NORTH CAROLINA REGISTER

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February 1, 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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Raleigh, North Carolina 27603
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545 Legislative Office Building
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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

January 5, 2023

EXECUTIVE ORDER NO. 275

NOTICE OF TERMINATION OF EXECUTIVE ORDER NO. 274

WHEREAS, in December 2022, the State of North Carolina was threatened by prolonged cold weather and an increased demand for drivers of propane and other heating fuels; and

WHEREAS, 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,* was issued on December 20, 2022; and

WHEREAS, this emergency declaration and transportation waiver is no longer necessary.

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

Executive Order No. 274 is hereby terminated immediately.

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 5th day of January in the year of our Lord two thousand and twenty-three.

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: CHAMPION RETAIL HOUSING, INC DBA CHAMPION HOMES CENTER

Applicant's Address: 411 OCEAN HWY WEST

SUPPLY, NC 28462

Application Date: 01/03/23

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

MARK J. YOST	CEO & PRESIDENT
LAURIE M. HOUGH	EVP, CFO & TREASURER
ROBERT M. SPENCE	SVP, GC & SECRETARY

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

TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

Notice *is hereby given in accordance with G.S. 150B-21.2 that the Private Protective Services Board intends to amend the rules cited as 14B NCAC 16 .0205 and .1101.*

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

Proposed Effective Date: *June 1, 2023*

Public Hearing:
Date: *February 21, 2023*
Time: *2:00 p.m.*
Location: *3101 Industrial Dr., Suite 104, Raleigh, NC 27609*

Reason for Proposed Action: *A corporation ceases to exist (except for "winding up") immediately upon dissolution or suspension of its corporate status. During a recent complaint investigation, the Board discovered it had no rule governing a corporate licensee in such instances. Therefore, the "company business license" is being amended. During the discussions regarding the new Digital Forensics Examiner license the Board made the decision that the Associate should maintain the trainee log and not the Associate's supervisor. A corresponding change being made for the Private Investigator Associates.*

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

Comment period ends: *April 3, 2023*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

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

- ☐ **State funds affected**
- ☐ **Local funds affected**
- ☐ **Substantial economic impact (>= $1,000,000)**
- ☐ **Approved by OSBM**
- ☒ **No fiscal note required**

CHAPTER 16 - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0200 - LICENSES: TRAINEE PERMITS

14B NCAC 16 .0205 COMPANY BUSINESS LICENSE

(a) Any firm, association, or corporation required to be licensed pursuant to G.S. 74C-2(a) shall upload on the Board's website an application for a company business license on a form provided by the Board. Only a sole proprietorship that is owned and operated by an individual licensee shall be exempt from this Rule. This application for license shall require such information as the firm, association, or corporation name; the address of its principal office within the State; any past conviction for criminal offenses of any company director, or officer; information concerning the past revocation, suspension, or denial of a business or professional license to any director or officer; a list of all directors and officers of the firm, association, or corporation; a list of all persons, firms, associations, corporations or other entities owning 10 percent or more of the outstanding shares of any class of stock; and the name and address of the qualifying agent.

(b) In addition to the items required in Paragraph (a) of this Rule, an out-of-state corporation shall file with its application for a license, a copy of its certificate of authority to transact business in this State issued by the North Carolina Secretary of State in accordance with G.S. 55-15-01. The corporation shall also file a consent to service of process and pleadings that shall be authenticated by its corporate seal and accompanied by a duly certified copy of the resolution of the board of directors authorizing the proper officer or officers to execute the consent.

(c) After filing a completed application with the Board, the Board shall conduct a background investigation to determine if the qualifying agent is in a management position. The Board shall also determine if the directors or officers have the requisite good moral character as defined in G.S. 74C-8(d)(2). For purposes of this Rule, "conviction" means and includes the entry of a plea of guilty or no contest or a verdict rendered in open court by a judge or jury.

(d) Upon satisfactory completion of the background investigation, a company business license shall be issued. This license shall be conspicuously displayed at the principle place of business within North Carolina.

(e) The company business license shall be issued only to the business entity and shall not be construed to extend to the licensing of its officers and employees.
(f) The issuance of the company business license is issued to the firm, association, or corporation in addition to the license issued to the qualifying agent. The qualifying agent for the firm, association, or corporation which has been issued the company business license shall be responsible for assuring compliance with G.S. 74C.
(g) Dissolution or administrative suspension of corporate status shall result in suspension of the company business license by operation of law and may result in disciplinary action for unlicensed activity.

Authority G.S. 74C-2(a); 74C-5.

SECTION .1100 - TRAINING AND SUPERVISION FOR PRIVATE INVESTIGATOR ASSOCIATES

14B NCAC 16 .1101 DEFINITIONS
In addition to the definitions set forth in G.S. 74C, the following definitions shall apply to this Section:

(1) "Private Investigator Associate" refers to an individual training to become a Private Investigator. A Private Investigator Associate may also be referred to as a "trainee" in these Rules. A Private Investigator Associate must complete three training levels as set out in this Section.
(2) "One-on-one Supervision" means person-to-person contact whereby the licensed investigator is personally and directly supervising or training the Associate. The training investigator must be the sponsoring licensed Private Investigator or any licensed Private Investigator who is a member of the sponsoring Private Investigator's firm, association, or corporation. The Private Investigator Associate may not subcontract his or her employment to another Private Investigator. However, the sponsoring Private Investigator may subcontract the Private Investigator Associate if the sponsor obtains prior written approval from the Board's Director by showing that the Private Investigator Associate will receive an educational benefit from the subcontract employment and the Associate will receive one-on-one supervision from another licensed Private Investigator. One-on-one supervision may also be satisfied if the Associate undergoes training from an individual or educational course approved by the Board's Director prior to the Associate receiving the training.
(3) "Training Checklist" refers to the document(s) that shall state all areas of training and work that the Associate has performed. The supervising Private Investigator is responsible for maintaining the training checklist and providing a copy of the checklist to the Associate. The Training Checklist must reflect the date the Associate advances from one level to another. The training checklist must be signed by the Associate and the sponsoring Private Investigator at the end of each reporting period. In the event the Associate transfers employment to another Private Investigator, the Associate must provide the new supervising Private Investigator with the training checklist and the new sponsoring Private Investigator will then be responsible for the maintenance of the checklist. The Training Checklist must be updated on a quarterly basis for Level One Associates and on a yearly basis for Level Two and Level Three Associates. The training checklist must be maintained pursuant to Rule .0108 of this Chapter. When an Associate completes Level Three, the Training Checklist must be made a part of the Associate's application for a Private Investigator's license. The Board shall have immediate access to the training checklist.
(4) "Associate Log" refers to the document(s) maintained by the ~~sponsoring Private Investigator~~ Associate which shall list each case the Associate has worked, the number of hours spent on the case, and the type of work performed. Details of the one-on-one training must be documented within the Associate's log.

Authority G.S. 74C-2(c); 74C-5(2).

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .0208; 07M .0603 and repeal the rules cited as 15A NCAC 07J .0604; 07M .0501, .0602 and .0902.*

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

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

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: *The Coastal Resources Commission's floating structure policies do not specifically address Floating Upweller Systems used in shellfish aquaculture operations. These amendments clarify how they may be sited in public trust waters.*

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

Comment period ends: *April 3, 2023*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

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

☒ **State funds affected**
☐ **Local funds affected**
☐ **Substantial economic impact (>= $1,000,000)**
☒ **Approved by OSBM**
☐ **No fiscal note required**

CHAPTER 07 - COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0200 – THE ESTUARINE AND OCEAN SYSTEMS

15A NCAC 07H .0208 USE STANDARDS

(a) General Use Standards

(1) Uses that are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and public trust areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads, factories, and parking lots are examples of uses that are not water dependent. Uses that are water dependent include: utility crossings, wind energy facilities, docks, wharves, boat ramps, dredging, bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring pilings, navigational channels, access channels and drainage ditches;

(2) Before being granted a permit, the CRC or local permitting authority shall find that the applicant has complied with the following standards:

(A) The location, design, and need for development, as well as the construction activities involved shall be consistent with the management objective of the Estuarine and Ocean ~~System AEC (Rule .0203 of this subchapter)~~ System AEC in Rule .0203 of this Section and shall be sited and designed to avoid significant adverse impacts upon the productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation as defined by the Marine Fisheries Commission, and spawning and nursery areas;

(B) Development shall comply with State and federal water and air quality rules, statutes and regulations;

(C) Development shall not cause irreversible damage to documented archaeological or historic resources as identified by the N.C. Department of Cultural ~~resources;~~ and Natural Resources;

(D) Development shall not increase siltation;

(E) Development shall not create stagnant water bodies;

(F) Development shall be timed to avoid significant adverse impacts on life cycles of estuarine and ocean resources; and

(G) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters.

(3) When the proposed development is in conflict with the general or specific use standards set forth in this Rule, the CRC may approve the development if the applicant can demonstrate that the activity associated with the proposed project will have public benefits as identified in the findings and goals of the Coastal Area Management Act, that the public benefits outweigh the long range adverse effects of the project, that there is no reasonable alternate site available for the project, and that all reasonable means and measures to mitigate adverse impacts of the project have been incorporated into the project design and shall be implemented at the applicant's expense. Measures taken to mitigate or minimize adverse impacts shall include actions that:

(A) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
(B) restore the affected environment; or
(C) compensate for the adverse impacts by replacing or providing substitute resources.

(4) "Primary nursery areas" are defined as those areas in the estuarine and ocean system where initial post larval development of finfish and crustaceans takes place. They are usually located in the uppermost sections of a system where populations are uniformly early juvenile stages. Primary nursery areas are designated and described by the N.C. Marine Fisheries Commission (MFC) and by the N.C. Wildlife Resources Commission (WRC) at 15A NCAC 03R .0103;

(5) "Outstanding Resource Waters" (ORW) are defined as those estuarine waters and public trust areas classified by the N.C. Environmental Management Commission (EMC). In those estuarine waters and public trust areas classified as ORW by the EMC no permit required by the Coastal Area Management Act shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC, or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site specific information, degrade the water quality or outstanding resource values; and

(6) Beds of "submerged aquatic vegetation" (SAV) are defined as those habitats in public trust and estuarine waters vegetated with one or more species of submergent vegetation. These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the Marine Fisheries Commission. Any rules relating to SAVs shall not apply to non-development control activities authorized by the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et seq.).

(b) Specific Use Standards

(1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of submerged aquatic vegetation as defined by the MFC, or areas of coastal wetlands except as otherwise allowed within this Subchapter. Navigation channels, canals and boat basins shall also comply with the following standards:

(A) Navigation channels and canals may be allowed through fringes of regularly and irregularly flooded coastal wetlands if the loss of wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands, and if there is no reasonable alternative that would avoid the wetland losses;

(B) All dredged material shall be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or coastal wetlands;

(C) Dredged material from maintenance of channels and canals through irregularly flooded wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method having no significant, long-term wetland impacts. Under no circumstances shall dredged material be placed on regularly flooded wetlands. New dredged material disposal areas shall not be located in the buffer area as outlined in 15A NCAC 07H .0209(d)(10);

(D) Widths of excavated canals and channels shall be the minimum required to meet the applicant's needs but not impair water circulation;

(E) Boat basin design shall maximize water exchange by having the widest possible opening and the shortest practical entrance canal. Depths of boat basins shall decrease from the waterward end inland;

(F) Any canal or boat basin shall be excavated no deeper than the depth of the connecting waters;

(G) Construction of finger canal systems are not allowed. Canals shall be either straight or meandering with no right angle corners;

(H) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may include shoreline stabilization, vegetative stabilization, or setbacks based on soil characteristics; and

(I) Maintenance excavation in canals, channels and boat basins within primary nursery areas and areas of submerged aquatic vegetation as defined by the MFC shall be avoided. However, when essential to maintain a traditional and established use, maintenance excavation may be approved if the applicant meets all of the following criteria:

(i) The applicant demonstrates and documents that a

water-dependent need exists for the excavation;

(ii) There exists a previously permitted channel that was constructed or maintained under permits issued by the State or Federal government. If a natural channel was in use, or if a human-made channel was constructed before permitting was necessary, there shall be evidence that the channel was continuously used for a specific purpose;

(iii) Excavated material can be removed and placed in a disposal area in accordance with Part (b)(1)(B) of this Rule without impacting adjacent nursery areas and submerged aquatic vegetation as defined by the MFC; and

(iv) The original depth and width of a human-made or natural channel shall not be increased to allow a new or expanded use of the channel.

(2) Hydraulic Dredging

(A) The terminal end of the dredge pipeline shall be positioned at a distance sufficient to preclude erosion of the containment dike and a maximum distance from spillways to allow settlement of suspended solids;

(B) Dredged material shall be either confined on high ground by retaining structures or deposited on beaches for purposes of renourishment if the material is suitable in accordance with the rules in this Subchapter, except as provided in Part (G) of this Subparagraph;

(C) Confinement of excavated materials shall be landward of all coastal wetlands and shall employ soil stabilization measures to prevent entry of sediments into the adjacent water bodies or coastal wetlands;

(D) Effluent from diked areas receiving disposal from hydraulic dredging operations shall be contained by pipe, trough, or similar device to a point waterward of emergent vegetation or, where local conditions require, below normal low water or normal water level;

(E) When possible, effluent from diked disposal areas shall be returned to the area being dredged;

(F) A water control structure shall be installed at the intake end of the effluent pipe;

(G) Publicly funded projects shall be considered by review agencies on a case-by-case basis with respect to dredging methods and dredged material disposal in accordance with Subparagraph (a)(3) of this Rule; and

(H) Dredged material from closed shellfish waters and effluent from diked disposal areas used when dredging in closed shellfish waters shall be returned to the closed shellfish waters.

(3) Drainage Ditches

(A) Drainage ditches located through any coastal wetland shall not exceed six feet wide by four feet deep (from ground surface) unless the applicant shows that larger ditches are necessary;

(B) Dredged material derived from the construction or maintenance of drainage ditches through regularly flooded marsh shall be placed landward of these marsh areas in a manner that will insure that entry of sediment into the water or marsh will not occur. Dredged material derived from the construction or maintenance of drainage ditches through irregularly flooded marshes shall be placed on non-wetlands wherever feasible. Non-wetland areas include relic disposal sites;

(C) Excavation of new ditches through high ground shall take place landward of an earthen plug or other methods to minimize siltation to adjacent water bodies; and

(D) Drainage ditches shall not have a significant adverse impact on primary nursery areas, productive shellfish beds, submerged aquatic vegetation as defined by the MFC, or other estuarine habitat. Drainage ditches shall be designed so as to minimize the effects of freshwater inflows, sediment, and the introduction of nutrients to receiving waters. Settling basins, water gates and retention structures are examples of design alternatives that may be used to minimize sediment introduction.

(4) Nonagricultural Drainage

(A) Drainage ditches shall be designed so that restrictions in the volume or diversions of flow are minimized to both surface and ground water;

(B) Drainage ditches shall provide for the passage of migratory organisms by allowing free passage of water of sufficient depth; and

(C) Drainage ditches shall not create stagnant water pools or changes in the velocity of flow.

(5) Marinas. "Marinas" are defined as any publicly or privately owned dock, basin or wet boat storage facility constructed to accommodate more than 10 boats and providing any of the following services: permanent or transient docking spaces, dry storage, fueling facilities, haulout facilities, and repair service. Excluded from this definition are boat ramp facilities allowing access only, temporary docking, and none of the preceding services. Expansion of existing facilities shall comply with the standards of this Subparagraph for all development other than maintenance and repair necessary to maintain previous service levels. Marinas shall comply with the following standards:

(A) Marinas shall be sited in non-wetland areas or in deep waters (areas not requiring dredging) and shall not disturb shellfish resources, submerged aquatic vegetation as defined by the MFC, or wetland habitats, except for dredging necessary for access to high-ground sites. The following four alternatives for siting marinas are listed in order of preference for the least damaging alterative; marina projects shall be designed to have the highest of these four priorities that is deemed feasible by the permit letting agency:

(i) an upland basin site requiring no alteration of wetland or estuarine habitat and providing flushing by tidal or wind generated water circulation or basin design characteristics;

(ii) an upland basin site requiring dredging for access when the necessary dredging and operation of the marina will not result in significant adverse impacts to existing fishery, shellfish, or wetland resources and the basin design shall provide flushing by tidal or wind generated water circulation;

(iii) an open water site located outside a primary nursery area which utilizes piers or docks rather than channels or canals to reach deeper water; and

(iv) an open water marina requiring excavation of no intertidal habitat, and no dredging greater than the depth of the connecting channel.

(B) Marinas that require dredging shall not be located in primary nursery areas nor in areas which require dredging through primary nursery areas for access. Maintenance dredging in primary nursery areas for existing marinas shall comply with the standards set out in Part (b)(1)(I) of this Rule;

(C) To minimize coverage of public trust areas by docks and moored vessels, dry storage marinas shall be used where feasible;

(D) Marinas to be developed in waters subject to public trust rights (other than those created by dredging upland basins or canals) for the purpose of providing docking for residential developments shall be allowed no more than 27 square feet of public trust areas for every one linear foot of shoreline adjacent to these public trust areas for construction of docks and mooring facilities. The 27 square feet allocation does not apply to fairway areas between parallel piers or any portion of the pier used only for access from land to the docking spaces;

(E) To protect water quality in shellfishing areas, marinas shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the marina. In compliance with 33 U.S. Code Section 101(a)(2) of the Clean Water Act and North Carolina Water Quality Standards (15A NCAC 02B .0200) adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November

28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Coastal Management shall consult with the Division of Marine Fisheries regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development;

(F) Marinas shall not be located without written consent from the leaseholders or owners of submerged lands that have been leased from the state or deeded by the State;

(G) Marina basins shall be designed to promote flushing through the following design criteria:

(i) the basin and channel depths shall gradually increase toward open water and shall never be deeper than the waters to which they connect; and

(ii) when possible, an opening shall be provided at opposite ends of the basin to establish flow-through circulation;

(H) Marinas shall be designed so that the capability of the waters to be used for navigation or for other public trust rights in estuarine or public trust waters are not jeopardized while allowing the applicant access to deep waters;

(I) Marinas shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels and their boundaries as designated by the US Army Corps of Engineers. This includes permanent or temporary mooring sites; speed or traffic reductions; or any other device, either physical or regulatory, that may cause a federally maintained channel to be restricted;

(J) Open water marinas shall not be enclosed within breakwaters that preclude circulation sufficient to maintain water quality;

(K) Marinas that require dredging shall provide areas in accordance with Part (b)(1)(B) of this Rule to accommodate disposal needs for future maintenance dredging, including the ability to remove the dredged material from the marina site;

(L) Marina design shall comply with all applicable EMC requirements (15A NCAC 02B .0200) for management of stormwater runoff. Stormwater management systems shall not be located within the 30-foot buffer area outlined in 15A NCAC 07H .0209(d);

(M) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and listing the availability of local pump-out services;

(N) Boat maintenance areas shall be designed so that all scraping, sandblasting, and painting will be done over dry land with collection and containment devices that prevent entry of waste materials into adjacent waters;

(O) All marinas shall comply with all applicable standards for docks and piers, shoreline stabilization, dredging and dredged material disposal of this Rule;

(P) All applications for marinas shall be reviewed by the Division of Coastal Management to determine their potential impact to coastal resources and compliance with applicable standards of this Rule. Such review shall also consider the cumulative impacts of marina development in accordance with G.S. 113A-120(a)(10); and

(Q) Replacement of existing marinas to maintain previous service levels shall be allowed provided that the development complies with the standards for marina development within this Section.

(6) Piers and Docking Facilities.

