NORTH CAROLINA REGISTER

VOLUME 37 • ISSUE 14 • Pages 974 – 1031

January 17, 2023

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

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

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NORTH CAROLINA REGISTER

Publication Schedule for January 2023 – December 2023

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
37:13	01/03/23	12/07/22	01/18/23	03/06/23	03/20/23	04/20/2023	05/01/23	09/30/23
37:14	01/17/23	12/20/22	02/01/23	03/20/23	04/20/23	05/18/2023	06/01/23	10/14/23
37:15	02/01/23	01/10/23	02/16/23	04/03/23	04/20/23	05/18/2023	06/01/23	10/29/23
37:16	02/15/23	01/25/23	03/02/23	04/17/23	04/20/23	05/18/2023	06/01/23	11/12/23
37:17	03/01/23	02/08/23	03/16/23	05/01/23	05/20/23	06/15/2023	07/01/23	11/26/23
37:18	03/15/23	02/22/23	03/30/23	05/15/23	05/20/23	06/15/2023	07/01/23	12/10/23
37:19	04/03/23	03/13/23	04/18/23	06/02/23	06/20/23	07/20/2023	08/01/23	12/29/23
37:20	04/17/23	03/24/23	05/02/23	06/16/23	06/20/23	07/20/2023	08/01/23	01/12/24
37:21	05/01/23	04/10/23	05/16/23	06/30/23	07/20/23	08/17/2023	09/01/23	01/26/24
37:22	05/15/23	04/24/23	05/30/23	07/14/23	07/20/23	08/17/2023	09/01/23	02/09/24
37:23	06/01/23	05/10/23	06/16/23	07/31/23	08/20/23	09/21/2023	10/01/23	02/26/24
37:24	06/15/23	05/24/23	06/30/23	08/14/23	08/20/23	09/21/2023	10/01/23	03/11/24
38:01	07/03/23	06/12/23	07/18/23	09/01/23	09/20/23	10/19/2023	11/01/23	03/29/24
38:02	07/17/23	06/23/23	08/01/23	09/15/23	09/20/23	10/19/2023	11/01/23	04/12/24
38:03	08/01/23	07/11/23	08/16/23	10/02/23	10/20/23	11/16/2023	12/01/23	04/27/24
38:04	08/15/23	07/25/23	08/30/23	10/16/23	10/20/23	11/16/2023	12/01/23	05/11/24
38:05	09/01/23	08/11/23	09/16/23	10/31/23	11/20/23	12/21/2023	01/01/24	05/28/24
38:06	09/15/23	08/24/23	09/30/23	11/14/23	11/20/23	12/21/2023	01/01/24	06/11/24
38:07	10/02/23	09/11/23	10/17/23	12/01/23	12/20/23	01/18/2024	02/01/24	06/28/24
38:08	10/16/23	09/25/23	10/31/23	12/15/23	12/20/23	01/18/2024	02/01/24	07/12/24
38:09	11/01/23	10/11/23	11/16/23	01/02/24	01/20/24	02/15/2024	03/01/24	07/28/24
38:10	11/15/23	10/24/23	11/30/23	01/16/24	01/20/24	02/15/2024	03/01/24	08/11/24
38:11	12/01/23	11/07/23	12/16/23	01/30/24	02/20/24	03/21/2024	04/01/24	08/27/24
38:12	12/15/23	11/22/23	12/30/23	02/13/24	02/20/24	03/21/2024	04/01/24	09/10/24

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

December 20, 2022

EXECUTIVE ORDER NO. 274

DECLARATION OF A STATE OF EMERGENCY AND TEMPORARY SUSPENSION OF MOTOR VEHICLE REGULATIONS TO ENSURE ADEQUATE TRANSPORTATION OF FUEL THROUGHOUT THE STATE

WHEREAS, a forecasted period of prolonged cold weather in North Carolina and in other parts of the United States has increased the demand for drivers of propane and other heating fuels; and

WHEREAS, the anticipated impact of forecasted weather and increased demand on drivers constitute a state of emergency as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19); and

WHEREAS, propane and other heating fuels remain in adequate supply for North Carolina residents; and

WHEREAS, due to a shortage of licensed commercial drivers, and the ongoing COVID-19 pandemic and seasonal flu, this state of emergency is essential to enable drivers transporting propane and other heating fuels across the state to do so quickly and efficiently; 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, 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 uninterrupted supply of fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum gas to residential and commercial establishments is essential, and any interruption in the delivery of those commodities threatens the public welfare; 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 if the governor has declared a state of emergency; 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 standards (49 C.F.R. Part 392.3) or any other portion of the regulations not specifically identified herein; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.70, the undersigned may declare that the health, safety, or economic well-being of persons or property in this state require that the maximum hours of service for drivers prescribed by N.C. Gen. Stat. § 20-381 be waived for persons transporting propane and essential heating fuels.

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 current and forecasted period of prolonged cold weather in North Carolina and in other parts of the United States, and associated impact on the demand for drivers of propane and other essential heating fuels.

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.

DPS, in conjunction with the North Carolina Department of Transportation ("DOT"), shall waive the maximum hours of service for drivers prescribed by the DPS pursuant to 49 C.F.R. Part 395.3 and N.C. Gen. Stat. § 20-381 for drivers transporting propane or essential heating fuels in the emergency area.

Section 5.

Pursuant to 49 C.F.R. § 390.23, I hereby waive 49 C.F.R. § 395.3 for vehicles transporting propane and other heating fuels.

Section 6.

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 4 and 5 of this Executive Order in a manner that does not endanger motorists in North Carolina.

Section 7.

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish that their loads are for use in providing direct assistance supporting emergency relief efforts including transporting propane and essential heating fuels.

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 transporting propane and essential heating fuel 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 transporting propane and essential heating fuels in North Carolina or affected states, the motor carrier and driver are subject to the requirements of 49 C.F.R. § 395.3, except that a driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with 49 C.F.R. § 395.3. When a driver is moving from emergency relief efforts to normal operations a 10-hour break is required if the total time a driver operated, whether conducting emergency relief efforts or a combination of emergency relief efforts and normal operations, equals or exceeds fourteen (14) hours.

Section 8.

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 declared emergency area.

Section 9.

This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency, whichever is less, unless this Executive Order is otherwise extended.

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 20th day of December 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: LiveWire EV, LLC

Applicant's Address: 3700 West Juneau Ave, Milwaukee WI 53208

Application Date: 10/25/22

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

Jochen Zeitz Chief Executive Officer

Ryan Morrissey President

Amanda Parker Chief Legal officer & Secretary

Jon Carter Treasurer

Tralisa Maraj Chief Financial Officer

Ryan Farage Sales Director

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 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice *is hereby given in accordance with G.S. 150B-21.2 that the Child Care Commission intends to adopt the rule cited as 10A NCAC 09 .2513 and amend the rules cited as 10A NCAC 09 .0713 and .2809.*

Link to agency website pursuant to G.S. 150B-19.1(c): *https://ncchildcare.ncdhhs.gov/Whats-New*

Proposed Effective Date: *July 1, 2023*

Public Hearing:
Date: *February 6, 2023*
Time: *11:00 a.m.*
Location: *NC Division of Child Development and Early Education, 333 Six Forks Road, Conference Room 165, Raleigh, NC 27609*

Reason for Proposed Action:
*Proposed amendments to rule **10A NCAC 09 .0713** will align it with statute and provide clarity pertaining to the staff/child ratios and multi-age group allowance. The proposed amendments would include two additional options for a child care center to choose--one that would permit a center to group four-year-old children up to age six together and the other for six-year-old children through age 12 to be grouped together. Other amendments will make this rule inclusive of all age groups served by licensed child care by adding in appropriate multi-age ratios for school-age children.*
*The adoption of rule **10A NCAC 09 .2513** will clarify a 2020 statute change to G.S. 110-86(2)(i) that exempted cooperative arrangements for "instructional needs" from child care licensure requirements. The proposed rule defines "cooperative arrangements for instructional needs" to clarify that cooperative arrangements that are for the purpose of facilitating school-aged children's education instruction would not be subject to licensure.*
*The amendment of rule **10A NCAC 09 .2809** will correct a conflict with another rule regarding outdoor space requirements in child care facilities. The amendment alters the way the space is calculated--changing it from a percentage of the capacity to the number of children using it, which is how outdoor space is calculated in the minimum standards section. This amendment is an approach to understanding the space requirements and for those interested in a two through five star rated license, building from minimum to enhanced standards. The proposed rule increases the square footage to 100 square feet of the outside learning environment for each child.*

Comments may be submitted to: *Dedra Alston, 2201 Mail Service Center, Raleigh, NC 27699-2200, Raleigh, NC 27699; phone (919) 814-6307; email Dedra.Alston@dhhs.nc.gov*

Comment period ends: *March 20, 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 09 - CHILD CARE RULES

SECTION .0700 - STAFF QUALIFICATIONS

10A NCAC 09 .0713 STAFF/CHILD RATIOS FOR CENTERS

(a) The staff/child ratios and group sizes for single-age groups of children in centers shall be as follows:

Age of Children	Ratio Staff/Children	Maximum Group Size
0 to 12 Months	1/5	10
12 to 24 Months	1/6	12
2 to 3 Years	1/10	20
3 to 4 Years	1/15	25
4 to 5 Years	1/20	25
5 Years and Older	1/25	25

(1) when combining age groups, the staff/child ratio for the youngest child in the group shall be maintained for the entire group;

(2) children of all ages may be cared for together in groups for the first and last operating hour of

the day, provided the staff/child ratio for the youngest child in the group is maintained;

(3) a child two years of age and older may be placed with children under one year of age when a physician certifies that the developmental age of the child makes this placement appropriate;

(4) when determined to be developmentally appropriate by the operator and parent, a child age two or older may be placed one age level above his or her chronological age without affecting the staff/child ratio for that group. This provision shall be limited to one child per group;

(5) except as provided in Subparagraphs (2) and (3) of this Paragraph, children under one year of age shall be kept separate from children two years of age and over;

(6) children between the ages of 12 months and 24 months shall not be grouped with older children unless all children in the group are less than three years of age;

(7) when only one caregiver is required to meet the staff/child ratio and no children under two years of age are in care, that caregiver may concurrently perform food preparation or other duties that are not direct child care responsibilities as long as supervision of the children as specified in 10A NCAC 09 .1801 is maintained;

(8) except as provided in Subparagraph (7) of this Paragraph, staff members and child care administrators who are counted in meeting the staff/child ratios as stated in this Rule shall not concurrently perform food preparation or other duties that are not direct child care responsibilities; and

(9) when only one caregiver is required to meet the staff/child ratio, the operator shall select one of the following options for emergency relief:

(A) the center shall post the name, address, and telephone number of an adult who has agreed in writing to be available to provide emergency relief; or

(B) there shall be a second adult on the premises who is available to provide emergency relief.

(10) the staff/child ratio applicable to a classroom as described in this Paragraph shall be posted in that classroom in an area that parents are able to view at all times.

(b) The staff/child ratios for a center located in a residence with a licensed capacity of 3 to 12 children when any preschool-age child is enrolled, or with a licensed capacity of 3 to 15 children when only school-age children are enrolled, are as follows:

Age of Children	Ratio Staff/Children
0 to 12 Months	1/5 preschool children plus three additional school-age children
12 to 24 Months	1/6 preschool children plus two additional school-age children
2 to 13 Years	1/10
3 to 13 Years	1/12
All school-age	1/15

(c) The staff/child ratio applicable to a classroom for a center located in a residence as described in Paragraph (b) of this Rule shall be posted in that classroom in an area that parents are able to view at all times.

(d) When only one caregiver is required to meet the staff/child ratio for a center located in a residence, as described in Paragraph (b) of this Rule and children under two years of age are in care, that person shall not concurrently perform food preparation or other duties that are not direct child care responsibilities.

(e) When only one caregiver is required to meet the staff/child ratio for a center located in a residence, as described in Paragraph (b) of this Rule the operator shall select one of the following options for emergency relief:

(1) the center shall post the name, address, and telephone number of an adult who has agreed in writing to be available to provide emergency relief and who can respond within a reasonable period of time; or

(2) there shall be a second adult on the premises who is available to provide emergency relief.

(f) Upon the Division's receipt of a written request, a center may choose to group children in multi-age groups rather than single-aged groups. The staff/child ratios and group sizes for multi-age groups of children in centers shall be as follows:

Age of Children	Ratio Staff/Children	Maximum Group Size
0 to 36 months ~~3 years of age~~	1/4	8
12 months to 36 months	1/5	10
24 months to 47 ~~60~~ months	1/6	10
4 years of age to 6 years of age	1/9	18
6 years of age through 12 years of age	1/19	25

(1) Before meeting the ratios outlined in this Paragraph or before changing from multi-age group ratios to single-age group ratios, the Division must be notified in writing;

(2) Paragraphs (a) through (e) of this Rule do not apply to centers that choose to meet the ratios outlined in this ~~Paragraph; and~~ Paragraph, with the exception of Subparagraphs (a)(7), (8) and (9) of this Rule;

(3) Children 36 months through 47 months may remain in the classroom with infants provided there is an agreed upon transition plan between

the child care facility, the child's parents or legal guardian, and local partners if the plan includes future care outside of the center. Transition plans must be initiated at least six months prior to a child's third birthday, maintained in each child's file, and be available for review by the Division; and

~~(3)~~(4) The staff/child ratio applicable for a multi-age group as described in this Paragraph shall be posted in that classroom in an area that parents are able to view at all times.

Authority G.S. 110-85; 110-91(7); 143B-168.3.

SECTION .2500 - CARE FOR SCHOOL-AGE CHILDREN

10A NCAC 09 .2513 COOPERATIVE ARRANGEMENT FOR INSTRUCTIONAL NEEDS

(a) For purposes of this Rule, "cooperative arrangement for instructional needs" means an arrangement between a group of parents to provide care for their school-age children in one of the parent's homes for the purpose of supervising and facilitating the children's online, virtual, or remote elementary or secondary education instruction.

(b) Pursuant to G.S. 110-86(2)(i), cooperative arrangements for instructional needs are not child care and therefore are exempt from licensure.

Authority G.S. 110-85; 110-86; 110-88; 110-91.

SECTION .2800 - TWO THROUGH FIVE STAR RATED LICENSES

10A NCAC 09 .2809 ENHANCED SPACE REQUIREMENTS

(a) There shall be at least 30 square feet inside space per child per the total licensed capacity and ~~75~~ 100 square feet outside space for ~~one third of the total number of the capacity for which the center is licensed.~~ each child using the outdoor learning environment at any one time. ~~In the alternative there shall be at least 35 square feet inside space per child per the total licensed capacity and 75 square feet outside space per child for the total licensed capacity.~~

(b) There shall be an area that can be arranged for administrative and private conference activities.

Authority G.S. 110-88(7); 110-90(4); 143B-68.3.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02D .0103, .0501, .0546, .0605, .1903-.1905, .2203; 02Q .0104, .0105, .0206, .0304, .0305, .0307, .0505, .0507, .0508 and .0710.*

Link to agency website pursuant to G.S. 150B-19.1(c): *http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process*

Proposed Effective Date: *July 1, 2023*

Public Hearing:
Date: *February 21, 2023*
Time: *6:00 p.m.*
Location:
1st Floor Training Room (#1210), DEQ Green Square Office Building, 217 West Jones St., Raleigh, NC 27603 or virtually using Cisco WebEx, Digital Hearing Link: https://bit.ly/3UX223w Meeting password: NCDAQ
Audio conference: To receive a call back, provide your phone number when you join the event, or call the number below and enter the access code. US TOLL +1-415-655-0003, Access code: 2430 592 4126
If you wish to speak at the digital public hearing, you must register, provide the required information, and follow instructions on ways to join the public hearing. Registration must be completed by 4:00 p.m. on February 21, 2023. To register, please go to the following link: https://forms.office.com/g/B8tWjjmkhw
**For instructions on ways to join the public hearing, please refer to the following link: https://files.nc.gov/ncdeq/Air%20Quality/rules/hearing/instructions-on-ways-to-join-webex.pdf*
https://www.webex.com/test-meeting.html
**If you have technical difficulties, the following automated voicemail has been set up to receive your verbal comments: 919-707-8429*

Reason for Proposed Action: *To receive comments on the proposed rule amendments to allow electronic submittal of documents and accompanying regulatory impact analysis for the proposed amendments. The amendments proposed in this rulemaking are primarily to allow an option for the Division of Air Quality (DAQ) to receive applications, records, and other documents electronically where paper copy submissions are currently required, once the DAQ has developed and made available a system for receiving such records in electronic format. The proposed revisions also include other minor changes throughout the rules to align with and complement the Department's transition to an electronic records storage system and allow electronic fee payments. On November 10, 2022, the Environmental Management Commission approved proceeding to public comment on the proposed amendments. The text of the rules and regulatory impact analysis are available on the DAQ website: http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process*

Comments may be submitted to: *Katherine Quinlan, 217 West Jones St., 1641 Mail Service Center, Raleigh, NC 27699-1641; phone (919) 707-8702; fax (919) 715-0717; email daq.publiccomments@ncdenr.gov (Please type "Electronic Documents Rule Revisions" in the subject line)*

Comment period ends: *March 20, 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 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS

15A NCAC 02D .0103 COPIES OF REFERENCED FEDERAL REGULATIONS

~~(a)~~ Copies of applicable Code of Federal Regulations sections referred to in this Subchapter may be obtained free of charge online at https://www.govinfo.gov/app/collection/cfr/. Copies of such rules are also available for public inspection at Department of Environmental Quality regional offices upon request. The contact information for each regional office is provided on the Division of Air Quality website at https://deq.nc.gov/about/divisions/air-quality/regional-offices. ~~offices. They are:~~

~~(1) Asheville Regional Office, 2090 Highway 70, Swannanoa, North Carolina 28778;~~

~~(2) Winston Salem Regional Office, 450 West Hanes Mill Road, Suite 300, Winston Salem, NC 27105;~~

~~(3) Mooresville Regional Office, 610 East Center Avenue, Suite 301, Mooresville, North Carolina 28115;~~

~~(4) Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina 27609;~~

~~(5) Fayetteville Regional Office, Systel Building, 225 Green Street, Suite 714, Fayetteville, North Carolina 28301;~~

~~(6) Washington Regional Office, 943 Washington Square Mall, Washington, North Carolina 27889; and~~

~~(7) Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.~~

~~(b) Copies of such rules may be obtained free of charge online at https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR.~~

Authority G.S. 143-215.3; 150B-21.6.

SECTION .0500 - EMISSION CONTROL STANDARDS

15A NCAC 02D .0501 COMPLIANCE WITH EMISSION CONTROL STANDARDS

(a) Purpose and Scope. The purpose of this Rule is to assure compliance with emission control standards found in this Section. This Rule shall apply to all air pollution sources, both combustion and non-combustion.

(b) All new sources shall be in compliance prior to beginning operations.

(c) In addition to any control or manner of operation necessary to meet emission standards in this Section, any source of air pollution shall be operated with such control or in such manner that the source shall not cause the ambient air quality standards pursuant to 15A NCAC 02D .0400 to be exceeded at any point beyond the premises on which the source is located. When controls more stringent than those named in the applicable emission standards in this Section are required to prevent violation of the ambient air quality standards or are required to create an offset, the permit shall contain a condition requiring these controls.

(d) The Bubble Concept. As provided in this Paragraph, a facility with multiple emission sources or multiple facilities within the same area may choose to meet the total emission limitation for a given pollutant through a different mix of controls than those required by the rules in 15A NCAC 02D .0500 or .0900.

(1) In order for this mix of alternative controls to be permitted, the Director shall determine that the following conditions are met:

(A) Sources pursuant to 15A NCAC 02D .0524, .0530, .0531, .1110 or .1111, the federal New Source Performance Standards (NSPS), the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), regulations established pursuant to Section 111(d) of the federal Clean Air Act, or state or federal Prevention of Significant Deterioration (PSD) requirements apply, shall have emissions no larger than if there were not an alternative mix of controls;

(B) The facility or facilities is located in an attainment area or an unclassified area or in an area that has been demonstrated to be attainment by the statutory deadlines with reasonable further progress toward attainment for those pollutants being considered;

(C) All of the emission sources affected by the alternative mix are in compliance with applicable regulations or are in compliance with established compliance agreements; and

(D) The review of an application for the proposed mix of alternative controls and the enforcement of any resulting permit will not require expenditures on the part of the State in excess of five times that which would otherwise be required for the review and enforcement of other permits.

(2) The owners or operators of the facility or facilities shall demonstrate the alternative mix of controls is equivalent in total allowed emissions, reliability, enforceability, and environmental impact to the aggregate of the otherwise applicable individual emission standards; and

(A) that the alternative mix approach does not interfere with the attainment and maintenance of the ambient air quality standards and does not interfere with the PSD program, which shall include modeled calculations of the amount, if any, of PSD increment consumed or created;

(B) that the alternative mix approach conforms with reasonable further progress requirements as defined in Clean Air Act Section 171(1), in any nonattainment area;

(C) that the emissions pursuant to the alternative mix approach are quantifiable, and trades among them are equivalent; and

(D) that the pollutants controlled pursuant to the alternative mix approach are of the same criteria pollutant categories, except that emissions of some criteria pollutants used in alternative emission control strategies are subject to the limitations as defined in 44 FR 71784 (December 11, 1979), Subdivision D.1.c.ii. The Federal Register referenced in this Part is hereby incorporated by reference and does not include subsequent amendments or editions.

