for the time period specified on the exemption.

*History Note: Authority G.S. 113-134; 113-270.2; 113-276; 113-276.1;*
*Eff. August 1, 2010;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 10B .0127 POSSESSION OF WILDLIFE KILLED ACCIDENTALLY OR FOUND DEAD**

(a) Deer killed accidentally on a road by reason of collision with a motor vehicle may be possessed and transported if authorization is obtained from the law enforcement officer who investigates the accident. Possession and transport of the deer carcass for personal and lawful use, including delivery of the carcass to a second person for his or her private use or use by a charitable organization shall be authorized.
(b) Commission employees may authorize possession and transport of deer and turkey killed accidently or found dead.
(c) Black bears killed accidentally or found dead shall not be possessed or transported unless written authorization is obtained from the Commission.
(d) Species listed as endangered, threatened, or of special concern under 15A NCAC 10I .0103, .0104, and .0105 killed accidentally or found dead may be possessed or transported if an endangered species permit is obtained from the Commission.
(e) Raptors and migratory birds killed accidentally or found dead may be possessed and transported under federal permits obtained from the U.S. Fish and Wildlife Service.
(f) All other wildlife resources may be possessed and transported legally if killed accidentally or found dead.
(g) The sale of any wildlife resources or wildlife parts from any animal killed accidentally or found dead is prohibited, except that licensed trappers and hunters may sell the carcasses, parts, or pelt of any armadillo, beaver, coyote, groundhog, mink, muskrat, nutria, opossum, otter, raccoon, skunk, weasel or bobcat to a licensed fur dealer if the dead furbearing animal was found during the open season for that species. Licensed trappers and hunters may also sell the carcasses, parts, or pelt of any fox to a licensed fur dealer if the dead fox was found during an open fox season and the county where the fox was found allows for the sale of fox carcasses, parts, and pelts. All tagging requirements set forth in 15A NCAC 10B .0400 apply.

*History Note: Authority G.S. 113-134; 113-274; 113-291.3; 113-291.4; 113-331; 113-333; 113-337;*
*Eff. January 1, 2013;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 10B .0212 FOXES (GRAY AND RED)**

(a) Foxes may be taken with weapons or traps the first through fourth Saturday in January in the following counties:

(1) Caswell;
(2) Clay;
(3) Graham;
(4) Henderson;
(5) Macon; and
(6) Tyrell.

(b) The season for pursuing or taking foxes with dogs on Bladen Lakes State Forest Game Land is August 2 through February 14.

(c) Foxes may be taken the Saturday before Thanksgiving Day through January 1 using archery equipment in all areas of the State east of Interstate Highway 77 and in Mitchell County.

(d) For areas of open season detailed in Paragraphs (a) through (c) of this Rule, the daily limit is two; and the season limit is 10.

*History Note: Authority G.S. 113-134; 113-291.2; 113-291.4; 113-291.4A;*
*Eff. February 1, 1976;*
*Amended Eff. July 1, 1987; December 1, 1985;*
*Temporary Amendment Eff. November 1, 1989;*
*Amended Eff. July 1, 1994; May 1, 1990;*
*Temporary Amendment Eff. July 1, 1999;*
*Amended Eff. August 1, 2018; May 1, 2009; July 1, 2000;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 10B .0216 FALCONRY**

(a) The open seasons for the practice of falconry coincide with the regular open seasons for squirrel, rabbit, quail, ruffed grouse and pheasant, and with the open seasons set forth in the Code of Federal Regulations for migratory game birds in this State.

(b) The daily bag, possession, and season limits in this Section for squirrel, rabbit, quail, ruffed grouse and pheasant and the daily bag, field possession, and total possession limits set forth in the Code of Federal Regulations for migratory game birds shall apply to falconry.

(c) An extended falconry season on rabbits is the Monday on or nearest October 15 through the last day of February.

(d) The daily bag limit for the extended season on rabbits is three, and the possession limit is six.

(e) When any raptor being used in falconry kills any species of wildlife for which there is no open season or a species of game on which the season is then closed, the licensed falconer or person using the raptor shall not take the dead wildlife into his or her possession, but shall leave the game where it lies, except that the raptor may be allowed to feed on the dead wildlife before leaving the site of the kill. If the species killed is a species of game on which there is a season limit, the kill shall be included as part of the season limit of the licensed falconer.

(d) After a falconer has acquired the daily bag, possession or season limit of any lawful species, regardless of the manner of taking, the falconer shall not release any raptor.

*History Note: Authority G.S. 113-134; 113-270.3(b)(4); 50 C.F.R. 21.28; 50 C.F.R. 21.29;*
*Eff. September 1, 1979;*
*Amended Eff. August 1, 2012; May 1, 2008; July 1, 1998;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 10B .0217 PISTOL SEASONS**

*History Note: Authority G.S. 113-134; 113-291.1(g); 50 C.F.R. 20.133;*
*Eff. August 1, 1980;*
*Repealed Eff. October 1, 2022.*

**15A NCAC 10B .0223 FERAL SWINE**

(a) There is no closed season for taking feral swine on private lands anytime during the day or night.

(b) Feral swine may be taken on game lands from the hours of one-half hour before sunrise until one-half hour after sunset during the open season for any game animal or game bird using any legal manner of take allowed during those seasons.

(c) Feral swine may be taken on game lands from one-half hour after sunset to one-half hour before sunrise by permit only. Individuals may apply for permits on or after July 1 online at ncwildlife.org, by phone, or in person at a wildlife service agent location. The number of permits issued annually will be based on achieving population management objectives of the Commission. The Commission shall issue available feral swine permits to applicants selected at random by computer. Permits shall be non-transferrable. All applicable laws and rules regarding the taking of feral swine shall apply.

(d) There are no bag limits on feral swine.

(e) Hunters may use artificial lights and electronic calls.