(A) Piers shall not exceed six feet in width. Piers greater than six feet in width shall be permitted only if the greater width is necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur;

(B) The total square footage of shaded impact for ~~docks~~ docks, platforms and mooring facilities (excluding the pier) allowed shall be eight square feet per linear foot of shoreline with a maximum of 2,000 square feet. In calculating the shaded impact, uncovered open water slips shall not

be counted in the total. Projects requiring dimensions greater than those stated in this Rule shall be permitted only if the greater dimensions are necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur. Size restrictions shall not apply to marinas;

(C) Piers and docking facilities over coastal wetlands shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking;

(D) A boathouse shall not exceed 400 square feet except to accommodate a documented need for a larger boathouse and shall have sides extending no farther than one-half the height of the walls as measured from the Normal Water Level or Normal High Water and covering only the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline, except that structural boat covers utilizing a frame-supported fabric covering may be permitted on properties with less than 75 linear feet of shoreline when using screened fabric for side walls. Size restrictions do not apply to marinas;

(E) The total area enclosed by an individual boat lift shall not exceed 400 square feet except to accommodate a documented need for a larger boat lift;

(F) Piers and docking facilities shall be single story. They may be roofed but shall not be designed to allow second story use;

(G) Pier and docking facility length shall be limited by:

(i) not extending beyond the established pier or docking facility length along the same shoreline for similar use. This restriction does not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public;

(ii) not extending into the channel portion of the water body; and

(iii) not extending more than one-fourth the width of a natural water body, or human-made canal or basin. Measurements to determine widths of the water body, canals, or basins shall be made from the waterward edge of any coastal wetland vegetation that borders the water body. The one-fourth length limitation does not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line. The one-fourth length limitation shall not apply when the proposed pier is located between longer piers or docking facilities within 200 feet of the applicant's property. However, the proposed pier or docking facility shall not be longer than the pier head line established by the adjacent piers or docking facilities, nor longer than one-third the width of the water body.

(H) Piers or docking facilities longer than 400 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least 1 foot each 100 foot increment of length longer than 400 feet, or, if the additional length is necessary to span some obstruction to navigation. Measurements to determine lengths shall be made from the waterward edge of any coastal wetland vegetation that borders the water body;

(I) Piers and docking facilities shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier or docking facility and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the

channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. If the adjacent property is sold before construction of the pier or docking facility commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the pier. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 07H .1205(t) illustrating the rule as applied to various shoreline configurations. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable as determined by the Director of the Division of Coastal Management; and

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

(7) Bulkheads

(A) Bulkhead alignment, for the purpose of shoreline stabilization, shall approximate the location of normal high water or normal water level;

(B) Bulkheads shall be constructed landward of coastal wetlands in order to avoid significant adverse impacts to the resources;

(C) Bulkhead backfill material shall be obtained from an upland source approved by the Division of Coastal Management pursuant to this Section, or if the bulkhead is a part of a permitted project involving excavation from a non-upland source, the material so obtained may be contained behind the bulkhead;

(D) Bulkheads shall be permitted below normal high water or normal water level only when the following standards are met:

(i) the property to be bulkheaded has an identifiable erosion problem, whether it results from natural causes or adjacent bulkheads, or it has unusual geographic or geologic features, e.g. steep grade bank, which will cause the applicant unreasonable hardship under the other provisions of this Rule;

(ii) the bulkhead alignment extends no further below normal high water or normal water level than necessary to allow recovery of the area eroded in the year prior to the date of application, to align with adjacent bulkheads, or to mitigate the unreasonable hardship resulting from the unusual geographic or geologic features;

(iii) the bulkhead alignment will not adversely impact public trust rights or the property of adjacent riparian owners;

(iv) the need for a bulkhead below normal high water or normal water level is documented by the Division of Coastal Management; and

(v) the property to be bulkheaded is in a non-oceanfront area.

(E) Where possible, sloping rip-rap, gabions, or vegetation shall be used rather than bulkheads.

(8) Beach Nourishment

(A) Beach creation or maintenance may be allowed to enhance water related recreational facilities for public, commercial, and private use consistent with the following:

(i) Beaches may be created or maintained in areas where they have historically been found due to natural processes;

(ii) Material placed in the water and along the shoreline shall be clean sand and free from pollutants. Grain size shall be equal to that found naturally at the site;

(iii) Beach creation shall not be allowed in primary nursery areas, nor in any areas where

siltation from the site would pose a threat to shellfish beds;

(iv) Material shall not be placed on any coastal wetlands or submerged aquatic vegetation as defined by MFC;

(v) Material shall not be placed on any submerged bottom with significant shellfish resources as identified by the Division of Marine Fisheries during the permit review; and

(vi) Beach construction shall not create the potential for filling adjacent navigation channels, canals or boat basins.

(B) Placing unconfined sand material in the water and along the shoreline shall not be allowed as a method of shoreline erosion control;

(C) Material from dredging projects may be used for beach nourishment if:

(i) it is first handled in a manner consistent with dredged material disposal as set forth in this Rule;

(ii) it is allowed to dry prior to being placed on the beach; and

(iii) only that material of acceptable grain size as set forth in Subpart (b)(8)(A)(ii) of this Rule is removed from the disposal site for placement on the beach. Material shall not be placed directly on the beach by dredge or dragline during maintenance excavation.

(D) Beach construction shall comply with State and federal water quality standards;

(E) The renewal of permits for beach nourishment projects shall require an evaluation by the Division of Coastal Management of any adverse impacts of the original work; and

(F) Permits issued for beach nourishment shall be limited to authorizing beach nourishment only one time.

(9) Groins

(A) Groins shall not extend more than 25 feet waterward of the normal high water or normal water level unless a longer structure is justified by site specific conditions and by an individual who meets any North Carolina occupational licensing requirements for the type of structure being proposed and approved during the application process;

(B) Groins shall be set back a minimum of 15 feet from the adjoining riparian lines. The setback for rock groins shall be measured from the toe of the structure. This setback may be waived by written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the groin;

(C) Groins shall pose no threat to navigation;

(D) The height of groins shall not exceed one foot above normal high water or normal water level;

(E) No more than two structures shall be allowed per 100 feet of shoreline unless the applicant provides evidence that more structures are needed for shoreline stabilization.

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

(G) Riprap material used for groin construction shall be free from loose dirt or any other pollutant and of a size sufficient to prevent its movement from the site by wave and current action.

(10) "Freestanding Moorings".

(A) A "freestanding mooring" is any means to attach a ship, boat, vessel, floating structure or other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling as long as the piling is not associated with an existing or proposed pier, dock, or boathouse;

(B) Freestanding moorings shall be permitted only:

(i) to riparian property owners within their riparian corridors; or

(ii) to any applicant proposing to locate a mooring buoy consistent with a water use plan that is included in either the local zoning or land use plan.

(C) All mooring fields shall provide an area for access to any mooring(s) and other land based operations that shall include wastewater pumpout, trash disposal and vehicle parking;

(D) To protect water quality of shellfishing areas, mooring fields shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the mooring field. In compliance with Section 101(a)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 (a)(2), and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Marine Fisheries shall be consulted regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development;

(E) Moorings shall not be located without written consent from the leaseholders or owners of submerged lands that have been leased from the state or deeded by the State;

(F) Moorings shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels. This includes permanent or temporary mooring sites, speed or traffic reductions, or any other device, either physical or regulatory, which may cause a federally maintained channel to be restricted;

(G) Open water moorings shall not be enclosed within breakwaters that preclude circulation and degrade water quality in violation of EMC standards;

(H) Moorings and the associated land based operation design shall comply with all applicable EMC requirements for management of stormwater runoff;

(I) Mooring fields shall have posted in view of patrons a notice prohibiting the discharge of any waste from boat toilets or any other discharge and listing the availability of local pump-out services and waste disposal;

(J) Freestanding moorings associated with commercial shipping, public service, or temporary construction or salvage operations may be permitted without a public sponsor;

(K) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing including the length of the vessel to be moored. Moorings and the attached vessel shall not interfere with the access of any riparian owner nor shall it block riparian access to channels or deep water, which allows riparian access. Freestanding moorings shall not interfere with the ability of any riparian owner to place a pier for access;

(L) Freestanding moorings shall not be established in submerged cable or pipe crossing areas or in a manner that interferes with the operations of an access through any bridge;

(M) Freestanding moorings shall be marked or colored in compliance with U.S. Coast Guard and the WRC requirements and the required marking maintained for the life of the mooring(s); and

(N) The type of material used to create a mooring must be free of pollutants and of a design and type of material so as to not present a hazard to navigation or public safety.

(11) Filling of Canals, Basins and Ditches - Notwithstanding the general use standards for estuarine systems as set out in Paragraph (a) of this Rule, filling canals, basins and ditches shall be allowed if all of the following conditions are met:

(A) the area to be filled was not created by excavating lands which were below the normal high water or normal water level;

(B) if the area was created from wetlands, the elevation of the proposed filling does not exceed the elevation of said wetlands so that wetland function will be restored;

(C) the filling will not adversely impact any designated primary nursery area, shellfish bed, submerged aquatic vegetation as defined by the MFC,

coastal wetlands, public trust right or public trust usage; and

(D) the filling will not adversely affect the value and enjoyment of property of any riparian owner.

(12) "Submerged Lands Mining"

(A) Development Standards. Mining of submerged lands shall meet all the following standards:

(i) The biological productivity and biological significance of mine sites, or borrow sites used for sediment extraction, shall be evaluated for significant adverse impacts and a protection strategy for these natural functions and values provided with the State approval request or permit application;

(ii) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant benthic communities identified by the Division of Marine Fisheries or the WRC shall be avoided;

(iii) Mining shall avoid significant archaeological resources as defined in Rule .0509 of this Subchapter; shipwrecks identified by the Department of Cultural Resources; and unique geological features that require protection from uncontrolled or incompatible development as identified by the Division of Energy, Mineral, and Land Resources pursuant to G.S. 113A-113(b)(4)(g);

(iv) Mining activities shall not be conducted on or within 500 meters of significant biological communities identified by the Division of Marine Fisheries or the WRC, such as high relief hard bottom areas. "High relief" is defined for this Part as relief greater than or equal to one-half meter per five meters of horizontal distance;

(v) Mining activities shall be timed to minimize impacts on the life cycles of estuarine or ocean resources; and

(vi) Mining activities shall not affect potable groundwater supplies, wildlife, freshwater, estuarine, or marine fisheries.

(B) Permit Conditions. Permits for submerged lands mining may be conditioned on the applicant amending the mining proposal to include measures necessary to ensure compliance with the provisions of the Mining Act and the rules for development set out in this Subchapter. Permit conditions shall also include:

(i) Monitoring by the applicant to ensure compliance with all applicable development standards; and

(ii) A determination of the necessity and feasibility of restoration shall be made by the Division of Coastal Management as part of the permit or consistency review process. Restoration shall be necessary where it will facilitate recovery of the pre-development ecosystem. Restoration shall be considered feasible unless, after consideration of all practicable restoration alternatives, the Division of Coastal Management determines that the adverse effects of restoration outweigh the benefits of the restoration on estuarine or ocean resources. If restoration is determined to be necessary and feasible, then the applicant shall submit a restoration plan to the Division of Coastal Management prior to the issuance of the permit.

(C) Dredging activities for the purposes of mining natural resources shall be consistent with the development standards set out in this Rule;

(D) Mitigation. Where mining cannot be conducted consistent with the development standards set out in this Rule, the applicant may request mitigation approval under 15A NCAC 07M .0700; and

(E) Public Benefits Exception. Projects that conflict with the standards in this

Subparagraph, but provide a public benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this Rule.

(13) "Wind Energy Facilities"

(A) An applicant for the development and operation of a wind energy facility shall provide:

(i) an evaluation of the proposed noise impacts of the turbines to be associated with the proposed facility;

(ii) an evaluation of shadow flicker impacts for the turbines to be associated with the proposed facility;

(iii) an evaluation of avian and bat impacts of the proposed facility;

(iv) an evaluation of viewshed impacts of the proposed facility;

(v) an evaluation of potential user conflicts associated with development in the proposed project area; and

(vi) a plan regarding the action to be taken upon decommissioning and removal of the wind energy facility. The plan shall include estimates of monetary costs, time frame of removal and the proposed site condition after decommissioning.

(B) Development Standards. Development of wind energy facilities shall meet the following standards in addition to adhering to the requirements outlined in Part (a)(13)(A) of this Rule:

(i) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant benthic communities identified by the Division of Marine Fisheries or the WRC shall be avoided;

(ii) Development shall not be sited on or within 500 meters of significant biological communities identified by the Division of Marine Fisheries or the WRC, such as high relief hard bottom areas. High relief is defined for this standard as relief greater than or equal to one-half meter per five meters of horizontal distance;

(iii) Development shall not cause irreversible damage to documented archeological resources including shipwrecks identified by the Department of Cultural Resources and unique geological features that require protection from uncontrolled or incompatible development as identified by the Division of Energy, Mineral, and Land Resources pursuant to G.S. 113A-113(b)(4)(g);

(iv) Development activities shall be timed to avoid significant adverse impacts on the life cycles of estuarine or ocean resources, or wildlife;

(v) Development or operation of a wind energy facility shall not jeopardize the use of the surrounding waters for navigation or for other public trust rights in public trust areas or estuarine waters; and

(vi) Development or operation of a wind energy facility shall not interfere with air navigation routes, air traffic control areas, military training routes or special use airspace and shall comply with standards adopted by the Federal Aviation Administration and codified under 14 CFR Part 77.13.

(C) Permit Conditions. Permits for wind energy facilities may be conditioned on the applicant amending the proposal to include measures necessary to ensure compliance with the standards for development set out in this Rule. Permit conditions may include monitoring to ensure compliance with all applicable development standards; and

(D) Public Benefits Exception. Projects that conflict with these standards, but provide a public benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this Rule.

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

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

SECTION .0600 - DECLARATORY RULINGS AND PETITIONS FOR RULEMAKING

15A NCAC 07J .0604 FEDERAL ACTIVITIES

Authority G.S. 113A-124; 150B-4.

SUBCHAPTER 07M - GENERAL POLICY GUIDELINES FOR THE COASTAL AREA

SECTION .0500 - POST-DISASTER POLICIES

15A NCAC 07M .0501 DECLARATION OF GENERAL POLICY

Authority G.S. 113A-102; 113A-107; 113A-120; 113A-124(c).

SECTION .0600 - FLOATING STRUCTURE POLICIES

15A NCAC 07M .0602 DEFINITIONS

Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8).

15A NCAC 07M .0603 POLICY STATEMENTS

(a) It is the policy of the State of North Carolina that floating structures shall not be allowed or permitted within the public trust waters of the coastal area except in a marina permitted as development pursuant to the Coastal Area Management Act of 1974.

(b) All floating structures shall be in conformance with local regulations for on-shore sewage treatment.

(c) A boat shall be deemed a floating structure when its means of propulsion has been removed or rendered inoperative and it contains at least 200 square feet of living space area.

(d) A floating upweller system is a structure used in mariculture for the purpose of growing shellfish. For the purpose of this Rule, floating upweller systems are considered floating structures.

(e) Floating upweller systems may be permitted as a platform at a private docking facility in accordance with 15A NCAC 07H .0208(b)(6) or at a permitted marina in accordance with 15A NCAC 07H .0208(b)(5).

Authority G.S. 113A-102; 113A-103; 113A-107; 113A-108; 113A-118; 119.2(a)(2); 113A-120(a)(8).

SECTION .0900 - POLICIES ON USE OF COASTAL AIRSPACE

15A NCAC 07M .0902 POLICY STATEMENTS

Authority G.S. 113A-102(b); 113A-107.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 06 – BOARD OF BARBER AND ELECTROLYSIS EXAMINERS

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Board of Barber and Electrolysis Examiners intends to amend the rules cited as 21 NCAC 06G .0103; and 06J .0108.*

Link to agency website pursuant to G.S. 150B-19.1(c): *https://www.barbers.nc.gov/news.html*

Proposed Effective Date: *June 1, 2023*

Public Hearing:
Date: *February 21, 2023*
Time: *10:00 a.m.*
Location: *By videoconference at http://bit.ly/3Gua4M1 or by teleconference at (984) 204-1487 conference ID 530 516 847#*

Reason for Proposed Action: *Applicants for apprentice and instructor licenses must take two types of exams: written and practical. If they pass one part but fail the other, they have six months to pass the failed exam. Otherwise, they must retake both exams. The board proposes to extend the six-month deadline to three years. The amendment to 21 NCAC 06G .0103 would extend this deadline for instructor applicants, and the amendment to 21 NCAC 06J .0108 would extend this deadline for apprentice applicants.*

Comments may be submitted to: *Dennis Seavers, 7001 Mail Service Center, Raleigh, NC 27699-7000; phone (919) 814-0641; fax (919) 981-5068; email dennis.seavers@nc.gov*

Comment period ends: *April 3, 2023*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

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

☐ **State funds affected**
☐ **Local funds affected**
☐ **Substantial economic impact (>= $1,000,000)**
☐ **Approved by OSBM**
☒ **No fiscal note required**

SUBCHAPTER 06G - BARBER SCHOOL INSTRUCTORS

21 NCAC 06G .0103 INSTRUCTOR EXAMINATION

(a) ~~A prospective~~ An applicant for an instructor ~~of barbering~~ license shall make a grade of at least 80 percent on both the written and practical parts ~~(written and practical)~~ of the instructor's examination before being ~~certified.~~ licensed.

(b) If any applicant to be licensed as a barber school instructor fails one portion of the examination, but passes the other portion, he or she may take and pass the failed portion within ~~six months~~ three years of the notification of failure. If the failed portion is not passed within ~~six months~~ three years of the notification of failure, the applicant shall take all parts of the examination again.

Authority S.L. 2022-72, s. 2.

SUBCHAPTER 06J - APPRENTICE BARBERS

21 NCAC 06J .0108 EXAMINATION

If any applicant to be licensed as an apprentice barber fails either the written or practical portion of the examination, he or she shall take and pass the failed portion within ~~six months~~ three years of the notification of failure. If the failed portion is not passed within ~~six months~~ three years of the notification of failure, the applicant shall take both portions of the examination again.

Authority S.L. 2022-72, s. 2.

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

Rules approved by the Rules Review Commission at its meeting on December 15, 2022 Meeting.

	REGISTER CITATION TO THE NOTICE OF TEXT
STRUCTURAL PEST CONTROL COMMITTEE	
Prohibited Acts	02 NCAC 34 .0904* 36:21 NCR
HHS - HEALTH SERVICE REGULATION, DIVISION OF	
Performance Standards	10A NCAC 14C .1102 37:02 NCR
Definitions	10A NCAC 14C .2001 37:02 NCR
Performance Standards	10A NCAC 14C .2003 37:02 NCR
Definitions	10A NCAC 14C .2801 37:02 NCR
Performance Standards	10A NCAC 14C .2803* 37:02 NCR
Definitions	10A NCAC 14C .3801* 37:02 NCR
Performance Standards	10A NCAC 14C .3803* 37:02 NCR
Definitions	10A NCAC 14C .4001* 37:02 NCR
Performance Standards	10A NCAC 14C .4003* 37:02 NCR
SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION	
Admission of Trainees	12 NCAC 10B .0713* 37:02 NCR
PRIVATE PROTECTIVE SERVICES BOARD	
Definitions	14B NCAC 16 .0103 37:01 NCR
Training Requirements for Armed Security Guards	14B NCAC 16 .0807* 37:01 NCR
COASTAL RESOURCES COMMISSION	
Record of Hearings and Comments	15A NCAC 07I .0504* 34:09 NCR
Coastal Resources Commission Approval	15A NCAC 07I .0602* 34:09 NCR
Replacement of Existing Structures	15A NCAC 07J .0210* 34:09 NCR
Declaration of General Policy	15A NCAC 07M .0601* 34:09 NCR
Policy Statements	15A NCAC 07M .0603* 34:09 NCR
DIETETICS/NUTRITION, BOARD OF	
Applications	21 NCAC 17 .0104* 37:02 NCR
Disapproved Application	21 NCAC 17 .0108* 37:02 NCR
Licensure Certificate	21 NCAC 17 .0110* 37:02 NCR
Suspension, Revocation and Denial of License	21 NCAC 17 .0112* 37:04 NCR
Code of Ethics for Professional Practice and Conduct	21 NCAC 17 .0114* 37:02 NCR
Violations, Complaints, Subsequent Board Action, and Hear...	21 NCAC 17 .0116 37:04 NCR
Definitions	21 NCAC 17 .0201 37:02 NCR
Requirement for Review	21 NCAC 17 .0202 37:02 NCR
Review and Board Action	21 NCAC 17 .0203 37:02 NCR
Records and Reports	21 NCAC 17 .0304* 37:02 NCR
Individuals Providing Nutrition Information	21 NCAC 17 .0402* 37:02 NCR
Telepractice	21 NCAC 17 .0403* 37:02 NCR

Definitions	21 NCAC	17	.0501*	37:04 NCR
Complaints	21 NCAC	17	.0502*	37:04 NCR
Investigations	21 NCAC	17	.0503*	37:04 NCR
Right to Hearing	21 NCAC	17	.0504	37:04 NCR
Request for Hearing	21 NCAC	17	.0505	37:04 NCR
Granting or Denying Hearing Request	21 NCAC	17	.0506	37:04 NCR
Notice of Hearing	21 NCAC	17	.0507	37:04 NCR
Contested Cases	21 NCAC	17	.0508	37:04 NCR
Informal Procedures	21 NCAC	17	.0509	37:04 NCR
Informal Resolution	21 NCAC	17	.0510	37:04 NCR
Disqualification of Board Members	21 NCAC	17	.0511	37:04 NCR
Subpoenas	21 NCAC	17	.0512	37:04 NCR
Witnesses	21 NCAC	17	.0513	37:04 NCR
Final Decision	21 NCAC	17	.0514	37:04 NCR
Proposals for Decision	21 NCAC	17	.0515	37:04 NCR
Drug Testing and Intervention	21 NCAC	17	.0517	37:04 NCR
FUNERAL SERVICE, BOARD OF				
Continuing Education Program	21 NCAC	34B	.0408*	37:04 NCR
Preneed Sales License	21 NCAC	34D	.0202*	37:04 NCR
OPTOMETRY, BOARD OF EXAMINERS IN				
Contacting the Board	21 NCAC	42A	.0101	37:05 NCR

The following rules are subject to Legislative Review.