The demonstrations of equivalence shall be performed with at least the same level of detail as State Implementation Plan (SIP) demonstration of attainment for the area. A copy of the SIPs can be found on the DAQ website at https://deq.nc.gov/about/divisions/air-quality/air-quality-planning/state-implementation-plans. If the facility involves another facility in the alternative strategy, it shall complete a modeling demonstration to ensure that air quality is protected. Demonstrations of equivalency shall take into account differences in the level of reliability of the control measures or other uncertainties.

(3) The emission rate limitations or control techniques of each source within the facility or facilities subjected to the alternative mix of controls shall be specified in the facility's permit or facilities' permits.

(4) Compliance schedules and enforcement actions shall not be affected because an application for an alternative mix of controls is being prepared or is being reviewed.

(5) The Director may waive or reduce requirements in this Paragraph up to the extent allowed by the Emissions Trading Policy Statement published in the Federal Register of April 7, 1982, pages 15076-15086, provided that the analysis required by Paragraph (e) of this Rule supports any waiver or reduction of requirements. The Federal Register referenced in this Subparagraph is hereby incorporated by reference and does not include subsequent amendments or editions.

(e) In a permit application for an alternative mix of controls pursuant to Paragraph (d) of this Rule, the owner or operator of the facility shall demonstrate the proposal is equivalent to the existing requirements of the SIP in total allowed emissions, enforceability, reliability, and environmental impact. The Director shall provide for public notice with an opportunity for a request for public hearing following the procedures pursuant to 15A NCAC 02Q .0300 or .0500, as applicable.

(1) If a permit containing these conditions is issued pursuant to 15A NCAC 02Q .0300, it shall become a part of the state implementation plan (SIP) as an appendix available for inspection ~~at the Department's regional offices.~~ as specified in 15A NCAC 02Q .0105. Until the U.S. Environmental Protection Agency (EPA) approves the SIP revision embodying the permit containing an alternative mix of controls, the facility shall continue to meet the otherwise applicable existing SIP requirements.

(2) If a permit containing these conditions is issued pursuant to 15A NCAC 02Q .0500 it shall be available for inspection ~~at the Department's regional offices.~~ as specified in 15A NCAC 02Q .0105. Until the EPA approves the Title V permit containing an alternative mix of controls, the facility shall continue to meet the otherwise applicable existing SIP requirements.

The revision shall be submitted for approval by the EPA on the basis of the revision's consistency with EPA's "Policy for Alternative Emission Reduction Options Within State Implementation Plans" as promulgated in the Federal Register of December 11, 1979, pages 71780-71788, and subsequent rulings.

(f) If the owner or operator of any combustion and non-combustion source or control equipment subject to the requirements of this Section is required to demonstrate compliance with a rule in this Section, source testing procedures pursuant to 15A NCAC 02D .2600 shall be used.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .0546 CONTROL OF EMISSIONS FROM LOG FUMIGATION OPERATIONS

(a) Purpose. The purpose of this Rule is to establish emission control requirements for hazardous air pollutants and toxic air pollutants from log fumigation operations.

(b) Definitions. For the purpose of this Rule, the following definitions and definitions in this Subchapter or 15A NCAC 02Q apply:

(1) "Bulk or tarpaulin log fumigation" means the fumigation of logs that are placed in piles on an impermeable surface and covered with a weighted-down tarpaulin.

(2) "Chamber log fumigation" means the fumigation of logs inside a sealed building or structure that is specifically used for fumigation. Chambers used for fumigation may be either atmospheric or vacuum type.

(3) "Container log fumigation" means the fumigation of logs inside a container where the doors of the container are closed and sealed.

(4) "Fumigant" means the hazardous air pollutant or toxic air pollutant that is used to eliminate the pests within the logs.

(5) "Fumigation operation" means the period of time that the fumigant is injected and retained in the container, chamber, or bulk piles for the purposes of treating the logs for insects and other pests to prevent the transfer of exotic organisms.

(6) "Hazardous air pollutant" means any pollutant listed under Section 112(b) of the federal Clean Air Act in 42 U.S.C. 7412(b).

(7) "Public right-of-way" means an access area where people can reasonably be expected to be present for any or all parts of a 24-hour period.

(8) "Toxic air pollutant" means any of the carcinogens, chronic toxicants, acute systemic toxicants, or acute irritants that are listed in 15A NCAC 02D .1104.

(c) Applicability. This Rule applies to new, existing, and modified bulk, chamber, and container log fumigation operations that use a hazardous air pollutant or toxic air pollutant as a fumigant.

(d) Emission Control Requirements. The owner or operator of a log fumigation operation shall comply with the Toxic Air Pollutant Guidelines specified in 15A NCAC 02D .1104 and follow the procedures specified in 15A NCAC 02D .1106, 15A NCAC 02Q .0709, and .0710.

(e) The owner or operator shall post signs notifying the public of fumigation operations. The signs shall be visible and legible to the public at the fence or property line closest to any public right-of-way. The signs shall remain in place at all times and shall conform to the format for placards mandated by the federally approved fumigant label.

(f) Monitoring, Recordkeeping and Reporting. The owner or operator of a bulk, chamber, or container log fumigation operation shall comply with the requirements pursuant to 15A NCAC 02D .0600:

(1) The owner or operator shall send an initial notification of commencement of operations to the appropriate Division of Air Quality regional office within 15 days of initial fumigation start-up.

(2) The owner or operator shall submit ~~a~~ quarterly summary ~~report,~~ reports, signed by ~~with the original signature of~~ the permittee or the authorized responsible official, of the monitoring and recordkeeping activities. ~~activities postmarked no~~ No later than 30 days after the end of each calendar year ~~quarter.~~ quarter, reports shall be postmarked or received by the Division in accordance with 15A NCAC 02D .0605(i). The report shall contain the following:

(A) the company name, address, and facility ID number;

(B) the calendar year quarter represented by the report;

(C) the daily and total fumigant usage in pounds for each quarter;

(D) a summary of the monitoring data required by the permit that was collected during the quarter; and

(E) a summary of exceedances from the levels established in the permit that occurred during the quarter of any monitoring parameters.

(g) Compliance Schedule. The owner or operator of an existing log fumigation operation subject to this Rule shall achieve compliance within 60 days after the Rule is effective or in accordance with an alternate compliance schedule approved by the Director. In establishing an alternate compliance schedule, the Director shall consider whether the compliance approach chosen by the facility involves the purchase and installation of a control device. New and modified facilities shall achieve compliance with this Rule upon start-up.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.107(a)(5).

SECTION .0600 - MONITORING: RECORDKEEPING: REPORTING

15A NCAC 02D .0605 GENERAL RECORDKEEPING AND REPORTING REQUIREMENTS

(a) The owner or operator of a source subject to a requirement of this Subchapters 02D or 02Q of this Chapter shall maintain:

(1) records detailing all malfunctions pursuant to 15A NCAC 02D .0535;

(2) records of all testing conducted pursuant to rules in Subchapter 02D;
(3) records of all monitoring conducted pursuant to Subchapters 02D or 02Q of this Chapter,
(4) records detailing activities relating to any compliance schedule in this Subchapter; and
(5) for unpermitted sources, records necessary to determine compliance with rules in Subchapters 02D or .02Q of this Chapter.

(b) The permit shall specify:
(1) the type of monitoring required and the frequency of the monitoring;
(2) the type of records to be maintained; and
(3) the type of reports to be submitted and the frequency of submitting these reports, as necessary to determine compliance with rules in Subchapters 02D or 02Q of this Chapter or with an emission standard or permit condition.

(c) If the Director has evidence that a source is violating an emission standard or permit condition, the Director may require the owner or operator of any source subject to the requirements in Subchapters 02D or 02Q of this Chapter to submit to the Director any information necessary to determine the compliance status of the source.

(d) The owner or operator of a source of excess emissions that last for more than four hours and that results from a malfunction, a breakdown of process or control equipment, or any other abnormal conditions shall report excess emissions in accordance with the requirements of 15A NCAC 02D .0535.

(e) Copies of all records and reports generated in response to the requirements pursuant to 15A NCAC 02D .0600 shall be retained by the owner or operator for a period of two years after the date that the record was made or the report submitted, except that the retention period shall be extended if necessary to comply with other State or federal requirements.

(f) All records and reports generated in response to the requirements of 15A NCAC 02D .0600 shall be made available to personnel of the Division for inspection.

(g) The owner or operator of a source subject to the requirements of 15A NCAC 02D .0600 shall comply with the requirements of 15A NCAC 02D .0600 at his or her own cost.

(h) No person shall falsify any information required by a rule in Subchapter 02D or a permit issued pursuant to 15A NCAC 02Q. No person shall knowingly submit any falsified information required by a rule in Subchapter 02D or a permit issued pursuant to Subchapter 02Q of this Chapter.

(i) All reports, notifications, records, or other documentation required by 15A NCAC 02D and 02Q to be provided to the Division or any regional office shall be submitted as follows:
(1) Except as specified in Subparagraph (2) of this Paragraph, submit the documents in hard copy format to the Director, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699-1641, or regional office in accordance with 15A NCAC 02D .0103, as appropriate.
(2) After such time that the Division makes available a system for receiving electronic submittals, as identified in 15A NCAC 02Q .0104(c)(1), documents may be submitted in electronic format through such system in lieu of the procedures in Subparagraph (1) of this Paragraph.

Authority G.S. 143-215.3(a)(1); 143-215-65; 143-215.66; 143-215.1078(a)(4).

SECTION .1900 – OPEN BURNING

15A NCAC 02D .1903 OPEN BURNING WITHOUT AN AIR QUALITY PERMIT

(a) All open burning is prohibited except open burning allowed pursuant to Paragraph (b) of this Rule or 15A NCAC 02D .1904. Except as allowed pursuant to Subparagraphs (b)(3) through (b)(9) of this Rule, open burning shall not be initiated in a county that the Department or the Forsyth County Office of Environmental Assistance and Protection, has forecasted to be in an Air Quality Action Day Code "Orange" or above during the 24-hour time period covered by that Air Quality Action Day.

(b) The following types of open burning are permissible without an air quality permit.
(1) The open burning of leaves, logs, stumps, tree branches, or yard trimmings, if the following conditions are met:
(A) the material burned originates on the premises of private residences and is burned on those premises and does not include material collected from multiple private residences and combined for burning;
(B) there are no public pickup services available;
(C) non-vegetative materials, such as household garbage, treated or coated wood, or any other synthetic materials are not burned;
(D) the burning is initiated no earlier than 8:00 a.m. and no additional combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;
(E) the burning does not create a nuisance; and
(F) material is not burned when the North Carolina Forest Service or other government agencies have banned burning for that area.

The burning of logs or stumps of any size shall not be considered to create a nuisance for purposes of the application of the open burning air quality permitting exception described in this Subparagraph;
(2) The open burning for land clearing or right-of-way maintenance if the following conditions are met:
(A) The wind direction at the time that the burning is initiated and the wind direction as forecasted by the National

Weather Service at the time that the burning is initiated are away from any area, including public roads within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be affected by smoke, ash, or other air pollutants from the burning;

(B) The location of the burning is at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property where the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if:

(i) a signed, written statement waiving objections to the open burning associated with the land clearing operation is obtained and submitted to, and the exception granted by, the regional office supervisor before the burning begins from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 500 feet of the open burning site. In the case of a lease or rental agreement, the lessee or renter shall be the person from whom permission shall be gained prior to any burning; or

(ii) an air curtain incinerator that complies with 15A NCAC 02D .1904 is utilized at the open burning site.

Factors that the regional supervisor shall consider in deciding to grant the exception include: all the persons who need to sign the statement waiving the objection have signed it; the location of the burn; and the type, amount, and nature of the combustible substances. The regional supervisor shall not grant a waiver if a college, school, licensed day care, hospital, licensed rest home, or other similar institution is less than 500 feet from the proposed burn site when such institution is occupied;

(C) Only land-cleared plant growth is burned. Heavy oils, items containing natural or synthetic rubber, synthetic materials, or any materials other than plant growth shall not be burned; however, kerosene, distillate oil, or diesel fuel may be used to start the fire;

(D) Initial burning begins only between the hours of 8:00 a.m. and 6:00 p.m., and no combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;

(E) No fires are initiated or vegetation added to existing fires when the North Carolina Forest Service or other government agencies have banned burning for that area; and

(F) Materials are not carried off-site or transported over public roads for open burning unless the materials are carried or transported to:

(i) Facilities permitted in accordance with 15A NCAC 02D .1904 for the operation of an air curtain incinerator at a permanent site; or

(ii) A location, where the material is burned not more than four times per calendar year, which meets all of the following criteria:

(I) at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted;

(II) there are no more than two piles, each no more than 20 feet in diameter, being burned at one time; and

(III) the location is not a permitted solid waste management facility;

(3) camp fires and fires used solely for outdoor cooking and other recreational purposes, ceremonial occasions, or for human warmth and comfort and that do not create a nuisance and do not use synthetic materials, refuse, or salvageable materials for fuel;

(4) fires purposely set to public or private forest land for forest management practices for which burning is currently acceptable to the North Carolina Forest Service;

(5) fires purposely set to agricultural lands for disease and pest control and fires set for other agricultural or apicultural practices for which burning is currently acceptable to the North Carolina Department of Agriculture and Consumer Services;

(6) fires purposely set for wildlife management practices for which burning is currently acceptable to the Wildlife Resource Commission;

(7) fires for the disposal of dangerous materials when the Division has determined that it is the safest and most practical method of disposal;

(8) fires purposely set by manufacturers of fire-extinguishing materials or equipment, testing laboratories, or other persons, for the purpose of testing or developing these materials or equipment in accordance with a standard qualification program;

(9) fires purposely set for the instruction and training of fire-fighting personnel at permanent fire-fighting training facilities;

(10) fires purposely set for the instruction and training of fire-fighting personnel when conducted under the supervision of or with the cooperation of one or more of the following agencies:

(A) the North Carolina Forest Service;

(B) the North Carolina Department of Insurance; or

(C) North Carolina Community Colleges;

(11) fires not described in Subparagraphs (9) or (10) of this Paragraph, purposely set for the instruction and training of fire-fighting personnel, provided that:

(A) the regional office supervisor has been notified according to the procedures and deadlines contained in the notification form and the regional office supervisor has granted permission for the burning. The information required to be submitted in the form includes:

(i) the address of the fire department that is requesting the training exercise;

(ii) the location of the training exercise;

(iii) a description of the type of structure or object and amount of materials to be burned at the location of the training exercise;

(iv) the dates that the training exercise will be performed; and

(v) an inspection from a North Carolina Asbestos Inspector that the structure being burned is free of asbestos.

The form shall be submitted 10 days prior to commencement of the burn. This form may be obtained in electronic format at https://deq.nc.gov/about/divisions/air-quality/air-quality-enforcement/open-burning/firefighter-information or by ~~writing~~ contacting the appropriate regional office ~~at the address~~ as specified in 15A NCAC 02D .1905 and requesting it.

(B) Factors that the regional office supervisor shall consider in granting permission for the burning include:

(i) type, amount, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning of salvageable items or if the primary purpose of the fire is to dispose of synthetic materials or refuse;

(ii) the burning of previously demolished structures. The regional office supervisor shall not consider these structures as having training value;

(iii) the burning of motor vehicles. The regional office supervisor may allow an exercise involving the burning of motor vehicles burned over a period of time by a training unit or by several related training units if he or she determines that they have training value; and

(iv) the distance from the location of the fire training to residential, commercial, or institutional buildings or properties.

Any deviations from the dates and times of exercises, including additions, postponements, and deletions, submitted in the schedule in the approved plan shall be communicated verbally to the regional office supervisor at least one hour before the burn is scheduled.

(12) fires for the disposal of vegetative material generated as a result of a natural disaster, such as tornado, hurricane, or flood, if the regional office supervisor grants permission for the burning. The person desiring to do the burning

shall document and provide written notification to the regional office supervisor that there is no other practical method of disposal of the waste. Factors that the regional office supervisor shall consider in granting permission for the burning include type, amount, location of the burning, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning if the primary purpose of the fire is to dispose of synthetic materials or refuse or recovery of salvageable materials. Fires authorized under this Subparagraph shall comply with the conditions of Parts (b)(2)(A) through (E) of this Rule.

(c) The authority to conduct open burning pursuant to this Section does not exempt or excuse any person from the consequences, damages, or injuries that may result from this conduct. It does not excuse or exempt any person from complying with all applicable laws, ordinances, rules or orders of any other governmental entity having jurisdiction even though the open burning is conducted in compliance with this Section.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); S.L. 2011-394, s.2.

15A NCAC 02D .1904 AIR CURTAIN INCINERATORS

(a) Applicability. This Rule applies to the following air curtain incinerators:

(1) new and existing air curtain incinerators subject to 40 CFR 60.2245 through 60.2260 or 60.2970 through 60.2974 that combust the following materials:
  (A) 100 percent wood waste;
  (B) 100 percent clean lumber;
  (C) 100 percent yard waste; or
  (D) 100 percent mixture of only wood waste, clean lumber, and yard waste.

(2) new and existing temporary air curtain incinerators used at industrial, commercial, institutional, or municipal sites where a temporary air curtain incinerator is defined in Subparagraph (b)(6) of this Rule.

(b) Definitions. For the purpose of this Rule, the following definitions apply:

(1) "Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood or wood products that have been painted, pigment-stained, or pressure treated, or manufactured wood products that contain adhesives or resins.

(2) "Malfunction" means any unavoidable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures caused entirely or in part by poor maintenance, careless operations or any other upset condition within the control of the emission source are not considered a malfunction.

(3) "New air curtain incinerator" means an air curtain incinerator that began operating on or after the effective date of this Rule.

(4) "Operator" means the person in operational control over the open burning.

(5) "Permanent air curtain incinerator" means an air curtain incinerator whose owner or operator operates the air curtain incinerator at one facility or site during the term of the permit.

(6) "Temporary air curtain incinerator" means an air curtain incinerator whose owner or operator moves the air curtain incinerator to another site and operates it for land clearing or right-of-way maintenance at that site at least once during the term of its permit.

(7) "Temporary-use air curtain incinerator used in disaster recovery" means an air curtain incinerator that meets all of the following requirements:
  (A) combusts less than 35 tons per day of debris consisting of the materials listed in Parts (a)(1)(A) through (C) of this Rule;
  (B) combusts debris within the boundaries of an area officially declared a disaster or emergency by federal, state or local government; and
  (C) combusts debris for less than 16 weeks unless the owner or operator submits a request for additional time at least 1 week prior to the end of the 16-week period and provides the reasons that the additional time is needed. The Director will provide written approval for the additional time if he or she finds that the additional time is warranted based on the information provided in the request.

  Examples of disasters or emergencies include tornadoes, hurricanes, floods, ice storms, high winds, or acts of bioterrorism.

(8) "Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:
  (A) grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial, institutional, or industrial sources as part of maintaining yards or other private or public lands;
  (B) construction, renovation, or demolition wastes;
  (C) clean lumber; and
  (D) treated wood and treated wood products, including wood products

that have been painted, pigment-stained, or pressure treated, or manufactured wood products that contain adhesives or resins.

(9) "Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. Yard waste comes from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include:

(A) construction, renovation, or demolition wastes;

(B) clean lumber; and

(C) wood waste.

(c) Air curtain incinerators shall comply with the following conditions and requirements:

(1) the operation of air curtain incinerators in particulate and ozone nonattainment areas shall cease in a county that the Department or the Forsyth County Office of Environmental Assistance and Protection has forecasted to be an Air Quality Action Day Code "Orange" or above during the 24-hour time period covered by that Air Quality Action Day;

(2) the wind direction at the time that the burning is initiated and the wind direction as forecasted by the National Weather Service during the time of the burning shall be away from any area, including public roads within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be affected by smoke, ash, or other air pollutants from the burning;

(3) no fires shall be started or material added to existing fires when the North Carolina Forest Service, Fire Marshall, or other governmental agency has banned burning for that area;

(4) burning shall be conducted only between the hours of 8:00 a.m. and 6:00 p.m. No combustible materials shall be added to the air curtain incinerator prior to or after this time period;

(5) The air curtain incinerator shall not be operated more than the maximum source operating hours-per-day and days-per-week. The maximum source operating hours-per-day and days-per-week shall be set to protect the ambient air quality standard and prevention of significant deterioration (PSD) increment for particulate. The maximum source operating hours-per-day and days-per-week shall be determined using the modeling procedures in 15A NCAC 02D .1106(b), (c), and (f). This Subparagraph shall not apply to temporary air curtain incinerators;

(6) air curtain incinerators shall meet manufacturer's specifications for operation and upkeep to ensure complete burning of material charged into the pit. Manufacturer's specifications shall be kept on site and be available for inspection by Division staff;

(7) the owner or operator of an air curtain incinerator shall allow the ashes to cool and water the ash prior to its removal to prevent the ash from becoming airborne;

(8) only distillate oil, kerosene, diesel fuel, natural gas, or liquefied petroleum gas may be used to start the fire; and

(9) the location of the burning shall be at least 300 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if a signed, written statement waiving objections to the air curtain burning is obtained from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 300 feet of the burning site. In case of a lease or rental agreement, the lessee or renter, and the property owner shall sign the statement waiving objections to the burning. The statement shall be submitted to and approved by the regional office supervisor before initiation of the burn. Factors that the regional supervisor shall consider in deciding to grant the exception include: all the persons who need to sign the statement waiving the objection have signed it; the location of the burn; and the type, amount, and nature of the combustible substances.