*History Note: Authority G.S. 113-129; 113-134; 113-264; 113-291; 113-291.1; 113-291.2;*
*Temporary Adoption Eff. October 1, 2011;*
*Eff. February 1, 2012;*
*Temporary Amendment Eff. August 1, 2012;*
*Amended Eff. August 1, 2015; March 21, 2013;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 10B .0302 PROHIBITED TAKING**

No person shall trap, take, or possess any armadillo, beaver, coyote, groundhog, mink, muskrat, nutria, opossum, otter, raccoon, skunk, weasel or bobcat, except:

(1) during the open trapping seasons for that species and in accordance with the bag limits set forth in Rule .0303 of this Section; or
(2) during the open hunting seasons for that species and within the bag limits prescribed for the species in Section .0200 of this Subchapter.

*History Note: Authority G.S. 113-134; 113-291.1; 113-291.2;*
*Eff. February 1, 1976;*
*Amended Eff. August 1, 1977;*
*Recodified from Rule 10B .0301 Eff. January 1, 2011;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 10B .0304 BAG LIMITS**

There are no bag limits on fur-bearing animals as defined in G.S. 113-129(7a), armadillos, coyotes, groundhogs, and feral swine, except where local laws govern trapping, or conflict with this Rule.

*History Note: Authority G.S. 113-134; 113-291.2;*

*Eff. August 1, 1977;*
*Amended Eff. May 1, 2009; May 1, 2008; June 1, 2005; July 1, 1996; July 1, 1984;*
*Recodified from Rule 10B .0303 Eff. January 1, 2011;*
*Temporary Amendment Eff. December 29, 2011;*
*Amended Eff. November 1, 2012;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 10B .0305 TRAPS**

(a) A foothold, steel-jaw, or leghold trap set on dry land with a solid anchor shall not have a chain longer than eight inches unless the chain is fitted with a shock-absorbing device with at least 40 pounds and no more than 75 pounds of pressure to stretch or compress the device.

(b) A Collarum™-type trap shall:

(1) have a cable that is 3/16 inch in diameter, a loop stop with a minimum loop diameter of three inches, a relaxing lock, and a breakaway device that has been tested to break or disassemble at no more than 285 pounds of pull;
(2) have a set capture loop no less than 10 inches and no greater than 12 inches in diameter;
(3) be equipped with at least one swivel device between the loop and the anchor;
(4) be staked in a manner that does not allow the animal or the restraint device to reach any part of a fence or reach rooted, woody vegetation greater than one-half inch in diameter;
(5) not be set using a drag; and
(6) not be used with a kill pole.

*History Note: Authority G.S. 113-134; 113-291.6;*
*Eff. May 1, 2007;*
*Recodified from Rule 10B .0304 Eff. January 1, 2011;*
*Amended Eff. January 1, 2011;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 10B .0401 DEFINITIONS**

As used in this Section, the following definitions shall apply:

(1) "Affix", when used in reference to attachment of a fur tag to the carcass or pelt of an animal, means permanent attachment of the tag through some portion of the carcass or pelt in a manner that is not removable without damage to the tag.
(2) "Carcass" means the dead body of an animal from which the pelt has not been removed;
(3) "Fur dealer" means any person who is licensed under the provisions of G.S. 113-273(f).
(4) "Pelt" means the fur, hide, or skin of an animal which has been removed from the carcass, but does not include a finished product which has been manufactured from such fur, hide, or skin or is in the active process of such manufacture.
(5) "Person" means any individual, firm, corporation, or association which is authorized by law to act as an entity.
(6) "Parts" means any part or portion from the dead body of an animal, including the meat, glands, urine, skull, and dead body of the animal without the pelt.

*History Note: Authority G.S. 113-129; 113-134; 113-273; 113-291.4;*
*Eff. November 14, 1978;*
*Amended Eff. January 1, 1992; August 1, 1981; October 1, 1980;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 10B .0404 TAGGING**

(a) Every fox taken in an area of open season as provided by G.S. 113-291.4 shall be tagged at the scene of taking.

(b) Every person taking any bobcat or otter in this State, or any foxes under a depredation permit, general statute, rule, or local law that permits taking, shall obtain and affix the appropriate tag to the carcass or pelt before selling, transferring, or transporting within or outside the State, except that:

(1) A person may transport the same from the place of taking to his North Carolina residence and from his North Carolina residence to a fur tag agent or taxidermist's place of business.
(2) A person may transport the same from the place of taking to the nearest place in this State where the appropriate tag may be obtained.
(3) The carcass, pelt, or mounted specimen is exempt from tagging requirements while in the taxidermist's place of business or after the mount is completed.
(4) A licensed trapper may take live foxes during any legal trapping season, except foxes taken under G.S. 113-291.4(f) and (f1), without tagging them and sell them to a licensed controlled hunting preserve for fox in accordance with G.S. 113-273(g).
(5) A licensed taxidermist may ship the same to a tannery for processing.

(c) Carcasses and pelts of bobcats, otters, and foxes taken within this State shall not be removed from the state without an appropriate fur tag affixed thereto, except a licensed taxidermist may ship the same to a tannery for processing. When the U.S. Fish and Wildlife Service repeals its tagging requirements for otter and bobcat this Paragraph shall apply only to tagging foxes.

(d) Where the taking of foxes with weapons or traps and the sale thereof is authorized by local legislation, except foxes taken by licensed trappers who live-trap for sale during any open season, the hunter or trapper taking the fox shall, in the absence of a specific provision to the contrary, obtain and affix the carcass or pelt with an appropriate tag before selling or transferring to any other person, or transporting the same for any purpose than as authorized by Paragraph (a) of this Rule.

*History Note: Authority G.S. 113-134; 113-276.1; 113-291.4; S.L. 1985, chs. 108, 179, 180, 664 and 722;*
*Eff. November 14, 1978;*
*Amended Eff. August 1, 2015; August 1, 2010; July 10, 2010; May 1, 2008; July 1, 1994; January 1, 1992; December 1, 1985; October 1, 1980;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 10B .0405 FUR DEALERS**

(a) Any individual wanting to engage in the business of buying or selling fur-bearing animals or other wild animals that may lawfully be sold, as specified in G.S. 113-273(f), shall first obtain a fur dealer license from the Commission.

(b) Application for a fur dealer license shall be made online at www.ncwildlife.org or at the Commission headquarters located at 1751 Varsity Drive, Raleigh, NC 27606. Information required from the applicant shall include:

(1) the applicant's name, address, telephone number, date of birth; and

(2) a list of all employees to be covered under the license.