ADMINISTRATION, DEPARTMENT OF				
Definitions	01 NCAC	05A	.0112*	37:04 NCR
Good Faith Efforts	01 NCAC	05E	.0101*	37:04 NCR
DIETETICS/NUTRITION, BOARD OF				
Definitions, Acronyms, and Initialisms	21 NCAC	17	.0101*	37:02 NCR
Qualifications for Licensure	21 NCAC	17	.0103*	37:02 NCR
Granting License Without Examination	21 NCAC	17	.0106*	37:02 NCR
Requirements	21 NCAC	17	.0302*	37:02 NCR
Supervision	21 NCAC	17	.0303*	37:02 NCR
Individuals Aiding the Practice of Dietetics or Nutrition	21 NCAC	17	.0401*	37:02 NCR
Disciplinary Costs	21 NCAC	17	.0516*	37:04 NCR

TITLE 01 - DEPARTMENT OF ADMINISTRATION

01 NCAC 05A .0112 DEFINITIONS

For the purpose of this Chapter:

(1) "Agency" or "Agencies" means all departments, institutions, boards, commissions, universities, community colleges, or other units of the State subject to G.S. 143, Article 3, unless specifically exempted by statute.

(2) "Best and Final Offer" ("BAFO") is a document that memorializes the details of Negotiations between the State and a Vendor and mutually modifies the Vendor's Offer.

(3) "Best Value Procurement" shall have the same meaning as in G.S. 143-135.9.

(4) "Bid Value Benchmark" or "General Delegation" means the maximum authorized expenditure set pursuant to G.S. 116-31.10, G.S. 115D-58.14, or G.S. 143-52(a) and 143-

53.1 for which an Agency may contract to purchase Goods or Services without obtaining prior approval for the purchase from the Division.

(5) "Clarification" means communications between the State and a Vendor that occur after receipt of a Vendor's Offer made for the purpose of eliminating irregularities, informalities, or apparent clerical mistakes in an Offer. A Clarification may also be used in order for the State to interpret an Offer or Offers or to facilitate the State's evaluation of all Offers. A Clarification shall not be used to cure material deficiencies in an Offer, alter the scope of an Offer, or to negotiate.

(6) "Consultant Services" means contracted work or tasks performed by a Vendor or independent contractor possessing specialized knowledge, experience, expertise, and professional qualifications to investigate a Purchasing Agency's defined problems or projects and to provide counsel, review, analysis, or advice in formulating or implementing improvements in programs or Services. This includes improvements related to the organization, planning, directing, control, evaluation, and operation of a program, Agency or department.

(7) "Competition" in purchasing exists when the available market for the Goods or Services to be acquired consists of more than one Responsible Vendor that is qualified and willing to submit an Offer.

(8) "Contract" means any type of agreement entered into by Agencies, regardless of what it may be titled or called, setting out the obligations of the parties concerning a Procurement of Goods or Services.

(9) "Contract Term" means the time period in which a Contract is active and in effect.

(10) "Deficiency" means either a failure to meet a stated Requirement or a combination of weaknesses in an Offer that increases the risk that a Vendor will be unable to meet its contractual obligations.

(11) "Division" means the Division of Purchase and Contract.

(12) "Electronic" means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

(13) "Electronic Bid System" means the Division's Electronic system used variously to advertise Solicitations, notify Vendors, conduct Reverse Auctions, and post Contract awards.

(14) "Emergency Situations" means unforeseen circumstances as stated in G.S. 143-57, that endanger lives, property, or the continuation of a vital program such as those essential for health or safety, as determined by the Purchasing Agency Director, and that can be rectified only by immediate purchases or rental of Goods or Services.

(15) "Extension" means an additional Contract Term not provided for in the Contract that is mutually agreed to by the State and all Vendor parties in a Contract amendment.

(16) "Goods" means any tangible property, including all equipment, materials, supplies, and commodities. Where the printing is not the predominant aspect of a service contract, acquisition of printing shall be considered the purchase of Goods under these Rules.

(17) "Goods Contract" means any agreement involving the Procurement of Goods from a Vendor, but that may also have ancillary Services aspects.

(18) "HUB" means Historically Underutilized Business as defined in G.S. 143-128.4 and certified in accordance with G.S. 143-48.4.

(19) "HUB Office" means the North Carolina Department of Administration Office for Historically Underutilized Business.

(20) "Initial Contract Term" means the initial period for performance under a Contract after which the Contract will either terminate or be extended pursuant to a Renewal or Extension.

(21) "Negotiation" means oral or written communications in a waived or open competitive Procurement between the State and Vendor undertaken with the intent of allowing a Vendor to revise its Offer. Revisions may apply to price, schedule, technical requirements, or other terms of the proposed Contract. Negotiations are specific to each Offer and shall be conducted to maximize the State's ability to obtain best value based on the evaluation factors set forth in the Solicitation. Negotiations shall be memorialized in any resulting Contract.

(22) "Offer" means a bid, proposal, BAFO, or other proposition submitted in response to any Solicitation, Negotiation, or other approved acquisition process, as well as responses to solution-based Solicitations and government-Vendor partnerships.

(23) "Personal Services Contract" has the same definition as in G.S. 143-48.6(b). A Personal Services Contract is a type of Service Contract.

(24) "Pressing Need" means a need arising from unforeseen causes as stated in G.S. 143-57, outside the State's control, including delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, as determined by the Purchasing Agency Director, which can be satisfied only by immediate purchase or rental of Goods or Services.

(25) "Price" means the amount paid by the State to a Vendor for Goods or Services.

(26) "Procurement" means the process of acquiring Goods or Services.

(27) "Professional Services" means the contracted work or tasks performed by a Vendor or independent contractor possessing specialized knowledge, experience, expertise, and professional qualifications, who provides ongoing Services. A Professional Services Contract is a type of Service Contract.

(28) "Progressive Award" means an award for portions of a definite quantity requirement to more than one Vendor. Each portion is for a definite quantity and the sum of the portions is the total quantity procured. A Progressive Award may be in the Purchasing Agency's best interest when awards to more than one Vendor for different amounts of the same item are needed to obtain the total quantity or the time or times of delivery required.

(29) "Public Funds" means any amount received, held, disbursed, or otherwise subject to or accounted for in accordance with the State Budget Act and amounts used to acquire Goods and Services that are required to be purchased in accordance with Article 3 of Chapter 143 of the General Statutes.

(30) "Purchasing Agency" or "Purchaser" means the Agency that issues a purchase order or otherwise acquires Goods or Services through a purchasing process.

(31) "Recalled Bid" means a Bid that is rescinded by the Vendor after the bid opening but prior to a contract being awarded.

(32) "Renewal" means an optional term provided for in the Contract that can be exercised as of right by the State.

(33) "Responsible Vendor" means a Vendor who demonstrates in its Offer that it has the capability to perform the requirements of the Solicitation.

(34) "Responsive Offer" means an Offer that conforms to the Requirements of the Solicitation.

(35) "Requirement" is a provision of a Solicitation and any resulting Contract that prescribes the nature or details of a standard, process, or procedure that must be complied with by the Vendor before any further evaluation of the Offer is conducted by the State.

(36) "Sealed Offer" means an Offer that remains unopened until the public opening time stated in the Solicitation.

(37) "Secretary" means the Secretary of the North Carolina Department of Administration.

(38) "Service Contract" means any agreement for compensation involving Services and requiring a particular or specialized knowledge, experience, expertise, or similar capabilities in the Vendor. Contracts for Consultant Services, Professional Services, and Personal Services are also examples of a Service Contract. A Service Contract may also involve the ancillary purchase of Goods.

(39) "Services" means the tasks and duties undertaken by a Vendor in a Service Contract to fulfill the Requirements and Specifications of the Contract.

(40) "Signature" means a manual autograph, an Electronic identifier, or an Electronic authentication technique, that is intended by the person using it to have the same force and effect as a manual signature.

(41) "Small Purchase" means the purchase of Goods and Services not covered by a Term Contract where the expenditure of Public Funds including Extensions and Renewals is equal to or less than the Small Purchase Benchmark amount, pursuant to 01 NCAC 05B .0301.

(42) "Solicitation" means to request or invite Vendor Offers, or to request information regarding the acquisition of Goods and Services, through the use of Solicitation Documents.

(43) "Solicitation Documents" means a Written or Electronic (a) Invitation for Bids (IFB); (b) Request for Quotations (RFQ); (c) Request for Proposals (RFP); (d) Best and Final Offer (BAFO); or (e) other documents to invite Vendor Offers, including all mutually agreed attachments and items incorporated by reference therein.

(44) "Specification" means any description of the physical or functional characteristics of, or the nature of, the Goods or Services to be procured.

(45) "SPO" means the State Procurement Officer who is also the Director of the Division.

(46) "Subcontractor" means a firm under contract with the prime contractor/vendor for supplying materials, labor, or materials and labor.

(47) "Tabulation" means a list of Vendors submitting Offers in response to a particular Solicitation and, if applicable, the prices offered as allowed under G.S. 143-52(a).

(48) "Technical Offer" means a proposal by a Vendor in response to the Solicitation, absent the price content.

(49) "Term Contract" is a binding agreement between purchaser and seller to buy and sell certain Goods or Services at certain prices, for an agreed Contract Term, and under specific terms and conditions.

(50) "Total Cost of Ownership" means a summation of all purchase, operating, and related costs to be expended during the projected lifetime of a Good or Service or both.

(51) "Vendor" means a contractor, supplier, bidder, company, independent contractor, firm, corporation, partnership, individual, or other entity submitting a response to a Solicitation.

(52) "Voided Bid" means an Electronic bid that was submitted by a Vendor in connection with an Electronic Solicitation that has been cancelled, the bids voided and not opened electronically.

(53) "Weakness" means a flaw in the Offer that increases the risk of unsuccessful contract performance.

(54) "Withdrawal" or "Withdrawn Bid" means a Bid that is rescinded by the Vendor prior to the bid opening.

(55) "Written" or "Writing" means a communication recorded in a medium of expression that can be preserved, read, retrieved, and reproduced for an indefinite period of time, including information in a form that is electronically transmitted and stored.

History Note: Authority G.S. 143-48.3; 143-48.6; 143-49; 143-52; 143-53; 143-53.1; 143-57; 143-135.9;
Eff. February 1, 1996;
Amended Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. March 1, 2022; November 1, 2021; October 1, 2019;
Amended Eff. Pending Legislative Review.

01 NCAC 05E .0101 GOOD FAITH EFFORTS

Agencies shall require vendors subcontracting all or part of a contract for the purchase of goods or services to undertake good faith efforts to recruit HUB participation when contracting with the State. A vendor makes good faith efforts if they perform at least five of the following actions:

(1) Notifying at least two HUBs about the opportunity to participate as a subcontractor at least 10 calendar days before the opportunity to respond to the solicitation ends. The notification shall be made by electronic means and shall include:
  (a) a description of the goods or services being solicited;
  (b) the date, time and location where offers are to be submitted;
  (c) the name of the individual within the company who shall be available to answer questions about the opportunity to participate in the response to the solicitation;
  (d) where solicitation documents may be reviewed; and
  (e) any special requirements that exists, such as insurance, licenses, bonds, and financial arrangements.

(2) Making plans, specifications, and requirements accessible to prospective HUB subcontractors by publishing them on the vendor's website at least 10 calendar days before the opportunity to respond to the solicitation ends.

(3) Dividing or combining elements of work into subcontracts as determined by the vendor.

(4) Working with minority trade, community, or similar organizations identified by the HUB Office that assist in recruiting HUBs. This element is satisfied if the vendor makes contact with any of the organizations listed at https://bit.ly/hub-business-resources to identify HUBs that provide goods or services needed to complete the project.

(5) Attending pre-bid conferences or site visits provided for in the solicitation.

(6) Assisting in obtaining required bonding or insurance or providing alternatives for HUB subcontractors. This element is satisfied if the vendor:
  (a) Contacts a bonding or insurance company to assist a potential HUB subcontractor in obtaining coverage from the bonding company or insurance company;
  (b) Offers to cover a potential HUB subcontractor with the vendor's bonding or insurance policy; or
  (c) Offers a potential HUB subcontractor an alternative to bonding or insurance that meets the requirements of the solicitation.

(7) Negotiating with interested HUB subcontractors. The reasons for rejecting an interested HUB shall be documented in writing.

(8) Assisting a potential HUB subcontractor in obtaining equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit. This element shall be satisfied by:
  (a) offering to loan equipment to a HUB subcontractor;
  (b) offering a letter of reference to a HUB subcontractor to obtain equipment, supplies, a loan, or a line of credit; or
  (c) offering to establish a joint payment agreement with a HUB subcontractor.

(9) Assisting a HUB subcontractor in obtaining the same unit pricing from the vendor's suppliers by requesting their suppliers provide the same unit pricing to a HUB subcontractor as the vendor would pay.

(10) Negotiating joint venture or partnership agreements with HUBs.

(11) Providing quick pay agreements and policies that pay HUB subcontractors as work is performed, whether in time units or job units, as agreed by the vendor and HUB subcontractor.

History Note: Authority G.S. 143-48(a); 143-48.4; 143-49(1), (2), (3), (11); 143-53(a)(1), (4), (8); 143-60(5).
Eff. Pending legislative review.

TITLE 02 - DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

02 NCAC 34 .0904 PROHIBITED ACTS

(a) No reference shall be made by any certified applicator, licensee, Structural Pest Control business establishment, or Structural Pest Control business entity in any form of advertising that would indicate approval, endorsement, or recommendation by the Committee or by any agency of the federal government or North Carolina State, county, or city government.
(b) The use of a structural pest control license, certified applicator's identification card, registered technician's identification card, or licensee identification card for any purpose other than identification is prohibited.
(c) In solicitation of structural pest control business, no licensee or his or her employees shall claim that inspections or treatments are required, authorized, or endorsed by any agency of the federal government or North Carolina State, county, or city government unless said agency states that an inspection or treatment is required for a specific structure.
(d) No licensee shall advertise, in any way or manner, as a contractor for structural pest control services, in any phase of work for which he or she does not hold a valid license as provided for under G.S. 106-65.25(a), unless said licensee shall hold a valid certified applicator's identification card or registered technician's identification card, as provided for under G.S. 106-65.31, as an employee of a person who does hold a valid state license covering phases of structural pest control work advertised.
(e) The impersonation of any North Carolina State, county, or city inspector or any other governmental official is prohibited.
(f) No licensee, certified applicator, or registered technician's identification card holder shall advertise or hold himself or herself out in any manner in connection with the practice of structural pest control as an entomologist, plant pathologist, horticulturist, public health engineer, or sanitarian, unless such person shall be qualified in such a field by required professional standards and certifications, or a degree from an accredited college or university as appropriate for the title used.
(g) No certified applicator, licensee, or his or her employees shall represent to any property owner or his or her authorized agent or occupant of any structure that any specific pest is infesting any property, structure, or surrounding areas unless visible evidence of such infestation exists.
(h) No certified applicator, licensee, or their employees shall authorize, direct, assist, or aid in the publication, advertisement, distribution, or circulation of any material containing false statements or misrepresentations concerning the licensee's structural pest control business or business of the company with which he or she is employed.
(i) No certified applicator, licensee, or their employees shall advertise or contract in a company name contradictory to that shown on the certified applicator's identification card or license certificate; provided, however, when there is a sale of a business or other name change the company may use both names together for a period not to exceed three years from the date of the name change or sale of business.
(j) No certified applicator shall use any name on his or her certified applicator's identification card which contains the words "exterminating", "pest control", or any other words which imply that he or she provides pest control services for a valuable consideration unless he or she is a licensee or a duly authorized agent or employee of a licensee.
(k) No licensee issued an inactive license shall engage in any phase of structural pest control under an inactive license issued by the committee.
(l) No licensee, certified applicator, or registered technician shall indicate on any foundation diagram prepared pursuant to 02 NCAC 34 .0601 or 02 NCAC 34 .0605 that hidden damage or possible hidden damage due to any wood-destroying organism exists in a structure unless there is visible evidence of infestation or damage present in the immediate area of the alleged hidden damage.
(m) No pesticide shall be applied for the purpose of performing structural pest control when the conditions at the site of application favor drift or runoff from the target site.
(n) A final order imposing civil liability under Section 14(a) of 7 USC 1361(a), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), against any licensee, certified applicator , or non-certified applicator, or a criminal conviction, entry of a plea of guilty, or of nolo contendere under Section 14(b) of FIFRA by a licensee, certified applicator, or non-certified applicator shall constitute grounds for the denial, suspension, or revocation of any license or certification issued by the committee.

History Note: Authority G.S. 106-65.23; 106-65.25; 106-65.29;
Eff. July 1, 1976;
Readopted Eff. November 22, 1977;
Amended Eff. January 1, 1991 January 1, 1989; August 20, 1980;
Temporary Amendment Eff. July 10, 1995 for a period of 120 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. August 1, 2002; July 1, 1998; November 1, 1995;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018;
Amended Eff. January 1, 2023.

TITLE 10A - DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 14C .1102 PERFORMANCE STANDARDS

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

(1) "Approved beds" means nursing home or adult care home beds that were issued a certificate of need but are not being used to provide services as of the application deadline for the review period.
(2) "Existing beds" means nursing home or adult care home beds that are being used to provide services as of the application deadline for the review period.
(3) "Maximum capacity" means the total number of existing, approved, and proposed nursing home or adult care home beds times 365 days.

(4) "Occupancy rate" means the total number of patient days of care provided in the nursing home or adult care home beds during a full fiscal year of operation divided by maximum capacity expressed as a percentage.

(5) "Proposed beds" means the nursing home or adult care home beds proposed in the application under review.

(b) An applicant proposing to develop nursing home beds pursuant to a need determination in the annual State Medical Facilities Plan in effect as of the first day of the review period shall:

(1) provide projected utilization of the existing, approved, and proposed beds during each of the first three full fiscal years of operation following completion of the project;

(2) project an occupancy rate for the existing, approved, and proposed beds of at least 90 percent of maximum capacity during the third full fiscal year of operation following completion of the project; and

(3) provide the assumptions and methodology used to project the utilization and occupancy rate required by Subparagraphs (1) and (2) of this Paragraph.

(c) An applicant proposing to develop adult care home beds pursuant to a need determination in the annual State Medical Facilities Plan in effect as of the first day of the review period shall:

(1) provide projected utilization of the existing, approved, and proposed beds during each of the first three full fiscal years of operation following completion of the project;

(2) project an occupancy rate for the existing, approved, and proposed beds of at least 85 percent of maximum capacity during the third full fiscal year of operation following completion of the project; and

(3) provide the assumptions and methodology used to project the utilization and occupancy rate required by Subparagraphs (1) and (2) of this Paragraph.

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Eff. November 1, 1996;
Temporary Amendment Eff. January 1, 2002;
Amended Eff. April 1, 2003;
Readopted Eff. January 1, 2023.

10A NCAC 14C .2001 DEFINITIONS

The following definitions shall apply to this Section:

(1) "Home health agency" shall have the same meaning as defined in G.S. 131E-176(12).

(2) "Service area" shall have the same meaning as defined in the annual State Medical Facilities Plan in effect as of the first day of the review period.

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Eff. September 1, 1980;
Amended Eff. March 1, 1996; July 1, 1995; July 1, 1991; February 1, 1985; May 1, 1983;
Readopted Eff. January 1, 2023.