(d) Exemptions. Temporary-use air curtain incinerators used in disaster recovery are excluded from the requirements of this Rule if the following conditions are met:

(1) the air curtain incinerator meets the definition of a temporary-use air curtain incinerators used in disaster recovery as specified in Subparagraph (b)(7) of this Rule;

(2) the air curtain incinerator meets all the requirements pursuant to 40 CFR 60.2969 or 60.3061, as applicable; and

(3) the air curtain incinerator is operated in a manner consistent with the operations manual for the air curtain incinerator and the charge rate during all periods of operation is less than or equal to the lesser of 35 tons per day or the maximum charge rate specified by the manufacturer of the air curtain incinerator.

(e) Permitting. Air curtain incinerators shall be subject to 15A NCAC 02Q .0500.

(1) The owner or operator of a new or existing permanent air curtain incinerator shall obtain a General Title V Operating Permit pursuant to 15A NCAC 02Q .0509.

(2) The owner or operator of a new or existing temporary air curtain incinerator shall obtain a

General Title V Operating Permit pursuant to 15A NCAC 02Q .0510.

(3) The owner or operator of an existing permanent or temporary air curtain incinerator shall complete and submit a permit application no later than 12 months after the effective date of this Rule.

(4) The owner or operator of a new permanent or temporary air curtain incinerator shall complete and submit a permit application 60 days prior to the date the unit commences operation.

(5) The owner or operator of an existing permanent or temporary air curtain incinerator that is planning to close rather than obtaining a permit pursuant to 15A NCAC 02Q .0509 or 15A NCAC 02Q .0510 shall submit a closure notification to the Director no later than 12 months after the effective date of this Rule.

(f) Opacity limits.

(1) The owner or operator of an existing air curtain incinerators shall meet the following opacity limits:

(A) Maintain opacity to less than or equal to 35 percent opacity (as determined by the average of 3 1-hour blocks consisting of 10 6-minute average opacity values) during startup of the air curtain incinerator, where startup is defined as the first 30 minutes of operation.

(B) Maintain opacity to less than or equal to 10 percent opacity (as determined by the average of 3 1-hour blocks consisting of 10 6-minute average opacity values) at all times, other than during startup or during malfunctions.

(2) The owner or operator of a new air curtain incinerator shall meet the opacity limits specified in Subparagraph (f)(1) of this Rule within 60 days after air curtain incinerator reaches the charge rate at which it will operate, but no later than 180 days after its initial startup.

(g) Performance tests.

(1) All initial and annual opacity tests shall be conducted using 40 CFR 60 Appendix A-4 Test Method 9 to determine compliance with the opacity limitations specified in Subparagraph (f)(1) of this Rule.

(2) The owner or operator of an existing air curtain incinerator shall conduct an initial performance test for opacity as specified in 40 CFR 60.8 on or before 90 days after the effective date of this rule.

(3) The owner or operator of a new air curtain incinerator shall conduct an initial performance test for opacity as specified in 40 CFR 60.8 within 60 days after achieving the maximum charge rate at which the affected air curtain incinerator will be operated, but not later than 180 days after initial startup of the air curtain incinerator.

(4) After the initial test for opacity, the owner or operator of a new or existing air curtain incinerator subject to this Rule shall conduct annual opacity tests on the air curtain incinerator no more than 12 calendar months following the date of the previous test.

(5) The owner or operator of an existing air curtain incinerator that has ceased operations and is restarting after more than 12 months since the previous test shall conduct an opacity test upon startup of the unit.

(h) Recordkeeping and Reporting Requirements.

(1) Prior to commencing construction of an air curtain incinerator, the owner or operator of a new air curtain incinerator shall submit the following information to the Director:

(A) a notification of intent to construct an air curtain incinerator;

(B) the planned initial startup date of the air curtain incinerator; and

(C) the materials planned to be combusted in the air curtain incinerator.

(2) The owner or operator of a new or existing air curtain incinerator shall do the following:

(A) keep records of results of all initial and annual opacity tests onsite in either paper copy or electronic format for five years;

(B) make all records available for submission to the Director or for an inspector's onsite review;

(C) report the results of the initial and annual opacity tests as the average of 3 1-hour blocks consisting of 10 6-minute average opacity values;

(D) submit initial opacity test results to the Division no later than 60 days following the initial test and submit annual opacity test results within 12 months following the previous report;

(E) submit initial and annual opacity test reports to the Division as ~~electronic or paper copy~~ specified in 15A NCAC 02D .0605(i) on or before the applicable submittal date; and

(F) keep a copy of the initial and annual reports onsite for a period of five years.

(i) In addition to complying with the requirements of this Rule, an air curtain incinerator subject to:

(1) 40 CFR Part 60, Subpart CCCC, shall also comply with 40 CFR 60.2245 through 60.2260; or

(2) 40 CFR Part 60, Subpart EEEE, shall also comply with 40 CFR 60.2970 through 60.2974.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5); 143-215.107(a)(10); 143-215.108; 40 CFR 60.2865; S.L. 2011-394, s.2.

15A NCAC 02D .1905 REGIONAL OFFICE LOCATIONS

Inquiries, requests, and plans shall be handled by the appropriate Department of Environmental Quality regional office. Contact information for each regional office can be found on the Division website at https://deq.nc.gov/about/divisions/air-quality/regional-offices. ~~They are:~~

~~(1) Asheville Regional Office, 2090 U.S. 70 Highway, Swannanoa, North Carolina 28778;~~

~~(2) Winston Salem Regional Office, 450 West Hanes Mill Road, Suite 300, Winston-Salem, North Carolina 27105;~~

~~(3) Mooresville Regional Office, 610 East Center Avenue, Suite 301, Mooresville, North Carolina 28115;~~

~~(4) Raleigh Regional Office, 3800 Barrett Drive, Raleigh, North Carolina 27609;~~

~~(5) Fayetteville Regional Office, 225 Green Street, Suite 714, Fayetteville, North Carolina 28301;~~

~~(6) Washington Regional Office, 943 Washington Square Mall, Washington, North Carolina 27889; and~~

~~(7) Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.~~

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

SECTION .2200 – SPECIAL ORDERS

15A NCAC 02D .2203 PUBLIC NOTICE

(a) The requirements of this Rule for public notice and public hearing shall apply to Consent Orders. The Commission may specify other conditions for Special Orders issued without consent if such conditions are necessary to achieve or demonstrate compliance with a requirement under this Subchapter or 15A NCAC 02Q.

(b) Notice of proposed Consent Order:

(1) The Director shall give notice pursuant to G.S. 143-215.110(a1).

(2) The Director shall give notice of a proposed Consent Order 30 days prior to any final action regarding the Consent Order.

(3) The notice shall be posted on the North Carolina Division of Air Quality web site at http://deq.nc.gov/about/divisions/air-quality/air-quality-enforcement/special-orders-by-consent and provided to those persons specified in G.S. 143-215.110(a1)(1) for air quality special orders.

(4) The notice shall include at least the following:

(A) name, address, and telephone number of the Division;

(B) name and address of the person to whom the proposed order is directed;

(C) a brief summary of the conditions of the proposed order, including the period of time during which action must be taken to achieve compliance and the major permit conditions or emission standards that the source will be allowed to exceed during the pendency of the order;

(D) a brief description of the procedures to be followed by the Commission or Director in reaching a final decision on the proposed order, which shall include descriptions of the process for submitting comments and requesting a public hearing. The description shall specify that comments and requests for a public hearing are to be received by the Division within 30 days following the date of public notice; and

(E) a description of the information available for public review, where it can be found, and procedures for obtaining copies of pertinent documents.

(c) Notice of public hearing for proposed Consent Order:

(1) The Director shall consider all requests for a public hearing, and if significant public interest for a public hearing exists, then he or she shall hold a public hearing.

(2) The Director shall give notice of the public hearing at least 30 days before the hearing.

(3) The notice shall be posted on the North Carolina Division of Air Quality web site at http://deq.nc.gov/about/divisions/air-quality/air-quality-enforcement/special-orders-by-consent and provided to those persons specified in G.S. 143-215.110(a1)(2) for air quality special orders.

(4) The notice shall include the information specified in Subparagraph (b)(4) of this Rule. It shall also state the time and location for the hearing and the procedures for providing comment.

(5) The Chairman of the Commission or the Director shall appoint one or more hearing officers to preside over the public hearing and to receive written and oral comments. The hearing officer shall provide the Commission a written report of the hearing, which shall include:

(A) a copy of the public notice;

(B) a copy of all the written comments and supporting documentation received;

(C) a summary of all the oral comments received;

(D) recommendations of the hearing officer to the Commission; and

(E) a proposed Consent Order for the Commission's consideration.

(d) Any person may request to receive copies of all notices required by this Rule, and the Director shall ~~mail~~ provide copies of notices to those who have submitted a request.

(e) Any Consent Order may be modified by the Director to incorporate minor modifications, such as modification of standard conditions to reflect updated versions of federal or state regulations, correction of typographical errors, or interim date extensions, without public notice provided that the modifications do not extend the final compliance date by more than four months.

Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.110.

SUBCHAPTER 02Q - AIR QUALITY PERMITS PROCEDURES

SECTION .0100 – GENERAL PROVISIONS

15A NCAC 02Q .0104 WHERE TO OBTAIN AND FILE PERMIT APPLICATIONS

(a) Application forms for a permit or permit modification may be obtained ~~from and shall be filed with the Director, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699-1641 or any of the regional offices listed pursuant to 15A NCAC 02Q .0105.~~ from the Division of Air Quality website at https://deq.nc.gov/about/divisions/air-quality/air-quality-permitting. Any person may request to receive copies of application forms available on the Division of Air Quality website, and the Director shall provide copies of forms to those who have submitted a request.

(b) Applications for a permit or permit modification shall be submitted as follows:

(1) Any submittal to the Division required under 15A NCAC 02Q .0500 shall be provided in hard copy format with original signature of the responsible official, as defined in 15A NCAC 02Q .0503, to the Director, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699-1641.

(2) Any submittal to the Division required under 15A NCAC 02Q .0300 shall be provided in hard copy format with original signature of the responsible official, as defined in 15A NCAC 02Q .0303, to the appropriate regional office address in accordance with 15A NCAC 02Q .0105.

(3) After such time that the Division makes available a system for receiving electronic submittals, as identified in Paragraph (c) of this Rule, submittals may be made in electronic format following the procedures in Paragraph (c) of this Rule in lieu of the procedures in Subparagraphs (1) and (2) of this Paragraph.

(c) All electronic submittals shall meet the following requirements:

(1) Submittals to the Division pursuant to 15A NCAC 02Q .0500 shall be made through a system that has been approved by EPA as compliant with the Cross Media Electronic Reporting Rule (CROMERR) under 40 CFR Part 3. When available, a link to the approved electronic reporting system will be made available on the Division of Air Quality permitting website at https://deq.nc.gov/about/divisions/air-quality/air-quality-permitting.

(2) Submittals to the Division pursuant to 15A NCAC 02Q .0300 shall be made through the system identified in Subparagraph (1) of this Paragraph, or as otherwise specified by the Division on its permitting website at https://deq.nc.gov/about/divisions/air-quality/air-quality-permitting.

~~(b) The number of copies of applications to be filed shall be specified in 15A NCAC 02Q .0305 and .0507.~~

Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

15A NCAC 02Q .0105 COPIES OF REFERENCED DOCUMENTS

(a) Copies of applicable Code of Federal Regulations (CFR) sections referred to in this Subchapter may be obtained free of charge online at https://www.govinfo.gov/app/collection/cfr/. Copies of such rules are also available for public inspection at Department of Environmental Quality regional ~~offices.~~ offices upon request. The contact information for each regional ~~offices are:~~ office is provided on the Division of Air Quality website at https://deq.nc.gov/about/divisions/air-quality/regional-offices.

~~(1) Asheville Regional Office, 2090 Highway 70, Swannanoa, North Carolina 28778;~~

~~(2) Winston Salem Regional Office, 450 West Hanes Mill Road, Suite 300, Winston Salem, NC 27105;~~

~~(3) Mooresville Regional Office, 610 East Center Avenue, Suite 301, Mooresville, North Carolina 28115;~~

~~(4) Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina 27609;~~

~~(5) Fayetteville Regional Office, Systel Building, 225 Green Street, Suite 714, Fayetteville, North Carolina 28301;~~

~~(6) Washington Regional Office, 943 Washington Square Mall, Washington, North Carolina 27889; and~~

~~(7) Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28403.~~

(b) Excluding information entitled to confidential treatment pursuant to 15A NCAC 02Q .0107, permit ~~Permit~~ applications and permits may be reviewed ~~at the Central Files office in the Department of Environmental Quality, Green Square Office Building, 217 West Jones Street, Raleigh, North Carolina, 27603,~~ electronically through the public access portal on the Division of Air Quality website or at a Department of Environmental Quality regional office, which may be contacted as specified in Paragraph

(a) of this Rule. ~~excluding information entitled to confidential treatment pursuant to 15A NCAC 02Q .0107.~~
(c) ~~Copies~~ Paper copies of permit applications and permits can be ~~made~~ requested for pickup at a Department of Environmental Quality regional office for ten cents ($0.10) per page. ~~Copies of CFR may be obtained free of charge online at https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR.~~

Authority G.S. 143-215.3(a)(1); 150B-19(5).

SECTION .0200 - PERMIT FEES

15A NCAC 02Q .0206 PAYMENT OF FEES
(a) Payment of fees required pursuant to 15A NCAC 02Q .0200 may be by check or money order made payable to the N.C. Department of Environmental Quality. Annual permit fee payments shall refer to the permit number.
(b) If, within 30 days after being billed, the permit holder fails to pay an annual fee required pursuant to 15A NCAC 02Q .0200, the Director may initiate action to terminate the permit pursuant to 15A NCAC 02Q .0309 or .0519 as applicable.
(c) A holder of multiple permits may arrange to consolidate the payment of annual fees into one annual payment.
(d) The payment of the permit application fee required by 15A NCAC 02Q .0200 shall accompany the application and is non-refundable.
(e) The Division shall annually prepare and make publicly available an accounting showing aggregate fee payments collected pursuant to 15A NCAC 02Q .0200 from facilities that have obtained or will obtain permits pursuant to 15A NCAC 02Q .0500 except synthetic minor facilities, and showing a summary of reasonable direct and indirect expenditures required to develop and administer the Title V permit program.
(f) In lieu of the procedures in Paragraph (a) of this Rule, fees required pursuant to 15A NCAC 02Q .0200 may be paid electronically if an electronic payment option is available for the applicable fee, as provided on the Division of Air Quality Permitting website at https://deq.nc.gov/about/divisions/air-quality/air-quality-permitting.

Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d).

SECTION .0300 - CONSTRUCTION AND OPERATION PERMITS

15A NCAC 02Q .0304 APPLICATIONS
(a) Obtaining and filing application. Permit, permit modification, or permit renewal applications may be obtained and shall be filed ~~in writing~~ according to 15A NCAC 02Q .0104.
(b) Information to accompany application. Along with filing a complete application form, the applicant shall also file the following:
(1) for a new facility or an expansion of existing facility, a zoning consistency determination according to G.S. 143-215.108(f) that:
(A) bears the date of receipt entered by the clerk of the local government; or
(B) consists of a letter from the local government indicating that all zoning or subdivision ordinances are met by the facility;
(2) for a new facility or an expansion of existing facility in an area without zoning, an affidavit and proof of publication of a legal notice as required pursuant to 15A NCAC 02Q .0113;
(3) for permit renewal, an emissions inventory that contains the information specified pursuant to 15A NCAC 02D .0202, Registration of Air Pollution Sources (the applicant shall use emission inventory forms or electronic data systems provided by the Division to satisfy this requirement); and
(4) documentation showing the applicant complies with Parts (A) or (B) of this Subparagraph if this information is necessary to evaluate the source, its air pollution abatement equipment, or the facility:
(A) the applicant is financially qualified to carry out the permitted activities; or
(B) the applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged, and has been in substantial compliance with federal and State environmental laws and rules.
(c) When to file application. For sources subject to the requirements of 15A NCAC 02D .0530 (prevention of significant deterioration) or .0531 (new source review for sources in nonattainment areas), applicants shall file air permit applications at least 180 days before the projected construction date. For all other sources, applicants shall file air permit applications at least 90 days before the projected date of construction of a new source or modification of an existing source.
(d) Permit renewal, name, or ownership changes with no modifications. If no modification has been made to the originally permitted source, application for permit change may be made by application to the Director ~~at the address~~ as specified in 15A NCAC 02Q .0104. The permit renewal, name, or ownership change application shall state that there have been no changes in the permitted facility since the permit was last issued.
To make a name or ownership change, the applicant shall send the Director the ~~copies of letters~~ content specified in 15A NCAC 02Q ~~.0305(a)(3)~~ .0305(3) or (4) signed by the responsible official as defined in 15A NCAC 02Q .0303.
(e) Applications for date and reporting changes. Application for changes in construction or test dates or reporting procedures may be made by letter to the Director ~~at the address~~ as specified in 15A NCAC 02Q .0104. To make changes in construction or test dates or reporting procedures, the applicant shall send the Director the ~~copies of letters~~ letter specified in 15A NCAC 02Q ~~.0305(a)(5)~~ .0305(5) signed by the responsible official as defined in 15A NCAC 02Q .0303.
(f) When to file applications for permit renewal. Applicants shall file applications for renewals ~~such that they are mailed to the~~

~~Director at the address~~ as specified in 15A NCAC 02Q ~~.0104~~ .0104 at least 90 days before expiration of the permit. If a hard copy of the application is mailed to the Director, the application shall be ~~and~~ postmarked at least 90 days before expiration of the permit.

(g) Name or ownership change. The permittee shall file requests for permit name or ownership changes when the permittee is aware of the imminent name or ownership change.

~~(h) Number of copies of additional information. The applicant shall submit the same number of copies of additional information as required for the application package.~~

~~(i)~~(h) Requesting additional information. Whenever the information provided on the permit application forms does not adequately describe the source or its air cleaning device, the Director may request that the applicant provide other information necessary to evaluate the source or its air cleaning device. Before acting on a permit application, the Director may request information from an applicant and conduct any inquiry or investigation that is necessary to determine compliance with applicable standards.

~~(j)~~(i) Application fee. With the exceptions specified in 15A NCAC 02Q .0203(i), a non-refundable permit application processing fee shall accompany each application. The permit application processing fees are listed in 15A NCAC 02Q .0200. A permit application shall be incomplete until the permit application processing fee is received.

~~(k)~~(j) Correcting submittals of incorrect information. An applicant shall have a continuing obligation to submit relevant facts pertaining to his or her permit application and to correct incorrect information in his or her permit application.

~~(l)~~(k) Retaining copy of permit application package. The applicant shall retain for the duration of the permit term one complete copy of the application package and all information submitted in support of the application package.

Authority G.S. 143-215.3(a)(1); 143-215.108.

15A NCAC 02Q .0305 APPLICATION SUBMITTAL CONTENT

~~(a)~~ If an applicant does not submit the following information with the application package, the application package shall be considered incomplete for processing:

(1) for new facilities and modified facilities:
- ~~(A)~~(a) an application fee required pursuant to 15A NCAC 02Q .0200;
- ~~(B)~~(b) a zoning consistency determination required pursuant to15A NCAC 02Q .0304(b)(1);
- ~~(C)~~(c) the documentation required pursuant to 15A NCAC 02Q .0304(b)(2) if required;
- ~~(D)~~(d) a financial qualification or substantial compliance statement if required; and
- ~~(E)~~(e) applications required pursuant to 15A NCAC 02Q .0304(a) and Paragraph (b) of this Rule and signed by the responsible official;

(2) for renewals: ~~one copy of~~ the application required pursuant to 15A NCAC 02Q .0304(a) and ~~(d) and~~ (d), signed by the responsible ~~official~~ official, and an emissions inventory that contains the information specified pursuant to 15A NCAC 02D .0202, Registration of Air Pollution Sources;

(3) for a name change: ~~one copy~~ a letter signed by the responsible official indicating the current facility name, the date on which the name change will occur, and the new facility name;

(4) for an ownership change: an application fee required pursuant to 15A NCAC 02Q .0200 and:
- ~~(A)~~(a) ~~one copy of~~ a letter signed by the seller and the buyer, indicating the change; ~~or~~
- ~~(B)~~(b) ~~one copy of~~ a letter bearing the signature of both the seller and buyer, containing a written agreement with a specific date for the transfer of permit responsibility, coverage, and liability between the current and new permittee; or
- ~~(C)~~(c) submit ~~one copy of~~ the appropriate form provided by the Division; and

(5) for corrections of typographical errors; changes in name, address, or telephone number of any individual identified in the permit; changes in test dates or construction dates; or similar minor changes: ~~one copy of~~ a letter signed by the responsible official describing the proposed change and explaining the need for the proposed change.

~~(b) The applicant shall submit copies of the application package as follows:~~
- ~~(1) one copy for all applications;~~
- ~~(2) one additional copy for facilities demonstrating compliance through modeling analysis; and~~
- ~~(3) three additional copies for sources subject to the requirements of 15A NCAC 02D .0530 or .0531.~~

Authority G.S. 143-215.3(a)(1); 143-215.108.

15A NCAC 02Q .0307 PUBLIC PARTICIPATION PROCEDURES

(a) This Rule shall not apply to sources subject to the requirements of 15A NCAC 02D .0530 or .0531 or Appendix S of 40 CFR Part 51. For sources subject to the requirements of 15A NCAC 02D .0530 or .0531 or Appendix S of 40 CFR Part 51, the procedures in 15A NCAC 02D .0530 or .0531 or Appendix S of 40 CFR Part 51 shall be followed, respectively.