(c) The fur dealer license shall not be transferable.

(d) Any individual working on behalf of the licensed fur dealer shall have a copy of the fur dealer's current license.

(e) It is unlawful for any fur dealer, or person acting on his or her behalf, to import, buy, or accept delivery of a carcass or pelt of any fur-bearing animal or other wild animal from a source located in any other state that has not been affixed with a tag in accordance with the tagging requirements of the state from which the animal was taken, unless documentation of the date and hour of the arrival of such carcass or pelt at the fur dealer's place of business is available for inspection.

(f) Imported carcasses and pelts shall not be resold or removed from a fur dealer's place of business without having been tagged as required by Paragraph (e) of this Rule.

(g) Except as provided by Paragraph (e) of this Rule, it is unlawful for any licensed fur dealer to have in his or her possession the carcass or pelt of any bobcat, otter, or fox which has not been affixed with a fur tag provided by the Commission unless the fox was taken from a county exempt from fox tagging requirements.

(h) Licensed fur dealers shall maintain records of all acquisitions of carcasses and pelts of beaver, bobcat, coyote, mink, muskrat, nutria, opossum, otter, raccoon, striped skunk, spotted skunk, weasel, and foxes. Such records shall consist of receipts, copies of receipts, or other written evidence of the transactions showing the sources and numbers of acquisition.

(i) Monthly reports shall be submitted to the Commission on or before the 15th day of the succeeding month on forms supplied by the Commission at www.ncwildlife.org or at the Commission headquarters located at 1751 Varsity Drive, Raleigh, NC 27606-2576. Reports shall include the following:

(1) all acquisitions of carcasses and pelts, except those which have been acquired from and reported by other fur dealers licensed by the State;

(2) all acquisitions made during each month beginning with October and ending with March of the following year;

(3) distinguishment between acquisitions made within the State and those made from outside the State; and

(4) counties in which the animals were taken if within the State.

In the case of nonresident fur dealers licensed to do business in this State, the records and reports required by this Paragraph apply only to carcasses or pelts of animals acquired from within this State, and no reports are required from nonresident fur dealers who acquire pelts only from other fur dealers licensed in the State.

(j) The records required by Paragraph (i) of this Rule and the inventory of carcasses and pelts on hand shall be made available for inspection by representatives of the Commission upon request or during the fur dealer's business hours.

*History Note: Authority G.S. 113-129; 113-134; 113-273; 113-291.3; 113-291.4; 50 C.F.R. 23; 87 Stat. 884;*
*Eff. November 14, 1978;*
*Amended Eff. August 1, 2010; January 1, 1992; December 1, 1981; August 1, 1981; February 2, 1981;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 10B .0406 MISUSE OF TAGS**

(a) Fur tags shall only be affixed to the carcass or pelt of the species of animal for which their use is authorized.

(b) It is unlawful to buy or sell any bobcat, otter, or fox carcass or pelt that has an unauthorized tag affixed.

(c) Unused fox tags shall not be sold or transferred to any other person.

(d) Unused fur tags shall not be sold for a price greater than the fee listed for such tag in Rule .0403(c) of this Section.

(e) Fur tags shall not be reused or removed from the pelt to which they are affixed prior to delivery to a manufacturer or fur processor.

(f) Fur tags shall not be counterfeit or modified.

*History Note: Authority G.S. 113-134; 113-135; 113-135.1; 113-273; 113-276.1; 113-291.4;*
*Eff. November 14, 1978;*
*Amended Eff. August 1, 2017; August 1, 2010; January 1, 1992; December 1, 1981; October 1, 1980;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 10C .0203 RECIPROCAL LICENSE AGREEMENTS**

(a) Virginia. In accordance with a reciprocal license agreement between the States of North Carolina and Virginia, all valid fishing licenses and permits legally obtained from the Virginia Department of Wildlife Resources or the North Carolina Wildlife Resources Commission, or the duly authorized agents of either, shall be reciprocally honored for the purpose of fishing with rod and reel, or hook and line, in the following waters:

(1) Portions of New River:

(A) between the confluence of the North and South fork of the New River in Allegheny County North Carolina; and

(B) confluence of New and Little Rivers in Grayson County Virginia.

(2) Dan River east of the Union Street Dam at Danville;

(3) Staunton River arm of Kerr Reservoir East of the mouth of Difficult Creek;

(4) Kerr Reservoir;

(5) Lake Gaston; and

(6) all tributary waters in either Virginia or North Carolina that are accessible by boat from the

main bodies of the Kerr and Gaston Reservoirs, from the Island Creek subimpoundment.

(b) Georgia. In accordance with a reciprocal license agreement between the States of North Carolina and Georgia, all valid fishing licenses and permits legally obtained from the Georgia Department of Natural Resources, the North Carolina Wildlife Resources Commission, or duly authorized agents of either, shall be reciprocally honored for the purposes of fishing with hook and line in all of Chatuge Reservoir including all tributary waters lying in either Georgia or North Carolina that are accessible by boat from the main body of Chatuge Reservoir. All persons fishing in the waters of Chatuge Reservoir beyond the bounds of the state from which they hold a valid fishing license, shall be authorized to fish with said license only from boats not anchored to the shore or to a pier or boat dock connecting to the shore. Senior citizen and juvenile license exemptions authorized by either state shall be honored by both states.

(c) Tennessee. In accordance with a reciprocal license agreement between the States of North Carolina and Tennessee, all valid inland fishing licenses and permits obtained from the Tennessee Wildlife Resources Agency, the North Carolina Wildlife Resources Commission, or the duly authorized agents of either, shall be reciprocally honored for the purpose of fishing with rod and reel, or hook in line in the following waters:

(1) The portion of Slick Rock Creek that coincides with the state line between North Carolina and Tennessee; and

(2) Calderwood Reservoir.

*History Note: Authority G.S. 113-134; 113-275; 113-304;*
*Eff. February 1, 1976;*
*Amended Eff. August 1, 2017; August 1, 2014; July 1, 1998; July 1, 1995; July 1, 1991;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 10C .0206 TROTLINES, JUG HOOKS AND SET HOOKS**

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

(1) "set hook" means a fishing device consisting of a single line having no more than three hooks that is attached at one end only to a stationary object.