10A NCAC 14C .2003 PERFORMANCE STANDARDS

An applicant proposing to develop a new Medicare-certified home health agency pursuant to a need determination in the annual State Medical Facilities Plan in effect as of the first day of the review period shall:

(1) provide projected utilization for each of the first three full fiscal years of operation following completion of the project;

(2) project to serve at least 325 residents of the proposed service area during the third full fiscal year of operation following completion of the project; and

(3) provide the assumptions and methodology used to provide the projected utilization required in Item (1) of this Rule.

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Eff. March 1, 1996;
Temporary Amendment Eff. January 1, 2002;
Amended Eff. April 1, 2003;
Readopted Eff. January 1, 2023.

10A NCAC 14C .2801 DEFINITIONS

The following definitions shall apply to this Section:

(1) "Approved rehabilitation beds" means rehabilitation beds that were issued a certificate of need but are not licensed as rehabilitation beds as of the application deadline for the review period.

(2) "Average daily census (ADC)" means the total number of inpatient rehabilitation days of care provided during a full fiscal year of operation divided by 365 days.

(3) "Existing rehabilitation beds" means rehabilitation beds that are licensed as rehabilitation beds as of the application deadline for the review period.

(4) "Occupancy rate" means the ADC divided by the total number of existing, approved, and proposed rehabilitation beds expressed as a percentage.

(5) "Proposed rehabilitation beds" means the rehabilitation beds proposed in the application under review.

History Note: Authority G.S. 131E-177; 131E-183(b);
Eff. May 1, 1991;
Amended Eff. February 1, 1993;
Temporary Amendment Eff. February 1, 2006;
Amended Eff. November 1, 2006;
Readopted Eff. January 1, 2023.

10A NCAC 14C .2803 PERFORMANCE STANDARDS

An applicant proposing to develop rehabilitation beds pursuant to a need determination in the annual State Medical Facilities Plan in effect as of the first day of the review period shall:

(1) provide projected utilization of all existing, approved, and proposed rehabilitation beds on the hospital license during each of the first three full fiscal years of operation following completion of the project;

(2) project that the occupancy rate for all existing, approved, and proposed rehabilitation beds on the hospital license shall be at least 70 percent during the third full fiscal year of operation following completion of the project; and

(3) provide the assumptions and methodology used to provide the projected utilization and occupancy rate required in Items (1) and (2) of this Rule.

History Note: Authority G.S. 131E-177; 131E-183(b);
Eff. November 1, 1996;
Readopted Eff. January 1, 2023.

10A NCAC 14C .3801 DEFINITIONS

The following definitions shall apply to this Section:

(1) "Applicant hospital" means the hospital where the applicant proposes to develop the new acute care beds and includes all campuses on one license.

(2) "Approved beds" means acute care beds in a hospital that were issued a certificate of need but are not licensed as of the application deadline for the review period.

(3) "Average daily census (ADC)" means the total number of acute care days of care provided during a full fiscal year of operation divided by 365 days.

(4) "Existing beds" means acute care beds in a hospital that are licensed as of the application deadline for the review period.

(5) "Hospital system" means all hospitals in the proposed service area owned or operated by the applicant or a related entity.

(6) "Occupancy rate" means the ADC divided by the total number of existing, approved, and proposed acute care hospital beds expressed as a percentage.

(7) "Proposed beds" means the acute care beds proposed to be developed in a hospital in the application under review.

(8) "Qualified applicant" shall have the same meaning as defined in the annual State Medical Facilities Plan in effect as of the first day of the review period.

(9) "Service area" shall have the same meaning as defined in the annual State Medical Facilities Plan in effect as of the first day of the review period.

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Temporary Adoption Eff. January 1, 2004;
Eff. August 1, 2004;
Readopted Eff. January 1, 2023.

10A NCAC 14C .3803 PERFORMANCE STANDARDS

An applicant proposing to develop new acute care beds in a hospital pursuant to a need determination in the annual State Medical Facilities Plan in effect as of the first day of the review period shall:

(1) document that it is a qualified applicant;

(2) provide projected utilization of the existing, approved, and proposed acute care beds for the applicant hospital during each of the first three full fiscal years of operation following completion of the project;

(3) project an occupancy rate of the existing, approved, and proposed acute care beds for the applicant hospital during the third full fiscal year of operation following completion of the project that equals or exceeds the target occupancy percentage;

(4) provide projected utilization of the existing, approved, and proposed acute care beds for the hospital system during each of the first three full fiscal years of operation following completion of the project;

(5) project an average occupancy rate of the existing, approved, and proposed acute care beds for the hospital system during the third full fiscal year of operation following completion of the project that equals or exceeds the target occupancy percentage of:

(a) 66.7 percent if the ADC is less than 100;

(b) 71.4 percent if the ADC is 100 to 200;

(c) 75.2 percent if the ADC is 201 to 399; or

(d) 78.0 percent if the ADC is greater than 400; and

(6) provide the assumptions and methodology used to project the utilization and occupancy rates required in Items (2), (3), (4), and (5) of this Rule.

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Temporary Adoption Eff. January 1, 2004;
Eff. August 1, 2004;
Readopted Eff. January 1, 2023.

10A NCAC 14C .4001 DEFINITIONS

The following definitions shall apply to this Section:

(1) "Approved beds" means hospice inpatient facility or hospice residential care facility beds that were issued a certificate of need but are not licensed as of the application deadline for the review period.

(2) "Average daily census (ADC)" means the total number of days of care provided in the hospice

inpatient facility or hospice residential care facility beds during a full fiscal year of operation divided by 365 days.

(3) "Existing beds" means hospice inpatient facility or hospice residential care facility beds that are licensed as of the application deadline for the review period.

(4) "Hospice inpatient facility beds" means inpatient beds in a facility licensed in accordance with the rules in Subchapter 10A NCAC 13K which are hereby incorporated by reference including subsequent amendments.

(5) "Hospice residential care facility beds" means group residential care beds in a facility licensed in accordance with the rules in Subchapter 10A NCAC 13K.

(6) "Occupancy rate" means the ADC divided by the total number of existing, approved, and proposed hospice inpatient facility or hospice residential care facility beds expressed as a percentage.

(7) "Proposed beds" means the hospice inpatient facility or hospice residential care facility beds proposed in the application under review.

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Temporary Adoption Eff. February 1, 2006;
Eff. November 1, 2006;
Readopted Eff. January 1, 2023.

10A NCAC 14C .4003 PERFORMANCE STANDARDS

(a) An applicant proposing to develop new hospice inpatient facility beds pursuant to a need determination in the annual State Medical Facilities Plan in effect as of the first day of the review period shall:

(1) provide projected utilization of all existing, approved, and proposed hospice inpatient facility beds on the license during each of the first three full fiscal years of operation following completion of the project;

(2) project that the occupancy rate for all existing, approved, and proposed hospice inpatient facility beds on the license shall be at least 65 percent during the third full fiscal year of operation following completion of the project; and

(3) provide the assumptions and methodology used to provide the projected utilization and occupancy rate required by Subparagraphs (1) and (2) of this Paragraph.

(b) An applicant proposing to develop new hospice residential care facility beds shall:

(1) provide projected utilization of all existing, approved, and proposed hospice residential care facility beds on the license during each of the first three full fiscal years of operation following completion of the project;

(2) project that the occupancy rate for all existing, approved, and proposed hospice residential care facility beds on the license shall be at least 65 percent during the third full fiscal year of operation following completion of the project; and

(3) provide the assumptions and methodology used to provide the projected utilization and occupancy rate required by Subparagraphs (1) and (2) of this Paragraph.

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Temporary Adoption Eff. February 1, 2006;
Eff. November 1, 2006;
Temporary Amendment Eff. February 1, 2008;
Amended Eff. November 1, 2008;
Readopted Eff. January 1, 2023.

TITLE 12 - DEPARTMENT OF JUSTICE

12 NCAC 10B .0713 ADMISSION OF TRAINEES

(a) The school shall not admit any individual as a trainee in any commission-certified basic training course who is not a citizen of the United States.

(b) The school shall not admit any individual younger than 20 years of age as a trainee in any Detention Officer Certification Course and shall not admit any individual younger than 18 years of age as a trainee in the Telecommunicator Certification Course without the prior written approval of the Director of the Standards Division. The Director shall approve those individuals who will turn 20 years of age prior to the end of any Detention Officer Certification Course and, those individuals who will turn 18 years of age prior to the end of the Telecommunicator Certification Course.

(c) The school shall not admit any individual who has not provided the documentation required by 12 NCAC 10B .0302 to demonstrate that he or she meets the high school educational requirement set out in 12 NCAC 10B .0302.

(d) The school shall give priority admission in commission-certified basic training courses to individuals holding full-time employment with criminal justice agencies.

(e) The school shall not admit any individual as a trainee in a presentation of any Detention Officer Certification Course or the Telecommunicator Certification Course unless the individual has provided to the School a Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) in compliance with 12 NCAC 10B .0304. The F-1 is completed by applicants and shall contain questions concerning biographical information, current medications, allergies, and past medical history, serious illnesses and medical conditions, hospitalizations, immunizations, and occupational history. The F-2 form is completed by a medical examiner and shall contain an applicant's biographical information, vision, hearing, cardiovascular and circulator health, urinalysis, TB skin test, and other medical conditions relevant to the applicant's physical fitness to perform the duties of a justice officer. Form F-2 also contains the examining medical professional's recommendation and concerns as to an applicant's physical fitness to perform the duties of a justice officer. The Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) required by the North Carolina Criminal

Justice Education and Training Standards Commission shall be recognized by the Commission for the purpose of complying with this Rule.

(f) The school shall not admit any individual trainee in commission-certified basic training courses unless the individual has provided the School a certified criminal record check for local and state records where the trainee has resided within the past 10 years and where the trainee attended high school. The record check shall be from the Clerk of Court, a law enforcement agency within the jurisdiction, or other governmental entity that maintains or has access to criminal records for the jurisdiction. The record shall be certified by the entity providing the record with either a raised seal or other visible verification that the document is an authentic copy. An Administrative Office of the Courts criminal record check or a comparable out-of-state criminal record check shall satisfy this requirement. If an individual trainee has received a probationary certificate from the Commission at the time of enrollment, this records check requirement shall be waived.

(g) The school shall not admit any individual as a trainee in commission-certified basic training courses who has been convicted of the following:

(1) a felony;
(2) a crime for which the punishment could have been imprisonment for more than two years;
(3) a crime or unlawful act defined as a "Class B Misdemeanor" within the five year period prior to the date of appointment;
(4) four or more crimes or unlawful acts as defined as "Class B Misdemeanors" regardless of the date of conviction;
(5) four or more crimes or unlawful acts defined as "Class A Misdemeanors" except the trainee may be enrolled if the last conviction occurred more than two years prior to the date of enrollment; or
(6) any combination of four or more "Class A Misdemeanors" or "Class B Misdemeanors" regardless of the date of conviction.

(h) Pursuant to 12 NCAC 09B .0203, every individual who is admitted as a trainee in a presentation of the Commission-certified Basic Law Enforcement Training Course shall notify the School of all criminal offenses that the trainee is arrested for, charged with, pleads no contest to, pleads guilty to, or is found guilty of, and shall notify the School of all Domestic Violence Orders pursuant to G.S. Chapter 50B and Civil No Contact Orders pursuant to G.S. Chapter 50C, that are issued by a judicial official.

(i) Notification shall include all criminal offenses except minor traffic offenses. A minor traffic offense is defined for purposes of this Paragraph as any offense under G.S. Chapter 20 or similar laws of other jurisdictions, except those Chapter 20 offenses published in the Class B Misdemeanor Manual as referenced in 12 NCAC 10B. 0103. All driving while impaired, driving under the influence, and driving while license permanently revoked or permanently suspended offenses shall also be reported to the school.

(j) The notifications required under Paragraph (i) shall be in writing and shall specify the nature of the offense, the court where the case was initiated and the court where the case was or will be heard or disposed of if it is a different court, the date of the arrest or criminal charge, the date of issuance of the Domestic Violence Order or Civil No Contact Order, and the final disposition and the date thereof. The notifications required under Paragraph (j) shall be received by the School within 30 days of the date the case was disposed of in court. The requirements of this Paragraph shall apply at all times during which the trainee is enrolled in a Basic Law Enforcement Training Course. The requirements of this Paragraph shall be in addition to the notifications required under 12 NCAC 10B .0301 and 12 NCAC 09B .0101.

History Note: Authority G.S. 17C-4; 17E-7;
Eff. April 1, 2001;
Amended Eff. January 1, 2018; January 1, 2013; January 1, 2007; January 1, 2005;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018;
Amended Eff. January 1, 2023.

TITLE 14B - DEPARTMENT OF PUBLIC SAFETY

14B NCAC 16 .0103 DEFINITIONS

In addition to the definitions set forth in G.S. 74C, the following definitions shall apply throughout this Subchapter:

(1) "Agency Head" means the Chairman of the Board.
(2) "Applicant" means any person, firm, or corporation applying to the Board for a license, trainee permit, registration, or firearms trainer certificate.
(3) "Armed Security Guard" means an individual employed, full time or part time, by a contract security company or a proprietary security organization:
  (a) who at any time wears, carries, or possesses a firearm in the performance of his or her duties; and
  (b) whose principal duty is that of:
    (i) an armed security guard, officer, patrol, or watchman;
    (ii) an armed armored car service guard; or
    (iii) an armed courier service guard.
(4) "Board" means the Private Protective Services Board established by G.S. 74C.
(5) "Branch Manager or Operator" means the individual endowed with the responsibility and liability for a branch office.
(6) "Branch Office" means a separate but dependent part of a central organization engaged in the business of providing private protective services established for the purpose of extending the activities of the central organization. The establishment of a telephone number or mailing address in the company name constitutes prima facie evidence of a branch office. If an out-of-state person, firm,

association, or corporation opens an office in North Carolina, the North Carolina office shall be deemed the principal place of business and shall have a resident licensed qualifying agent.

(7) "Chairman" means the Chairman of the Private Protective Services Board.

(8) "Contract Security Company" means any person, firm, association, or corporation engaging in a private protective services business as defined in G.S. 74C-3 that provides the services on a contractual basis for a fee or other valuable consideration to any other person, firm, association, or corporation.

(9) "Direct Supervision" means personal, face-to-face contact and direction of the trainee's activities on a frequent and reasonable basis based upon the trainee's level of experience.

(10) "Investigative Capacity" means any law enforcement agency position for which the duties include conducting investigations and interviews, completing reports, and testifying in courts, administrative hearings, or military tribunals.

(11) "Law Enforcement Officer" means a sworn peace officer who has the power of arrest, and who is an employee of the United States, any state, or any political subdivision of a state.

(12) "Licensee" means any person licensed to perform private protective services in North Carolina in accordance with G.S. 74C.

(13) "Proprietary Security Organization" means any person, firm, association, corporation, or department that employs watchmen, security guards or "officers," patrol personnel, or couriers in connection with the business affairs of the employer.

(14) "Qualifying Agent" means the individual licensee who is responsible for the private protective services business. If the licensee maintains an office in North Carolina, the Qualifying Agent must be a resident of North Carolina.

(15) "Registered agent" means the individual resident of North Carolina designated by the business entity in lieu of the Qualifying Agent as allowed by G.S. 74C-8(c)(1) who may be, but is not required to be, the registered agent required by G.S. 55D-30.

(16) "Restored" means that an individual is no longer in need of psychiatric care as determined by a physician.

(17) "Temporary unarmed security guard" means an individual who is hired for a period of 30 days or less within a calendar year and who is designated by his or her employer as a temporary security guard at the start of employment.

History Note: *Authority G.S. 74C-3; 74C-5; 74C-8; Eff. June 1, 1984; Amended Eff. October 1, 2013; August 1, 1998; May 1, 1988; July 1, 1987; Transferred and Recodified from 12 NCAC 07D .0104 Eff. July 1, 2015; Readopted Eff. August 1, 2020; Amended Eff. January 1, 2023; March 1, 2022.*

14B NCAC 16 .0807 TRAINING REQUIREMENTS FOR ARMED SECURITY GUARDS

(a) Applicants for an armed security guard firearm registration permit shall first complete the basic unarmed security guard training course set forth in Rule .0707 of this Chapter.

(b) Private investigator licensees applying for an armed security guard firearm registration permit shall first complete a five-hour training course consisting of the courses set forth in Rule .0707(a)(1) and (2) of this Chapter and all additional training requirements set forth in that Rule.

(c) Applicants for an armed security guard firearm registration permit shall complete a basic training course for armed security guards which consists of at least 20 hours of classroom instruction including:

(1) legal limitations on the use of handguns and on the powers and authority of an armed security guard, including familiarity with rules and regulations relating to armed security guards (minimum of four hours);

(2) handgun safety, including range firing procedures (minimum of one hour);

(3) handgun operation and maintenance (minimum of three hours);

(4) handgun fundamentals (minimum of eight hours); and

(5) night firing (minimum of four hours).

Subparagraph (c)(2), "operation" under Subparagraph (c)(3), and Subparagraph (c)(4) of this Rule shall be completed prior to the applicant's participation in range firing.

(d) Applicants for an armed security guard firearm registration permit shall attain a score of at least 80 percent accuracy on a firearms range qualification course established by the Board and the Secretary of Public Safety, a copy of which is on file in the Director's office, once in three consecutive attempts. Should a student fail to attain a score of 80 percent accuracy, the student may be given a second opportunity to qualify once in three consecutive attempts on the course of fire the student did not pass. Failure to qualify after the second series of attempts shall require the student to repeat the entire basic training course for armed security guards. All attempts must take place within 20 days of the completion of the initial 20 hour course. For rifle qualification all shots shall be located on the target.

(e) All initial armed security guard training required by this Chapter shall be administered by a certified trainer and shall be completed no more than 90 days prior to the date of issuance of the armed security guard firearm registration permit.

(f) All applicants for an armed security guard firearm registration permit shall obtain training under the provisions of this Section using their duty weapon and their duty ammunition or ballistic equivalent ammunition, to include lead-free ammunition that

meets the same point of aim, point of impact, and felt recoil of the duty ammunition, for all weapons.

(g) No more than six new or renewal armed security guard applicants per one instructor shall be placed on the firing line at any one time during firearms range training for armed security guards.

(h) Applicants for re-certification of an armed security guard firearm registration permit shall complete a basic recertification training course for armed security guards that consists of at least four hours of classroom instruction and is a review of the requirements set forth in Subparagraphs (c)(1) through (c)(5) of this Rule. The recertification course is valid for 180 days after completion of the course. Applicants for recertification of an armed security guard firearm registration permit shall also complete the requirements of Paragraph (d) of this Rule.

(i) An armed guard registered with one company may be registered with a second company. The registration shall be considered "dual." The registration with the second company shall expire at the same time that the registration expires with the first company. An updated application shall be required to be submitted by the applicant, along with the digital photograph, updated criminal records checks, and a forty dollar ($40.00) registration fee. If the guard will be carrying a firearm of the same make, model, and caliber, then no additional firearms training shall be required. The licensee shall submit a letter stating the guard will be carrying the same make and model firearm. If the guard will be carrying a firearm of a different make and model, the licensee shall submit a letter to the Board advising of the make, model, and caliber of the firearm the guard will be carrying and the guard shall be required to qualify at the firing range on both the day and night qualification course. The qualification score is valid for 180 days after completion of the course.

(j) To be authorized to carry a standard 12 gauge shotgun in the performance of his or her duties as an armed security guard, an applicant shall complete, in addition to the requirements of Paragraphs (a), (c), and (d) of this Rule, six hours of classroom training that shall include the following:

(1) legal limitations on the use of shotgun (minimum of one hour);
(2) shotgun safety, including range firing procedures (minimum of one hour);
(3) shotgun operation and maintenance (minimum of one hour);
(4) shotgun fundamentals (minimum of two hours); and
(5) night firing (minimum of one hour).

Subparagraph (j)(2), "operation" under Subparagraph (j)(3), and Subparagraph (j)(4) of this Rule shall be completed prior to the applicant's participation in range firing.

(k) An applicant may take the additional shotgun training at a time after the initial training in this Rule. If the shotgun training is completed at a later time, the shotgun certification shall run concurrent with the armed registration permit. In addition to the requirements set forth in Paragraph (j) of this Rule, applicants shall attain a score of at least 80 percent accuracy on a shotgun range qualification course established by the Board and the Secretary of Public Safety, a copy of which is on file in the Director's office.

(l) Applicants for shotgun recertification shall complete one hour of classroom training covering the topics set forth in Paragraph (j) of this Rule and shall also complete the requirements of Paragraph (d) of this Rule.