(b) Public notice shall be given by publication in a newspaper of general circulation in the area where the facility is located and shall be ~~mailed~~ provided to persons who are on the Division's ~~mailing~~ notification list for air quality permit notices and to the EPA.

(c) The public notice shall identify:
- (1) the affected facility;
- (2) the name and address of the permittee;

(3) the name and address of the person to whom to send comments and requests for public hearing;
(4) the name, address, and telephone number of a Divisional staff person from whom interested persons may obtain additional information, including copies of the draft permit, the application, compliance plan, monitoring and compliance reports, all other relevant supporting materials, and all other materials available to the Division that are relevant to the permit decision;
(5) the activity or activities involved in the permit action;
(6) any emissions change involved in any permit modification;
(7) a brief description of the public comment procedures;
(8) the procedures to follow to request a public hearing unless a public hearing has already been scheduled; and
(9) the time and place of any hearing that has already been scheduled.

(d) The notice shall allow at least 30 days for public and EPA comments.
(e) If the Director determines that significant public interest exists or that the public interest will be served, the Director shall require a public hearing to be held on a draft permit. Notice of a public hearing shall be given at least 30 days before the public hearing.
(f) The Director shall make available for public inspection in at least one location in the region affected the information submitted by the permit applicant and the Division's analysis of that application.
(g) The Director shall send EPA a copy of each draft permit subject to public and EPA comment when sending EPA the notice of request for public comment for that permit and shall send EPA a copy of each such permit when it is issued.
(h) Confidential material shall be handled in accordance with 15A NCAC 02Q .0107.

Authority G.S. 143-215.3(a)(1),(3); 143-215.4(b); 143-215.108.

SECTION .0500 - TITLE V PROCEDURES

15A NCAC 02Q .0505 APPLICATION SUBMITTAL CONTENT

If an applicant does not submit the following information with its application package, the application package shall be returned:
(1) for new facilities and modified facilities:
(a) an application fee as required pursuant to 15A NCAC 02Q .0200;
(b) a consistency determination as required pursuant to 15A NCAC 02Q .0507(d)(1);
(c) the documentation required pursuant to 15A NCAC 02Q .0507(d)(2);
(d) a financial qualification or substantial compliance statement if required; and
(e) applications as required pursuant to 15A NCAC 02Q ~~.0507(a) and (e) and~~ .0507(a), signed as required by 15A NCAC 02Q .0520;
(2) for renewals: applications as required pursuant to 15A NCAC 02Q ~~.0507(a) and (e) and~~ .0507(a), signed as required by 15A NCAC 02Q .0520;
(3) for a name change: ~~three copies of~~ a letter signed by a responsible official in accordance with 15A NCAC 02Q .0520 indicating the current facility name, the date on which the name change will occur, and the new facility name;
(4) for an ownership change: an application fee as required pursuant to 15A NCAC 02Q .0200; and ~~three copies of~~ a letter bearing the signature of both the seller and buyer and containing a written agreement with a specific date for the transfer of permit responsibility, coverage, and liability between the current and new permittee; and
(5) for corrections of typographical errors; changes of the name, address, or telephone number of any individual identified in the permit; changes in test dates or construction dates; or similar minor changes: ~~three copies of~~ a letter signed by a responsible official in accordance with 15A NCAC 02Q .0520 describing the proposed change and explaining the need for the proposed change.

Authority G.S. 143-215.3(a)(1),(1a); 143-215.107(a)(10); 143-215.108.

15A NCAC 02Q .0507 APPLICATION

(a) Except for:
(1) minor permit modifications covered pursuant to 15A NCAC 02Q .0515;
(2) significant modifications covered pursuant to 15A NCAC 02Q .0516(c); or
(3) renewals submitted pursuant to 15A NCAC 02Q .0513;

the owner or operator of a source shall have 12 months after the facility or source becomes subject to the Title V operating permit program pursuant to 15A NCAC 02Q .0500 to file a complete application for a permit or permit revision. However, the owner or operator of a source shall not begin construction or operation of a source until he or she has obtained a construction and operation permit pursuant to 15A NCAC 02Q .0501(b) or (c) and 15A NCAC 02Q .0504.
(b) An application shall include all the information described in 40 CFR 70.3(d) and 70.5(c), including a list of insignificant activities because of size or production rate but not including insignificant activities because of category. An application shall be certified by a responsible official for truth, accuracy, and completeness. In an application submitted pursuant to this Rule, the applicant may attach copies of applications submitted pursuant to 15A NCAC 02Q .0400 or 15A NCAC 02D .0530 or .0531 if the information in those applications contains information required in this Section and is current, accurate, and complete.

(c) Application for a permit, permit revision, or permit renewal shall be made in accordance with 15A NCAC 02Q .0104 on forms of the Division and shall include plans and specifications giving all necessary data and information as required by this Rule. If the information provided on these forms does not describe the source or its air pollution abatement equipment to the extent necessary to evaluate the application, the Director shall request that the applicant provide any other information necessary to evaluate the source and its air pollution abatement equipment.

(d) Along with filing a complete application, the applicant shall also file the following:

(1) for a new facility or an expansion of existing facility, a consistency determination in accordance with G.S. 143-215.108(f) that:
  (A) bears the date of receipt entered by the clerk of the local government; or
  (B) consists of a letter from the local government indicating that all zoning or subdivision ordinances are met by the facility;

(2) for a new facility or an expansion of an existing facility in an area without zoning, an affidavit and proof of publication of a legal notice as required pursuant to 15A NCAC 02Q .0113; and

(3) if required by the Director, information showing that:
  (A) the applicant is financially qualified to carry out the permitted activities; or
  (B) the applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged and has been in substantial compliance with federal and State environmental laws and rules.

~~(e) The applicant shall submit copies of the application package as follows:~~

~~(1) for sources subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200, five copies plus one additional copy for each affected state that the Director has to notify pursuant to 15A NCAC 02Q .0521 and 15A NCAC 02Q .0522;~~

~~(2) for sources not subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200, three copies plus one additional copy for each affected state that the Director has to notify pursuant to 15A NCAC 02Q .0521 and 15A NCAC 02Q .0522.~~

~~(f)~~(e) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date the applicant filed a complete application but prior to release of a draft permit.

~~(g) The applicant shall submit the same number of copies of additional information as required for the application package.~~

~~(h)~~(f) The submittal of a complete permit application shall not affect the requirement that any facility have a permit pursuant to 15A NCAC 02D .0530, .0531, or .0532 or pursuant to 15A NCAC 02Q .0400.

~~(i)~~(g) The Director shall give priority to permit applications containing early reduction demonstrations pursuant to Section 112(i)(5) of the federal Clean Air Act. The Director shall take final action on such permit applications after receipt of the complete permit application.

~~(j)~~(h) Except as specified in 15A NCAC 02Q .0203(i), a non-refundable permit application processing fee, defined in 15A NCAC 02Q .0200, shall accompany each application. Each permit application shall be deemed incomplete until the permit application processing fee is received.

~~(k)~~(i) The applicant shall retain for the duration of the permit term one complete copy of the application package and all information submitted in support of the application package.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

15A NCAC 02Q .0508 PERMIT CONTENT

(a) A permit shall specify and reference the origin and authority for each term or condition and shall identify any differences compared to the applicable requirement on which the term or condition is based.

(b) A permit shall specify emission limitations and standards, including operational requirements and limitations, that assure compliance with all applicable requirements at the time of permit issuance.

(c) Where an applicable requirement of the federal Clean Air Act is more stringent than an applicable requirement of rules promulgated pursuant to Title IV, both provisions shall be placed in a permit. A permit shall state that both provisions are enforceable by EPA.

(d) A permit for sources using an alternative emission limit established in 15A NCAC 02D .0501(d) or 15A NCAC 02D .0952 shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(e) The expiration date of a permit shall be for a fixed term of five years for sources covered by Title IV and for a term of no more than five years from the date of issuance for all other sources including solid waste incineration units combusting municipal waste subject to standards in Section 129(e) of the federal Clean Air Act.

(f) A permit shall contain monitoring and related recordkeeping and reporting requirements as specified in 40 CFR 70.6(a)(3) and 70.6(c)(1), including conditions requiring:

(1) the permittee to submit reports of required monitoring at least every six months. The permittee shall submit reports:
  (A) on forms obtained from the Division ~~at the address~~ as specified in 15A NCAC 02Q .0104;
  (B) in a manner as specified by a permit condition; or

(C) on other forms that contain the information required by this Subchapter or as specified by a permit condition;

(2) the permittee to report:

(A) malfunctions, emergencies, and other upset conditions as prescribed in 15A NCAC 02D .0524, .0535, .1110, or .1111; and

(B) deviations quarterly from permit requirements not covered by 15A NCAC 02D .0524, .0535, .1110, or .1111. The permittee shall include the probable cause of such deviations and any corrective actions or preventive measures taken; and

(3) the responsible official to certify all deviations from permit requirements.

(g) At the request of a permittee, the Director may allow records to be maintained in electronic form in lieu of maintaining paper records. The Director shall make this decision based on factors such as whether the electronic records contain the same information as the paper records and the availability of the electronic records for inspection to demonstrate compliance.

(h) A permit for facilities covered by 15A NCAC 02D .2100, Risk Management Program, shall contain:

(1) a statement listing 15A NCAC 02D .2100 as an applicable requirement; and

(2) conditions that require the owner or operator of the facility to submit:

(A) a compliance schedule for meeting the requirements of 15A NCAC 02D .2100 by the dates provided in 15A NCAC 02D .2101(a); or

(B) as part of the compliance certification required by Paragraph (n) of this Rule, a certification statement that the source is in compliance with all requirements of 15A NCAC 02D .2100, including the registration and submission of the risk management plan.

The content of the risk management plan need not be incorporated as a permit term or condition.

(i) A permit shall:

(1) contain a condition prohibiting emissions exceeding any allowances that a facility lawfully holds pursuant to Title IV but shall not limit the number of allowances held by a permittee. A permittee shall not use allowances as a defense to noncompliance with any other applicable requirement;

(2) contain a severability clause so that various permit requirements will continue to be valid in the event of a challenge to any other portion of the permit;

(3) state that noncompliance with any condition of the permit constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application;

(4) state that the permittee may not use as a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit;

(5) state that the Director may reopen, modify, revoke and reissue, or terminate the permit for reasons specified in 15A NCAC 02Q .0517 or .0519;

(6) state that the filing of a request by the permittee for a permit revision, revocation and reissuance, termination, notification of planned changes, or anticipated noncompliance does not stay any permit condition;

(7) specify the conditions in which the permit will be reopened before the expiration of the permit;

(8) state that the permit does not convey any property rights of any sort, or any exclusive privileges;

(9) state that the permittee will furnish to the Division, in a timely manner:

(A) any information that the Director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit, and

(B) copies of records required to be kept by the permit when such copies are requested by the Director.

The permit shall also state that for information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality;

(10) contain a provision to ensure that the permittee pays fees required by 15A NCAC 02Q .0200;

(11) contain a condition that authorizes the permittee to make Section 502(b)(10) changes, off-permit changes, or emission trades in accordance with 15A NCAC 02Q .0523;

(12) include all applicable requirements for all sources covered by the permit;

(13) include fugitive emissions in the same manner as stack emissions;

(14) contain a condition requiring annual reporting of actual emissions as required by 15A NCAC 02Q 0207;

(15) include all sources including insignificant activities; and

(16) contain other provisions the Director considers appropriate.

(j) A permit shall state the terms and conditions for reasonably anticipated operating scenarios identified by the applicant in the application. These terms and conditions shall:

(1) require the permittee, contemporaneously with making a change from one operating scenario

to another, to record in a log at the permitted facility a record of the operating scenario in which it is operating;

(2) extend the permit shield described in 15A NCAC 02Q .0512 to all terms and conditions in each such operating scenario; and

(3) ensure that each operating scenario meets all applicable requirements of Subchapter 02D of this Chapter and of this Section.

(k) A permit shall identify which terms and conditions are enforceable by the Division only.

(l) A permit shall state that the permittee will allow personnel of the Division to:

(1) enter the permittee's premises where the permitted facility is located or emissions-related activity is conducted, or where records are kept by the conditions of the permit;

(2) have access to and copy any records that are required to be kept by the conditions of the permit;

(3) inspect any source, equipment, including monitoring and air pollution control equipment, practices, or operations regulated or required by the permit; and

(4) sample or monitor substances or parameters, for the purpose of assuring compliance with the permit or applicable requirements.

(m) When a compliance schedule is required by 40 CFR 70.5(c)(8) or by a rule contained in Subchapter 02D of this Chapter, the permit shall contain the compliance schedule and shall state that the permittee shall submit at least semiannually, or more frequently if specified in the applicable requirement, a progress report. The progress report shall contain:

(1) dates for achieving the activities, milestones, or compliance required in the compliance schedule and dates when such activities, milestones, or compliance were achieved; and

(2) an explanation of why any dates in the compliance schedule were not or will not be met and any preventive or corrective measures adopted.

(n) The permit shall contain requirements for compliance certification with the terms and conditions in the permit that are enforceable by EPA pursuant to Title V of the federal Clean Air Act, including emissions limitations, standards, and work practices. The permit shall specify:

(1) the frequency, not less than annually or more frequently as specified in the applicable requirements, of submissions of compliance certifications;

(2) a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(3) a requirement that the compliance certification include:

(A) the identification of each term or condition of the permit that is the basis of the certification;

(B) the status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the methods or means designated in 40 CFR 70.6(c)(5)(iii)(B). The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance was required and in which an excursion or exceedance as defined in 40 CFR 64 occurred;

(C) whether compliance was continuous or intermittent;

(D) the identification of the methods or other means used by the owner and operator for determining the compliance status with each term and condition during the certification period; these methods shall include the methods and means required in 40 CFR Part 70.6(a)(3).The owner or operator also shall identify any other material information that shall be included in the certification to comply with Section 113(c)(2) of the federal Clean Air Act, which prohibits knowingly making a false certification or omitting material information; and

(E) such other facts as the Director may require to determine the compliance status of the source; and

(4) that all compliance certifications be submitted to EPA as well as to the Division.

Authority G.S. 143-215.3(a)(1),(2); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108.

SECTION .0700 – TOXIC AIR POLLUTANT PROCEDURES

15A NCAC 02Q .0710 PUBLIC NOTICE AND OPPORTUNITY FOR PUBLIC HEARING

(a) If the owner or operator of a facility chooses to make a demonstration pursuant to 15A NCAC 02Q .0709(a)(2) or (b), the Commission or its delegate shall approve or disapprove the permit after a public notice with an opportunity for a public hearing.

(b) The public notice shall be given by publication in a newspaper of general circulation in the area where the facility is located and shall be ~~mailed~~ provided to persons who are on the Division's ~~mailing~~ notification list for air quality permit notices.

(c) The public notice shall identify:

(1) the affected facility;

(2) the name and address of the permittee;

(3) the name and address of the person to whom to send comments and requests for public hearing;

(4) the name, address, and telephone number of a Divisional staff person from whom interested persons may obtain additional information, including copies of the draft permit, the application, compliance plan, pollution prevention plan, monitoring and compliance reports, all other relevant supporting materials, and all other materials available to the Division that are relevant to the permit decision;
(5) the activity or activities involved in the permit action;
(6) emissions change involved in the proposed permit modification;
(7) a brief description of the public comment procedures;
(8) the procedures to follow to request a public hearing unless a public hearing has already been scheduled; and
(9) the time and place of a hearing that has already been scheduled.

(d) The notice shall allow at least 30 days for public comments.
(e) If the Director determines that significant public interest exists or that the public interest will be served, the Director shall require a public hearing to be held on a draft permit. Notice of a public hearing shall be given at least 30 days before the public hearing.
(f) The Director shall make available for public inspection, in at least one location in the region affected, the information submitted by the permit applicant and the Division's analysis of that application.
(g) Any persons requesting paper copies of material identified in Subparagraph (c)(4) of this Rule shall pay ten cents ($0.10) per page for each page copied. Confidential material shall be handled in accordance with 15A NCAC 02Q .0107.

Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45.

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***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07B .0702, .0803; 07H .0308; and 07K .0207.*

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

Proposed Effective Date: *July 1, 2023*

Public Hearing:
Date: *February 23, 2023*
Time: *1:30 p.m.*
Location: *Ocean Isle Beach Town Hall, 111 Causeway Drive, Ocean Isle Beach, NC 28469*

Reason for Proposed Action:
15A NCAC 07B .0702, .07B .0803 *The Coastal Resources Commission (CRC) is proposing amendments to the CAMA Land Use Planning Program. These amendments include increased flexibility for plan content and policy statements. Specifically, these amendments will allow local governments to identify which enforceable land use plan (LUP) policies shall apply to CAMA permitting reviews within the bounds of CAMA and NCAC 07B.*
15A NCAC 07H .0308, .07K .0207 *The Coastal Resources Commission proposes to amend its administrative rules in order to provide greater flexibility to local governments, government agencies and private property owners in constructing accessways and enhanced handicap access to the beach by allowing the use of beach matting.*

Comments may be submitted to: *Braxton Davis, 400 Commerce Avenue, Morehead City, NC 28557; phone (252) 515-5400*

Comment period ends: *March 20, 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 07 - COASTAL MANAGEMENT

SUBCHAPTER 07B – STATE GUIDELINES FOR LAND USE PLANNING

SECTION .0700 – LAND USE PLANNING REQUIREMENTS

15A NCAC 07B .0702 LAND USE PLAN ELEMENTS
(a) Organization of the Plan. The land use plan or comprehensive plan, hereinafter referred to as "the plan", shall include a matrix that shows the location of the required elements as set forth in this Rule.
(b) Community Concerns and Aspirations. The purpose of this element is to provide an understanding of the underlying planning needs and desires of the community to support the land use and

development policies included in the plan. This element shall include:

(1) Significant existing and emerging conditions: The plan shall describe the dominant growth-related conditions that influence land use, development, water quality, and other environmental concerns in the planning area.

(2) Key issues: The plan shall describe the land use and development topics most important to the future of the planning area. This description shall include public access, land use compatibility, infrastructure carrying capacity, natural hazard areas, water quality, and may also include local areas of concern as described in Subparagraph (d)(2)(Land Use Plan Management Topics) of this Rule.

(3) A community vision: The vision shall describe the general physical appearance and form that represents the local government's plan for the future. It shall include objectives to be achieved by the plan and identify changes that may be needed to achieve the planning vision as determined by the local government.

(c) Existing and Emerging Conditions. The purpose of this element is to provide a sound factual basis necessary to support the land use and development policies included in the plan. It shall describe the following:

(1) Population, Housing, and Economy. The plan shall include discussion of the following data and trends:

(A) Population:

(i) Permanent population growth trends using data from the two most recent decennial Censuses;

(ii) Current permanent and seasonal population estimates;

(iii) Key population characteristics, including age and income, and

(iv) Thirty year projections of permanent and seasonal population in five-year increments.

(B) Housing stock: The plan shall include an estimate of current housing stock, including permanent and seasonal units, tenure, and types of units (single-family, multifamily, and manufactured).

(C) Local economy: The plan shall describe employment by major sectors and community economic activity.

(2) Natural systems. The plan shall describe the natural features and discuss the environmental conditions of the planning jurisdiction to include:

(A) Natural features as follows.

(i) Areas of Environmental Concern (AECs) as set forth in 15A NCAC 07H;

(ii) Soil characteristics, including limitations for septic tanks, erodibility, and other factors related to development;

(iii) Environmental Management Commission (EMC) water quality classifications (SC, SB, SA, HQW, and ORW) and related use support designations located at http://portal.ncdenr.org/web/q/ps/csu/classifications and provided at no fee; and Division of Marine Fisheries (DMF)shellfish growing areas and water quality conditions located at http://portal.ncdenr.org/web/mf/shellfish-sanitation-and-recreational-water-quality and provided at no fee;

(iv) Flood and other natural hazard areas;

(v) Storm surge areas;

(vi) Non-coastal wetlands, including forested wetlands, shrub-scrub wetlands and freshwater marshes;

(vii) Water supply watersheds or wellhead protection areas;

(viii) Primary nursery areas;

(ix) Environmentally fragile areas, such as wetlands, natural heritage areas, areas containing endangered species, prime wildlife habitats, or maritime forests; and

(x) Additional natural features or conditions identified by the local government.

(B) Environmental conditions. The plan shall provide an assessment of the following environmental conditions and features:

(i) Water quality:

(I) Status and changes of surface water quality, including impaired streams from the most recent N.C. Division of Water Resources Basin Planning Branch

Reports, Clean Water Act 303(d) List, and other comparable data;

(II) Current situation and trends on permanent and temporary closures of shellfishing waters as determined by the Report of Sanitary Survey by the Shellfish Sanitation and Recreational Water Quality Section of the N.C. Division of Marine Fisheries;

(III) Areas experiencing chronic wastewater treatment system malfunctions; and

(IV) Areas with water quality or public health problems related to non-point source pollution.

(ii) Natural hazards:

(I) Areas subject to recurrent flooding, storm surges and high winds; and

(II) Areas experiencing significant shoreline erosion as evidenced by the presence of threatened structures or public facilities.

(iii) Natural resources:

(I) Environmentally fragile areas (as defined in Sub-Part (c)(2)(A)(ix) of this Rule) or areas where resource functions are impacted as a result of development; and

(II) Natural resource areas that are being impacted or lost as a result of incompatible development. These may include, but are not limited to the following: coastal wetlands, protected open space, and agricultural land.

(3) Existing Land Use and Development. The plan shall include a map and descriptions of the following:

(A) Existing land use patterns, which may include the following categories: Residential, commercial, industrial, institutional, public, dedicated open space, vacant, agriculture, and forestry. Land use descriptions shall include estimates of the land area allocated to each land use and characteristics of each land use category.

