NORTH CAROLINA REGISTER

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March 1, 2023

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PUBLISHED BY
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Contact List for Rulemaking Questions or Concerns

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

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

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Fiscal Notes & Economic Analysis

Office of State Budget and Management
116 West Jones Street
Raleigh, North Carolina 27603-8005
Contact: Julie Ventaloro, Economic Analyst — osbmruleanalysis@osbm.nc.gov — 984-236-0694

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

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

Legislative Process Concerning Rulemaking

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

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

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.

Notice of Application for a new Innovative Approval of a Wastewater System for On-site Subsurface Use

Pursuant to NCGS 130A-343(g), the North Carolina Department of Health and Human Services (DHHS) shall publish a Notice in the NC Register that a manufacturer has submitted a request for approval of a modification of a wastewater system, component, or device for on-site subsurface use. The following application has been submitted to DHHS:

Application by: Steve Barry
AQWA Inc.
1507 Drexel St
Wilson, NC 27893

For: Innovative Approval for AQWA Drip Irrigation Systems

DHHS Contact: Jon Fowlkes
1-919-707-5875
Fax: 919-845-3973
jon.fowlkes@dhhs.nc.gov

These applications may be reviewed by contacting the applicant or Jon Fowlkes, Branch Head, at 5605 Six Forks Rd, Raleigh, NC, On-Site Water Protection Branch, Environmental Health Section, Division of Public Health. Draft proposed innovative approvals and proposed final action on the application by DHHS can be viewed on the On-Site Water Protection Branch web site: http://ehs.ncpublichealth.com/oswp/.

Written public comments may be submitted to DHHS within 30 days of the date of the Notice publication in the North Carolina Register. All written comments should be submitted to Mr. Jon Fowlkes, Branch Head, On-site Water Protection Branch, 1642 Mail Service Center, Raleigh, NC 27699-1642, jon.fowlkes@dhhs.nc.gov, or fax 919-845-3973. Written comments received by DHHS in accordance with this Notice will be taken into consideration before a final agency decision is made on the innovative subsurface wastewater system application.

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: JT Kustoms LLC

Applicant's Address: 4738 Pleasant Garden Rd. Pleasant Garden, NC 27313

Application Date: 12/13/2022

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

James Thompson President

Tonya Thompson Vice President

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 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice *is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02B .0305.*

Link to agency website pursuant to G.S. 150B-19.1(c): *https://deq.nc.gov/public-notices-hearings*

Proposed Effective Date: *September 1, 2023*

Public Hearing:
Date: *April 27, 2023*
Time: *6:00 p.m.*
Location: *Caldwell Community College & Technical Institute Watauga Campus, 460 Community College Drive, Building W460-Room 135, Boone NC 28607*

Reason for Proposed Action: *The Environmental Management Commission proposes to amend 15A NCAC 02B .0305 for the reclassification of the following surface waters to add the High Quality Waters supplemental classification: Craborchard Creek, Little Beaverdam Creek, Stone Mountain Branch, and West Fork Rube Creek. Further the proposed rule amendments would reclassify the following surface waters to add the Outstanding Resource Waters supplemental classification: Dutch Creek, Green Ridge Branch, Harrison Branch, Laurel Creek, Shawneehaw Creek, South Fork Ellison Branch, and Upper Laurel Creek. All the affected surface waters are in Watauga County, NC except for Green Ridge Branch and Shawneehaw Creek. Portions of Green Ridge Branch and Shawneehaw Creek are in Watauga County and Avery County, NC. The High Quality Waters supplemental classification is intended for waters with excellent water quality, whereas, the purpose of the Outstanding Resource Waters supplemental classification is to protect waters that have excellent water quality and at least one outstanding resource value (recreational and/or ecological) recognized by the Environmental Management Commission. A 2020 NC Division of Water Resources water quality study showed that all of these surface waters have excellent water quality and seven of the waters exhibit at least one outstanding resource value (e.g. the water is rare species habitat; the water is a component of a state park; and/or the water is a designated Public Mountain Trout Water). Under the Clean Water Act, the US Environmental Protection Agency requires the protection and maintenance of surface waters exceeding the quality beyond what is necessary to support its classified uses. If reclassified, restrictions associated with new development and new and expanded wastewater discharges would apply. There are no permitted or planned wastewater discharges and no known planned new developments that would be impacted by the proposal. Lastly, a regulatory impact analysis for these reclassification proposals, which has been approved by OSBM, shows a one-time cost of $500 to the state associated with updating the surface water classifications map.*

Comments may be submitted to: *Adriene Weaver, DEQ-DWR, 1611 Mail Service Center, Raleigh, NC 27699-1611; email adriene.weaver@ncdenr.gov*

Comment period ends: *May 1, 2023*

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

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

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

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

15A NCAC 02B .0305 WATAUGA RIVER BASIN

(a) Classifications assigned to the waters within the Watauga River Basin are set forth in the Watauga River Basin Classification Schedule, which may be inspected at the following places:

(1) the Internet at https://deq.nc.gov/about/divisions/water-

resources/water-planning/classification-standards/river-basin-classification; and

(2) the following offices of the North Carolina Department of Environmental Quality:

(A) Asheville Regional Office
2090 US Highway 70
Swannanoa, North Carolina;

(B) Winston-Salem Regional Office
450 West Hanes Mill Road
Winston-Salem, North Carolina; and

(C) Division of Water Resources
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) Unnamed streams entering the State of Tennessee are classified "C."