(m) To be authorized to carry a rifle in the performance of his or her duties as an armed security guard, an applicant shall complete, in addition to the requirements of Paragraphs (a), (c), and (d) of this Rule, 16 hours of classroom training which shall include the following:

(1) legal limitations on the use of rifles (minimum of one hour);
(2) rifle safety, including range firing procedures (minimum of one hour);
(3) rifle operation and maintenance (minimum of two hours);
(4) rifle fundamentals (minimum of ten hours); and
(5) night firing (minimum two hours).

Subparagraph (m)(2), "operation" under Subparagraph (m)(3), and Subparagraph (m)(4) of this Rule shall be completed prior to the applicant's participation in range firing.

(n) The applicant shall pass a skills course that tests each basic rifle skill and the test of each skill shall be completed within three attempts.

(o) An applicant may take the additional rifle training at a time after the initial training in Paragraph (c) of this Rule. If the rifle training is completed at a later time, the rifle certification shall run concurrent with the armed registration permit. In addition to the requirements set forth in Paragraphs (m) and (n) of this Rule, applicants shall attain a score of at least 80 percent accuracy on a rifle range qualification course established by the Board and the Secretary of Public Safety, a copy of which is on file in the Director's office.

(p) Applicants for rifle recertification shall complete an additional one hour of classroom training covering the topics set forth in Paragraph (m) of this Rule and shall also complete the requirements of Paragraph (d) of this Rule.

(q) Upon written request, an applicant for an armed security guard firearm registration permit who possesses a current firearms trainer certificate shall be given a firearms registration permit that will run concurrent with the trainer certificate upon completion of an annual qualification with the applicant's duty firearms as set forth in Paragraph (d) of this Rule.

(r) An armed security guard is required to qualify annually both for day and night firing with his or her duty handgun, shotgun, and rifle, if applicable. If the security guard fails to qualify on any course of fire, the security guard shall not carry the firearm until such time as he or she meets the qualification requirements. Upon failure to qualify, the firearm instructor shall notify the security guard that he or she is no longer authorized to carry the firearm and the firearm instructor shall notify the employer and the Private Protective Services Board staff on the next business day.

(s) A firearm training certificate of an armed security guard remains valid even if the guard leaves the employment of one company for the employment of another. The range qualifications shall remain valid if the guard will be carrying a firearm of the same make, model, and caliber and no additional firearms training shall be required. The licensee shall submit a letter stating the guard will be carrying the same make and model firearm. If the guard will be carrying a firearm of a different make and model,

the licensee shall submit a letter to the Board advising of the make, model, and caliber of the firearm the guard will be carrying and the guard shall be required to qualify at the firing range on both the day and night qualification course. The qualification score is valid for 180 days after completion of the course. However, nothing herein shall extend the period of time the qualification is valid.

History Note: Authority G.S. 74C-5; 74C-9; 74C-13;
Eff. June 1, 1984;
Amended Eff. November 1, 1991; February 1, 1990; July 1, 1987;
Temporary Amendment Eff. January 14, 2002;
Amended Eff. October 1, 2013; October 1, 2010; June 1, 2009; February 1, 2006; August 1, 2002;
Transferred and Recodified from 12 NCAC 07D .0807 Eff. July 1, 2015;
Amended Eff. January 1, 2018; February 1, 2016; October 1, 2015;
Readopted Eff. November 1, 2019;
Amended Eff. January 1, 2023; February 1, 2022.

TITLE 15A - DEPARTMENT OF ENVIRONMENTAL QUALITY

15A NCAC 07I .0504 RECORD OF HEARINGS AND COMMENTS

Each permit-letting agency shall compile and maintain a complete record of the public hearing on its proposed local implementation and enforcement plan and comments received pursuant to G.S. 113A-117. The record of the public hearing, written comment, and any documentation filed with the local permit-letting agency as to the proposed management plan shall:

(1) consist of a written account from the minutes or transcribed from an electronic recording, and all written documents;
(2) remain open for 15 days after the hearing; and
(3) be available to the Coastal Resources Commission upon request.

History Note: Authority G.S. 113-117(a); 113A-117(b); 113A-117(c);
Eff. November 1, 1984;
Readopted Eff. January 1, 2023.

15A NCAC 07I .0602 COASTAL RESOURCES COMMISSION APPROVAL

An amendment of a local implementation and enforcement plan shall be submitted to the Coastal Resources Commission for approval in the same manner in which the original plan is submitted.

History Note: Authority G.S. 113A-117(c);
Eff. November 1, 1984;
Readopted Eff. January 1, 2023.

15A NCAC 07J .0210 REPLACEMENT OF EXISTING STRUCTURES

Replacement of structures damaged or destroyed by natural elements, fire or normal deterioration is considered development and requires CAMA permits. Replacement of structures shall be permitted if the replacement is consistent with current CRC rules. Repair of structures damaged by natural elements, fire or normal deterioration is not considered development and shall not require CAMA permits. The CRC shall use the following criteria to determine whether proposed work is considered repair or replacement.

(1) NON-WATER DEPENDENT STRUCTURES. Proposed work is considered replacement if the Department determines that the cost to do the work exceeds 50 percent of the market value of an existing structure either prior to a catastrophic event such as a fire or hurricane or if there is no catastrophic event, at the time of the request market value and costs are determined as follows:
  (a) The market value of the structure shall be determined by the Division based on information provided by the applicant that is no more than one year old as of the date the request is made. The market value of the structure shall not include the value of the land or value resulting from the location of the property, the value of accessory structures, or the value of other improvements located on the property. The information provided by the applicant may include any of the following:
    (i) an appraisal;
    (ii) the replacement cost with depreciation for age of the structure and quality of construction; or
    (iii) the tax assessed value.
  (b) The cost to do the work is the cost to return the structure to its pre-damaged condition, using labor and materials obtained at market prices, regardless of the actual cost incurred by the owner to restore the structure. It shall include the costs of construction necessary to comply with local and state building codes. The cost shall be determined by the Division utilizing any or all of the following provided by the applicant:
    (i) an estimate provided by a North Carolina licensed contractor qualified by license to provide an estimate or bid with respect to the proposed work;

(ii) an insurance company's report itemizing the cost, excluding contents and accessory structures; or

(iii) an estimate provided by the local building inspections office.

(2) WATER DEPENDENT STRUCTURES. The proposed work is considered replacement if it enlarges the existing structure in any dimension. The proposed work is also considered replacement if:

(a) in the case of fixed docks, piers, platforms, boathouses, boatlifts, and free standing moorings, more than 50 percent of the framing and structural components (beams, girders, joists, stringers, or pilings) must be rebuilt in order to restore the structure to its pre-damage condition. Water dependent structures that are structurally independent from the principal pier or dock, such as boatlifts or boathouses, are considered as separate structures for the purpose of this Rule;

(b) in the case of boat ramps and floating structures such as docks, piers, platforms, and modular floating systems, more than 50 percent of the square feet area of the structure must be rebuilt in order to restore the structure to its pre-damage condition;

(c) in the case of bulkheads, seawalls, groins, breakwaters, and revetments, more than 50 percent of the linear footage of the structure must be rebuilt in order to restore the structure to its pre-damage condition.

History Note: Authority G.S. 113A-103(5)b.5.; 113A-107(a),(b);
Eff. July 1, 1990;
Amended Eff. August 1, 2007;
Readopted Eff. January 1, 2023.

15A NCAC 07M .0601 DECLARATION OF GENERAL POLICY

It is hereby declared that the general welfare and public interest require that floating structures, as defined in G.S. 113A-103(5a), to be used for residential or commercial purposes not encroach upon the public trust, except as allowed by Rule .0603 of this Section, nor discharge into the public trust waters of the coastal area of North Carolina.

History Note: Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8); 113A-103; 113A-113(5);
Eff. July 1, 1983;
Readopted Eff. January 1, 2023.

15A NCAC 07M .0603 POLICY STATEMENTS

(a) It is the policy of the State of North Carolina that floating structures shall not be allowed or permitted within the public trust waters of the coastal area except in a marina permitted as development pursuant to the Coastal Area Management Act of 1974.

(b) All floating structures shall be in conformance with local regulations for on-shore sewage treatment.

(c) A boat shall be deemed a floating structure when its means of propulsion has been removed or rendered inoperative and it contains at least 200 square feet of living space area.

History Note: Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8); 113A-103; 113A-119.2(a)(2);
Eff. July 1, 1983;
Readopted Eff. January 1, 2023.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 17 – BOARD OF DIETETICS/NUTRITION

21 NCAC 17 .0101 DEFINITIONS, ACRONYMS, AND INITIALISMS

(a) As used in this Chapter, the following terms shall mean:

(1) "Act" means Dietetics/Nutrition Practice Act in Article 25 of Chapter 90 of the General Statutes.

(2) "Applicant" means any person who has applied to the Board for a license to lawfully do any of the acts listed under G.S. 90-365(a).

(3) "Application" means a written request directed to and received by the Board, on forms supplied by the Board, for a license to lawfully do any of the acts listed under G.S. 90-365(a), together with all information, documents, and other materials necessary to demonstrate that the applicant has met the requirements for licensure as specified in the Act.

(4) "Degree" means a degree received from a college or university that was regionally accredited at the time the degree was conferred, or a validated foreign equivalent.

(5) "Dietitian/nutritionist" or "nutritionist" means one engaged in dietetics or nutrition practice.

(6) "Health care practitioner" includes any individual who is licensed under G.S. 90 and whose licensed scope of practice includes dietetics or nutrition.

(7) "Nutrition assessment" means:

(A) the initial and ongoing, dynamic, and systematic process of obtaining, verifying, and interpreting biochemical, anthropometric, physical, nutrigenomic, clinical, and dietary data to determine nutritional needs and order therapeutic diets,

including enteral and parenteral nutrition;

(B) the ordering of laboratory tests related to the practice of nutrition and dietetics; and

(C) the conducting of a swallow screen.

(D) The collection of data does not, by itself, constitute nutrition assessment.

(8) "Nutrition counseling" means the advice and assistance provided to individuals or groups on nutrition intake by integrating information from the nutrition assessment with information on food and other sources of nutrient and meal preparation consistent with therapeutic needs and cultural background, which shall include ethnicity, race, language, religious and spiritual beliefs, education, and socioeconomic status.

(9) "Nutrition education" means a formal process to instruct or train a client, patient, or population group in a skill or to impart knowledge to help clients, patients, or population groups voluntarily manage or modify food, nutrition, and physical activity choices and behavior to maintain or improve health.

(10) "Nutrition intervention" means planned actions and nutrition counseling by a provider of nutrition care, intended to improve a nutrition-related behavior, risk factor, environmental condition, or aspect of the health status, consistent with therapeutic needs and cultural background.

(11) "Nutrition monitoring or evaluation" means regular re-evaluation of the nutrition care treatment and prevention plan, which may include review of clinical research and standards of care, to compare the outcomes with the patient's previous health status, intervention goals, or reference standards to determine the progress made in achieving desired outcomes of nutrition care and whether planned interventions should be continued or revised.

(12) "Nutrition services" for purposes of G.S. 90-357.5(c)(2) means the provision of nutrition assessments, nutrition intervention, education, counseling, or management, and nutrition monitoring or evaluation.

(13) "Swallow screen" means a minimally invasive evaluation procedure conducted by a licensed dietitian/nutritionist that provides for the determination of:

(A) the likelihood that dysphagia exists;

(B) whether the patient requires referral for further swallowing assessment;

(C) whether it is safe to feed the patient orally for the purposes of nutrition, hydration, and administration of medication; and

(D) whether the patient requires referral for nutritional or hydrational support.

(14) "Alternate supervised experiential learning" means observational hours that do not involve direct patient or client care or the discussion thereof. Such hours are limited to: observing videos of client and practitioner interactions; shadowing an experienced clinician; participating in simulation exercises or role playing; or utilizing case studies to prepare treatment plans.

(15) "Direct supervised experiential learning" means nutrition care services provided for the benefit of patients or clients. Such hours are limited to: counseling individuals and groups; researching and developing patient or client treatment plans for current patients or clients; researching, preparing, and presenting patient or client workshops; community education involving development and delivery of education to a specific population; supervisor grand rounds and one-on-one meetings with one's supervisor to discuss current patient or client care; or direct hours approved as part of a programmatically accredited supervised practice program.

(16) "Therapeutic diet" means a nutrition intervention prescribed by a physician or other authorized non-physician practitioner that provides food, fluid, or nutrients via oral, enteral, or parenteral routes as part of treatment of disease or clinical conditions to modify, eliminate, decrease, or increase identified micronutrients and macronutrients in the diet, or to provide mechanically altered food when indicated.

(17) "Weight control services" as used in G.S. 90-368(7) means a general program of instruction with food, supplements, food products, or a food plan designed for one or more healthy population groups in order to achieve or maintain a healthy weight. A weight control program is not individualized to provide medical nutrition therapy as defined in G.S. 90-352(3a) or nutrition care services as defined in G.S. 90-352(4) to manage or treat a medical condition for a specific person or group.

(b) As used in this Chapter, the following acronyms and initialisms shall mean:

(1) "ACBN" means the American Clinical Board of Nutrition, whose Diplomate of the American Clinical Board of Nutrition credential is accredited by the National Commission for Certifying Agencies.

(2) "ACEND" means the Accreditation Council for Education in Nutrition and Dietetics.

(3) "AND" means the Academy of Nutrition and Dietetics.

(4) "BCNS" means the Board for Certification of Nutrition Specialists, whose Certified Nutrition

Specialist credential is accredited by the National Commission for Certifying Agencies.

(5) "CDR" means the Commission on Dietetic Registration, whose Registered Dietitian Nutritionist credential is accredited by the National Commission for Certifying Agencies.

(6) "LDN" means licensed dietitian/nutritionist.

(7) "LN" means licensed nutritionist.

(8) "PLDN" means provisionally licensed dietitian/nutritionist.

(9) "PLN" means provisionally licensed nutritionist.

History Note: Authority G.S. 90-352; 90-356;
Temporary Adoption Eff. March 19, 1992 for a period of 180 days to expire on September 13, 1992;
Eff. June 1, 1992;
Recodified from 21 NCAC 17 .0001 Eff. February 1, 1995;
Amended Eff. December 1, 2011; April 1, 2010; July 18, 2002; March 1, 1996;
Readopted Eff. December 1, 2019;
Amended Eff. Pending legislative review.

21 NCAC 17 .0103 QUALIFICATIONS FOR LICENSURE

Each applicant for an initial license as a licensed dietitian/nutritionist shall meet the qualifications as set forth in G.S. 90-357.5(a) and the rules of this Chapter. Each applicant for an initial license as a licensed nutritionist shall meet the qualifications as set forth in G.S. 90-357.5(c) and the rules of this Chapter.

History Note: Authority G.S. 90-356; 90-357;
Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on September 13, 1992;
Eff. June 1, 1992;
Recodified from 21 NCAC 17 .0003 Eff. February 1, 1995;
Amended Eff. December 1, 2011; July 18, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016;
Amended Eff. Pending legislative review.

21 NCAC 17 .0104 APPLICATIONS

(a) Each applicant for initial licensure shall file a completed application with the Board. Application forms are available at www.ncbdn.org.

(b) A complete application shall be:

(1) typed;

(2) signed by the applicant affirming that the information on the application is true and releasing to the Board information pertaining to the application;

(3) accompanied by the application, issuance, and criminal history record check fees; and

(4) accompanied by evidence, statements, or documents demonstrating the applicant meets the applicable requirements specified in G.S. 90-357.5 and this Rule and the applicant is not in violation of G.S. 90-363.

(c) Applicants shall submit a completed application to the North Carolina Board of Dietetics/Nutrition via its website at www.ncbdn.org.

(d) The Board shall not review an application until the applicant pays the application fee. The fee may be paid online via credit card, or by check or money order mailed to: North Carolina Board of Dietetics/Nutrition, 1135 Kildaire Farm Road, Suite 200, Cary, NC 27511.

(e) Examination information for each of the examinations the Board recognizes may be found on the following websites:

(1) Information regarding the Registered Dietitian Nutritionist examination offered by the Commission on Dietetic Registration may be found at: https://www.cdrnet.org/program-director/student-instructions.

(2) Information regarding the Certified Nutrition Specialist examination offered by the Board for Certification of Nutrition Specialists may be found at: https://theana.org/certify/CNScandidate.

(3) Information regarding the Diplomate of the American Clinical Board of Nutrition examination offered by the American Clinical Board of Nutrition may be found at: https://www.acbn.org/apply.

(f) Before cancelling an application, the Executive Director shall send notice to an applicant who does not complete the application that lists the additional materials required. An incomplete application shall be valid for a period of four months from the date the application is filed with the Board. Four months after submission of an application, if the application and any required documentation has not been completed by the applicant, the application shall be considered cancelled due to failure to complete. Complete applications that the Board determines require additional evidence under Paragraph (m) of this Rule shall be eligible for consideration for the timeline set forth in that Paragraph.

(g) Applicants providing evidence of current registration as a Registered Dietitian Nutritionist by the CDR in G.S. 90-357.5(a)(2) shall submit a photocopy of the applicant's registration identification card, or a copy of a CDR Credential Verification certificate certifying that the applicant is a Registered Dietitian Nutritionist.

(h) Applicants providing evidence of completing academic requirements in G.S. 90-357.5(a)(1) shall either:

(1) Submit transcripts and a verification statement that includes the original signature of the Program Director of a college or university where the course of study was accredited by the ACEND as meeting the competency requirements of the most current edition of the Accreditation Standards for Nutrition and Dietetic Didactic Programs; or

(2) Submit documentation, including official transcripts, demonstrating the course of study met the competency requirements of the most current edition of the ACEND Accreditation Standards for Nutrition and Dietetic Didactic Programs, which is hereby incorporated by

reference. Copies of these standards may be obtained at no charge from ACEND's website at: https://www.eatrightpro.org/acend/accreditation-standards-fees-and-policies/2022-standards-and-templates.

(i) Applicants providing evidence of completing academic requirements in G.S. 90-357.5(c) shall submit documentation, including official transcripts, demonstrating completion of the requirements stated in G.S. 90-357.5(c)(1).

(j) Applicants providing evidence of completing a Board-approved internship or documented, supervised practice experience in G.S. 90-357.5(a)(1)(b) shall either:

(1) Submit a verification statement that includes the original signature of the Program Director of a documented, supervised practice experience that has been accredited by the ACEND as meeting the competency requirements of the most current edition of the Accreditation Standards for Nutrition and Dietetics Internship Programs; or

(2) Submit documentation demonstrating at least 1000 hours of documented, supervised practice experience, meeting the competency requirements of the most current edition of the Accreditation Standards for Nutrition and Dietetics Internship Programs issued by ACEND. The scope of activities may include alternate supervised experiential learning such as simulation, case studies, and role playing, but must also include at least 750 hours of direct supervised experiential learning. The 1000 hours must be concurrent with or following completion of the academic requirements for licensure and need not be a paid experience.

(k) The following shall be necessary for applicant's submitting proof of completion of a Board-approved internship or a documented, supervised practice experience in nutrition services under Subparagraph (j)(2) of this Rule;

(1) If there shall be more than one supervisor or facility for different parts of the supervised practice experience, information and verification of each part, as provided in Subparagraphs (2) and (3) of this Paragraph, is required.

(2) The applicant shall provide to the Board for each supervisor/facility:

(A) the name and address of the facility providing the supervised practice experience;

(B) the name, address, phone, and title of the supervisor who supervised the supervised practice experience;

(C) a summary of nutrition services performed, along with dates and hours spent performing them;

(D) evidence that the supervisor met the requirements stated in G.S. 90-357.5(a)(1)(b) at the time of supervision; and

(E) an attestation that the supervisor is not related to, married to, or domestic partners with the supervisee.

(3) Each supervisor shall:

(A) regularly, commensurate with the care provided, observe the provision of nutrition care services by the student or trainee supervised, and evaluate, authorize, and approve all nutrition care services of the student or trainee supervised;

(B) maintain primary responsibility for and control over all nutrition care services performed by the student or trainee, including clinical record keeping;

(C) ensure the student or trainee is designated throughout the supervised practice experience by a title that indicates the individual's status as a student or trainee;

(D) verify that the applicant participated in nutrition services under his or her supervision, stating the total number of hours;

(E) provide a summary of the nutrition services completed under his or her supervision; and

(F) provide an evaluation of the applicant for the Board to be able to assess the applicant's performance in completion of the competencies required by ACEND.