(B) Historic, cultural, and scenic areas designated by a state or federal agency or by local government.

(4) Community Facilities. The plan shall evaluate existing and planned capacity, location, and adequacy of community facilities that serve the community's existing and planned population and economic base; as well as those that protect important environmental factors such as water quality; and that guide land development in the coastal area. The evaluation shall include:

(A) Public and private water supply and wastewater systems. The plan shall describe existing public and private systems, including existing condition and capacity. It shall describe any documented overflows, bypasses, or other problems that may degrade water quality or constitute a threat to public health as documented by the Division of Water Resources (DWR). It shall indicate future needs based on population projections. The plan shall include a map of existing and planned service areas.

(B) Transportation systems. The plan shall include a map of the existing and planned multimodal systems and port and airport facilities. It shall describe any highway segments deemed by the North Carolina Department of Transportation (NCDOT) as having unacceptable service as documented in the most recent NCDOT Transportation and/or Thoroughfare Plan. It shall describe highway facilities on the current thoroughfare plan or facilities on the current transportation improvement plan. It shall describe the impact of existing facilities on land use patterns.

(C) Stormwater systems. The plan shall describe the existing public stormwater management system. It shall identify existing drainage problems and water quality issues related to point-source discharges of stormwater runoff.

(d) Future Land Use. This element of the plan is intended to guide the development and use of land in a manner that achieves the goals of the Coastal Area Management Act through local government land use and development policies, including a future land use map. This element shall include:

(1) Policies.

(A) Definitions:

(i) Policy: A specified policy statement and the future land use map and its designation descriptions.

(ii) Exceeding Policy: A policy that is more stringent than the use standards and permitting requirements found in 15A NCAC 07H, State Guidelines for Areas of Environmental Concern, or that establishes a standard for development activity not addressed within 15A NCAC 07H.

(iii) Enforceable Policy: A policy that is definitive and regulatory in its wording and not open to broad interpretation.

~~(A)~~(B) Community Concerns and Aspirations and Existing and Emerging Conditions shall be considered in the development of local government plan policies as required in Rule .0702(b) and (c) of this Section.

~~(B)~~(C) Policies shall be consistent with the goals of the CAMA, shall address the Land Use Plan Management Topics set forth in Subparagraph (d)(2) of this Rule, and comply with all state and federal rules.

~~(C)~~(D) ~~Policies that exceed use standards and permitting requirements found in Subchapter 7H, State Guidelines for Areas of Environmental Concern,~~ Exceeding policies shall be identified in the plan. For each policy that exceeds the use standards and permitting requirements found in 15A NCAC 07H, a description that cites the rule being exceeded and explains how the rule is exceeded shall be provided.

(E) Enforceable policies shall be identified in the plan.

(F) Local governments shall select from the list of exceeding and enforceable policies that will be used in the review of CAMA permits.

(G) Local governments with plans certified prior to the effective date of this rule may amend their plan to identify enforceable policies and select from the identified enforceable policies those that will be used in the review of CAMA permits. In the absence of local government selected enforceable policies, the Division and its Local Permit Officers shall use all policies that meet the definition of enforceable in the review of CAMA permits.

(2) Land Use Plan Management Topics. The purposes of the CRC management topics are to ensure that plans support the goals of the CAMA, define the CRC's expectations for land use policies, and provide a basis for plan review and certification by the CRC. In addition to the management topics outlined below, plans may also include policies to address local areas of concern. Each management topic includes two components: a management goal and planning objectives.

(A) Public Access:

(i) Management Goal: Maximize public access to the beaches and the public trust waters of the coastal region.

(ii) Planning Objectives: The plan shall include policies that address access needs and opportunities, with strategies to develop public access and provisions for all segments of the community, including persons with disabilities. Oceanfront communities shall establish access policies for beach areas targeted for nourishment.

(B) Land Use Compatibility:

(i) Management Goal: Ensure that development and use of resources or preservation of land balance protection of natural resources and fragile areas with economic development, avoids risks to public health, safety, and welfare.

(ii) Planning Objectives: The plan shall include policies that characterize future land

use development patterns and establish mitigation criteria and concepts to minimize conflicts.

(C) Infrastructure Carrying Capacity:

(i) Management Goal: Ensure that public infrastructure systems are sized, located, and managed so the quality and productivity of AECs and other fragile areas are protected or restored.

(ii) Planning Objectives: The plan shall include policies that establish service criteria and ensure improvements minimize impacts to AECs and other fragile areas.

(D) Natural Hazard Areas:

(i) Management Goal: Conserve and maintain barrier dunes, beaches, flood plains, and other coastal features for their natural storm protection functions and their natural resources giving recognition to public health, safety, and welfare issues.

(ii) Planning Objectives: The plan shall include policies that establish mitigation and adaptation concepts and criteria for development and redevelopment, including public facilities, and that minimize threats to life, property, and natural resources resulting from erosion, high winds, storm surge, flooding, or other natural hazards.

(E) Water Quality:

(i) Management Goal: Maintain, protect, and where possible enhance water quality in all coastal wetlands, rivers, streams, and estuaries.

(ii) Planning Objectives: The plan shall include policies that establish strategies and practices to prevent or control nonpoint source pollution and maintain or improve water quality.

(3) Future land use map. The plan shall include a map that depicts the policies for growth and development, and the desired future patterns of land use and land development with consideration given to natural system constraints and infrastructure. The plan shall include map designations with descriptions of land uses and development.

(e) Tools for Managing Development. The purpose of this element is to describe the management tools and actions the local government will use to implement the ~~plan.~~ plan and, if applicable, how enforceable policies are used in the CAMA permit reviews. This element shall include:

(1) Guide for land use decision-making. The plan shall describe the role of the plan policies, including the future land use map, in local decisions regarding land use and development.

(2) Development program. The plan shall describe the community's development management program, including local ordinances, codes, other plans and policies.

(3) Action plan and implementation schedule. The plan shall describe the actions that will be taken by the local government to implement policies that meet the CRC's management topic goals and objectives. It shall specify the fiscal year(s) in which each action is anticipated to start and finish. It shall describe the specific steps the local government plans to take to implement the policies, including the adoption and amendment of local ordinances, other plans, and special projects. The action plan shall be used to prepare the implementation status report for the plan.

(4) The plan shall describe the role of any enforceable policies selected by the local government for use in the review of CAMA permits in accordance with G.S. 113A-111.

Authority G.S. 113A-102; 113A-107(a); 113A-110; 113A-111; 113A-124.

SECTION .0800 –LAND USE PLAN AND AMENDMENT REVIEW AND CERTIFICATION

15A NCAC 07B .0803 CERTIFICATION AND USE OF THE PLAN

(a) Certification of Plans and Amendments: This Rule outlines the certification procedures and conditions for locally adopted land use plans or comprehensive plans, hereinafter referred to as "the plan," or plan amendments. The procedures shall be as follows:

(1) The Division District Planner shall submit a written report to the CRC, or qualified employee of the Department pursuant to G.S. 113A-124(c)(9), on the locally adopted plan or amendment and either recommend certification or identify how the plan or amendment does not meet the procedures and conditions for certification as set forth in Subparagraph (a)(3) of this Rule.

(2) The public shall have an opportunity to submit written objections or comments on the locally adopted plan or amendment prior to

certification pursuant to G.S. 113A-110(e). Written objections or comments shall be received by the Division no more than 30 calendar days after local adoption of the plan or amendment. Written objections shall be limited to the criteria for certification as defined in Subparagraph (a)(3) of this Rule, and shall identify the specific plan elements that are opposed. Written objections or comments shall be sent by the Division to the local government submitting the plan or amendment. Written objections or comments shall be considered in the certification of the local plan or amendment.

(3) The CRC or qualified employee of the Department, pursuant to G.S. 113A-124(c)(9), shall certify plans and amendments following the procedures and conditions specified in this Rule, and that the plans and amendments meet the following conditions:
   (A) are consistent with the Coastal Area Management Act G.S. 113A-110;
   (B) are consistent with the rules of the CRC;
   (C) do not violate State or federal law; and
   (D) contain policies that address each management topic as set forth in Rule .0702(d)(2) of this Subchapter.

(4) If the plan or amendment does not meet certification requirements, the applicant shall be informed by the Division of Coastal Management within 45 calendar days regarding how the plan or amendment does not meet the procedures and conditions for certification.

(b) Copies of the Plan. Within 90 calendar days of certification of the plan or an amendment, the local government shall provide one printed and one digital copy of the plan to the Division. Amendments shall be incorporated in all copies of the plan. The dates of local adoption, certification, and amendments shall be published on the cover.

(c) Use of the Plan. ~~Once certified, the plan shall be utilized in the review of the CAMA permits~~ Local governments shall implement the plan in accordance with G.S. 113A-111. ~~Local governments shall have the option to exercise their enforcement responsibility by choosing from the following:~~ Once certified, any enforceable policies selected by the local government shall be used by the Division and its Local Permit Officers in the review of CAMA permits in accordance with G.S. 113A-111. For plans certified prior to the effective date of this rule, in the absence of clearly identified enforceable policies the Division and its Local Permit Officers shall use all policies that meet the definition of enforceable under Rule .0702(d)(1)(A) of this Subchapter in the review of CAMA permits. Local governments shall have the option to exercise their enforcement responsibility by choosing from the following:

(1) Local administration: The local government reviews the CAMA permits for consistency with the plan;

(2) Joint administration: The local government identifies enforceable policies, ~~including the future land use map and implementation actions~~ that will be used by the Division for the CAMA permit consistency ~~reviews or;~~ reviews.

(3) Division administration: The Division reviews the CAMA permits for consistency with the plan policies, including the future land use map and implementation actions.

(d) Plan updates and Amendments. Local governments shall determine the scope, timing, and frequency of plan updates and amendments.

Authority G.S. 113A-107(a); 113A-110; 113-111; 113A-124.

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0300 - OCEAN HAZARD AREAS

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

(a) Ocean Shoreline Erosion Control Activities:

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

structures must be removed by the permittee.

(G) Permanent erosion control structures that would otherwise be prohibited by these standards may be permitted on finding by the Division that:

(i) the erosion control structure is necessary to protect a bridge that provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in Part (a)(2)(B) of this Rule;

(ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and

(iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.

(H) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:

(i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in Part (a)(2)(B) of this Rule;

(ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;

(iii) the structure is limited in extent and scope to that necessary to protect the site; and

(iv) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of significant adverse impacts on adjoining properties and on public access to and use of the beach.

(I) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:

(i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits;

(ii) dredging alone is not practicable to maintain safe access to the affected channel;

(iii) the structure is limited in extent and scope to that necessary to maintain the channel;

(iv) the structure shall not have significant adverse impacts on fisheries or other public trust resources; and

(v) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any significant adverse impacts on adjoining properties and on public access to and use of the beach.

(J) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:

(i) the structure will not be enlarged beyond the dimensions set out in the permit;

(ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and

(iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

(K) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 07M .0200 and general and specific use standards within this Section.

(2) Temporary Erosion Control Structures:

(A) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.

(B) Temporary erosion control structures as defined in Part (A) of this Subparagraph may be used to protect only imminently threatened roads and associated right of ways and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.

(C) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed under Rule .0309 of this Section as an exception to the erosion setback requirement.

(D) Temporary erosion control structures may be placed waterward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.

(E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected except to align with temporary erosion control structures on adjacent properties, where the Division has determined that gaps between adjacent erosion control structures may result in an increased risk of damage to the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet waterward of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet waterward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or the Director's designee in accordance with Part (A) of this Subparagraph.

(F) Temporary erosion control structures may remain in place for up to eight years for a building and its associated septic system, a bridge or a road. The property owner shall be responsible for removal of any portion of the temporary erosion control structure exposed above grade within 30 days of the end of the allowable time period.

(G) An imminently threatened structure or property may be protected only once, regardless of ownership, unless the threatened structure or property is located in a community that is actively pursuing a beach nourishment project or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. Existing temporary erosion control structures may be permitted for additional eight-year periods provided that the structure or property being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter, and the community in which it is located is actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. In the case of a building, a temporary erosion control

structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (H) of this Subparagraph shall begin at the time the initial erosion control structure was installed. For the purpose of this Rule:

(i) a building and its septic system shall be considered separate structures,

(ii) a road or highway may be incrementally protected as sections become imminently threatened. The time period for removal of each contiguous section of temporary erosion control structure shall begin at the time that the initial section was installed, in accordance with Part (F) of this Subparagraph.

(H) For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with G.S. 113A-115.1 if it:

(i) has been issued an active CAMA permit, where necessary, approving such project; or

(ii) has been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or

(iii) has received a favorable economic evaluation report on a federal project; or

(iv) is in the planning stages of a project designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and initiated by a local government or community with a commitment of local or state funds to construct the project or the identification of the financial resources or funding bases necessary to fund the beach nourishment, inlet relocation or stabilization project.

If beach nourishment, inlet relocation, or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Part (F) of this Subparagraph.

(I) Once a temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, it shall be removed to the maximum extent practicable by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment project, or an inlet relocation or stabilization project, any portion of the temporary erosion control structure exposed above grade shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.

(J) Removal of temporary erosion control structures is not required if they are covered by sand. Any portion of the temporary erosion control structure that becomes exposed above grade after the expiration of the permitted time period shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management.

(K) The property owner shall be responsible for the removal of remnants of all portions of any

damaged temporary erosion control structure.

(L) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the temporary erosion control structure shall not exceed 20 feet, and the total height shall not exceed six feet, as measured from the bottom of the lowest bag.

(M) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.

(N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.

(3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and in accordance with Rule .0312 of this Section.

(4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the vegetation line to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:

(A) The area on which this activity is being performed shall maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;

(B) The activity shall not exceed the lateral bounds of the applicant's property unless permission is obtained from the adjoining land owner(s);

(C) Movement of material from seaward of the mean low water line will require a CAMA Major Development and State Dredge and Fill Permit;

(D) The activity shall not increase erosion on neighboring properties and shall not have an adverse effect on natural or cultural resources;

(E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.

(b) Dune Protection, Establishment, Restoration and Stabilization.

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

(2) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same configuration as adjacent natural dunes.

(3) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.

(4) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas shall be replanted or temporarily stabilized until planting can be completed.

(5) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand in the area in which it is to be placed.

(6) No new dunes shall be created in inlet hazard areas. Reconstruction or repair of existing dune systems as defined in Rule .0305 of this Section and within the Inlet Hazard Area may be permitted.

(7) Sand held in storage in any dune, other than the frontal or primary dune, shall remain on the lot or tract of land to the maximum extent practicable and may be redistributed within the Ocean Hazard AEC provided that it is not placed any farther oceanward than the crest of a primary dune, if present, or the crest of a frontal dune.

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

(c) Structural Accessways:

(1) Structural accessways shall be permitted across primary or frontal dunes so long as they are designed and constructed in a manner that entails negligible alteration of the primary or frontal dune. Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a) of this Rule.

(2) An accessway shall be considered to entail negligible alteration of primary or frontal dunes provided that:

(A) The accessway is exclusively for pedestrian use;

(B) The accessway is a maximum of six feet in width;

(C) Except in the case of beach ~~matting for a local, State, or federal government's public access,~~ matting, the accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the dune, in accordance with any more restrictive local, State, or federal building requirements. Beach matting ~~for a local, State, or federal government's public access~~ shall be installed at grade and not involve any excavation or fill of the dune; and

(D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.

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

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

(5) Structural accessways and beach matting may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune, provided they do not interfere with public trust rights and emergency access along the beach. Structural accessways and beach matting are not restricted by the requirement to be landward of the First Line of Stable and Natural Vegetation as described in Rule .0309(a) of this Section. A local, State, or federal entity may install beach matting farther seaward to enhance handicap accessibility at a public beach access, subject to review by the Wildlife Resources Commission and the U.S. Fish and Wildlife Service to determine whether the proposed design or installation will have an adverse impact on sea turtles or other threatened or endangered species.

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

(1) In order to avoid danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any building constructed within the ocean hazard area shall comply with relevant sections of the North Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.

(2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.

(3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on or seaward of the primary dune, the pilings shall extend to five feet below mean sea level.

(4) All foundations shall be designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100-year storm. Cantilevered decks and walkways shall meet the requirements of this Part or shall be designed to break-away without structural damage to the main structure.

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

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

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

15A NCAC 07K .0207 STRUCTURAL ACCESSWAYS OVER FRONTAL DUNES EXEMPTED

(a) The North Carolina Coastal Resources Commission exempts from the CAMA permit requirement all structural pedestrian accessways, including beach matting ~~installed by a local, State, or federal government~~ to provide public or private access over primary and frontal dunes when such accessways can be shown to meet the following criteria:

(1) The accessway shall not exceed six feet in width and shall be for private residential or for public access to an ocean beach. This

exemption does not apply to accessways for commercial use or for motor-powered vehicular use.

(2) The accessway shall be constructed so as to make no alterations to the frontal dunes that are not necessary to construct the accessway. This means that the accessway shall be constructed over the frontal dune without any alteration of the dunes. In no case shall the dune be altered so as to diminish its capacity as a protective barrier against flooding and by not reducing the volume of the dune. Driving of pilings into the dune or a local, State, or federal government's use of beach matting for public access that is installed at grade and involves no excavation or fill shall not be considered alteration of a frontal dune for the purposes of this Rule.

(3) The accessway shall conform with any applicable local or State building code standards.

(4) Structural accessways may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune, provided they do not interfere with public trust rights and emergency access along the beach. Structural accessways are not restricted by the requirement to be landward of the First Line of Stable and Natural Vegetation as described in 15A NCAC 07H .0309(a).

(5) Damaged, non-functioning, or portions of accessways that become non-compliant with Subparagraph (4) of this Paragraph shall be removed by the property owner.

(b) Before beginning any work under this exemption the CAMA local permit officer or Department of Environmental Quality representative shall be notified of the proposed activity to allow on-site review of the proposed accessway. Notification can be by telephone, in person, or in writing and must include:

(1) name, address, and telephone number of landowner and location of work including county and nearest community; and

(2) the dimensions of the proposed structural accessway.

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

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***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10D .0232.*

Link to agency website pursuant to G.S. 150B-19.1(c): *https://www.ncwildlife.org/Proposed-Regulations*

Proposed Effective Date: *June 1, 2023*

Public Hearing:
Date: *February 8, 2023*
Time: *2:00 p.m.*
Location:
Register online here: https://ncwildlife-org.zoomgov.com/webinar/register/WN_UaRxfaZZSzewj_UTyrrOQA
Join by phone toll free (833 568 8864) using Webinar ID: 160 674 8952

Reason for Proposed Action: *This rule was adopted as part of the 2022-2023 annual rulemaking cycle. During technical corrections, a typographical error was made removing "Tuesday" from the December Bear Season. This rule is a follow-up to the temporary rule effective Dec 1, 2022.*

Comments may be submitted to: *Rulemaking Coordinator, 1701 Mail Service Center, Raleigh, NC 27699; email regulations@ncwildlife.org*

Comment period ends: *March 20, 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 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10D - GAME LANDS REGULATIONS

SECTION .0200 - USE OF GAME LANDS

15A NCAC 10D .0232 GULL ROCK GAME LAND IN HYDE COUNTY

Gull Rock is a Seven Days per Week Area, in which the following applies:

(1) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

(2) Waterfowl on posted waterfowl impoundments shall be taken only on the following days:
  (a) the opening and closing days of the applicable waterfowl seasons;
  (b) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
  (c) Tuesdays and Saturdays of the applicable waterfowl season.
(3) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas designated and posted as camping areas.
(4) Bear may only be taken the first Saturday, Monday, and Tuesday of the November Bear Season and the second Saturday, Monday, and Tuesday of the December Bear Season.

Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305.