(2) "jug hook" means a fishing device consisting of a single line having no more than three hooks that is attached to a float.

(3) "trotline" means a fishing device consisting of a horizontal common line having multiple hooks attached.

(b) Trotlines, jug hooks, and set hooks may be set in the inland waters of North Carolina, provided no live bait is used, except that they:

(1) may not be set in any of the impounded waters on the Sandhills Game Land;

(2) may not be set in any designated public mountain trout waters except impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing; and

(3) in Lake Waccamaw, trotlines, jug hooks, or set hooks may be set only from October 1 through April 30.

(c) Each trotline, set hook, and jug hook shall bear legible and indelible identification of the user's name and address or the user's Wildlife Resources Commission customer number.

(d) Each trotline and set hook shall be conspicuously marked at each end with a flag, float, or other prominent object so that its location is readily discernible by boat operators and swimmers.

(e) Trotlines shall be set parallel to the nearest shore in all inland fishing waters unless otherwise prohibited.

(f) The number of jug hooks that may be fished is limited to 70 per boat.

(g) All trotlines, set hooks, and jug hooks shall be fished at least once daily with all fish removed.

(h) Trotlines, set hooks, and jug hooks without bait or not labeled as described in this Paragraph may be removed from the water by wildlife enforcement officers.

(i) It is unlawful to use metal cans or glass jugs as floats.

*History Note: Authority G.S. 113-134; 113-272; 113-292;*
*Eff. February 1, 1976;*
*Amended Eff. July 1, 1993; May 1, 1992; July 1, 1989; January 1, 1982;*
*Temporary Amendment Eff. July 1, 2002;*
*Amended Eff. August 1, 2015; August 1, 2014; August 1, 2013; May 1, 2008; June 1, 2005; August 1, 2002;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 10C .0208 SPAWNING AREAS**

(a) No person shall fish by any method from March 1 to May 31 in the following restored floodplain sloughs connected to the French Broad River and Mud Creek in Henderson County:

(1) Slough 1 at 35.403687 N, 82.531970 W connected to the French Broad River, located 0.25 miles upstream of Butler Bridge Rd (SR 1345).

(2) Slough 2 at 35.398380 N, 82.528750 W connected to the French Broad River, located 1.0 miles upstream of Butler Bridge Rd.

(3) Slough 3 at 35.396449 N, 82.525462 W connected to Mud Creek, located 0.1 miles upstream from confluence with the French Broad River.

(b) Each slough shall be marked with signs on both banks.

*History Note: Authority G.S. 113-134; 113-292;*
*Eff. February 1, 1976;*
*Amended Eff. May 1, 2009; August 1, 2004; July 1, 1993; July 1, 1989; July 1, 1985; July 1, 1984;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 10C .0214 FISH COLLECTORS**

(a) A collection license may be issued to qualified individuals to take any species of fish from the inland fishing waters of the State, or inland game fish from the joint or coastal waters.

(b) Individuals interested in obtaining a collection license shall apply by sending an application to 1701 Varsity Drive, Raleigh, NC 27606 or by completing and submitting an application online

at www.ncwildlife.org. Information required by the applicant shall include:

(1) name, address, date of birth, email, and driver's license number;
(2) species information;
(3) organizational affiliation, if any; and
(4) full documentation of research or educational proposal(s), if applicable.

(c) The Commission shall consider the following qualifications when issuing a license:

(1) prior research or educational experience in the same or similar field;
(2) work with or for an educational institution;
(3) type of study requested of license (harvest or catch and release);
(4) current status and quantity of species requested;
(5) collection methodology proposed; and
(6) disposition of collection.

(d) A collection license may be used in lieu of any other fishing license required by law and shall authorize possession and transportation of the fish incidental to the authorized taking.

(e) A collection license may be issued:

(1) upon payment of the license fee.
(2) to any individual, so long as the take is not deemed harmful to the efficient conservation of the species to be collected or to other fish or wildlife resources that may be dependent thereon.

(f) Endangered and threatened species shall not be taken or collected under a collection license except with a valid endangered species permit.

(g) Unless a more limited duration is designated on the license, collection licenses shall be valid from January 1 through December 31 of the applicable year.

(h) The manner of taking fish under a collection license may be specified on the license and need not be restricted to the usual methods of lawful fishing.

(i) Licensed individuals shall submit the following information to the Commission within 15 days of license expiration. The report shall be completed online at www.ncwildlife.org and include:

(1) the numbers of each species taken under the license;
(2) the use or disposition thereof; and
(3) the date and waterbody of taking.

Depending on the species taken, additional information including the sex, size, weight, age, and condition of species taken may be required.

(j) The Executive Director or his or her designee may, pursuant to G.S. 113-272.4(d), impose further restrictions or conditions on individuals licensed under this Rule deemed to be necessary to the efficient administration of the wildlife conservation laws and Rules.

*History Note: Authority G.S. 113-134; 113-272.4;*
*Eff. January 1, 1981;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 10C .0215 REPLACEMENT COSTS OF WILDLIFE RESOURCES - FISH**

*History Note: Authority G.S. 113-134; 113-267;*
*Eff. December 1, 1993.*
*Repealed Eff. October 1, 2022.*

**15A NCAC 10C .0216 STATE INLAND FISHING LICENSE EXEMPTIONS**

(a) The Commission may exempt participants of an organized fishing event conducted by a governmental or non-profit entity from obtaining an inland fishing license.

(b) The state inland fishing license exemption shall only be issued when all the following information is submitted by the applicant on a form found online at www.ncwildlife.org not less than 21 days prior to the organized fishing event:

(1) applicant name, address, phone number, and email address;
(2) applicant organization name and address;
(3) date, time, and location of event; and
(4) estimated number of event attendees and event description.

(c) The state inland fishing license exemption is subject to the following conditions:

(1) The person in charge of the event must be on-site at all times and have a copy of the exemption available for inspection on request by Commission personnel; and
(2) The exemption shall be limited to the immediate location of the event and shall remain in effect only for the duration of the event.