(l) Applicants providing evidence of completing a Board-approved internship or documented, supervised practice experience in G.S. 90-357.5(c)(2) must submit documentation demonstrating at least 1000 hours of documented, supervised practice experience, meeting the requirements as stated in G.S. 90-357.5(c)(2). The scope of activities may include alternate supervised experiential learning such as simulation, case studies, and role playing, but must also include at least 750 hours of direct supervised experiential learning. The 1000 hours must be concurrent with or following completion of the academic requirements for licensure and need not be a paid experience. Learning experiences must prepare students to provide nutrition care services for various populations of diverse cultures, genders, and across the life cycle, which may include infants, children, adolescents, adults, pregnant/lactating females, and older adults and to be able to competently formulate actionable medical nutrition therapies and interventions, education, counseling, and ongoing care for the prevention, modulation, and management of a range of acute and chronic medical conditions, including:

(1) underweight, overweight, malnutrition, and obesity;

(2) cardiometabolic;

(3) endocrine;

(4) immune and autoimmune; and

(5) gastrointestinal disorders.

(m) The following shall be necessary for proof of completion of a Board-approved internship or a documented, supervised practice experience in nutrition services under Paragraph (l) of this Rule:

(1) If there shall be more than one supervisor or facility for different parts of the supervised practice experience, information and verification of each part, as provided in Subparagraphs (2) and (3) of this Paragraph, is required.

(2) The applicant shall provide to the Board for each supervisor/facility:

(A) the name and address of the facility providing the supervised practice experience;

(B) the name, address, phone, and title of the supervisor who supervised the supervised practice experience;

(C) a summary of nutrition services performed, along with dates, and hours spent performing them;

(D) evidence that the supervisor met the requirements as stated in G.S. 90-357.5(c)(2) at the time of supervision; and

(E) an attestation that the supervisor is not related to, married to, or domestic partners with the supervisee.

(3) Each supervisor shall:

(A) regularly, commensurate with the care provided, observe the provision of nutrition care services by the student or trainee supervised, and evaluate, authorize, and approve all nutrition care services of the student or trainee supervised;

(B) maintain primary responsibility for and control over all nutrition care services performed by the student or trainee, including clinical record keeping;

(C) ensure the student or trainee is designated throughout the supervised practice experience by a title that indicates the individual's status as a student or trainee;

(D) verify that the applicant participated in nutrition services under his or her supervision, stating the total number of hours;

(E) provide a summary of the nutrition services completed under his or her supervision; and

(F) provide an evaluation of the applicant for the Board to be able to assess the applicant's performance in the provision of nutrition services, as defined in 21 NCAC 17 .0101(12), to address, at a minimum, the acute and chronic medical conditions listed in Paragraph (l) of this Rule.

(n) Applicants who have obtained his or her education outside of the United States and its territories shall:

(1) Have his or her academic degrees evaluated by a Board-approved foreign credential evaluating service as equivalent to a baccalaureate or higher degree conferred by a U.S. college or university accredited by the regional accrediting agencies recognized by the Council on Higher Education Accreditation and the U.S. Department of Education; and

(2) All documents submitted in a language other than English shall be accompanied by a certified translation thereof in English from a Board-approved translation service.

(3) The following foreign credential evaluating and translation services are Board-approved:

(A) Academic and Professional International Evaluation, Inc., which may be found at: www.apie.org;

(B) Academic Credentials Evaluation Institute, Inc., which may be found at: https://www.acei-global.org/;

(C) American Education Research Corporation, Inc., which may be found at: http://www.aerc-eval.com/;

(D) Association of International Credential Evaluators, Inc., which may be found at: www.aice-eval.org;

(E) Bruscan Educational Information Services, which may be found at: http://www.bruscan.com/;

(F) Center for Educational Documentation, Inc., which may be found at: http://www.cedevaluations.com/;

(G) Education Credential Evaluators, Inc., which may be found at: www.ece.org;

(H) Educational Perspectives, which may be found at: https://www.edperspective.org/;

(I) Foundation for International Services, Inc., which may be found at: https://www.fis-web.com/;

(J) International Education Research Foundation, which may be found at: www.ierf.org;

(K) Josef Silny & Associates, which may be found at: http://www.jsilny.org/;

(L) SpanTran: The Evaluation Company, which may be found at: https://www.spantran.com/; or

(M) World Education Services, Inc., which may be found at: https://www.wes.org/.

(o) If the Board determines that the application does not demonstrate satisfaction of the requirements specified in G.S. 90-

357.5 and this Rule, the Board shall notify the applicant in writing. The notification shall include what is required to demonstrate the applicant meets the statutory requirements, and the applicant shall be:

(1) offered the ability to place the application on hold for a time period of up to one year from the date of the letter providing the Board's determination, so long as such a request is made in writing within 30 days of the date of the letter. During this hold time, the applicant may provide other evidence demonstrating the applicant satisfied the requirements the Board determined were not met;

(2) offered the opportunity to appear for an interview before the Board. At any time during that interview, the applicant may stop the interview, and request to have all or any part of requested information provided in writing; and

(3) offered the ability to withdraw the application so long as such a request is made in writing within 30 days of the date of the letter. The applicant will be allowed to apply for licensure at a later time.

(p) If an applicant who received the notice specified in Paragraph (o) of this Rule does not provide a written response to the Board within 30 days of the date of the notification requesting that he or she be granted an interview or his or her application be placed on hold or withdrawn, or after the opportunity for an interview the Board determines the applicant has still not demonstrated satisfaction of the requirements specified in G.S. 90-357.5 and this Rule and the applicant has not requested his or her application be placed on hold or withdrawn, the Board shall issue the applicant an official rejection as provided in G.S. 90-358.

(q) A rejected applicant shall have 60 days from the date of official rejection to request a contested case hearing in accordance with the rules of this Chapter.

History Note: Authority G.S. 90-356; 90-357.5; 90-357.6; 90-358;
Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on September 13, 1992;
Eff. June 1, 1992;
Recodified from 21 NCAC 17 .0004 Eff. February 1, 1995;
Amended Eff. December 1, 2011; July 18, 2002; March 1, 1996;
Readopted Eff. August 1, 2019;
Amended Eff. January 1, 2023.

21 NCAC 17 .0106 GRANTING LICENSE WITHOUT EXAMINATION

History Note: Authority G.S. 90-356; 90-360;
Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on September 13, 1992;
Eff. June 1, 1992;
Recodified from 21 NCAC 17 .0006 Eff. February 1, 1995;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016;
Repealed Eff. Pending legislative review.

21 NCAC 17 .0108 DISAPPROVED APPLICATION

The Board shall not approve an applicant for licensure or renewal if the applicant:

(1) has not completed the requirements set by Article 25 of Chapter 90 of the General Statutes and the rules of this Chapter.

(2) has failed to remit any applicable fees; and

(3) has failed to comply with requests for supporting documentation.

History Note: Authority G.S. 90-356; 90-358; 90-363;
Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on September 13, 1992;
Eff. June 1, 1992;
Recodified from 21 NCAC 17 .0008 Eff. February 1, 1995;
Amended Eff. July 18, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016;
Amended Eff. January 1, 2023.

21 NCAC 17 .0110 LICENSURE CERTIFICATE

(a) The Board shall issue to each licensee an electronic license certificate and an electronic license identification card. The identification card shall contain the person's name, license number, and date of expiration.

(b) License certificates shall be signed by the Chair, Secretary, and Treasurer and be affixed with the seal of the Board. Identification cards shall bear the signature of the Chair.

(c) Any certificate or identification card issued by the Board shall remain the property of the Board and shall be surrendered to the Board upon demand.

(d) Licensees shall comply with G.S. 90-640, which specifies the wearing of a name badge.

(e) The license certificate must be displayed in a public manner as follows:

(1) The license certificate shall be displayed in the primary place of employment of the licensee; or

(2) In the absence of a primary place of employment or when the licensee is employed in multiple locations, the licensee shall print and carry a current, Board-issued license identification card.

(f) Neither the licensee nor anyone else shall make any alteration on a license certificate or license identification card issued by Board.

(g) The Board shall issue an official licensure certificate upon a written request from the licensee and payment of the Duplicate License Certificate Fee.

(h) Within 30 days of a name change, the licensee must submit a written request with government-issued documentation reflecting the name change to the Board. Upon receipt of the request and documentation the Board shall re-issue a license certificate and license identification card. If an official licensure certificate reflecting the name change is requested, the request shall be accompanied by a Duplicate License Certificate Fee.

History Note: Authority G.S. 90-356; 90-362;
Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on September 13, 1992;

Eff. June 1, 1992;
Recodified from 21 NCAC 17 .0010 Eff. February 1, 1995;
Amended Eff. July 18, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016;
Amended Eff. January 1, 2023.

21 NCAC 17 .0112 SUSPENSION, REVOCATION AND DENIAL OF LICENSE

(a) The Board may refuse to issue a license, or suspend, revoke, or impose probationary conditions and restrictions on the license of a person upon a finding of any of the causes provided in Article 25 of Chapter 90 of the General Statutes.

(b) When the Board has probable cause to believe that, an applicant or licensee has violated any part of G.S. 90-350 through 90-369 or the rules of this Chapter, the Board shall so advise the person in writing as referenced in Rule .0503 and .0504 of this Chapter and provide the person with the opportunity for a hearing as referenced in Rule .0504 of this Chapter. The Board's final decision or order shall be made in writing as referenced in Rule .0514 of this Chapter.

(c) A suspended license is subject to expiration and may be renewed as provided in this Section, but such renewal shall not entitle the licensee to engage in the licensed activity until he or she is reinstated. If a license revoked on disciplinary grounds is to be reinstated, the licensee must reapply and pay all applicable fees. The Board may deny or refuse to reinstate a license or may suspend or impose probationary conditions on a license if the licensee has engaged in conduct listed in G.S. 90-363.

History Note: Authority G.S. 90-356; 90-363;
Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on September 13, 1992;
Eff. August 3, 1992;
Recodified from 21 NCAC 17 .0012 Eff. February 1, 1995;
Amended Eff. January 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016;
Amended Eff. January 1, 2023.

21 NCAC 17 .0114 CODE OF ETHICS FOR PROFESSIONAL PRACTICE AND CONDUCT

(a) Licensees, under the Act, shall comply with the following Code of Ethics in their professional practice and conduct. The Code reflects the ethical principles of the dietetic/nutrition professional and outlines obligations of the licensee to self, client or patient, society, and the profession and sets forth mandatory standards of conduct for all licensees.

(1) The licensee shall provide professional services with objectivity and with respect for the unique needs and values of individuals as determined through the nutritional assessment.

(2) The licensee shall conduct all practices of dietetics or nutrition with honesty.

(3) The licensee shall present substantiated information and assess the validity and applicability of scientific evidence without personal bias.

(4) The licensee shall practice evidence-based dietetics or nutrition.

(5) The licensee shall assume responsibility and accountability for personal competence in practice, continuously develop and enhance expertise through education, and recognize personal limitations.

(6) The licensee shall inform the public of his or her services by using accurate and truthful information.

(7) The licensee shall not exercise undue influence on a client or patient. This includes, not exercising excessive persuasion or improper influence on a client or patient in the promotion or the sale of services or products. The licensee shall be alert to any conflicts of interest and shall provide full disclosure when a real or potential conflict of interest arises.

(8) The licensee shall not reveal information about a client or patient obtained in a professional capacity, without prior consent of the client or patient, except as authorized or required by law, and shall make full disclosure about any limitations on his or her ability to guarantee this.

(9) The licensee shall safeguard client or patient confidentiality according to current regulations and laws, using appropriate technology, such as encryption.

(10) The licensee shall recognize and exercise professional judgment within the limits of the licensee's qualifications and shall not accept or perform professional responsibilities which the licensee knows or has reason to know that he or she is not qualified to perform.

(11) The licensee shall collaborate with others involved in the patient's care, obtain consultation from health care providers when appropriate, and make referrals to health care providers when the licensee cannot provide the client or patient the services he or she needs.

(12) The licensee shall take action, with prior consent of the client or patient, to inform a client or patient's physician or other health care practitioner in writing in cases where a client or patient's nutritional status indicates a change in health status impacting the disease or medical condition for which the physician or other health care practitioner is treating the client or patient.

(13) The licensee shall ensure that his or her client or patient has sufficient information to understand the nutrition diagnosis and the implications of nutrition intervention. The licensee shall not guarantee that nutrition care services will cause any certain outcome or particular result for the client or patient.

(14) The licensee shall permit use of that licensee's name for the purpose of certifying that dietetics

or nutrition services have been rendered only if the licensee has provided or supervised those services.

(15) The licensee shall document, code, and bill nutrition services to most accurately reflect the character and extent of such delivered services.

(16) The licensee shall notify the Board in writing within 30 days of the occurrence of any of the following:

(A) the licensee seeks any medical care or professional treatment for the chronic or persistent use of intoxicants, drugs, or narcotics.

(B) the licensee is adjudicated to be mentally incompetent.

(C) the licensee has been convicted or entered into a plea of guilty or nolo contendere to any crime directly related to the duties and responsibilities of a dietitian or nutritionist or that was violent or sexual in nature; or

(D) the licensee has been disciplined by an agency of another state that regulates the practice of dietetics or nutrition.

(17) The licensee shall comply with all laws and rules concerning the profession.

(18) The licensee shall uphold the Code of Ethics for professional practice and conduct by reporting to the Board inappropriate behavior or treatment of a client or patient by the licensee or others in violation of the Code and the Act.

(19) The licensee shall not interfere with an investigation or disciplinary proceeding by willful misrepresentation of facts to the Board or its representative or by the use of threats or harassment against any person.

(20) The licensee shall not engage in kissing, fondling, touching, or in any activities, advances, or comments of a sexual nature with any client, patient, or, while under the licensee's supervision, any supervisee, student, or trainee.

(21) The licensee shall not invite, accept, or offer gifts, monetary incentives, or other considerations that affect or reasonably give an appearance of affecting the licensee's professional judgment.

(b) Conduct and circumstances which may result in disciplinary action by the Board include the following:

(1) The licensee is a chronic user of intoxicants, drugs, or narcotics to the extent that the same impairs his or her ability to practice dietetics or nutrition, as determined by a health care provider licensed to conduct such assessment.

(2) The licensee is mentally, emotionally, or physically unfit to practice dietetics or nutrition and is afflicted with such a mental, emotional, or physical disability as to be dangerous to the health and welfare of a client or patient, as determined by a health care provider licensed to conduct such assessment.

(3) The licensee has been disciplined by an agency of another state that regulates the practice of dietetics or nutrition and at least one of the grounds for the discipline is the same or substantially equivalent to the grounds for discipline in this state.

(4) The licensee has violated any provisions of the Act or any of the rules of this Chapter.

History Note: Authority G.S. 90-356(3); 90-356(2);
Temporary Adoption Eff. March 19, 1992 for a period of 180 days to expire on September 13, 1992;
Eff. July 1, 1992;
Recodified from 21 NCAC 17 .0014 Eff. February 1, 1995;
Amended Eff. April 1, 2010; July 1, 2004; July 18, 2002; March 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016;
Amended Eff. January 1, 2023.

21 NCAC 17 .0116 VIOLATIONS, COMPLAINTS, SUBSEQUENT BOARD ACTION, AND HEARINGS

History Note: Authority G.S. 90-356; 90-363; 90-370;
Temporary Adoption Eff. July 16, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. November 30, 1992;
Recodified from 21 NCAC 17 .0016 Eff. February 1, 1995;
Amended Eff. April 1, 2010; July 18, 2002; January 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016;
Repealed Eff. January 1, 2023.

21 NCAC 17 .0201 DEFINITIONS

History Note: Authority G.S. 90-356; 90-368;
Eff. February 1, 1995;
Amended Eff. December 1, 2011; March 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016;
Repealed Eff. January 1, 2023.

21 NCAC 17 .0202 REQUIREMENT FOR REVIEW

History Note: Authority G.S. 90-356; 90-368;
Eff. February 1, 1995;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016;
Repealed Eff. January 1, 2023.

21 NCAC 17 .0203 REVIEW AND BOARD ACTION

History Note: Authority G.S. 90-356; 90-368;
Eff. February 1, 1995;
Amended Eff. December 1, 2011;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016;
Repealed Eff. January 1, 2023.

21 NCAC 17 .0302 REQUIREMENTS

A student or trainee under direct supervision is exempt pursuant to G.S. 90-368(2) when enrolled in a course of study or completing a documented, supervised practice experience as required under G.S. 90-357.5, not to exceed five years. The Board may approve or disapprove a request, submitted to the Board electronically or via postal mail, for an extension of the period of time if the delay is not the result of a willful or negligent act, error, or omission, or a failure to exercise reasonable diligence.

History Note: Authority G.S. 90-356(2); 90-357.5; 90-368(2); Eff. March 1, 1996;
Amended Eff. July 18, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016;
Amended Eff. Pending legislative review.

21 NCAC 17 .0303 SUPERVISION

For purposes of G.S. 90-368(2), "direct supervision" means the supervising practitioner:

(1) together with the supervisee, shall identify and document: competency goals for the supervised practice experience described in G.S. 90-357.5; the supervisee's scope of practice; the assignment of clinical tasks as appropriate to the supervisee's level of competence; the supervisee's relationship and access to the supervisor; and an evaluation process for the supervisee's performance.

(2) is physically onsite and available for physical intervention where the student or trainee is providing nutrition care that requires physically touching the patient and is either physically onsite and available for physical intervention or continuously available by means of two-way real-time audiovisual technology that allows for the direct, contemporaneous interaction by sight and sound between the qualified supervisor and the supervisee where the student or trainee is providing medical nutrition therapy not requiring touching of the patient;

(3) shall be available to render assistance during the provision of nutrition care when requested by the patient or client, or shall have arranged for another qualified practitioner lawfully able render nutrition care services, to be available in the absence of the supervising practitioner;

(4) regularly, commensurate with the care provided, observes the nutrition care services of the student or trainee supervised, and evaluates, authorizes, and approves all medical nutrition therapy provided by the student or trainee supervised;

(5) maintains primary responsibility for and control over all nutrition care services performed by the student or trainee, including countersigning all clinical encounter notes; and

(6) ensures the student or trainee is designated throughout the supervised practice experience by a title that indicates the individual's status as a student or trainee.

History Note: Authority G.S. 90-356(2); 90-357.5; 90-368(2); Eff. March 1, 1996;
Amended Eff. December 1, 2011; July 18, 2002;
Readopted Eff. December 1, 2019;
Amended Eff. Pending legislative review.

21 NCAC 17 .0304 RECORDS AND REPORTS

(a) Permanent and current records from internships or documented, supervised practice experiences in nutrition services shall be available for review by representatives of the Board. The Board may use such records in determining compliance with G.S. 90-368(2) and in approving applications for a license.

(b) The Board may require such records for review throughout the period of completing an individual's internship or documented, supervised practice experience in nutrition services required under G.S. 90-357.5 and throughout the period of application review to provide evidence and substantiate compliance with Article 25 of Chapter 90 of the General Statutes and the rules of this Chapter.

History Note: Authority G.S. 90-356(2); 90-368(2); 90-357; Eff. March 1, 1996;
Amended Eff. July 18, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016;
Amended Eff. January 1, 2023.

21 NCAC 17 .0401 INDIVIDUALS AIDING THE PRACTICE OF DIETETICS OR NUTRITION

(a) As used in this Section, the following terms and phrases, which have not already been defined in Article 25 of Chapter 90 of the General Statutes shall have the meanings specified:

(1) "Direct supervision" as referenced in G.S. 90-368(4) means that a licensed dietitian/nutritionist, licensed nutritionist, or other licensed health care practitioner whose licensed scope of practice includes the practice of dietetics or nutrition shall:

(A) be available for consultation on delegated nutrition care activities being performed by the person being supervised, either through on-site or through electronic communication, and shall be available to render assistance when needed to the unlicensed personnel and patient or client, or shall have arranged for another licensee to be available in the absence of the licensed dietitian/nutritionist, licensed nutritionist, or other licensed health care practitioner whose licensed scope

of practice includes the practice of dietetics or nutrition;

(B) directly and personally examine, evaluate, and approve the acts or functions of the person supervised; and

(C) provide sufficient guidance and direction as to enable the unlicensed personnel to perform the delegated activity or function.

(2) "Nutrition care activities" means activities performed by unlicensed personnel that are delegated by licensed dietitians/nutritionists, licensed nutritionists, or other licensed health care practitioners whose licensed scope of practice includes the practice of dietetics or nutrition in accordance with Paragraphs (b), (c), and (d) of this Rule and that support the provision of medical nutrition therapy as referenced in G.S. 90-352(3a).