(c) The Watauga River Basin Classification Schedule was amended effective:

(1) August 12, 1979;
(2) February 1, 1986;
(3) October 1, 1987;
(4) August 1, 1989;
(5) August 1, 1990;
(6) December 1, 1990;
(7) April 1, 1992;
(8) August 3, 1992;
(9) February 1, 1993;
(10) April 1, 1994;
(11) August 1, 1998;
(12) November 1, ~~2007.~~ 2007; and
(13) September 1, 2023.

(d) The Watauga River Basin Classification Schedule was amended effective July 1, 1989 as follows:

(1) Dutch Creek (Index No. 8-11) was reclassified from Class C-trout to Class B-trout.
(2) Pond Creek (Index No. 8-20-2) from water supply intake (located just above Tamarack Road) to Beech Creek and all tributary waters were reclassified from Class WS-III to C.

(e) The Watauga River Basin Classification Schedule was amended effective December 1, 1990 with the reclassification of the Watauga River from the US Highway 321 bridge to the North Carolina/Tennessee state line from Class C to Class B.

(f) The Watauga River Basin Classification Schedule was amended effective April 1, 1992 with the reclassification of Pond Creek from Classes WS-III and C to Classes WS-III Trout and C Trout.

(g) The Watauga River Basin Classification Schedule was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules (15A NCAC 2B .0100, .0200 and .0300), which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(h) The Watauga River Basin Classification Schedule was amended effective February 1, 1993 with the reclassification of Boone Fork (Index No. 8-7) and all tributary waters from Classes C Tr HQW and C HQW to Classes C Tr ORW and C ORW.

(i) The Watauga River Basin Classification Schedule was amended effective April 1, 1994 with the reclassification of the Elk River from Peavine Branch to the North Carolina/Tennessee state line [Index No. 8-22-(3)] from Class C Tr to Class B Tr.

(j) The Watauga River Basin Classification Schedule was amended effective August 1, 1998 with the reclassification of East Fork Pond Creek from its source to the backwater of Santis Lake, [Index No. 8-20-2-1.5] from Class WS-II Tr to Class WS-III Tr; the reclassification of West Fork Pond Creek (Santis Lake) [Index No. 8-20-2-1-(2)] from the backwaters of Santis Lake to Pond Creek from WS-II Tr CA to WS-III Tr CA; and the reclassification of the connecting stream of Lake Coffey [Index No. 8-20-2-2] from the dam at Lake Coffey to Pond Creek from WS-II Tr CA to C Tr.

(k) The Watauga River Basin Classification Schedule was amended effective November 1, 2007 with the reclassification of the Beech Creek Bog near Beech Creek [Index No. 8-20] to Class WL UWL. The North Carolina Division of Water Resources maintains a Geographic Information Systems data layer of the UWL.

(l) The Watauga River Basin Classification Schedule was amended effective November 1, 2023 with the reclassification of the following waterbodies:

(1) Green Ridge Branch (Index No. 8-3) and all tributary waters from source to Watauga River from Class C to Class C ORW.
(2) Harrison Branch (Index No. 8-10-1) and all tributary waters from source to Laurel Fork from Class C to Class C ORW.
(3) The portion of Upper Laurel Fork (Index No. 8-10-3) and all tributary waters from source to SR 103 from Class C to Class C ORW.
(4) The portion of Dutch Creek [Index No. 8-12-(0.5)] and all tributary waters from source to Pigeonroost Creek from Class B Tr to Class B Tr ORW.
(5) Craborchard Creek (Index No. 8-12-3) and all tributary waters from source to Dutch Creek from Class C Tr to Class C Tr HQW.
(6) The portion of South Fork Ellison Branch (Index No. 8-15-1-2) and all tributary waters from Source to U.S. 421 from Class C to Class C ORW.
(7) Laurel Creek (Index No 8-17) and all tributary waters from source to Watauga River from Class C Tr to Class C Tr ORW, including Worley Creek (Index No. 8-17-1) from source to Laurel Creek from Class C Tr to Class C Tr ORW and Spice Branch (Creek)(Index No 8-17-2) from source to Laurel Creek from Class C to Class C ORW.
(8) The portion of Little Beaverdam Creek (Index No. 8-19-2) and all tributary waters from source

to Fork Branch from Class C Tr to Class C Tr HQW, including Jones Branch (Index No. 8-19-2-1) from source to Little Beaverdam Creek from Class C to Class C HQW.