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***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to adopt the rule cited as 15A NCAC 10F .0379 and amend the rules cited as 15A NCAC 10F .0308, .0316, .0333 and .0355.*

Link to agency website pursuant to G.S. 150B-19.1(c): *https://www.ncwildlife.org/Proposed-Regulations*

Proposed Effective Date: *June 1, 2023*

Public Hearing:
Date: *February 9, 2023*
Time: *2:00 p.m.*
Location: *Register online here: https://ncwildlife-org.zoomgov.com/webinar/register/WN_xMLoN3GvSiW6VwtTim1WxQ Join by phone toll free (833 568 8864) using Webinar ID: 160 380 8068*

Reason for Proposed Action: *The following are recommended to improve boater safety:*
***15A NCAC 10F .0308** Clay County – Extend the no-wake zone at the Ho Hum Campground boat ramp; remove the no-wake zone in McCracken Cove for lack of necessity; incorporate a marked Swim Area at the Clay County Recreational Park; and incorporate a Restricted Area denoting the existing Jack Rabbit swimming area and no-wake zone for safety.*
***15A NCAC 10F .0316** Forsyth, Rockingham, and Stokes Counties – Establish no-wake zones at two locations at Humphrey's Ridge Marina and Campground on Belews Lake in Stokesdale.*
***15A NCAC 10F .0333** Lake Wylie Marine Commission, Mecklenburg County –Establish a no-wake zone in the waters of Withers Cove on Lake Wylie, in the waters shore to shore in the vicinity of the Mecklenburg Charlotte Fire and Police Department and Shopton Road West Bridge on Route 1116.*
***15A NCAC 10F .0355** Perquimans County, Town of Hertford, Perquimans River – Extend the existing no-wake zone in the Perquimans River to 190 yards northeast of the Perquimans River Bridge, otherwise known as the Hertford S-Bridge, in the navigation channel and to the east and southward to the shoreline of the Town of Hertford.*
***15A NCAC 10F .0379** City of Roxboro– Establish a no-wake zone in a narrow channel, shore to shore in the open part of Lake Roxboro.*

Comments may be submitted to: *Rulemaking Coordinator, 1701 Mail Service Center, Raleigh, NC 27699; email regulations@ncwildlife.org*

Comment period ends: *March 20, 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 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0308 CLAY COUNTY
(a) Regulated Areas. This Rule shall apply to the following waters in Chatuge Lake:
(1) ~~within 50 yards~~ the water shore to shore within 150 yards of the boat ramp at Ho Hum ~~Campground;~~ Campground at 47 Ho Hum Loop, Hayesville;
(2) the waters of Shooting Creek, from a line shore to shore 50 yards west of the High Bridge on NC Highway 175, to a line at the southeast end of Shooting Creek shore to shore, from a point

at 35.01960 N, 83.72752 W; to a point at 35.01979 N, 83.72638 W;

(3) the waters of Gibson Cove, south of a line from a point on the east shore at 35.01005 N, 83.79750 W to a point on the west shore at 35.01099 N, 83.79929 W, southwest to the end of Gibson ~~Cove;~~ Cove at 3279 Myers Chapel Road in Hayesville;

(4) within 50 yards of the Chatuge Cove ~~Marina;~~ Marina at 2397 Highway 175 in Hayesville;

(5) the portion of the cove shore to shore, west of Cottage Court off of NC Highway 175, northeast of a line from a point on the east shore at 35.02576 N, 83.73784 W; to a point on the northwest shore at 35.02609 N, 83.73945 W;

(6) within 50 yards of the Chatuge Dam Spillway access ~~area;~~ area in the vicinity of 1407 Chatuge Dam Road in Hayesville; and

~~(7) the waters of McCracken Cove; and~~

~~(8)~~(7) within 50 yards of the peninsula at Clay County Recreational Park, from a point on the north shore at 35.00850 N,83.79254 W, east to a point in the water at 35.00874 N,83.79187 W, south to a point in the water at 35.00782 N, 83.79119 W, southwest to a point in the water at 35.00672 N, 83.79211 W, west to a point on the shore at 35.00696 N, 83.79259 W.

(b) Speed Limit. It shall be unlawful to operate a vessel at greater than no-wake speed within any of the regulated areas identified in Paragraph (a) of this Rule.

(c) ~~Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter a marked public swimming area.~~ Swimming Area. No person operating or responsible for the operation of a vessel shall allow it to enter the waters of the Clay County Recreational Park Swimming Area at Clay County Recreational Park, 47 Clay Recreation Park Road, Hayesville.

(d) Restricted Area. It shall be unlawful to operate a vessel at greater than no-wake speed within the no-wake zone at the Jack Rabbit Mountain Swim Area on Jack Rabbit Road in Hayesville. No person operating or responsible for the operation of a vessel shall allow it to enter the roped swim beach within the no-wake zone at Jack Rabbit Mountain Swim Area.

~~(d)~~(e) Placement of Markers. The Board of Commissioners of Clay County shall be the designated agency for placement of the markers implementing this Rule, subject to the approval of the Tennessee Valley Authority and the United States Army Corps of Engineers.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0316 FORSYTH, ROCKINGHAM AND STOKES COUNTIES

(a) Regulated ~~Area.~~ Areas. This Rule shall apply to the following waters ~~Belews Lake~~ in Forsyth, ~~Rockingham~~ Rockingham, and Stokes ~~Counties.~~ Counties:

(1) Belews Lake within 50 yards of any public boat launching ramp on the lake, and within 50 yards of any bridge crossing on the lake;

(2) Belews Lake at Humphrey's Ridge Marina and Grill at 473-499 Humphrey Ridge Drive in Stokesdale, east of a line from a point on the north shore at 36.27962 N, 80.03507 W to a point on the south shore at 36.27804 N, 80.03565 W; and

(b) Speed Limit. No person shall operate a vessel at greater than no-wake speed within ~~50 yards of any public boat launching ramp on the waters of Belews Lake in any of the counties listed in (a) of this Rule, or within 50 yards of any bridge crossing any portion of Belews Lake in Forsyth County.~~ any of the regulated areas identified in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Boards of Commissioners of Forsyth County, Rockingham County and Stokes County, or their designees shall be the designated agencies for placement and maintenance of markers implementing this Rule. All markers warning of a no-wake speed zone must be buoys or floating signs.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0333 MECKLENBURG AND GASTON COUNTIES

(a) Regulated Areas. This Rule shall apply to the following waters of Lake Wylie in Mecklenburg and Gaston Counties:

(1) McDowell Park. The waters of the coves adjoining McDowell Park and the Southwest Nature Preserve in Mecklenburg County shore to shore, east of the mouth of the cove at a line from a point on the south shore at 35.10272 N, 81.03026 W to a point on the north shore at 35.10556 N, 80.02964 W;

(2) Gaston County Wildlife Club Cove. The waters of the cove west of the Gaston County Wildlife Club on South Point Road in Belmont, north of a line at the mouth of the cove from a point on the east shore at 35.15628 N, 81.01427 W to a point on the west shore at 35.15628 N, 81.01615 W;

(3) Buster Boyd Bridge. The waters from a point 250 feet east of the Buster Boyd Bridge on N.C. Highway 49 in Mecklenburg County at 35.10293 N, 81.03932 W, to a point 150 feet west of the Buster Boyd Bridge at 35.10242 N, 81.04089 W;

(4) N.C. Highway 27 bridge. The waters shore to shore, from a point 50 yards north of the N.C. Highway 27 bridge in Mecklenburg and Gaston counties at 35.29849 N, 81.00346 W to a point 190 yards south of the N.C. Highway 27 bridge at 35.29635 N, 81.00424 W;

(5) Brown's Cove. The area beginning at the mouth of Brown's Cove in Mecklenburg County shore to shore, at a point at 35.16453 N, 81.00474 W, west to a point at 35.16480 N, 81.00309 W;

(6) Paradise Point Cove. The waters of Paradise Point Cove in Gaston County between Paradise Circle and Lake Front Drive, west of a line from a point on the south shore at 35.18853 N,

81.04036 W to a point on the north shore at 35.18991 N, 81.04136 W;

(7) Withers Cove. ~~The waters from a point 50 feet southeast of the Withers Bridge on SR 1116, otherwise known as Shopton Road W. in Mecklenburg County at 35.14576 N, 81.00187 W, to a point 50 feet northwest of the bridge at 35.14599 N, 81.00222 W;~~ The waters of Withers Cove in Mecklenburg County, shore to shore, beginning at a line north of the Mecklenburg Charlotte Fire Department and Police Department Boathouse from a point on the west shore at 35.14632 N, 81.00383 W to a point on the east shore at 35.14713 N, 81.00173 W, and ending at a point 50 feet southeast of the Withers Bridge on SR 1116, otherwise known as Shopton Road, at 35.14576 N, 81.00187 W;

(8) Sadler Island. The waters shore to shore beginning at a line from a point on the west shore of Lake Wylie in Gaston County at 35.27481 N, 81.0138 W east to a point on the east shore of the Lake in Mecklenburg County at 35.27423 N, 81.01111 W, extending south on the Lake west of Sadler Island to a line from a point on the west shore of the Lake in Gaston County at 35.27079 N, 81.01525 W, east to a point on the west side of Sadler Island in Mecklenburg County at 35.27051 N, 81.01396 W, and the waters shore to shore east of Sadler Island in Mecklenburg County from a point at 35.27441 N, 81.01185 W, south-southwest to a line from a point on the south shore of Sadler Island at 35.26635 N, 81.01432 W, south to a point on the Lake shore at 35.26494 N, 81.01368 W;

(9) Other bridges. The areas within 50 feet of any bridge in North Carolina that crosses the waters of Lake Wylie that is not otherwise specifically mentioned in this Paragraph; and

(10) Yachtsman on Lake Wylie Community. The waters within 50 yards of the community piers near the terminus of Waterside Drive in Mecklenburg County, and northward to include the waters east of the island that is west of Point Lookout Road, ending at a line from a point on the northern end of the island at 35.12226 N, 81.03306 W, east to a point on the shore at 35.12253 N, 81.03190 W; and

(11) Brown's Cove. The waters of Brown's Cove beginning at a line from a point on the east shore at 35.16892 N, 80.99702 W to a point on the west shore at 35.16948 N, 80.99783 W, northeast to a line from a point on the south shore at 35.16913 N, 80.99556 W to a point on the north shore at 35.17043 N, 80.99684 W.

(b) Speed Limit Near Ramps. No person shall operate a vessel at greater than no-wake speed within 50 yards of any public boat-launching ramp, dock, pier, marina, boat storage structure, or boat service area.

(c) Speed Limit Near Marked Swimming or Mooring Areas. No person shall operate a vessel at greater than no-wake speed within 50 yards of any marked mooring area or marked swimming area.

(d) Placement and Maintenance of Markers. The Lake Wylie Marine Commission shall be the designated agency for placement and maintenance of markers implementing this Rule.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0355 PERQUIMANS COUNTY

(a) Regulated Areas. This Rule shall apply to the following waters:

(1) Perquimans River:

(A) the canals of Holiday Island subdivision at Albemarle Sound; and

(B) Town of Hertford: ~~the part of the Perquimans River beginning 75 yards northeast of the Perquimans River Bridge, otherwise known as the Hertford S-shaped Bridge, parallel to the bridge, shore to shore, and ending approximately 550 yards southwest, at a line from a point on the north shore 36.19305 N, 76.46957 W to a point on the south shore at 36.19150 N, 76.47099 W.~~ 550 yards southwest of the Perquimans River Bridge on U.S. Highway 17 Business, otherwise known as the Hertford S - Bridge, at a line from a point on the north shore at 36.19305 N, 76.46957 W to a point on the south shore at 36.19150 N, 76.47099 W, and 190 yards northeast of the bridge at a line from a point in the Perquimans River at 36.19530 N, 76.46518 W, eastward to Day Marker #11, then southeast to a point on the shore at 36.19337 N, 76.46367 W.

(2) Yeopim River:

(A) the canal between Navaho Trail and Cherokee Trail beginning at a point at 36.07893 N, 76.42278 W;

(B) the canal between Cherokee Trail and Ashe Street beginning at a point at 36.07865 N, 76.42603 W;

(C) within 50 yards of the boat ramp at Ashe and Pine Street;

(D) the canal between Pine Street and Linden Street beginning at a point at 36.07951 N, 76.43402 W;

(E) the canal between Willow Street and Evergreen Drive beginning at a point at 36.08005 N, 76.43735 W;

(F) the canal between Sago Street and Alder Street beginning at a point at 36.07986 N, 76.44063 W; and

(G) Bethel Creek north of a line from a point on the west shore at 36.09566 N, 76.47928 W to a point on the east

shore at 36.09534 N, 76.47738 W to a line from a point on the west shore at 36.10532 N, 76.48080 W to a point on the east shore at 36.10516 N, 76.48047 W.

(3) Yeopim Creek:
- (A) the canal between Mohave Trail and Iowa Trail beginning at a point at 36.08521 N, 76.41802 W;
- (B) the canal between Iowa Trail and Shawnee Trail beginning at a point at 36.08511 N, 76.41763 W;
- (C) the area within 75 yards of the Albemarle Plantation Marina Piers;
- (D) the area of the cove known as Beaver Cove, shore to shore beginning at a point at 36.08767 N, 76.42151 W; and
- (E) the waters of Yeopim Creek adjacent to Heritage Shores North, shore to shore, east of a line from a point on the north shore at 36.11356 N, 76.43138 W to a point on the south shore at 36.11288 N, 76.43173 W, to a line northwest from a point on the east shore at 36.11219 N, 76.42445 W to a point on the west shore at 36.11178 N, 76.42596 W.

(4) Little River: the entrance to the cove known as Muddy Gut Canal that extends from the waters known as Deep Creek, shore to shore beginning at a line from a point on the east shore at 36.17729 N, 76.28011 W to a point on the west shore at 36.17667 N, 76.28331 W.

(b) Speed Limit. No person shall operate a vessel at greater than no-wake speed within the regulated area described in Paragraph (a) of this Rule.

(c) Swimming Area. No person operating or responsible for the operation of a vessel shall permit it to enter the swimming area at the Snug Harbor Park and Beach on the Yeopim River.

(d) Placement of Markers. The Board of Commissioners of Perquimans County shall be the designated 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.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0379 CITY OF ROXBORO

(a) Regulated Area. This Rule applies to the waters of Lake Roxboro, located near Frogsboro in Person and Caswell counties, in the channel between a line shore to shore from 36.32069 N, 79.15373 W, and a line shore to shore at 36.31651 N, 79.15165 W.

(b) Speed Limit. No person shall operate a vessel at greater than no-wake speed within the regulated area described in Paragraph (a) of this Rule.

(c) Placement of Markers. The City of Roxboro is the designated agency for placement and maintenance of the markers implementing this Rule.

Authority G.S. 75A-3; 75A-15.

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Rules Review Commission intends to adopt the rules cited as 26 NCAC 05 .0115, .0212, amend the rules cited as 26 NCAC 05 .0101, .0103-.0108, .0110, .0114, .0202-.0205, .0211, and repeal the rules cited as 26 NCAC 05 .0102, .0109 and .0201.*

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

Link to agency website pursuant to G.S. 150B-19.1(c): *https://www.oah.nc.gov/rules-division/rules-review-commission*

Proposed Effective Date: *June 1, 2023*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Any member of the public may request a public hearing by submitting a written request for a public hearing within 15 days of publication of this notice of text. Requests may be submitted via email to brian.liebman@oah.nc.gov or via regular mail to 1711 New Hope Church Road, Raleigh, North Carolina 27609.*

Reason for Proposed Action: *The agency is taking steps to amend Section .0100 rules to clarify rules related to filings before RRC and to otherwise conform the Rules to RRC's style guide and the APA. Revisions to Section .0200 are again designed to clarify existing rules and bring the rules into conformity with changes to the portions of the APA governing periodic review.*

Comments may be submitted to: *Brian Liebman, 1711 New Hope Church Rd, Raleigh, NC 27609; phone (984) 236-1948; email brian.liebman@oah.nc.gov*

Comment period ends: *March 20, 2023*

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 05 – RULES REVIEW COMMISSION

SECTION .0100 - GENERAL

26 NCAC 05 .0101 DEFINITIONS

As used in this Chapter the following terms have the following meanings unless the context indicates otherwise:

(1) "Agency" means as defined in G.S. 150B-2(1b).

~~(1)~~(2) "Commission" or "RRC" means the Rules Review Commission as established in G.S. 143B-30.1.

~~(2)~~(3) "Objection letter" means any letter or other written correspondence from the public pursuant to G.S. 150B-21.3(b2) objecting to a rule and requesting review of the rule by the General Assembly filed with the Rules Review Commission while the rule is under review by the Rules Review Commission.

~~(3)~~(4) "Review" means the statutory "Part 3. Review by Commission" at G.S. 150B-21.8 and following including the RRC action as set out in G.S. 150B-21.10.

~~(4)~~(5) "Rewritten rules" mean rules that have been revised in an attempt to satisfy an objection by the Commission.

~~(5)~~(6) "Technical Changes" mean the changes made by an agency to reply to a request from the Commission or its staff as set out in G.S. 150B-21.10. Technical changes shall not result in a substantive change in the meaning, interpretation, or application of a rule and include the following categories of changes:

(a) Correcting errors of a general nature including:

(i) obvious typographical errors, misspellings, punctuation, and grammatical errors;

(ii) preferred English or legal usage;

(iii) errors in complying with OAH or, perhaps, statutory requirements that are not substantive errors; and

(iv) proof of compliance with the legally required process.

(b) Correcting errors that would appear to be substantive changes except that they do not change the intended or accepted meaning, interpretation or application of the rule including:

(i) changing "should" or "will" to "shall" or "must;"

(ii) clarifying the use of "approved;"

(iii) clarifying or correcting the use of "and," "or" or "and/or;"

(iv) clarifying or deleting commonly used adjectives or adverbs such as "thoroughly," "clearly," "adequately," "appropriate," and "substantial;" and

(v) inserting substantive contents of a rule's catchline (or title) into the rule itself.

(c) Requesting agencies to rewrite a rule, paragraph, or portions of a rule to more clearly express the intent of the agency when the meaning and application of the rule is known and understood.

(d) Acting on agencies' requests on behalf of citizens or agency staff to clarify the intent, requirements, or prohibition of a rule that would not result in a change in the rule's enforcement.

(e) Deleting or rewriting portions of rules that are not necessary rather than raising objections.

Authority G.S. 143B-30.1.

26 NCAC 05 .0102 COMMUNICATIONS WITH COMMISSIONERS

Authority G.S. 143B-30.1.

26 NCAC 05 .0103 SUBMISSION OF WRITTEN COMMENTS CONCERNING PERMANENT RULES TO THE RRC

(a) Written comments submitted by any person concerning a permanent rule shall be received by the RRC staff by 5:00 p.m. Eastern Time of the fifth business day prior to the RRC meeting at which the permanent rule is to be reviewed. If comments are submitted electronically, the comments shall be sent to rrc.comments@oah.nc.gov.

(b) Written comments shall state how a rule either complies with or fails to comply with the statutory grounds for the RRC's review set out in G.S. 150B-21.9.

(c) Persons submitting comments shall also submit a copy of the comments at the same time and in the same manner to the agency's rulemaking coordinator. Rulemaking coordinator contact information is located at www.ncoah.com/rules.

(d) A person or agency may submit rebuttal comments concerning permanent rules. Comments from a person shall be submitted in the same manner as set out in Paragraph (a) of this Rule prior to 5:00 p.m. Eastern Time of the business day before the RRC meeting at which the rule is to be reviewed. An agency may submit rebuttal comments before or at the RRC meeting.

(e) Any person submitting written comments or submitting rebuttal comments at an RRC meeting shall submit sufficient copies for each of the Commissioners, commission counsel, agency rulemaking coordinator, and the permanent record, a total of 16 copies.

(f) The Chair may waive the requirements of this Rule based on the factors in Rule .0112 of this Chapter.

(g) Written comments not submitted in accordance with this Rule are subject to being excluded from the record by the Commission.

Authority G.S. 143B-30.1.

26 NCAC 05 .0104 SUBMISSION OF WRITTEN COMMENTS CONCERNING TEMPORARY RULES TO THE RRC

(a) Written comments submitted by any person concerning a temporary rule shall be received by the RRC staff by 5:00 p.m. Eastern Time on the business day prior to the RRC meeting at which the temporary rule is to be reviewed. If comments are submitted electronically, the comments shall be sent to rrc.comments@oah.nc.gov.

(b) Written comments shall state how a rule either complies with or fails to comply with the statutory grounds for the RRC's review set out in G.S. 150B-21.1 and G.S. 150B-21.9.

(c) Persons submitting comments shall also submit a copy of the comments at the same time and in the same manner to the agency's rulemaking coordinator. Rulemaking coordinator contact information is located at www.ncoah.com/rules.

(d) A person or agency may submit rebuttal comments concerning temporary rules. An agency may submit rebuttal comments at the RRC meeting.

(e) Any person submitting written comments or rebuttal comments at an RRC meeting shall submit sufficient copies for each of the Commissioners, commission counsel, agency rulemaking coordinator, and the permanent record, a total of 16 copies.

(f) The Chair may waive the requirements of this Rule based on the factors in Rule .0112 of this Chapter.

(g) Written comments not submitted in accordance with this Rule are subject to being excluded from the record by the Commission.

Authority G.S. 143B-30.1.

26 NCAC 05 .0105 REQUIRED NOTICE PRIOR TO ORAL RRC PRESENTATION

(a) The Chair may allow an agency or any person to make oral statements in support of or in opposition to a rule or report as set forth in Rule .0206 of this Chapter.

(b) Any person or agency desiring to make an oral statement concerning a permanent rule shall notify the RRC staff in writing by 5:00 p.m. Eastern Time of the second business day before the RRC meeting. The notice shall identify the rule upon which the oral statement will be made and shall also include the name, address, telephone number, fax number and email address of the individual who will be making the oral statement. If the person did not submit a written comment, the person shall state whether the oral statement will support or oppose the rule or report.

(c) Any person or agency desiring to make an oral statement concerning a temporary rule shall notify the RRC staff prior to the start of the RRC meeting or RRC designee meeting at which a temporary rule will be reviewed. The notice shall identify the rule upon which the oral statement will be made and shall also include the name, address, telephone number, fax number and email address of the individual who will be making the oral statement. If the person did not submit a written comment, the person shall state whether the oral statement will support or oppose the rule.

(d) At the same time the person notifies the RRC staff, the person shall also notify the rule making coordinator for the agency proposing the rule if the person wishes to speak in opposition to the rule or report. If a person fails to notify the agency in accordance with this rule, the Chair may deny a request to make an oral statement to the RRC.

(e) If the Commission asks an individual to address a rule or report, the prior notice required by this Rule does not apply.

Authority G.S. 143B-30.1.

26 NCAC 05 .0106 LIMITATIONS ON ORAL PRESENTATIONS

(a) The RRC Chair in open session may set time limits on oral presentations before the Commission.

(b) Unless the Chair sets other time limits for oral presentations, the time allowed for presentations shall not exceed ~~ten~~ five minutes for each requesting person or agency. The Chair may require that oral presentations be limited to representative spokespersons for those advocating or those opposing rule approval by the RRC.