(b) The licensed dietitian/nutritionist, licensed nutritionist, or other licensed health care practitioner whose licensed scope of practice includes the practice of dietetics or nutrition:

(1) may delegate nutrition care activities to unlicensed personnel that are appropriate to the level of knowledge and skill of the unlicensed personnel;

(2) shall be responsible for the initial and ongoing determination of the competence of the unlicensed personnel to perform any delegated acts or functions. Delegation of nutrition care activities shall be in writing and shall identify the patient or client and the act or function assigned to the unlicensed personnel;

(3) shall supervise the nutrition care activities of the unlicensed personnel and maintain responsibility for nutrition care activities performed by all personnel to whom the care is delegated;

(4) shall not delegate the entire spectrum of medical nutrition therapy but may delegate specific acts and functions which support the licensed professional's provision of medical nutrition therapy; and

(5) shall have the responsibility for clinical record documentation.

(c) The following variables shall be considered by the licensed dietitian/nutritionist, licensed nutritionist, or other licensed health care practitioner whose licensed scope of practice includes the practice of dietetics or nutrition in determining whether or not an activity or function may be delegated to unlicensed personnel:

(1) knowledge and skills of the unlicensed personnel which include both basic educational and experience preparation and continuing education and experience;

(2) the competence of the unlicensed personnel for the activity or function;

(3) the variables in each service setting which include:

(A) the complexity and frequency of nutrition care needed by a given client population;

(B) the acuity and stability of the client's condition; and

(C) established policies, procedures, practices, and channels of communication of the facilities where the delegated activities or functions are being performed which lend support to the types of nutrition care activities being delegated, or not delegated, to unlicensed personnel; and

(4) whether the licensed dietitian/nutritionist, licensed nutritionist, or other licensed health care practitioner whose licensed scope of practice includes the practice of dietetics or nutrition has the skills, experience, and ability to supervise the unlicensed personnel for the activity or function.

(d) Tasks, treatments, or interventions that may not be delegated include, but are not limited to:

(1) assessments of data, problem identification, and outcome evaluation;

(2) tasks, treatments, or intervention that require a license; and

(3) any and all aspects of care or activities that require independent clinical judgment or knowledge by a licensee.

History Note: Authority G.S. 90-356(2); 90-368(4);
Eff. March 1, 1996;
Amended Eff. May 1, 2010; July 18, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016;
Amended Eff Pending Legislative Review.

21 NCAC 17 .0402 INDIVIDUALS PROVIDING NUTRITION INFORMATION

(a) The following terms and phrases shall have the meanings specified:

(1) "Nutrition information" means nutrition information related to food, food materials, or dietary supplements which is designed for one or more healthy population groups and is based on scientific evidence. Nutrition information is not individualized to provide nutrition care services for the purpose of managing or treating a medical condition for a specific person or group as referenced in G.S. 90-352(3a).

(2) "Reported or historical use" means information about food, food materials, or dietary supplements which is based on:

(A) historical or methodological studies or research conducted by experts in the field using sound scientific methods with randomized controlled clinical trials; or

(B) reports on scientific studies published in peer-reviewed medical or dietetics and nutrition journals or publications.

(b) The Board shall deem an individual who provides nutrition information or education to be in compliance with G.S. 90-368(9) when:

(1) The person does not hold himself or herself out to be a dietitian or nutritionist or imply orally or in writing or indicate in any way that he or she is a dietitian or nutritionist;

(2) The person does not provide medical nutrition therapy support activities which have not been delegated to him or her by a licensed dietitian/nutritionist, licensed nutritionist, or other licensed health care practitioner whose licensed scope of practice includes the practice of dietetics or nutrition;

(3) The person provides nutrition information on or about food, food materials, or dietary supplements, and does not provide nutrition information on the nutritional needs of the consumer as related to managing or treating a medical condition;

(4) The person provides nutrition information in connection with the marketing and distribution of the food, food materials, dietary supplements, or other goods to be provided or sold, and does not provide nutrition information in connection with the marketing and distribution of medical nutrition therapy services;

(5) The person provides the nutrition information on food, food materials, nutraceuticals, dietary supplements, or other goods in accordance with federal, State, and local laws, regulations, and ordinances, including but not limited to G.S. 90, Article 25.

History Note: Authority G.S. 90-356(2); 90-368;
Eff. March 1, 1996;
Amended Eff. July 18, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016;
Amended Eff. January 1, 2023.

21 NCAC 17 .0403 TELEPRACTICE

Any person, whether residing in this State or not, who by use of electronic or other medium performs any of the acts described as the practice of medical nutrition therapy with a client or patient located in this State, but is not licensed pursuant to Article 25 of Chapter 90 of the General Statutes shall be deemed by the Board as being engaged in the practice of medical nutrition therapy and subject to the enforcement provisions available to the Board. Among other remedies, the Board shall report violations of this Rule to any occupational licensing board having issued an occupational license to a person who violates this Rule. This Rule does not apply to persons licensed pursuant to, or exempt from licensure pursuant to, Article 25 of G.S. 90.

History Note: Authority G.S. 90-356;
Eff. February 1, 2006;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016;
Amended Eff. January 1, 2023.

21 NCAC 17 .0501 DEFINITIONS

As used in this Section:

(1) "Good cause" related to motions or requests to continue or for additional time for responding includes:
  (a) death or incapacitating illness of a party, or attorney of a party;
  (b) a court order requiring a continuance;
  (c) lack of proper notice of the hearing;
  (d) a substitution of the representative or attorney of a party if the substitution is shown to be required;
  (e) a change in the parties or pleadings requiring postponement; and agreement for a continuance by all parties if either more time is necessary to complete mandatory preparation for the case, such as authorized discovery, and the parties and the Board have agreed to new hearing date or parties have agreed to a settlement of the case that has been or is likely to be approved by the final decision maker; and
  (f) where, for any other reason, either party has shown that the interests of justice require a continuance or additional time.

(2) "Good cause" related to motions or requests to continue or for additional time for responding shall not include:
  (a) intentional delay;
  (b) unavailability of a witness if the witness testimony can be taken by deposition; and
  (c) failure of the attorney or representative to properly utilize the statutory notice period to prepare for the hearing.

(3) "Investigative Committee" means a Board committee composed of one licensed dietitian/nutritionist member of the Board, one licensed nutritionist member of the Board, and the public member of the Board. This Committee is charged with the duty of reviewing cases and complaints involving licensees, applicants for licensure, and all other allegations involving violations of the Dietetics/Nutrition Practice Act. The Investigative Committee shall be responsible for directing investigations and making recommendations to the Board regarding

unresolved cases or complaints at regularly scheduled meetings.

(4) "Licensee" means all persons to whom the Board has issued a license under Article 25 of Chapter 90 of the General Statutes.

History Note: Authority G.S. 90-356; 150B-38; Eff. January 1, 2023.

21 NCAC 17 .0502 COMPLAINTS

(a) Anyone may complain to the Board alleging that a person, applicant, or licensee has committed an action prohibited by Article 25 of Chapter 90 of the General Statutes or the rules of the Board.

(b) Complaints may be submitted to the Board by completing the Board's complaint form online at www.ncbdn.org/file-a-complaint or a paper form may be requested by contacting the Board office. Paper forms may be delivered to the Board by mail or hand-delivery at 1135 Kildaire Farm Road, Suite 200, Cary, NC 27511.

(c) Each complaint submitted shall set forth specific facts and circumstances known to the complainant relating to the Dietetics/Nutrition Practice Act or the Board's rules, and the conduct or competence of each person who is the subject of the complaint.

(d) Anonymous complaints are not investigated unless, if upon preliminary review of the contents of the complaint by Board staff, it appears the allegation(s) indicate a violation of the Dietetics/Nutrition Practice Act or the Board's rules, sufficient identification information for the person who is the subject of the complaint is provided, and there is sufficient information to substantiate allegation(s).

(e) Investigations may be conducted by the Board staff or by other persons authorized by the Board.

(f) Upon receipt of a complaint, the Board shall confirm receipt of the complaint to the complainant.

(g) The Board staff, or its authorized Investigator, shall assign a complaint number to the initial complaint, review the contents of the complaint, and conduct a preliminary review of information to determine whether an individual's conduct or competence relates to the Dietetics/Nutrition Practice Act or the Board's rules.

(h) If preliminary information in the complaint does not relate to an individual's conduct or competence under the authority of the Dietetics/Nutrition Practice Act or the Board's rules, the Board staff, or its authorized Investigator, shall close the complaint and send notice to the complainant. If applicable, the Board staff may refer the complainant to the appropriate governmental agency for handling such complaints. No further action shall be taken by the Board.

(i) If the information about an individual's conduct or competence appears to be under the authority of the Dietetics/Nutrition Practice Act or the Board's rules, Board staff, or its authorized Investigator, shall open an investigative case and begin an investigation of the matters described in the complaint.

History Note: Authority G.S. 90-356; 90-363; Eff. January 1, 2023.

21 NCAC 17 .0503 INVESTIGATIONS

(a) Once an investigative case is created, the Board staff, or its authorized Investigator, shall send each person who is the subject of an investigation, using the mail or electronic mail address of record in the Board's records for each person, or the mail or electronic mail address provided on the complaint form if the person is not in the Board's records, a summary of the complaint and a request for a written response.

(b) Licensees shall submit a written response to a complaint received by the Board within 45 days from the date the Board confirms the licensee's receipt of notice of the complaint. The Board shall grant up to an additional 30 days for the response where the licensee demonstrates good cause for the extension of time. The response shall contain accurate and complete information. Where a licensee fails to respond in the time and manner provided herein, the Board may proceed with making its decision in the absence of the licensee or information from the licensee, and the licensee may be held by the Board to be interfering with an investigation by willful misrepresentation of facts under 21 NCAC 17 .0114(19) in violation of G.S. 90-363(7).

(c) A summary of the complaint and a request for a written response sent to a person who is not an applicant for licensure or a licensee of the Board shall be accompanied by the following statement:

"You are hereby notified that the opinion expressed herein is not a legal determination. An occupational licensing board does not have the authority to order you to discontinue your current practices. Only a court may determine that you have violated or are violating any law and, if appropriate, impose a remedy or penalty for the violation. Further, pursuant to G.S. 150B-4, you may have the right, prior to initiation of any court action by the Board, to request a declaratory ruling regarding whether your particular conduct is lawful. You are further notified that any right to a declaratory ruling supplements any other legal rights that you may already have to establish the legality of your conduct with respect to the goods or services you offer or provide."

(d) The Board staff, or its authorized Investigator, shall investigate a complaint and shall provide the Board's Investigation Committee with an investigation report. The Investigative Committee shall review the report and shall determine to:

(1) request further investigation of particular aspects of the matter;

(2) request the individual who is the subject of the complaint meet with members of the Board to be interviewed if he or she is willing to be interviewed; or

(3) accept the report and make a recommendation to the Board.

(e) The Board shall authorize the Investigative Committee to make a recommendation to the Board if an investigation is complete and the complaint is unresolved.

(f) The Board shall consider the Investigative Committee's recommendation and shall determine whether to:

(1) conduct further investigation of particular aspects of the matter;

(2) close or dismiss the case or issue a non-disciplinary letter of caution;

(3) issue a consent order to the subject of an investigation, specifying any disciplinary sanctions to be applied and, if the consent order is not accepted, issue a notice of hearing;
(4) issue a notice of hearing to a subject, specifying any disciplinary sanctions; or
(5) apply to the courts for injunctive relief, refer a matter to a district attorney for prosecution, or take other actions, including reporting the matter to appropriate state or federal agencies.

(g) A copy of a notice of hearing shall be sent to the complainant.
(h) Whenever a complaint is dismissed or a complaint file is closed, notification of the Board's final decision shall be sent to the complainant, and the accused party.

History Note: Authority G.S. 90-356; 90-363;
Eff. January 1, 2023.

21 NCAC 17 .0504 RIGHT TO HEARING

When the Board acts or proposes to act, other than in rule-making or declaratory ruling proceedings, in a manner which will affect the rights, duties, or privileges of a specific, identifiable licensee or applicant for a license, such person has the right to an administrative hearing. When the Board proposes to act in such a manner, it shall give any such affected person notice of the right to a hearing by mailing to the person, by certified mail at the person's last known address, a notice of the proposed action and a notice of a right to a hearing. Notice of a right to a hearing may also be given by any method of service permitted in G.S. 150B-38(c), by a signed acceptance of service from such person, or by delivery to the person's attorney of record who accepts service on behalf of the person.

History Note: Authority G.S. 90-356; 150B-38(h);
Eff. January 1, 2023.

21 NCAC 17 .0505 REQUEST FOR HEARING

(a) An individual who believes that individual's rights, duties, or privileges have been affected by the Board's administrative action, but who has not received notice of a right to an administrative hearing, may file a formal request for a hearing.
(b) The individual may submit a request to the Board's office, with the request bearing the notation: "REQUEST FOR ADMINISTRATIVE HEARING." The request shall contain the following information:
(1) name and address of the petitioner;
(2) a concise statement of the action taken by the Board which is challenged;
(3) a concise statement of the way in which the petitioner has been aggrieved; and
(4) a clear and specific statement of request for a hearing.

(c) In order to preserve a person's rights with respect to a Board action, the person shall file a request for hearing with the Board within 60 days after the person receives notice of the Board action that the person challenges.

History Note: Authority G.S. 90-356; 150B-38;
Eff. January 1, 2023.

21 NCAC 17 .0506 GRANTING OR DENYING HEARING REQUEST

(a) The Board shall grant a request for a hearing if it determines that the party requesting the hearing is a "person aggrieved" within the meaning of G.S. 150B-2(6). Whenever the Board proposes to deny, suspend, or revoke a license, or issue a letter of reprimand to a licensee, the licensee shall be deemed to be a person aggrieved.
(b) If the Board determines the petitioner is not a person aggrieved, the Board shall issue a denial that shall constitute a final agency decision.
(c) Approval of a request for a hearing shall be signified by issuing a notice as required by G.S. 150B-38(b) and explained in Rule .0507 of this Section.

History Note: Authority G.S. 90-356; 150B-38; 150B-42;
Eff. January 1, 2023.

21 NCAC 17 .0507 NOTICE OF HEARING

(a) The Board shall give the party or parties in a contested case a notice of hearing not less than 15 days before the hearing. Said notice shall contain the following information, in addition to the items specified in G.S. 150B-38(b):
(1) the name, position, address, and telephone number of a person from the Board to contact for further information or discussion;
(2) the date, time, and place for a pre-hearing conference, if any; and
(3) any other information deemed relevant to informing the parties as to the procedure of the hearing.

(b) A party who has been served with a notice of hearing may file a written response with the Board in accordance with G.S. 150B-38(d). If the party desires to submit a written response instead of personally appearing at the hearing, the party shall state that desire in the written response, and the Board shall consider the written response in lieu of a personal appearance.
(c) If the party who has been given proper notice in accordance with Paragraph (a) of this Rule neither appears pursuant to the notice nor files and serves a written response as set out in Paragraph (b) of this Rule, the Board shall find the allegations of the notice admitted. The Board may continue the hearing or proceed with the hearing and make its decision based on the evidence presented.
(d) If the Board determines that the public health, safety or welfare requires such action, it may issue an order summarily suspending a license pursuant to G.S. 150B-3. Upon service of the order, the licensee to whom the order is directed shall immediately cease the practice of medical nutrition therapy in North Carolina. The suspension shall remain in effect pending issuance by the Board of a final agency decision pursuant to G.S. 150B-42. However, pursuant to this Rule and Rule .0505 of this Section, a person subject to a summary suspension may request a hearing on whether the public health, safety, or welfare permits terminating or modifying the terms of the summary suspension pending a final agency decision. Neither an order of summary suspension nor a decision on whether the summary suspension order shall be terminated or modified is a final agency decision.

History Note: Authority G.S. 90-356; 150B-3; 150B-38; 150B-40; 150B-42;
Eff. January 1, 2023.

21 NCAC 17 .0508 CONTESTED CASES
All administrative hearings shall be conducted by a majority of the Board as set forth in G.S. 150B-40(b) or an administrative law judge designated to hear the case pursuant to G.S. 150B-40(e).

History Note: Authority G.S. 90-356; 150B-38; 150B-40;
Eff. January 1, 2023.

21 NCAC 17 .0509 INFORMAL PROCEDURES
(a) Before issuing a notice of hearing, the Board may designate one or more of its members, but in all cases less than a majority of the currently serving members of the Board, to meet informally via one or more conferences with the party or parties and attempt to reach an informal resolution of the dispute or any other matters as may aid in the disposition of the dispute. The designated Board member or members may direct one or more of the following dispositions:

(1) Submission to the Board with a recommendation to dismiss with no action;
(2) Submission to the Board with a recommendation that Board staff provide informal, non-disciplinary guidance to resolve the dispute;
(3) Submission to the Board with a recommendation to resolve the dispute or to expedite the hearing by consent order; or
(4) Scheduling, with appropriate notice, for contested case hearing.

The majority of the Board must approve all recommendations under Subparagraph (1), (2), and (3) of this Paragraph. Each Board member who is designated to serve in this capacity with regard to a party or parties' matter, whether the Board member actually meets with the individual or not, may participate in Board discussions concerning any recommendations made but may not vote upon the recommendation. The Board member or members who participated in the informal conferences shall be disqualified from hearing any contested case when the matter designated for informal resolution is any part of the subject matter of the contested case.
(b) The Board and the party or parties may agree to simplify the hearing by stipulation, or any other method provided by G.S. 150B-41(c).

History Note: Authority G.S. 90-356; 150B-41;
Eff. January 1, 2023.

21 NCAC 17 .0510 INFORMAL RESOLUTION
(a) Informal disposition may be made of a dispute, contested case, or an issue in a contested case by any method specified in G.S. 150B-41(c) during the hearing of a contested case.
(b) All recommendations of dismissal must be approved by a majority of the Board.
(c) All matters contained in a consent order, which disposes of a dispute, must be agreed to by the party or parties, and approved by a majority of the Board.

History Note: Authority G.S. 90-356; 150B-41;
Eff. January 1, 2023.

21 NCAC 17 .0511 DISQUALIFICATION OF BOARD MEMBERS
(a) Self-disqualification. If for any reason a Board member determines that personal bias or other factors render that member unable to hear a contested case and perform all duties in an impartial manner, that Board member shall voluntarily decline to participate in the hearing or decision.
(b) Petition for Disqualification. If for any reason any party in a contested case believes that a Board member is personally biased or otherwise unable to hear a contested case and perform all duties in an impartial manner, the party may file a sworn, notarized affidavit with the Board. The title of such affidavit shall bear the notation: "AFFIDAVIT OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF (name of case)."
(c) Contents of Affidavit. The affidavit must state all facts the party deems to be relevant to the disqualification of the Board member.
(d) Timeliness and Effect of Affidavit. An affidavit of disqualification shall be considered timely if filed 10 days before commencement of the hearing.
(e) A party may file and serve a motion for disqualification less than ten days before or during a hearing only when the motion is based on newly discovered evidence that by due diligence could not have been discovered in time to file a timely motion. Under these circumstances, the hearing shall continue with the challenged Board member sitting. Petitioner shall have the opportunity to present evidence supporting their petition, and the petition and any evidence relative thereto presented at the hearing shall be made a part of the record. The Board, before rendering its final decision, shall decide whether the evidence justifies disqualification. The decision about the disqualification of a Board member shall be made by the other Board members who are not the subject of the disqualification. The Board is not required to grant a new hearing if a Board member is disqualified during the course of a hearing.
(f) The presiding officer, in their discretion, may determine the method of resolving the motion for disqualification under G.S. 150B-40. This may include the authority to direct that the Board's Executive Director oversee an investigation of the allegations and report the findings to the Board.
(g) In the event of disqualification, the disqualified member shall not participate in further deliberation or decision of the case but may be called on to furnish information to the other members of the Board.
(h) If four or more members of the Board are disqualified pursuant to this Rule, the Board shall petition the Office of Administrative Hearings to appoint an administrative law judge to hear the contested case pursuant to G.S. 150B-40(e).

History Note: Authority G.S. 90-356; 150B-40;
Eff. January 1, 2023.