(d) The Commission may require that the applicants submit participant information for those fishing under the exemption.

*History Note: Authority G.S. 113-134; 113-272.2; 113-276; 113-292;*
*Eff. May 1, 2007;*
*Amended Eff. June 1, 2009;*
*Readopted Eff. October 1, 2022.*

**15A NCAC 10F .0310 DARE COUNTY**

(a) Regulated Areas. This Rule shall apply to the following waters and portions of waters in Dare County:

(1) Manteo. Doughs Creek off of Shallowbag Bay and all canals off of Shallowbag Bay.
(2) Hatteras.
(A) the waters of Pamlico Sound otherwise known as Hatteras Harbor and Muddy Creek bounded on the north and south by the high-water mark, on the west by a straight line between channel markers number 20 and 17 at the entrance to Hatteras Harbor, and on the east by the mouth of Muddy Creek at Sandy Bay at a point at 35.22801 N,75.68050 W; and
(B) Hatteras Ferry Terminal and United States Coast Guard basins ending at

Coast Guard Beacon Number One in the Hatteras Channel.

(3) Mann's Harbor. Old Ferry Dock Road Canal, beginning at a point at 35.90654 N, 75.76916 W.

(4) Nags Head.

(A) the canals of Old Nags Head Cove where the canal entrance meets Roanoke Sound beginning at a point at 35.94192 N, 75.62571 W;

(B) the Roanoke Sound inlets at Pond Island on either side of W. Marina Drive extending north from U.S. Highway 64-264.

(5) Wanchese.

(A) Wanchese Harbor otherwise known as Mill Landing Creek, beginning at its entrance from Roanoke Sound at a point at 35.84006 N, 75.61726 W; and

(B) the canal from its beginning where it connects with Roanoke Sound south of the dead-end road SR 1141 otherwise known as Thicket Lump Drive, extending northwest roughly parallel to SR 1141, SR 1142 otherwise known as The Lane, and SR 1143 otherwise known as Tink Tillet Road, then westward roughly parallel to N.C. Highway 345, and finally curving to the southwest roughly parallel to SR 1289 otherwise known as C B Daniels SR Road to its end.

(6) Stumpy Point Canal shore to shore, beginning 50 yards west of the Wildlife Resources Commission boating access area.

(7) Stumpy Point Basin off of Stumpy Point Bay, east of U.S. Highway 264 where it intersects Stumpy Point Bay at a point at 35.69591 N, 75.77264 W.

(8) Town of Southern Shores. Canals and lagoons within the Town of Southern Shores north of U.S. Highway 158.

(9) Colington Harbour. The waters in the canals of Colington Harbour Subdivision on Albemarle Sound.

(10) Kitty Hawk. The waters contained in the canals of Kitty Hawk Landing Subdivision.

(11) Washington Baum Bridge. Roanoke Sound from marker 24B north of the bridge to marker 24A south of the bridge, and 50 yards east of the navigation span west to the shore as designated by the appropriate markers.

(12) Kill Devil Hills. Baum Bay Harbor, beginning at a point at 36.00572 N, 75.68105 W.

(13) Avon. The waters of Pamlico Sound shore to shore beginning at a line from a point on the east shore of Big Island at 35.36653 N, 75.50770 W westward to a point on the mainland at 35.36653 N, 75.50556 W, south to include the waters of the cove between North Albacore Lane and South Albacore Lane and the waters of Mill Creek, and ending east of a line from a point on the south shore of Big Island at 35.36500 N, 75.50820 W southward to a point on the mainland at 35.36358 N, 75.50826 W.

(14) Jean Guite Creek. Jean Guite Creek from where it meets Kitty Hawk Bay at 36.04887 N, 75.72754 W, north to a line from a point on the east shore in Southern Shores at 36.10460 N, 75.74192 W to a point on the west shore in Martin's Point Subdivision at 36.10452 N, 75.73948 W.

(15) Frisco. The waters of the marina canal and boat basin at Palmetto Shores Subdivision, shore to shore beginning at the canal's entrance at Pamlico Sound at a point at 35.25427 N, 75.60301 W.

(b) Speed Limit. No person shall operate a vessel at greater than no-wake speed within any of the regulated areas described in Paragraph (a) of this Rule.

(c) Swimming Area. No person operating or responsible for the operation of any vessel, surfboard, water skis, or jet skis shall permit it to enter the marked swimming area at Colington Island on the west shore, from a point where the canal enters the harbor at 36.01797 N, 75.72681 W, north 600 feet to a point at 36.01964 N, 75.72683 W and extending 300 feet west into Albemarle Sound.

(d) Placement of Markers. The following agencies shall be the designated agencies for placement of markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers:

(1) the Board of Commissioners of the Town of Manteo for the areas indicated in Subparagraph (a)(1) of this Rule;

(2) the Board of Commissioners of Dare County for the areas indicated in Subparagraphs (a)(2) through (a)(7), (a)(9) and (a)(11) through (a)(15) of this Rule;

(3) the Board of Commissioners of the Town of Southern Shores for the areas indicated in Subparagraph (a)(8) of this Rule; and

(4) the Board of Commissioners of the Town of Kitty Hawk for the area indicated in Subparagraph (a)(10) of this Rule.

*History Note: Authority G.S. 75A-3; 75A-15;*
*Eff. February 1, 1976;*
*Amended Eff. April 1, 1997; December 1, 1994; May 1, 1994; March 1, 1993; May 1, 1988;*
*Temporary Amendment Eff. February 1, 1999; July 1, 1998;*
*Amended Eff. July 1, 2000; April 1, 1999;*
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016;*
*Amended Eff. October 1, 2022; October 1, 2018.*

**15A NCAC 10H .1510 WILDLIFE CONTROL TECHNICIAN CERTIFICATION ELIGIBILITY AND REQUIREMENTS**

(a) The following definitions shall apply in this Section:

(1) "Wildlife control technician" or "WCT" means an individual that holds a current and valid wildlife control technician certification issued by the Commission.