(c) Factors that the Chair may use in determining time limits are: ~~include the length of the agenda and time remaining in the meeting; the number of contested rules; the complexity of the issues; the public interest in a particular rule or report; the number of people desiring to address the RRC concerning the rule or report; the variations in their arguments (i.e., whether they are adding additional information to the debate or merely being repetitive of earlier speakers or earlier points raised by the same speaker) and the level of agreement within their positions or relationships; the nature of the comments in relation to the RRC scope of review; and the amount of notice given to the agency.~~

(1) the length of the agenda and of the meeting;
(2) the number of rules subject to comment;
(3) the complexity of the issues;
(4) the public interest in a particular rule or report;
(5) the number of people desiring to address the RRC concerning the rule or report;
(6) the variations in the speakers' arguments and the level of agreement within their positions or relationships;
(7) the nature of the comments in relation to the RRC scope of review; and
(8) the amount of notice given to the agency.

(d) The agency adopting the rule shall be allowed an opportunity to address the Commission when a person addresses the Commission in opposition to a rule, unless the agency fails to appear after notice of written comments opposing approval of the rule. When a comment in opposition to a rule first occurs by an oral comment at the Commission meeting, the agency shall be allowed an opportunity to address the Commission at the next meeting of the Commission or Commission's designee where the rule is under review.

Authority G.S. 143B-30.1.

26 NCAC 05 .0107 WITHDRAWAL OR AMENDMENT OF RULES AFTER FILING WITH RRC

(a) An agency ~~may~~ shall not withdraw a rule after filing with the RRC and before review by the RRC when:

(1) the rule is ~~an adoption;~~ a readoption; or

(2) the staff recommendation to object to the rule applies to existing language. ~~the amendment to the rule and not to the existing language;~~

~~(3) there is no staff recommendation to object to the rule; or~~

~~(4) the rule was not adopted in accordance with the Administrative Procedure Act.~~

(b) An agency shall make no changes to any rule after filing with the RRC and before review by the RRC except in response to a request for technical changes from the RRC or from the RRC staff.

(c) Upon receipt of a staff recommendation to object to a rule, the agency shall submit no further changes to the rule before review by the RRC.

Authority G.S. 143B-30.1.

26 NCAC 05 .0108 SUBMISSION OF REWRITTEN RULES OR RULES WITH TECHNICAL CHANGES

(a) The RRC shall not review rewritten rules until the next regular meeting following an objection. ~~the meeting at which a rule was originally reviewed by the RRC~~.

~~(b) Agencies may submit technical changes prior to the meeting at which a rule is initially reviewed for consideration and approval by the Commission at that meeting.~~

(b)~~(c)~~ All rules containing technical changes made in response to a request by the RRC staff shall be submitted to the RRC staff by the earlier of:

(1) 5:00 p.m. Eastern Time 10 business days after the Requests for Technical Change are submitted to the agency rulemaking coordinator; or

(2) 5:00 p.m. Eastern Time of the Friday before the RRC meeting. If that Friday is a holiday, then the rules shall be submitted on the last business day before the holiday.

(c)~~(d)~~ All rewritten rules shall be submitted to the RRC staff by 5:00 p.m. Eastern Time of the Friday before the RRC meeting. If that Friday is a holiday, then the rewritten rules shall be submitted on the last business day before the holiday.

(d)~~(e)~~ These deadlines may be waived by the RRC staff when an agency ~~which~~ that is a board or commission does not meet until the day of the deadline or later or when the original submission is deficient and requires further changes.

Authority G.S. 143B-30.1; 150B-21.10.

26 NCAC 05 .0109 COMMUNICATIONS WITH RRC STAFF

Authority G.S. 143B-30.1.

26 NCAC 05 .0110 FILING OBJECTION LETTERS

(a) The RRC shall not consider any objection letter which is dated prior to the time the agency adopts the rule.

(b) All objection letters shall be sent via U.S. Mail to 1711 New Hope Church Road, Raleigh, North Carolina, 27609, or via email to oah.rules@oah.nc.gov.

Authority G.S. 143B-30.1.

26 NCAC 05 .0114 RRC RULE APPROVAL CONTINGENT ON TECHNICAL CHANGE

(a) When the Commission approves a rule, the approval is contingent on an agency's making all requested technical changes.

(b) The agency ~~must~~ shall make ~~such change~~ all changes prior to ~~the close of business~~ 5:00 p.m. on the next business day after the rule is approved, or such other date or time as may be set by the Commission. ~~Commission, in order for the rule to take effect on the first day of the following month.~~

(c) If the change is made as set out in Paragraph (b) of this Rule, the rule shall become effective pursuant to G.S. 150B-21.3. If the change has not been made as set out in Paragraph (b) of this Rule, ~~then~~ the rule shall not become effective and shall be calendared on the Commission's agenda for the following month.

Authority G.S. 143B-30.1; 150B-21.10.

26 NCAC 05 .0115 EXTENSIONS OF TIME

(a) An agency may submit a request for an extension pursuant to G.S. 150B-21.10(3) at or before the RRC meeting at which the agency's rules are reviewed.

(b) Any rule subject to an extension shall be reviewed at the second regularly scheduled meeting following the extension unless:

(1) the agency provides written notice to RRC staff of its intent that the rule be reviewed at the firstregularly scheduled meeting following the extension; and

(2) the agency submits to RRC staff written responses to all Requests for Technical Changes no later than 10 business days prior to the first regularly scheduled RRC meeting following the extension.

(c) Submission of written notice pursuant to Subparagraph (b)(1) of this Rule shall not prevent an agency from subsequently informing RRC staff in writing of the agency's intention to have its rules reviewed at the second regularly scheduled meeting following the extension.

(d) An agency shall submit responses to all of RRC staff's Requests for Technical Changes no later than 10 business days prior to the second regularly scheduled meeting following the extension.

Authority G.S. 143B-30.1.

SECTION .0200 – PERIODIC REVIEW OF EXISTING RULES

26 NCAC 05 .0201 SCOPE

Authority G.S. 150B-21.3A.

26 NCAC 05 .0202 DEFINITIONS

In addition to the definitions in G.S. 150B-21.3A and in Rule .0101 of this Chapter, for the purposes of this Section the following definitions apply:

(1) "Determination" means a classification of a rule as necessary or unnecessary.
~~(a) unnecessary;~~
~~(b) necessary with substantive public interest; or~~
~~(c) necessary without substantive public interest.~~

(2) "Existing rules" means rules currently in the Code as of January 1, 2024 and every 10 years thereafter. ~~at the time the schedule contained in Rule .0211 of this Section becomes effective and are not repealed, transferred, expired, or reserved.~~

(3) "Report" means the report established pursuant to Rule .0206 of this Section, used to implement steps one through three in G.S. 150B-21.3A(c).

Authority G.S. 150B-21.3A.

26 NCAC 05 .0203 DEADLINES

(a) The Commission shall submit by email to the rulemaking coordinator of an agency subject to the review a report containing its existing rules. Agencies shall have 10 business days after the report is sent to review it for accuracy and completeness. An agency shall notify the Commission staff by email at oah.rules@oah.nc.gov of any errors or missing rules within the 10 business days following the date the RRC sent the report.

(b) An agency shall complete the report as set out in Rule .0206(b) of this Section. The agency shall then submit its initial report to the Office of Administrative Hearings at the above email address and OAH shall post the report on its website within five business days of receipt.

(c) All reports shall be filed on or before the ~~15th~~ 20th day of the month for Commission review of the report at its meeting the following month, using the schedule set forth in Rule .0211 of this Section. Commission counsel shall notify an agency if he or she intends to recommend reviewing this report at a later meeting. The Commission may delay reviewing a report until a later meeting if the workload of the Commission and its staff makes the review impracticable. If the Commission delays reviewing a report, it shall notify the agency. In rescheduling any review, the Commission shall consider the date on which the report was filed with the Commission.

(d) All deadlines that require filing or notification as set forth in this Rule shall be by 5:00 p.m. Eastern Time on the business day of the deadline or the next business day following the deadline if the deadline falls on a non-business day.

Authority G.S. 150B-21.3A.

26 NCAC 05 .0204 EXTENSION OF TIME

(a) If the agency cannot meet the filing deadline set forth in Rules .0203(c) and .0211 of this Section, the agency head may submit a written request for an extension of time from the Commission. The Commission shall consider the request at its next regularly scheduled meeting. The Commission's decision shall be made on a case by case basis, considering the justification offered by the agency requesting the extension, which may include:

(1) the efforts of the agency to comply with the review;
(2) any illness or incapacity of the staff member assigned responsibility for submitting the report;
(3) changes of composition to the agency or its staff that resulted in a delay of the review;
(4) whether the agency received a volume of comments that requires additional time to respond; and
(5) arguments against the delay by members of the public.

(b) A request solely citing time constraints to complete the report is insufficient for an extension of time.

(c) If an agency head submits a request for an extension, the agency shall post notice on its website and notify its interested persons mailing list maintained pursuant to G.S. 150B-21.2(d) that the RRC will review the request at its next regularly scheduled meeting. The notice shall also inform the public that individuals may contact the Commission to object to the delay.

(d) Any person desiring to submit written arguments against the delay proposed by an agency shall submit the comments by email to the individual commissioners and to the RRC staff by 5:00 p.m. Eastern Time on the Tuesday prior to the meeting.

Authority G.S. 150B-21.3A.

26 NCAC 05 .0205 AGENCY REQUEST TO RESCHEDULE REPORTS FOR EARLIER REVIEW AND ADD UNNECESSARY RULES TO THE SCHEDULE

(a) If an agency wishes to reschedule a report for review before the date set forth in Rule .0211 of this Section, the agency shall send a written request to the Commission. The request shall contain:

(1) the Title and Chapter of the Report;
(2) the reason for the request;
(3) if the report was already posted, a copy of the report and any public comments received;
(4) the date the report was originally scheduled for review; and
(5) the date that the agency seeks for Commission review.

(b) An agency seeking earlier review shall, on the date of submission of the request to the Commission, post notice on its website and notify its interested persons mailing list maintained pursuant to G.S. 150B-21.2(d) of the meeting date on which the Commission will review its request as set forth in Paragraph (e) of this Rule. The notice shall also inform the public that the individuals may contact the Commission to object to the rescheduling.

(c) The Commission's decision to grant the request for earlier review shall be made on a case-by-case basis, considering the following:

(1) the reason offered by the agency;
(2) the workload of the Commission; and
(3) arguments for or against the rescheduling by members of the public.

(d) If an agency designates a rule as unnecessary and places it on the current year schedule as set forth in G.S. 150B-21.3A(e), it

shall file written notice of this designation with the Commission. The Commission shall consider the notice at its next regularly scheduled meeting.

(e) For any requests made pursuant to this Rule, the Commission shall consider a request filed on or before the ~~15th~~ 20th day of the month at its meeting the next month and shall then place the rule or rules on the schedule. Following the Commission's decision, the Commission shall notify the agency of the date the agency is required to submit the report.

Authority G.S. 150B-21.3A.

26 NCAC 05 .0211 SCHEDULE

(a) The Commission shall review the report prepared for the identified portion of the Administrative Code pursuant to the schedule found on the OAH website at: https://www.oah.nc.gov/proposed-periodic-review-schedule. ~~on the month and year as set forth below:~~

(b) All requests to amend the schedule referenced here shall be made pursuant to Rules .0204 or .0205 of this Section.

~~July 2014~~	~~August 2014~~	~~September 2014~~	~~October 2014~~	~~November 2014~~
~~03 NCAC 01~~	~~04 NCAC 24~~	~~04 NCAC 17~~	~~15A NCAC 02B~~	~~04 NCAC 14~~
~~21 NCAC 23~~	~~21 NCAC 08~~	~~15A NCAC 01A~~	~~15A NCAC 02H~~	~~11 NCAC 14~~
~~21 NCAC 37~~	~~21 NCAC 52~~	~~15A NCAC 01S~~	~~15A NCAC 02T~~	~~11 NCAC 18~~
	~~25 NCAC 01A~~	~~18 NCAC 03~~	~~15A NCAC 02U~~	~~11 NCAC 20~~
	~~25 NCAC 01B~~	~~18 NCAC 05~~		~~11 NCAC 21~~
	~~25 NCAC 01C~~	~~21 NCAC 01~~		~~11 NCAC 22~~
	~~25 NCAC 02~~	~~21 NCAC 30~~		~~13 NCAC 08~~
				~~13 NCAC 10~~
				~~15A NCAC 12A~~
				~~15A NCAC 12B~~
				~~15A NCAC 12C~~
				~~15A NCAC 12D~~
				~~15A NCAC 12F~~
				~~15A NCAC 12G~~
				~~15A NCAC 12I~~
				~~15A NCAC 12J~~
				~~15A NCAC 12K~~
				~~15A NCAC 01G~~
				~~15A NCAC 01H~~
				~~21 NCAC 20~~
				~~21 NCAC 21~~
				~~21 NCAC 28~~
				~~21 NCAC 69~~
				~~24 NCAC 03~~
~~December 2014~~	~~January 2015~~	~~February 2015~~	~~March 2015~~	~~April 2015~~
~~10A NCAC 45~~	~~02 NCAC 09B~~	~~09 NCAC 03~~	~~04 NCAC 08~~	~~10A NCAC 13L~~
~~21 NCAC 02~~	~~02 NCAC 09C~~	~~09 NCAC 06~~	~~10A NCAC 05~~	~~10A NCAC 13M~~
~~21 NCAC 14~~	~~02 NCAC 09D~~	~~10A NCAC 97~~	~~10A NCAC 09~~	~~10A NCAC 13O~~
~~21 NCAC 62~~	~~02 NCAC 09E~~	~~15A NCAC 02S~~	~~21 NCAC 42~~	~~10A NCAC 26A~~
	~~02 NCAC 09F~~	~~21 NCAC 06~~		~~10A NCAC 26B~~
	~~02 NCAC 09G~~	~~24 NCAC 02~~		~~10A NCAC 26D~~
	~~02 NCAC 09H~~			~~15A NCAC 02R~~
	~~02 NCAC 09J~~			
	~~02 NCAC 09K~~			
	~~02 NCAC 09M~~			
	~~02 NCAC 09N~~			
	~~02 NCAC 09O~~			
	~~02 NCAC 38~~			
	~~02 NCAC 43F~~			
	~~02 NCAC 51~~			
	~~02 NCAC 52A~~			
	~~02 NCAC 52K~~			
	~~02 NCAC 54~~			
	~~10A NCAC 13A~~			
	~~10A NCAC 13D~~			
	~~10A NCAC 14I~~			

	15A NCAC 01F			
May 2015	**June 2015**	**July 2015**	**August 2015**	**September 2015**
07 NCAC 04 15A NCAC 08 15A NCAC 18D 17 NCAC 03 17 NCAC 06	04 NCAC 02R 10A NCAC 21 10A NCAC 22 15A NCAC 07B 21 NCAC 50 21 NCAC 61	02 NCAC 20B 02 NCAC 37 02 NCAC 42 02 NCAC 59A 02 NCAC 59B 02 NCAC 59C 02 NCAC 59E 02 NCAC 59F 02 NCAC 59G 02 NCAC 60A 02 NCAC 60B 15A NCAC 01I 15A NCAC 09 21 NCAC 11 21 NCAC 60 21 NCAC 63	02 NCAC 57 10A NCAC 13H 19A NCAC 01 19A NCAC 04 19A NCAC 05 19A NCAC 06	04 NCAC 15 10A NCAC 63 15A NCAC 18C
October 2015	**November 2015**	**December 2015**	**January 2016**	**February 2016**
06 NCAC 01 06 NCAC 02 06 NCAC 03 06 NCAC 04 10A NCAC 40 10A NCAC 47 11 NCAC 11 11 NCAC 19 18 NCAC 01 18 NCAC 04 18 NCAC 13 25 NCAC 01D	10A NCAC 14J 10A NCAC 46 10A NCAC 48 13 NCAC 15 13 NCAC 20 15A NCAC 12H	15A NCAC 02D 15A NCAC 02Q	01 NCAC 01 01 NCAC 03 01 NCAC 04 01 NCAC 25 01 NCAC 26 10A NCAC 13P 10A NCAC 26E 10A NCAC 26F 15A NCAC 04 21 NCAC 18 21 NCAC 29	10A NCAC 10 10A NCAC 89 13 NCAC 07 13 NCAC 12 21 NCAC 32 21 NCAC 45
March 2016	**April 2016**	**May 2016**	**June 2016**	**July 2016**
10A NCAC 70I 10A NCAC 70K 15A NCAC 01L 15A NCAC 01N 20 NCAC 01 20 NCAC 07	10A NCAC 13J 10A NCAC 27A 10A NCAC 27B 10A NCAC 27D 11 NCAC 06 11 NCAC 13 16 NCAC 01 16 NCAC 02 16 NCAC 03 25 NCAC 01F	01 NCAC 05 10A NCAC 23 10A NCAC 25 21 NCAC 12 21 NCAC 38 26 NCAC 01 26 NCAC 02 26 NCAC 03 26 NCAC 04	14B NCAC 15B 17 NCAC 01 17 NCAC 10 17 NCAC 11 17 NCAC 12 25 NCAC 01H 25 NCAC 01I 25 NCAC 01J	04 NCAC 01 19A NCAC 02
August 2016	**September 2016**	**October 2016**	**November 2016**	**December 2016**
04 NCAC 06 10A NCAC 06 10A NCAC 67 10A NCAC 68 10A NCAC 69 10A NCAC 72 21 NCAC 22	12 NCAC 01 12 NCAC 02 12 NCAC 03 14B NCAC 18 12 NCAC 06 21 NCAC 17 21 NCAC 64 25 NCAC 01E 25 NCAC 01K 25 NCAC 01L 25 NCAC 01M 25 NCAC 01N	10A NCAC 39 10A NCAC 43C 10A NCAC 43E 10A NCAC 43G 10A NCAC 43H 10A NCAC 43I 10A NCAC 43J 18 NCAC 06 18 NCAC 07 18 NCAC 10	10A NCAC 14F 15A NCAC 10F 15A NCAC 10H 20 NCAC 08	01 NCAC 09 01 NCAC 15 01 NCAC 17 01 NCAC 19 01 NCAC 35 08 NCAC 01 08 NCAC 02 08 NCAC 03 08 NCAC 04 08 NCAC 05 08 NCAC 06 08 NCAC 07 08 NCAC 08 08 NCAC 09 08 NCAC 10

				08 NCAC 12 11 NCAC 10 11 NCAC 16 14B NCAC 01 14B NCAC 02 14B NCAC 03 14B NCAC 04 14B NCAC 05 14B NCAC 06 14B NCAC 07 15A NCAC 02A 15A NCAC 02C 15A NCAC 02E
January 2017	**February 2017**	**March 2017**	**April 2017**	**May 2017**
02 NCAC 48C 02 NCAC 48D 02 NCAC 48F 02 NCAC 52B 02 NCAC 52C 02 NCAC 52D 02 NCAC 52E 02 NCAC 52F 02 NCAC 52G 02 NCAC 52H 02 NCAC 52I 02 NCAC 59D 02 NCAC 59H 10A NCAC 27E 10A NCAC 27F 10A NCAC 27H	10A NCAC 01 15A NCAC 01D 15A NCAC 01E	10A NCAC 17 10A NCAC 71 21 NCAC 04 21 NCAC 31	10A NCAC 27I, Sections .0400 and .0500 10A NCAC 27I, Section .0600 10A NCAC 28A 15A NCAC 01C 15A NCAC 13A 15A NCAC 13B, Sections .0100 .0800, .1000 .1400, and .1600 .1700 15A NCAC 13C	07 NCAC 01 07 NCAC 02G 07 NCAC 02H 07 NCAC 02I 07 NCAC 02J 07 NCAC 03 07 NCAC 05 07 NCAC 06 07 NCAC 07 07 NCAC 08 07 NCAC 09 07 NCAC 10 10A NCAC 13B 15A NCAC 27 21 NCAC 25
June 2017	**July 2017**	**August 2017**	**September 2017**	**October 2017**
14B NCAC 15C 15A NCAC 07O 17 NCAC 05 21 NCAC 26 21 NCAC 34	02 NCAC 29 02 NCAC 31 02 NCAC 39 02 NCAC 43A 02 NCAC 43B 02 NCAC 43C 02 NCAC 43D 02 NCAC 43E 02 NCAC 43G 02 NCAC 43L 02 NCAC 43M 02 NCAC 53 02 NCAC 58 18 NCAC 02 18 NCAC 08 18 NCAC 11 18 NCAC 12 24 NCAC 01	04 NCAC 12 04 NCAC 22 10A NCAC 70A 10A NCAC 70B 10A NCAC 70C 10A NCAC 70D 10A NCAC 70E 10A NCAC 70F 10A NCAC 70G 10A NCAC 70H 10A NCAC 70J 10A NCAC 70L 10A NCAC 70N 10A NCAC 70O 14B NCAC 17 21 NCAC 57	04 NCAC 03 10A NCAC 43A 10A NCAC 43B 10A NCAC 43F 21 NCAC 46 21 NCAC 54	10A NCAC 13C 10A NCAC 42 10A NCAC 43D 10A NCAC 44 15A NCAC 02K
November 2017	**December 2017**	**January 2018**	**February 2018**	**March 2018**
10A NCAC 14A 10A NCAC 14G 10A NCAC 14H 11 NCAC 08, Sections .0200, .0400, and .1500	10A NCAC 41A 10A NCAC 41B 10A NCAC 41D 10A NCAC 41F 10A NCAC 41G 10A NCAC 70M 15A NCAC 03	10A NCAC 13F 10A NCAC 28B 10A NCAC 28C 15A NCAC 07A 15A NCAC 07H 15A NCAC 07I 15A NCAC 07J	01 NCAC 38 01 NCAC 39 01 NCAC 40 01 NCAC 41B 01 NCAC 43 01 NCAC 44 04 NCAC 19L	07 NCAC 13A 07 NCAC 13B 07 NCAC 13C 07 NCAC 13D 07 NCAC 13F 07 NCAC 13G 07 NCAC 13I