21 NCAC 17 .0512 SUBPOENAS
(a) A party shall file and serve a request for a subpoena, attaching a proposed subpoena. The Board may issue the subpoena in accordance with G.S. 150B-39(c). Issued subpoenas must be

signed by the Presiding Officer, the Board's Executive Director, the Board's legal counsel, or a Board staff member designated by the Executive Director.
(b) Subpoenas shall be served as permitted by Rule 45 of the North Carolina Rules of Civil Procedure, as set forth in G.S. 1A-1.
(c) After service of the subpoena, the party serving the subpoena shall file and serve sworn proof of the method of service, demonstrating compliance with G.S. 150B-39(c).
(d) G.S. 150B-39(c) governs the recipients' duties in responding to subpoenas. A party to the case or person subject to the subpoena may object to a subpoena. Any objection to a subpoena shall be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board. Motions to override an objection or quash or modify a subpoena shall be filed in accordance with G.S. 150B-39(c). The Board shall hear and rule on motions to override an objection or quash or modify a subpoena as provided in G.S. 150B-39(c).

History Note: Authority G.S. 90-356; 150B-39;
Eff. January 1, 2023.

21 NCAC 17 .0513 WITNESSES
All testimony at the hearing shall be under oath or affirmation and shall be recorded. The presiding officer may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

History Note: Authority G.S. 90-356; 150B-42;
Eff. January 1, 2023.

21 NCAC 17 .0514 FINAL DECISION
In a contested case, the Board shall issue a final agency decision in compliance with G.S. 150B-42. To obtain judicial review, the person seeking review must file a petition with the court in accordance with the provisions of G.S. 150B-45.

History Note: Authority G.S. 90-356; 150B-42; 150B-45;
Eff. January 1, 2023.

21 NCAC 17 .0515 PROPOSALS FOR DECISION
(a) When an administrative law judge conducts a hearing pursuant to G.S. 150B-40(e), a "proposal for decision" shall be rendered. The parties may file written exceptions to this "proposal for decision" and submit their own proposed findings of fact and conclusions of law. The exceptions and alternative proposals must be filed within 10 days after the party has received the "proposal for decision" as drafted by the administrative law judge.
(b) Any exceptions to the procedure during the hearing, the handling of the hearing by the administrative law judge, rulings on evidence, or any other matter must be written and refer specifically to pages of the record or otherwise precisely identify the occurrence to which exception is taken. The exceptions and alternative proposals must be filed with the Board within 10 days of the receipt of the proposal for decision. The written exceptions shall bear the notation: "EXCEPTIONS TO THE PROCEEDINGS IN THE CASE OF (name of case)."
(c) Any party may present oral argument to the Board upon request. The request must be included with the written exceptions.
(d) Upon receipt of request for further oral argument, notice shall be issued promptly to all parties designating the time and place for such oral argument.
(e) Giving due consideration to the proposal for decision and the exceptions and arguments of the parties, the Board may adopt the proposal for decision or may modify it as the Board deems necessary. The decision rendered shall be a part of the record and a copy thereof given to all parties. The decision as adopted or modified becomes the "final agency decision" for the right to judicial review. Said decision shall be rendered by the Board within 60 days of the next regularly scheduled meeting following the oral arguments, if any. If there are no oral arguments presented, the decision shall be rendered within 60 days of the next regularly scheduled Board meeting following receipt of the written exceptions and alternative proposals.

History Note: Authority G.S. 90-356; 150B-40;
Eff. January 1, 2023.

21 NCAC 17 .0516 DISCIPLINARY COSTS
(a) The Board may recover against a licensee or license applicant, found to be in violation of the Act or rules adopted by the Board, the following costs of disciplinary actions incurred by the Board for the investigation, prosecution, hearing, or other administrative action:

(1) witness fees and statutorily-allowed expenses for witnesses;
(2) direct costs of the Board in taking or obtaining of depositions of witnesses;
(3) costs incurred by reason of administrative or staff time of employees of the Board directly attributable to the action leading to the final decision or order; and
(4) costs incurred by reason of legal fees charged to the Board directly attributable to the action leading to the final decision or order.

These costs may be assessed by the Board pursuant to final decisions or orders of the Board following an administrative hearing pursuant to Article 3A of Chapter 150B of the General Statutes. These costs may also be assessed against a licensee or license applicant for an investigation or action in the nature of disciplinary action, pursuant to the express consent by the person in a consent order approved by the Board.

History Note: Authority G.S. 90-356; 90-370;
Eff. Pending legislative review.

21 NCAC 17 .0517 DRUG TESTING AND INTERVENTION
(a) When information of suspected impairment of a licensee is received by the Board, the Board shall conduct an investigation and routine inquiries to determine the validity of the report.
(b) Licensees suspected of impairment may be required to submit to personal interviews if the investigation and inquiries indicate the report may be valid.
(c) The Board shall have authority to compel a licensee to submit to a mental or physical examination, including drug and blood alcohol testing, by physicians designated by the Board, if there is a reasonable suspicion that the licensee is consuming drugs or

alcohol to such an extent or with such frequency as to impair the licensee's ability to practice dietetics or nutrition. The cost of examination shall be borne by the licensee being examined. The failure of a dietitian/nutritionist or nutritionist to submit to such an examination when so directed constitutes an admission that the licensee is unable to deliver dietetics or nutrition services with reasonable skill and safety, upon which a default and a final order may be entered without the taking of testimony or presentation of evidence, unless the failure was due to circumstances beyond the licensee's control. A licensee affected under this Paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that the licensee can resume the competent delivery of dietetics or nutrition services with reasonable skill and safety. Neither the record of the proceedings nor any order of the Board based solely on a licensee's failure to submit to an examination shall be deemed by the Board to constitute a conclusive determination that the licensee engaged in any particular conduct.

(d) Information received by the Board related to a mental or physical examination of a licensee conducted by a licensed health professional shall remain confidential as a medical record but shall be freely exchanged with the Board or its authorized agents, for the purposes of the investigation.

(e) Information gathered shall be used to determine whether the licensee is a chronic or persistent user of intoxicants, drugs, or narcotics to the extent that the same impairs their ability to practice dietetics or nutrition.

(f) The Board may make arrangements for a licensee with impairments to participate in intervention, treatment, and a monitoring program without disciplinary action.

History Note: Authority G.S. 90-356;
Eff. January 1, 2023.

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CHAPTER 34 – BOARD OF FUNERAL SERVICE

21 NCAC 34B .0408 CONTINUING EDUCATION PROGRAM

(a) For licensees required to complete continuing education ("CE") as a prerequisite to annual license renewal, the five hours of approved CE shall meet the following requirements:

(1) CE courses taken at the direction of the Board as memorialized in a consent order, final agency decision, or taken voluntarily by the licensee to resolve a pending disciplinary matter, shall not be credited toward CE hours needed for annual licensure renewal. If the Board requires licensees to take a particular required course or courses, the Board shall notify licensees no later than October 1 of the year preceding the calendar year in which the course(s) will be required.

(2) Licensees shall not receive credit toward completed CE hours for taking the same CE course within two years.

(b) A person who has received his or her license within the past 12 months and who currently holds an active license shall receive CE credit toward annual licensure renewal for any CE hours earned after that licensee's mortuary science college graduation provided that the CE hours were earned within the preceding 12 months.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5); 150B-41(c);
Eff. July 1, 2005;
Amended Eff. January 1, 2009;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017;
Amended Eff. January 1, 2023.

21 NCAC 34D .0202 PRENEED SALES LICENSE

(a) Individuals who hold either an active funeral director's license or an active funeral service license issued by the Board and who have taken three or more hours of continuing education on preneed statutes and rules taught by Board staff within the preceding three calendar years are eligible for initial licensure as a preneed sales license upon application by a funeral establishment holding an active preneed establishment permit, as set forth in Paragraph (d) of this Rule.

(b) Only individuals who hold an active preneed sales license issued by the Board or resident trainees in funeral service or funeral directing registered with the Board as allowed by 21 NCAC 34B .0103 are permitted to engage in the following preneed funeral planning activities:

(1) discuss with consumers written materials, including price lists and photographs, descriptive of the funeral services, funeral merchandise, the preneed funeral plan, or funeral contract being offered;

(2) explain the various types of funeral ceremonies and services and the qualities and characteristics of various kinds of funeral merchandise;

(3) sell, on a preneed basis, funeral services and merchandise;

(4) record, on any form or otherwise, specific items of funeral services and merchandise selected on a preneed basis;

(5) make funeral arrangements on a preneed basis; and

(6) sign preneed contracts; provided, however, that the resident trainee and his or her licensed supervisor comply with 21 NCAC 34B .0103(e) when doing so.

(c) No preneed sales license is required for the sale of an insurance policy for which no funeral establishment or its representative is listed as the beneficiary or assignee of said policy. In connection with such a sale, the salesperson shall not be deemed to have engaged in preneed funeral planning if the salesperson shows only price lists of funeral services and merchandise to permit a prospective purchaser to make an informed decision as to the amount of insurance desired.

(d) An applicant shall apply for, renew, or surrender a preneed sales license in accordance with the following provisions:

(1) A funeral establishment holding an active preneed establishment permit shall apply for, or renew, a preneed sales license by submitting the

following to the Board on behalf of the applicant for a preneed sales license:

(A) the applicant's name, address, email address, and telephone number;

(B) the applicant's funeral director's or funeral service license number;

(C) the name, address, and preneed establishment permit number of the preneed funeral establishment licensee or licensees on whose behalf the applicant will sell preneed funeral contracts;

(D) the applicant's employment or agency relationship with the preneed establishment licensee or licensees;

(E) the initial or renewal application fee required by 21 NCAC 34A .0201(c) for each preneed sales licensee;

(F) the date on which the applicant has taken the continuing education course required by Paragraph (a) of this Rule; and

(G) the applicant's signature and attestation that he or she has read and will comply with the statutes and rules governing the practice of preneed funeral service.

(2) Either the preneed sales licensee or the preneed funeral establishment on whose behalf the preneed sales licensee is engaged in preneed funeral planning activities may surrender a preneed sales license by submitting notification of such surrender in writing to the Board.

(e) If a preneed sales licensee proposes to engage in preneed funeral planning activities on behalf of multiple preneed funeral establishment licensees that are not wholly owned by or affiliated with common ownership, the preneed sales licensee shall submit the following to the Board:

(1) the date on which the preneed sales licensee will begin engaging in preneed funeral planning activities for multiple preneed funeral establishment licensees;

(2) the date on which the preneed sales licensee will stop engaging in preneed funeral planning activities for multiple preneed funeral establishment licensees, if known;

(3) the name, license number, and signature of the preneed sales licensee;

(4) the name and signature of the licensed manager of each preneed funeral establishment licensee for whom the preneed sales licensee will engage in preneed funeral planning activities; and

(5) an attestation from each of the individuals identified in Subparagraphs (3) and (4) of this Paragraph that:

(A) he or she consents to the preneed sales licensee engaging in preneed funeral planning activities on behalf of the identified preneed funeral establishment licensees; and

(B) the preneed sales licensee and the preneed funeral establishment licensee on whose behalf the preneed funeral planning activities are to be conducted shall comply with the statutes and rules governing preneed funeral planning activities.

(f) The Board shall issue to each preneed sales licensee a pocket card as certification of the preneed sales license. The preneed sales licensee shall carry the card while engaging in preneed funeral planning.

(g) The preneed sales licensee shall sign and affix his or her preneed sales license number to each preneed funeral contract, which he or she sells, in the presence of the purchaser of the contract at the time of sale.

History Note: Authority G.S. 90-210.25(a)(4); 90-210.60(8); 90-210.67(a),(c); 90-210.69(a), (c);
Eff. July 1, 1993;
Amended Eff. January 1, 1996; June 1, 1994;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017;
Amended Eff. January 1, 2023.

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CHAPTER 42 – BOARD OF EXAMINERS IN OPTOMETRY

21 NCAC 42A .0101 CONTACTING THE BOARD

The Board mailing address is 521 Yopp Rd., Suite 214 #444, Jacksonville, NC 28540. The Board's phone number is (910) 285-3160; its toll free number is (800) 426-4457 (in-state only); and its fax number is (910) 285-4546. The email address is info@ncoptometry.org and its website is www.ncoptometry.org.

History Note: Authority G.S. 90-117.5;
Eff. February 1, 1976;
Readopted Eff. May 30, 1978;
Amended Eff. October 1, 1994; April 1, 1993; June 1, 1989; September 30, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015;
Amended Eff. January 1, 2023.

This Section contains information for the meeting of the Rules Review Commission February 16, 2023 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

February 16, 2023	April 20, 2023
March 16, 2023	May 18, 2023

AGENDA
RULES REVIEW COMMISSION
Thursday, February 16, 2023, 9:00 A.M.
1711 New Hope Church Rd., Raleigh, NC 27609

I. Ethics reminder by the chair as set out in G.S. 138A-15(e)

II. Approval of the minutes from the last meeting

III. Follow-up matters
- A. Medical Care Commission - 10A NCAC 13B .3801, .3903, .4103, .4104, .4106, .4305, .4603, .4801, .4805, .5102, .5105, .5406, .5408, .5411 (Liebman)
- B. Medical Care Commission - 10A NCAC 13F .0904; 13G .0904 (Duke)
- C. Department of Public Safety - 14B NCAC 03 .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, .0409, .0410 (Liebman)
- D. Department of Environmental Quality - 15A NCAC 01E .0101, .0102, .0103, .0104, .0105, .0106, .0107, .0108, .0109, .0110, .0111, .0112, .0113, .0114, .0115 (Duke)
- E. Environmental Management Commission - 15A NCAC 02B .0208, .0212, .0214, .0215, .0216, .0218 (Duke)
- F. Environmental Management Commission - 15A NCAC 02E .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, .0409 (Duke)
- G. Environmental Management Commission - 15A NCAC 02H .1301, .1401, .1402, .1403, .1404, .1405 (Liebman)
- H. Coastal Resources Commission - 15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510; 07I .0406, .0506, .0508, .0511, .0702; 07J .0203, .0204, .0206, .0207, .0208, .0312 (Liebman)
- I. Coastal Resources Commission - 15A NCAC 07H .2305 (Duke)
- J. Coastal Resources Commission - 15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0701, .0703, .0704, .1001, .1002, .1101, .1102 (Peaslee)
- K. Wildlife Resources Commission - 15A NCAC 10F .0201 (Duke)
- L. TSERS and LGERS Board of Trustees 02A - 20 NCAC 02A .0101, .0102, .0103, .0104, .0201, .0202, .0301, .0302, .0303, .0401, .0503, .0504, .0505 (Liebman)

M. TSERS Board of Trustees 02B – 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, .1207 (Liebman)
N. LGERS Board of Trustees 02C - 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, .1506 (Liebman)
O. TSERS Board of Trustees 02F – 20 NCAC 02F .0101, .0104, .0107, .0108 (Duke)
P. TSERS and LGERS Board of Trustees 02L, 02M - 20 NCAC 02L .0101, .0103, .0202, .0302; 02M .0101, .0102, .0104, .0201, .0202, .0206, .0301, .0302, .0303, .0304, .0305, .0307 (Duke)
Q. LGERS Board of Trustees 02N - 20 NCAC 02N .0106, .0108, .0208, .0215, .0218, .0219 (Duke)
R. Board of Examiners for Engineers and Surveyors - 21 NCAC 56 .0303, .0601, .0608, .1702, .1703, .1704, .1705, .1707, .1713 (Peaslee)

IV. Review of Filings (Permanent Rules) for rules filed between December 21, 2022 through January 20, 2023
- Department of Labor (Peaslee)
- Environmental Management Commission (Duke)
- State Board of Education (Liebman)
- Board of Examiners of Electrical Contractors (Ascher)
- Board of Examiners in Optometry (Duke)
- Board of Pharmacy (Peaslee)
- Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors (Ascher)
- Building Code Council (Liebman)

V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting

VI. Existing Rules Review

VII. Commission Business
- Next meeting: March 16, 2023

Commission Review
Log of Permanent Rule Filings
December 21, 2022 through January 20, 2023

LABOR, DEPARTMENT OF

The rules in Chapter 18 concern job listing services.

Introduction Repeal*	13	NCAC	18	.0101
Definitions Repeal*	13	NCAC	18	.0102
Licensing Procedures Repeal*	13	NCAC	18	.0103
Surety Bonds Repeal*	13	NCAC	18	.0104
Contracts Repeal*	13	NCAC	18	.0105
Records Repeal*	13	NCAC	18	.0106
Advertising Repeal*	13	NCAC	18	.0107
Prohibited Acts Repeal*	13	NCAC	18	.0108

Review of Job Listing Services 13 NCAC 18 .0109
Repeal*

Penalty 13 NCAC 18 .0110
Repeal*

ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Subchapter 2H concern procedures for permits: approvals including point source discharges to the surface waters (.0100); waste not discharged to surface waters (.0200); coastal waste treatment disposal (.0400); water quality certification (.0500); laboratory certification (.0800); local pretreatment programs (.0900); stormwater management (.1000); biological laboratory certification (.1100); special orders (.1200); discharges to isolated wetlands and isolated waters (.1300); and discharges to federally non-jurisdictional wetlands and federally non-jurisdictional classified surface waters (.1400).

Parameters for Which Certification May be Requested 15A NCAC 02H .0804
Amend*

EDUCATION, STATE BOARD OF

The rules in Subchapter 6E concern students including attendance (.0100); school athletics and sports medicine (.0200); and driver training (.0300);

Interscholastic Athletes and Administering Organizations ... 16 NCAC 06E .0204
Amend*

ELECTRICAL CONTRACTORS, BOARD OF EXAMINERS OF

The rules in Chapter 18B are from the Board of Electrical Contractors including general provisions (.0100); examinations and qualifications (.0200); terms and definitions applicable to licensing (.0300); licensing requirements (.0400); reciprocal licensing agreements with other states (.0700); special restricted licenses (.0800); violations and contested case hearings (.0900); forms, certificates, and publications of the board (.1000); and continuing education courses and requirements (.1100).

Requirements for All Examination Applicants 21 NCAC 18B .0201
Amend*

Alternative Examination 21 NCAC 18B .0212
Adopt*

Bidding Projects Pursuant to G.S. 87-1.1 21 NCAC 18B .0308
Adopt*

OPTOMETRY, BOARD OF EXAMINERS IN

The rules in Subchapter 42B concern license to practice optometry including license by examination (.0100); responsibility to supply information (.0200); and professional corporations and limited liability companies (.0300).

Approved Schools of Optometry 21 NCAC 42B .0101
Amend*

Failure to Meet Continuing Education Requirement 21 NCAC 42B .0303
Amend*

The rules in Subchapter 42D concern optometric assistants and technicians.

Definitions 21 NCAC 42D .0101
Amend*

Function 21 NCAC 42D .0102
Amend*

The rules in Subchapter 42M concern preceptorships.

Definitions Amend*	21	NCAC	42M	.0101
Termination Amend*	21	NCAC	42M	.0106

PHARMACY, BOARD OF

The rules in Chapter 46 cover organization of the board (.1200); general definitions (.1300); hospitals and other health facilities (.1400); admission requirements and examinations (.1500); licenses and permits (.1600); drugs dispensed by nurse and physician assistants (.1700); prescriptions (.1800); forms (.1900); administrative provisions (.2000); elections (.2100); continuing education (.2200); prescription information and records (.2300); dispensing in health departments (.2400); miscellaneous provisions (.2500); devices (.2600); nuclear pharmacy (.2700); compounding (.2800); product selection (.2900); disposal of unwanted drugs (.3000); clinical pharmacist practitioner (.3100); impaired pharmacist peer review program (.3200); and registry of pharmacist technicians (.3300).

COVID-19 Drug Preservation Rule Repeal*	21	NCAC	46	.1819

PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS, BOARD OF EXAMINERS OF

The rules in Chapter 50 are from the Plumbing, Heating and Fire Sprinkler Contractors including rules about organization (.0100); forms (.0200); examinations (.0300); general procedures (.0400); policy statements and interpretative rules (.0500); contested cases (.1000); fees (.1100); petitions for rules (.1200); declaratory rulings (.1300); and continuing education (.1400).

Use of License Amend*	21	NCAC	50	.0403
Proposal, Bid, Estimate, Performance Under G.S. 87-1.1 Adopt*	21	NCAC	50	.0415
Residential Fire Sprinkler Design Contractor License Amend*	21	NCAC	50	.0519
Examination Fees Amend*	21	NCAC	50	.1101

BUILDING CODE COUNCIL

2018 NC Fire Code/One-or-Two-Family Dwelling Residential. Amend*	Section D107.1
2018 NC Fire Code/Remoteness Amend*	Section D107.2
2018 NC Fire Code Amend*	Sections 510.4.2, 510.5, 510.5.4, and Chapter 80
2018 NC Plumbing Code/Water Service Pipe Amend*	Table 605.3
2018 NC Residential Code/Water Service Pipe Amend*	Table P2906.4
2020 NC Electrical Code/Definitions Amend*	Article 100