(2) "Wildlife control technician certification" or "WCT certification" means a certification issued by the Commission that authorizes an individual to engage in wildlife control or wildlife removal activities, for compensation, including reimbursement for the cost of materials, under the supervision of a licensed wildlife control agent.

(3) "Direct supervision" means to physically be within one's presence while maintaining visual and verbal contact.

(4) "Wildlife damage control" and "wildlife removal activities" means and includes:

(A) bat eviction and alligator damage control or removal activities;

(B) setting and moving traps;

(C) euthanasia; and

(D) issuing depredation permits in accordance with the applicable provision and requirements of 15A NCAC 10H .1502.

(b) It shall be unlawful to engage in wildlife damage control or wildlife removal activities for compensation, without first obtaining a WCT certification from the Commission, except that licensed trappers taking wild animals during the applicable open trapping season for that species shall not be required to obtain a WCT certification.

(c) Wildlife control technicians may only perform the following wildlife control or removal activities under direct supervision of a licensed WCA, or certified Alligator Control Agent if applicable:

(1) placement of traps;

(2) euthanasia of wildlife;

(3) bat evictions; and

(4) alligator removal or relocation.

(d) Wildlife control technicians shall not issue depredation permits.

(e) Individuals shall complete a Commission-approved, WCT training course, that reviews wildlife laws and rules, including methods for trapping, capture, and safe and humane wildlife handling to qualify for a WCT certification.

(f) Individuals may register for a Commission-approved training course at www.ncwildlife.org/wca. Required information shall include the following:

(1) the applicant's name, mailing address, email address, residence address, telephone number, driver's license number, and date of birth; and

(2) organizational affiliation, if applicable.

(g) A WCT certification shall not be transferable between individuals.

*History Note: Authority G.S. 113-134; 113-273; 113-274; Eff. October 1, 2022.*

## TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

## CHAPTER 10 – BOARD OF CHIROPRACTIC EXAMINERS

**21 NCAC 10 .0203 NORTH CAROLINA EXAMINATION**

(a) Eligibility. Only those applicants who meet the requirements of this Rule and G.S. 90-143 or, in the case of reciprocity applicants, G.S. 90-143.1, and who have submitted a written application and paid the non-refundable application fee pursuant to Rule 21 NCAC 10 .0202 shall be allowed to take the North Carolina examination.

(b) Dates of Examination. The North Carolina examination shall be given at least four times during the calendar year. The Board shall announce an examination date not less than 30 days in advance and shall publish the date of upcoming examinations on the Board's website, www.ncchiroboard.com. The Board shall also individually notify each eligible applicant of the date of the next examination after the applicant's non-refundable application fee has been paid and the written application completed.

(c) National Boards. Except as provided in Paragraph (e) of this Rule, in order to take the North Carolina examination, an applicant who has never been licensed in this State or who is not a reciprocity applicant shall first achieve a score of 375 or higher on Parts I-IV and the Physiotherapy examination given by the National Board of Chiropractic Examiners.

(d) Report of Scores. The applicant shall arrange for his or her test results from any National Board examination to be reported to the North Carolina Board. Failure to comply with this Paragraph shall be a basis for delaying the issuance of a license.

(e) Waiver of National Boards. Notwithstanding the requirements of Paragraph (c) of this Rule, an applicant who submits National Board examinations in conformity with the following schedule shall not be disqualified from licensure in North Carolina:

(1) An applicant who graduated from chiropractic college before July 1, 1966 shall not be required to submit a score from any National Board examination.

(2) An applicant who graduated from chiropractic college between July 1, 1966 and June 30, 1986 shall be required to submit scores of 375 or higher on National Board Part I, Part II, and the elective examination termed "Physiotherapy," but shall not be required to submit a score on Part III (WCCE) or Part IV.

(3) An applicant who graduated from chiropractic college between July 1, 1986 and June 30, 1997 shall be required to submit scores of 375 or higher on National Board Part I, Part II, the elective examination termed "Physiotherapy," and Part III, but shall not be required to submit a score on Part IV.

In order to receive a license, an applicant who qualifies for a waiver of any National Board score shall take and pass the Special Purpose Examination for Chiropractic ("SPEC") and the North Carolina Examination. An applicant who qualifies for a waiver of any National Board score shall maintain compliance with G.S. 90-143.3 and Rule .0202 of this Chapter.

(f) SPEC Examination. In order to take the North Carolina examination, a reciprocity applicant, a waiver applicant pursuant to Paragraph (e) of this Rule, or an applicant previously licensed in this State whose license has been cancelled pursuant to G.S. 90-155 for more than 180 days shall first take and pass the SPEC. The SPEC exam is administered by the National Board of Chiropractic Examiners. The passing score shall be 375 or higher. Reciprocity applicants and waiver applicants pursuant to Paragraph (e) of this Rule who have achieved a score of 375 or higher on Part IV of the National Board examination shall not be required to take and pass the SPEC exam prior to licensure.

(g) Nature of Examination. The North Carolina jurisprudence examination shall be a test of an applicant's knowledge of North Carolina chiropractic law and regulations. The passing grade shall be 75 percent.

*History Note: Authority G.S. 90-142; 90-143; 90-143.1; 90-143.3; 90-144; 90-145; 90-146;*
*Eff. February 1, 1976;*
*Readopted Eff. January 27, 1978;*
*Amended Eff. January 1, 1983; October 17, 1980;*
*Legislative Objection Lodged Eff. January 31, 1983;*
*Curative Amendment Eff. February 18, 1983;*
*Temporary Amendment Eff. May 1, 1998;*
*Amended Eff. October 1, 2018; April 1, 2018; February 1, 2009; July 1, 2004; August 1, 2000; August 1, 1995; December 1, 1988;*
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019;*
*Amended Eff. October 1, 2022; July 1, 2021.*

**21 NCAC 10 .0503 DETERMINATION OF PROBABLE CAUSE**

(a) General. Complaint allegations that could be considered violations of the Board's Practice Act, based on the findings of the Investigative Report, shall be referred to the Disciplinary Review Committee (DRC). The DRC shall conduct an informal conference with the party in order to consider the possibility of resolving the complaint.