11 NCAC 08, Sections .0500 – .0800 11 NCAC 08, Sections .0900 and .1400 11 NCAC 08, Sections .1000 – .1300 14B NCAC 09 14B NCAC 10 14B NCAC 11 14B NCAC 12 14B NCAC 13 21 NCAC 16 21 NCAC 33 21 NCAC 36 21 NCAC 39 21 NCAC 66	15A NCAC 03Q, Section .0100 15A NCAC 10B 15A NCAC 10C, Section .0100 15A NCAC 10C, Sections .0200 – .0600 15A NCAC 13B, Section .1500 20 NCAC 03 20 NCAC 09	15A NCAC 07K 15A NCAC 07L 15A NCAC 07M	12 NCAC 10 15A NCAC 02L 15A NCAC 02N 15A NCAC 02O 15A NCAC 02P	07 NCAC 13K 21 NCAC 48 21 NCAC 58
April 2018	**May 2018**	**June 2018**	**July 2018**	**August 2018**
07 NCAC 14 07 NCAC 15 10A NCAC 26C, Section .0100, Rule .0402, and Section .0500 10A NCAC 26C, Sections .0200, .0300, Rule .0401, and Section .0600 10A NCAC 27C 10A NCAC 28D 10A NCAC 28E 11 NCAC 12 21 NCAC 19	01 NCAC 06 01 NCAC 30 13 NCAC 01 13 NCAC 04 13 NCAC 05 13 NCAC 06 13 NCAC 13 13 NCAC 16 13 NCAC 17 13 NCAC 18 13 NCAC 19 21 NCAC 68	21 NCAC 07	19A NCAC 03	14B NCAC 16 20 NCAC 02 21 NCAC 65
September 2018	**October 2018**	**November 2018**	**December 2018**	**January 2019**
02 NCAC 09L 02 NCAC 34 04 NCAC 16	10A NCAC 13K 10A NCAC 41H 17 NCAC 04 21 NCAC 40	10A NCAC 14C 11 NCAC 05 11 NCAC 07	01 NCAC 41A 01 NCAC 41C 01 NCAC 41D 01 NCAC 41E 10A NCAC 13G 10A NCAC 41C 15A NCAC 01O 15A NCAC 02G 15A NCAC 02I 15A NCAC 02J 15A NCAC 10A 15A NCAC 10D 15A NCAC 10E 15A NCAC 10G 15A NCAC 10I 15A NCAC 10J 15A NCAC 10K	02 NCAC 46 02 NCAC 48A 02 NCAC 48B 02 NCAC 52J 02 NCAC 61 11 NCAC 01 11 NCAC 04 11 NCAC 17 15A NCAC 18A, Sections .0100, .0300 – .0900 and .3400
February 2019	**March 2019**	**April 2019**	**May 2019**	**June 2019**
04 NCAC 20 21 NCAC 03 21 NCAC 10 21 NCAC 53 21 NCAC 56	12 NCAC 09 17 NCAC 07	10A NCAC 15	10A NCAC 27G 15A NCAC 18A	10A NCAC 14E 10A NCAC 28F 10A NCAC 28G 10A NCAC 28H 10A NCAC 28I

				~~10A NCAC 29C~~ ~~10A NCAC 29D~~
~~**December 2019**~~	~~**March 2022**~~	~~**December 2023**~~		
~~04 NCAC 19N~~ ~~04 NCAC 19O~~ ~~04 NCAC 19P~~ ~~04 NCAC 19Q~~	~~16 NCAC 06~~	~~15A NCAC 05A~~ ~~15A NCAC 05B~~ ~~15A NCAC 05C~~ ~~15A NCAC 05F~~ ~~15A NCAC 05G~~		

~~(b) The report shall be filed in accordance with Rule .0203 of this Chapter.~~

Authority G.S. 150B-21.3A.

26 NCAC 05 .0212 READOPTIONS

(a) When setting a readoption deadline pursuant to G.S. 150B-21.3A(d)(2), an agency shall, within 60 days of receipt of the Commission's consultation request, submit to the Commission:

(1) written documentation of the agency's planned timeline for readoption, providing planned dates for all steps required by G.S. 150B-21.2; and

(2) written documentation of any of the agency's rulemaking priorities that the agency determines to be relevant to the timeline for readoption.

(b) To meet the readoption deadline established pursuant to G.S. 150B-21.3A(d)(2) and Paragraph (a) of this Rule, an agency shall:

(1) adopt the rule, as defined in G.S. 150B-2(1a), by the date established pursuant to G.S. 150B-21.3A(d)(2) and Paragraph (a) of this Rule; and

(2) file the rule with the Commission within 30 days of adoption.

Authority G.S. 143B-30.1; 150B-21.2(g); 150B-21.3A.

This Section contains information for the meeting of the Rules Review Commission December 15, 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
Seth M. Ascher	984-236-1934

RULES REVIEW COMMISSION MEETING DATES

January 19, 2023	March 16, 2023
February 16, 2023	April 20, 2023

RULES REVIEW COMMISSION MEETING
MINUTES
December 15, 2022

The Rules Review Commission met on Thursday, December 15, 2022, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via WebEx.

Commissioners Bobby Bryan, Jeanette Doran, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho were present in the Commission Room. Commissioners Wayne R. Boyles III, Jay Hemphill, and Jeff Hyde were present via WebEx.

Staff member Alexander Burgos, and Commission Counsel Lawrence Duke, Brian Liebman, and Bill Peaslee were present in the room.

The meeting was called to order at 9:01 a.m. with Chair Doran presiding.

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

APPROVAL OF MINUTES
The Chair asked for any discussion, comments, or corrections concerning the minutes of the November 17, 2022 regular meeting and the November 22, 2022 special meeting. There were none and the minutes were approved as distributed.

Upon the call of the Chair, the minutes for the November 17, 2022 regular meeting and the November 22, 2022 special meeting were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

The Chair notified the Commissioners that the following items on the agenda would be taken up out of order at the end of the agenda: Follow up matters for Department of Administration, Coastal Resources Commission Tabs H and J, and Board of Dietetics/Nutrition.

DRAFT

FOLLOW UP MATTERS

Department of Administration

01 NCAC 05A .0112 and 05E .0101 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

01 NCAC 05E .0103, .0104, and .0105 - The Commission objected to the rules in accordance with G.S. 150B-21.10. The Commission voted to adopt the staff opinions dated December 13, 2022 objecting to 01 NCAC 05E .0103 for failure to comply with the APA, lack of statutory authority to adopt the rule, the ambiguity contained in the rule, and lack of necessity for the rules, objected to 01 NCAC 05E .0104 for failure to comply with the APA and ambiguity contained in the rule, and objected to 01 NCAC 05E .0105 for ambiguity contained in the rule by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

01 NCAC 05E .0102 and .0106 were withdrawn at the request of the agency. No action was required by the Commission.

In accordance with G.S. 150B-21.3(b2), the Commission received over ten letters of objection requesting legislative review and a delayed effective date of 01 NCAC 05A .0112 and 05E .0101.

David Elliot, Deputy Secretary for the Department of Administration, addressed the Commission.

Gerry McCants with MCCANTS, LLC, addressed the Commission.

Structural Pest Control Committee

02 NCAC 34 .0904 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

State Board of Elections

08 NCAC 04 .0308, and .0309 – The Commission objected to these Rules at the November meeting. Pursuant to G.S. 150B-21.12(b), the time for the agency to respond to the objection has not expired. No action was required by the Commission.

Medical Care Commission

10A NCAC 13B .3801, .3903, .4103, .4104, .4106, .4305, .4603, .4801, .4805, .5102, .5105, .5406, .5408, and .5411 – These Rules remain on the agenda pending the agency's intention to seek a legislative fix to address the overarching statutory objection. No action was required by the Commission.

Sheriffs' Education and Training Standards Commission

12 NCAC 10B .0713 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Environmental Management Commission

15A NCAC 02B .0208, .0212, .0214, .0215, .0216, and .0218 - The Commission objected to these Rules at the May meeting. The agency has not responded to the Commission's objection since August 2022. No action was required by the Commission.

Environmental Management Commission

15A NCAC 02H .1301, .1401, .1402, .1403, .1404, and .1405 - The Commission objected to these Rules at the May meeting. The agency has not responded to the Commission's objection since August 2022. No action was required by the Commission.

Coastal Resources Commission

15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510; 07I .0406, .0506, .0508, .0511, .0702; 07J .0203, .0204, .0206, .0207, .0208, .0312 – Upon the call of the Chair, a motion to adopt Staff's recommendation to object to these Rules and approve Rules 15A NCAC 07I .0504, .0602, and 07J .0210 was taken up by the Commission by roll-call vote, ayes 1, noes 7 as follows: Voting in the affirmative: Jeff Hyde -1. Voting in the negative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 7. The motion failed.

DRAFT

15A NCAC 07I .0504, .0602, and 07J .0210 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510; 07I .0406, .0506, .0508, .0511, .0702; 07J .0203, .0204, .0206, .0207, .0208, .0312 – Upon the call of the Chair, the Commission voted to table these Rules and take them up at the January 2023 meeting by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

15A NCAC 07H .0504, .0601, .0603, and .0604 were returned at the request of the agency. No action was required by the Commission.

Mary Lucasse with the Department of Justice, and representing the agency, addressed the Commission.

Coastal Resources Commission
15A NCAC 07H .2305 – The Commission objected to this Rule at the September meeting. Pursuant to G.S. 150B-21.12(b), the time for the agency to respond to the objection has not expired. No action was required by the Commission.

Coastal Resources Commission
15A NCAC 07M .0601 and .0603 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0701, .0703, .0704, .1001, .1002, .1101, and .1102 – Upon the call of the Chair, the Commission voted to table these Rules and take them up at the January 2023 meeting by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

15A NCAC 07M .0503, .0801, .0802, .1201, and .1202 were returned at the request of the agency. No action was required by the Commission.

Behavior Analyst Licensure Board
21 NCAC 05 .0101, .0201, .0202, .0203, .0301, .0401, .0402, .0403, .0501, .0601, .0602, and .0603 – The Commission extended the period of review for these Rules at the November meeting. No action was required by the Commission.

Board of Dietetics/Nutrition
21 NCAC 17 .0101, .0103, .0104, .0106, .0108, .0110, .0112, .0114, .0116, .0201, .0202, .0203, .0302, .0303, .0304, .0401, .0402, .0403, .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0511, .0512, .0513, .0514, .0515, .0516, and .0517 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Cindy Schwalb, a member of the public, addressed the Commission.

Henry Jones with Jordan Price Wall Gray Jones and Carlton, PLLC and representing the agency, addressed the Commission.

In accordance with G.S. 150B-21.3(b2), the Commission received over ten letters of objection requesting legislative review and a delayed effective date of 21 NCAC 17 .0101, .0103, .0106, .0302, .0303, .0401, and .0516.

LOG OF FILINGS (PERMANENT RULES)
Medical Care Commission
Upon the call of the Chair, the Commission extended the period of review for 10A NCAC 13F .0904 and 13G .0904 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

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DHHS- Division of Health Service Regulation
Upon the call of the Chair, 10A NCAC 14C .1102, .2001, .2003, .2801, .2803, .3801, .3803, .4001, and .4003 were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Industrial Commission
Upon the call of the Chair, the Commission extended the period of review for 11 NCAC 23G .0104 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Sheriffs' Education and Training Standards Commission
Rule 12 NCAC 10B .1302 was withdrawn at the request of the agency. No action was required by the Commission.

Private Protective Services Board
Upon the call of the Chair, 14B NCAC 16 .0103 and .0807 were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Environmental Management Commission
Upon the call of the Chair, the Commission extended the period of review for 15A NCAC 02E .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, and .0409 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Wildlife Resources Commission
Upon the call of the Chair, the Commission extended the period of review for 15A NCAC 10F .0201by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

TSERS and LGERS Board of Trustees 20 NCAC 02A
Upon the call of the Chair, the Commission extended the period of review for 20 NCAC 02A .0101, .0102, .0103, .0104, .0201, .0202, .0301, .0302, .0303, .0401, .0503, .0504, and .0505 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

TSERS Board of Trustees 20 NCAC 02B
Upon the call of the Chair, the Commission extended the period of review for 20 NCAC 02B .0101, .0202, .0210, .0211, .0213, .0301, .0302, .0303, .0304, .0305, .0307, .0308, .0401, .0402, .0404, .0405, .0501, .0502, .0503, .0504, .0510, .0701, .0706, .0801, .0802, .0803, .0804, .0805, .0806, .0807, .0810, .0901, .0902, .0903, .0904, .0905, .0906, .1003, .1004, .1005, .1006, .1007, .1101, .1102, .1104, .1204, .1205, and .1207 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None

LGERS Board of Trustees 20 NCAC 02C
Upon the call of the Chair, the Commission extended the period of review for 20 NCAC 02C .0101, .0201, .0204, .0205, .0301, .0302, .0303, .0304, .0306, .0307, .0402, .0403, .0404, .0405, .0501, .0502, .0503, .0504, .0704, .0901, .0902, .0904, .0906, .0907, .0908, .0909, .1001, .1002, .1003, .1004, .1006, .1007, .1201, .1301, .1302, .1501, .1503, .1504, .1505, and .1506 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None

TSERS Board of Trustees 20 NCAC 02F
Upon the call of the Chair, the Commission extended the period of review for 20 NCAC 02F .0101, .0104, .0107, and .0108 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None

TSERS and LGERS Board of Trustees 20 NCAC 02L, 02M
Upon the call of the Chair, the Commission extended the period of review for 20 NCAC 02L .0101, .0103, .0202, .0302; 02M .0101, .0102, .0104, .0201, .0202, .0206, .0301, .0302, .0303, .0304, .0305, and .0307 by roll-call vote, ayes 8, noes 0 as

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follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None

LGERS Board of Trustees 20 NCAC 02N
Upon the call of the Chair, the Commission extended the period of review for 20 NCAC 02N .0106, .0108, .0208, .0215, .0218, and .0219 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None

Board of Funeral Service
Upon the call of the Chair, 21 NCAC 34B .0408 and 34D .0202 were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Board of Examiners in Optometry
Upon the call of the Chair, 21 NCAC 42A .0101 was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Board of Examiners for Engineers and Surveyors
Upon the call of the Chair, the Commission extended the period of review for 21 NCAC 56 .0303, .0601, .0608, .1702, .1703, .1704, .1705, .1707, and .1713 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None

The Chair called the meeting into a brief recess at 10:29 a.m.
The meeting resumed at 10:37 a.m.

COMMISSION BUSINESS
The Commission voted to adopt the RRC 2023 meeting dates with changes to the December meeting date. The December 21, 2023, meeting date was changed to December 14, 2023 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None

The Commission voted to approve the proposed changes to 26 NCAC 05 .0100 - .0200 and begin the rulemaking process by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None

The Commission voted to approve the 2024-2027 Periodic Review Schedule by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None

The Commission voted to approve the staff recommended Pre-Review Cover Sheet by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Jay Hemphill, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None

The meeting adjourned at 10:49 a.m.

The next regularly scheduled meeting of the Commission is Thursday, January 19, 2023, at 9:00 a.m.

_____
Alexander Burgos, Paralegal

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

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December 15, 2022

Rules Review Commission
Meeting
Please **Print** Legibly

Name	Agency
Jennifer Everett	DEQ
David Ellis	DOA
Ann Wall	SOS
Charla Burrill	NCBDN
Donya Strong	DOA
Henry Jones	NCBDN
Doug Lassiter	NCSTA
Robert Ez-Jatoutari	Crossfill Summer LLP
Mary Luana	NC DOJ
DAVID GADD	NCBPTE
Julie Youngman	SELC
Jonathan Avery	DNCR

Rules Review Commission Meeting December 15, 2022
Via WebEx

Name	Agency
Melissa Vuotto	NCREC
Anna Choi	General Contractors
Travis Narron	raleighnc.gov
Daniel Johnson	DOT
Fred Moreno	NCREC
Hannah Schoenbaum	ap.org
Sumit Gupta	NCLEG
Canaan Huie	mvalaw.com
Ellen Roeber	PT Board
Madison Mackenzie	
Marnie Jones	NCBDN
Jill Cramer	Labor
Paul Finkelstein	NCSBE
Spencer Ramsey	Behavior Analyst Board
Lindsey Wakely	NCSBE
H Landi	DOT
Shelby Taylor	DHHS
Blake Brewer	apcoworldwide.com
Emma Kate Sowder	NCMEDSOC
Jessica Montie	DEQ
Nathan Vail	DHHS
Virginia Niehaus	DHHS
Andy Jackson	John Locke
Thomas Jumalon	DHHS
Carol Williams	
Will Polk	DPS
Hampton Billips	ktsstrategies.com
James Burnette	Agriculture
Laura Lansford	DOR
David Elliott	DOA
David Rittlinger	DOI
Laura Rowe	Treasurer
Mac O'connor	
Ashley Pekrul	WRC
Anna Hayworth	Agriculture
Charla Burill	Dietetics
Hannah Jernigan	DOT
Renee Woody	Agriculture
Carrie Ruhlman	WRC

Ross Smith	myncma.org
Eric Hunt	DOJ
Powell Baggett	Treasurer
Pam Cashwell	DOA
Caitlin Schwab-Falzone	Behavior Analyst Board
John Barkley	DOJ
Yashira Cangas	Behavior Analyst Board
Shane Smith	DHHS
Brandon Walker	DPI
Douglas Brocker	Dental
Larry Michael	DHHS
Melissa Bowman	DOJ
Nadine Pfeiffer	DHHS

LIST OF APPROVED PERMANENT RULES
December 15, 2022 Meeting

ADMINISTRATION, DEPARTMENT OF

Definitions	01 NCAC	05A	.0112
Good Faith Efforts	01 NCAC	05E	.0101

STRUCTURAL PEST CONTROL COMMITTEE

Prohibited Acts	02 NCAC	34	.0904

HHS - HEALTH SERVICE REGULATION, DIVISION OF

Performance Standards	10A NCAC	14C	.1102
Definitions	10A NCAC	14C	.2001
Performance Standards	10A NCAC	14C	.2003
Definitions	10A NCAC	14C	.2801
Performance Standards	10A NCAC	14C	.2803
Definitions	10A NCAC	14C	.3801
Performance Standards	10A NCAC	14C	.3803
Definitions	10A NCAC	14C	.4001
Performance Standards	10A NCAC	14C	.4003

SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

Admission of Trainees	12 NCAC	10B	.0713

PRIVATE PROTECTIVE SERVICES BOARD

Definitions	14B NCAC	16	.0103
Training Requirements for Armed Security Guards	14B NCAC	16	.0807

COASTAL RESOURCES COMMISSION

Record of Hearings and Comments	15A NCAC	07I	.0504
Coastal Resources Commission Approval	15A NCAC	07I	.0602
Replacement of Existing Structures	15A NCAC	07J	.0210

Declaration of General Policy	15A NCAC	07M	.0601
Policy Statements	15A NCAC	07M	.0603
DIETETICS/NUTRITION, BOARD OF			
Definitions, Acronyms, and Initialisms	21 NCAC	17	.0101
Qualifications for Licensure	21 NCAC	17	.0103
Applications	21 NCAC	17	.0104
Granting License Without Examination	21 NCAC	17	.0106
Disapproved Application	21 NCAC	17	.0108
Licensure Certificate	21 NCAC	17	.0110
Suspension, Revocation and Denial of License	21 NCAC	17	.0112
Code of Ethics for Professional Practice and Conduct	21 NCAC	17	.0114
Violations, Complaints, Subsequent Board Action, and Hear...	21 NCAC	17	.0116
Definitions	21 NCAC	17	.0201
Requirement for Review	21 NCAC	17	.0202
Review and Board Action	21 NCAC	17	.0203
Requirements	21 NCAC	17	.0302
Supervision	21 NCAC	17	.0303
Records and Reports	21 NCAC	17	.0304
Individuals Aiding the Practice of Dietetics or Nutrition	21 NCAC	17	.0401
Individuals Providing Nutrition Information	21 NCAC	17	.0402
Telepractice	21 NCAC	17	.0403
Definitions	21 NCAC	17	.0501
Complaints	21 NCAC	17	.0502
Investigations	21 NCAC	17	.0503
Right to Hearing	21 NCAC	17	.0504
Request for Hearing	21 NCAC	17	.0505
Granting or Denying Hearing Request	21 NCAC	17	.0506
Notice of Hearing	21 NCAC	17	.0507
Contested Cases	21 NCAC	17	.0508
Informal Procedures	21 NCAC	17	.0509
Informal Resolution	21 NCAC	17	.0510
Disqualification of Board Members	21 NCAC	17	.0511
Subpoenas	21 NCAC	17	.0512
Witnesses	21 NCAC	17	.0513
Final Decision	21 NCAC	17	.0514
Proposals for Decision	21 NCAC	17	.0515
Disciplinary Costs	21 NCAC	17	.0516
Drug Testing and Intervention	21 NCAC	17	.0517
FUNERAL SERVICE, BOARD OF			
Continuing Education Program	21 NCAC	34B	.0408
Preneed Sales License	21 NCAC	34D	.0202
OPTOMETRY, BOARD OF EXAMINERS IN			
Contacting the Board	21 NCAC	42A	.0101