(b) Composition of the DRC. The DRC shall be composed of:

(1) The Board Secretary; and

(2) Either a former Board member or a licensee from among those who, at any election held pursuant to Rule .0103(c) of this Chapter, have been elected nominees for Board membership but not appointed to the Board. The Board Secretary shall select the second DRC member.

(c) The Board Secretary shall preside over the conference.

(d) Action by the DRC. The DRC shall dispose of each complaint charge as follows:

(1) Dismissal of the complaint with no action;

(2) Non-Disciplinary Letter of Caution;

(3) Resolution by settlement; or

(4) Scheduling for contested case hearing and whether the case shall be set before either the Board or an Administrative Law Judge in accordance with G.S. 150B-40(e).

*History Note: Authority G.S. 90-141; 90-142; 90-143; 90-154;*
*Eff. December 1, 1988;*
*Amended Eff. October 1, 2016;*
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019;*
*Amended Eff. October 1, 2022; January 1, 2020.*

**21 NCAC 10 .0803 FEE SCHEDULE**

(a) The Board shall charge the following fees:

(1) License application: $300.00;

(2) License renewal: $300.00;

(3) Certification of Competence: $35.00;

(4) Renewal of Certification of Competence: $50.00;

(5) Corporate registration: $50.00;

(6) Corporate registration renewal: $25.00; and

(7) Predetermination request: $45.00.

(b) All fees charged by the Board are non-refundable.

*History Note: Authority G.S. 55B-10; 55B-11; 90-142; 90-143.2; 90-143.4; 90-149; 90-155; 93B-8.1;*
*Eff. October 1, 2022.*

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**CHAPTER 16 – BOARD OF DENTAL EXAMINERS**

**21 NCAC 16I .0206 CONTINUING EDUCATION ON SUBSTANCE ABUSE AND MENTAL HEALTH**

(a) Every two calendar years, each dental hygienist shall complete one clock hour of continuing education on substance abuse and mental health. To count toward this requirement, the course shall be:

(1) designed to address relevant issues for dental professionals, including substance abuse, chemical dependency, impairment, and mental health disorders; and

(2) offered by a Board-approved sponsor as set out in Rule .0202(b) of this Section.

(b) The continuing education requirement set out in Paragraph (a) of this Rule may be completed through a self-study course that satisfies Subparagraphs (a)(1) and (2) of this Rule. The dental hygienist shall pass a test administered by the self-study course sponsor and obtain a certificate of completion from the sponsor.

(c) Every two calendar years, a dental hygienist may apply one clock hour of a course meeting the requirements of this Rule toward the total number of continuing education hours required pursuant to Rule .0201(a) of this Section.

*History Note: Authority G.S. 90-223; 90-225.1;*
*Eff. October 1, 2022.*

**21 NCAC 16R .0206 CONTINUING EDUCATION ON SUBSTANCE ABUSE AND MENTAL HEALTH**

(a) Every two calendar years, each dentist shall complete one clock hour of continuing education on substance abuse and mental health. To count toward this requirement, the course shall be:

(1) designed to address relevant issues for dental professionals, including substance abuse, chemical dependency, impairment, and mental health disorders; and

(2) offered by a Board-approved sponsor as set out in Rule .0202(b) of this Section.

(b) The continuing education requirement set out in Paragraph (a) of this Rule may be completed through a self-study course that satisfies Subparagraphs (a)(1) and (2) of this Rule. The dentist shall pass a test administered by the self-study course sponsor and obtain a certificate of completion from the sponsor.

(c) Every two calendar years, a dentist may apply one clock hour of a course meeting the requirements of this Rule toward the total number of continuing education hours required pursuant to Rule .0201(a) of this Section.

(d) The substance abuse and mental health continuing education requirement shall not replace or substitute for the controlled substance continuing education requirement set out in Rule .0201(b) of this Section.

*History Note: Authority G.S. 90-28; 90-31.1;*
*Eff. October 1, 2022.*

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**CHAPTER 46 - BOARD OF PHARMACY**

**21 NCAC 46 .1317 DEFINITIONS**

Terms used in this Chapter and G.S. 90, Article 4A, are defined as follows, unless otherwise defined in G.S. 90, Article 4A:

(1) "Ambulation assistance equipment" means devices that aid in walking, excluding canes, crutches, and walkers.

(2) "Approved school or college of pharmacy" means a school or college of pharmacy accredited by the Accreditation Council for Pharmacy Education ("ACPE") through its PharmD Program Accreditation Standards. It does not include any accreditation, certification, or other designation through the ACPE's International Services Program.

(3) "Diagnostic equipment" means equipment used to record physiological information while a person goes about normal daily living or while asleep in order to document a disease process. Early pregnancy tests (EPTs), thermometers, glucose meters, and cholesterol equipment are not included as diagnostic equipment.

(4) "Drug regimen review" or "drug use review" means a review of a patient's record by a licensed pharmacist that involves interpretation and evaluation of the drug therapy and other pharmaceutical care services to achieve intended medication outcomes and minimize negative effects of drug therapy.

(5) "Employee" means a person who is or would be considered an employee under the North Carolina Workers' Compensation Act. This definition applies to locations, both within and outside of this State, holding pharmacy or device and medical equipment permits and without regard to the number of persons employed by the permit holder.

(6) "Graduate of an approved school or college of pharmacy" means a person who has received an undergraduate professional degree in pharmacy from an approved school or college of pharmacy.

(7) "Health Care Facility" means one of the following organizations whose primary purpose is to provide a physical environment for patients to obtain health care services:

(a) a hospital;
(b) a long-term care facility;
(c) a mental health facility;
(d) a drug abuse treatment center;
(e) an assisted living facility;
(f) an ambulatory surgical center;
(g) a penal institution; or
(h) a hospice.

(8) "Health Care Facility Pharmacy" means a pharmacy permitted by the Board that provides services to patients of a Health Care Facility.

(9) "Internet pharmacy" means:

(a) A pharmacy that maintains an Internet web site for the purpose of selling or distributing prescription drugs; or

(b) A pharmacy that uses the Internet, either itself, or through agreement with a third party, to communicate with or obtain information from patients; uses such communication or information, in whole or in part, to solicit, fill or refill prescriptions; or otherwise uses such communication or information, in whole or in part, to engage in the practice of pharmacy.

Notwithstanding Sub-items (a) and (b) above, a pharmacy shall not be deemed an Internet pharmacy if it maintains each Internet web site for the following purposes only:

(i) To post advertisements that do not attempt to facilitate, directly or through agreement with a third party, an actual transaction involving a prescription drug;

(ii) To allow a patient to communicate a request for a refill of a valid prescription originally filled by the

pharmacy that maintains the Internet web site;

(iii) To allow a customer to research drug interactions and clinical pharmacology information; or

(iv) To allow a patient to send an electronic mail message to a pharmacist licensed in North Carolina.

(10) "Medication Order" means an order for a drug, device, or medical equipment for a patient from a person authorized by law to prescribe them.

(11) "Mobility equipment" means devices that aid a person in self-movement other than walking, including manual or power wheelchairs and scooters.

(12) "North Carolina resident" or "resident of North Carolina" includes not just any patient who is domiciled in the State of North Carolina, but also any patient who is present in the State of North Carolina at the time a drug, device, or medical equipment is dispensed to that person.

(13) "Oxygen and respiratory care equipment" means equipment or devices used to administer oxygen or other legend drugs, maintain viable airways, or monitor cardio-respiratory conditions or events, including the following:

(a) compressed medical gases;
(b) oxygen concentrators;
(c) liquid oxygen;
(d) nebulizers;
(e) compressors;
(f) aerosol therapy devices;
(g) portable suction machines;
(h) nasal continuous positive airway pressure (CPAP) machines;
(i) Bi-phasic positive pressure devices (BiPAP);
(j) infant monitors, such as apnea monitors and cardio-respiratory monitors;
(k) positive and negative pressure mechanical ventilators; and
(l) pulse oximeters.

(14) "Patient medication profile," "patient profile," or "pharmacy profile" means a list of all medications prescribed for or dispensed to a patient.

(15) "Pharmacist-Manager" means the person who accepts responsibility for the operation of a pharmacy in conformance with all statutes and rules pertinent to the practice of pharmacy and distribution of drugs by signing the permit application, its renewal, or addenda thereto.

(16) "Pharmacy Intern" means any person who is registered with the Board under the internship program of the Board to acquire pharmacy experience or enrolled in approved academic internship programs. A pharmacy intern working under a pharmacist preceptor or supervising pharmacist may, while under supervision, perform all acts constituting the practice of pharmacy.

(17) "Rehabilitation environmental control equipment" means equipment or devices that permit a person with disabilities to control his or her immediate surroundings.

(18) "Undergraduate professional degree in pharmacy" means a Bachelor of Science in Pharmacy or a Doctor of Pharmacy degree.

*History Note: Authority G.S. 90-85.3; 90-85.6; 90-85.13; 90-85.14; 90-85.15; 90-85.21; 90-85.21A; 90-85.22; 90-85.26; 90-85.32; 90-85.33; 90-85.34; 90-85.38; 90-85.40;*
*Eff. May 1, 1989;*
*Amended Eff. March 1, 2013; February 1, 2007; March 1, 2004; April 1, 1999; May 1, 1997; September 1, 1995; September 1, 1993; October 1, 1990; January 1, 1990;*
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017;*
*Amended Eff. October 1, 2022; November 1, 2021.*

**21 NCAC 46 .2403 DRUGS AND DEVICES TO BE DISPENSED**

*History Note: Authority G.S. 90-12.7; 90-85.6; 90-85.34A; 115C-375.2A;*
*Eff. March 1, 1987;*
*Amended Eff. September 1, 2016; January 1, 2015; August 1, 2014; May 1, 1989;*
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017;*
*Amended Eff. March 1, 2019;*
*Repealed Eff. October 1, 2022.*

*This Section contains information for the meeting of the Rules Review Commission November 17, 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** | **Appointed by House** |
|---|---|
| Jeanette Doran (Chair) | Andrew P. Atkins (1st Vice Chair) |
| Robert A. Bryan, Jr. (2nd Vice Chair) | Wayne R. Boyles, III |
| Jay R. Hemphill | Barbara A. Jackson |
| Jeff Hyde | Randy Overton |
| Robert A. Rucho | 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**

| | |
|---|---|
| November 17, 2022 | January 19, 2023 |
| December 15, 2022 | February 16, 2023 |

***AGENDA***
***RULES REVIEW COMMISSION***
***Thursday, November 17, 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 .0205, .0301, .0302, .0303, .0304, .0305, .0306, .0307, .0408, .0410 (Liebman)
- 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 September 21, 2022 through October 20, 2022
- Department of Administration
- Structural Pest Control Committee
- State Fire and Rescue Commission
- Sheriffs' Education and Training Standards Commission

- State Board of Education
- Behavior Analyst Licensure Board
- Licensing Board for General Contractors
- Board of Dental Examiners
- Board of Dietetics/Nutrition
- Medical Board
- Building Code Council

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: December 15, 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 | 10A NCAC 26E .0602 |
| Amend* | |
| Reporting Requirements | 10A NCAC 26E .0604 |
| Adopt* | |
| Penalties | 10A NCAC 26E .0605 |
| Adopt* | |

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 | 21 | NCAC 17 | .0113 |
| Amend* | | | |

**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 | 21 | NCAC 19 | .0103 |
| Repeal* | | | |
| Definitions and Overview | 21 | NCAC 19 | .0404 |
| Amend* | | | |
| Continuing Education Requirements, License Renewal, Reins... | 21 | NCAC 19 | .0701 |
| Amend* | | | |
| Board Approval of Courses | 21 | NCAC 19 | .0702 |
| Amend* | | | |
| Computation of Continuing Education Units | 21 | NCAC 19 | .0703 |
| Amend* | | | |
| Time Limits on Credit | 21 | NCAC 19 | .0704 |
| Amend* | | | |
| Application for Approval of Continuing Education | 21 | NCAC 19 | .0705 |
| Adopt* | | | |
| Waiver | 21 | NCAC 19 | .0706 |
| Adopt* | | | |