(9) West Fork Rube Creek (Index No. 8-19-3-2) and all tributary waters from source to Rube Creek from Class C to Class C HQW.

(10) The portion of Stone Mountain Branch (Index No. 8-21) and all tributary waters from source to an unnamed tributary located approximately350 feet southwest of the intersection of SR 1206 and SR 1201 from Class C to Class C HQW.

(11) Shawneehaw Creek (Index No. 8-22-7) and all tributary waters from source to Mill Pond, Elk River from Class C Tr to Class C Tr ORW.

Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

* * * * * * * * * * * * * * * * * * * *

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02D .0503, .0506, .0532, .0613, .0614, .0918, .0926-.0928, .0932, .0961, .0964, .1403, .1708; 02Q .0102, .0706 and repeal the rule cited as 15A NCAC 02D .0960.*

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

Proposed Effective Date: *September 1, 2023*

Public Hearing:
Date: *April 13, 2023*
Time: *6:00 p.m.*
Location:
1st Floor Training Room (#1210), DEQ Green Square Office Building, 217 West Jones St., Raleigh, NC 27603
or virtually using Cisco WebEx, Digital Hearing Link: https://bit.ly/3DQ3EWT
Event password: NCDAQ (62327 from phones)
Audio conference: To receive a call back, provide your phone number when you join the event, or call the number below and enter the access code. US TOLL +1-415-655-0003,
Access code: 2429 861 0784
If you wish to speak at the digital public hearing, you must register, provide the required information, and follow instructions on the following link: https://forms.office.com/g/DPUQnMmewJ
**For instructions on ways to join the public hearing, please refer to the following link: https://files.nc.gov/ncdeq/Air%20Quality/rules/hearing/instructions-on-ways-to-join-webex.pdf*
https://www.webex.com/test-meeting.html
**If you have technical difficulties, the following automated voicemail has been set up to receive your verbal comments: 919-707-8430*

Reason for Proposed Action: *To receive comments on the proposed rule changes to Part B Readoption Cleanup, and accompanying approved regulatory impact analysis. The revisions proposed in this rulemaking are primarily to provide clarifications requested by internal and external stakeholders related to changes proposed or adopted during the readoption process. These corrections were evaluated for impact and the analysis concludes there will be no change in burden to public or private stakeholders. On January 12, 2023, the Environmental Management Commission approved proceeding to public comment on the proposed amendments to 15A NCAC 02Q .0102, .0706, and 15A NCAC 02D .0503, .0506, .0532, .0613, .0614, .0918, .0926, .0927, .0928, .0932, .0961, .0964, .1403, .1708 and the proposed repeal of 15A NCAC 02D .0960. The text of the rules and regulatory impact analysis are available on the DAQ website: http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process.*

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

Comment period ends: *May 1, 2023*

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

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

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

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0500 - EMISSION CONTROL STANDARDS

15A NCAC 02D .0503 PARTICULATES FROM FUEL BURNING INDIRECT HEAT EXCHANGERS

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

(1) "Functionally dependent" means that structures, buildings, or equipment are interconnected through common process streams, supply lines, flues, or stacks.

(2) "Indirect heat exchanger" means any equipment used for the alteration of the temperature of one fluid by the use of another fluid in which the two fluids are separated by an impervious surface such that there is no mixing of the two fluids.

(3) "Plant site" means any single or collection of structures, buildings, facilities, equipment, installations, or operations that:

(A) are located on one or more adjacent properties;

(B) are ~~in~~ under common legal control; and

(C) are functionally dependent in their operations.

(b) The definition contained in Subparagraph (a)(3) of this Rule does not affect the calculation of the allowable emission rate of any indirect heat exchanger permitted prior to April 1, 1999.

(c) The emissions of particulate matter from the combustion of a fuel that are discharged from any stack or chimney into the atmosphere shall not exceed:

Maximum Heat Input In Million Btu/Hour	Allowable Emission Limit For Particulate Matter In ~~In Lb/Million~~ lb/Million Btu
Up to and Including 10	0.60
100	0.33
1,000	0.18
10,000 and Greater	0.10

For a heat input between any two consecutive heat inputs stated in the table set forth in this Paragraph, the allowable emissions of particulate matter shall be calculated by the equation $E= 1.090*Q^{-0.2594}$. "E" equals the allowable emission limit for particulate matter in lb/million Btu. "Q" equals the maximum heat input in million Btu/hour.

(d) This Rule applies to installations in which fuel is burned for the purpose of producing heat or power by indirect heat transfer. Fuels include those such as coal, coke, lignite, peat, natural gas, and fuel oils, but exclude wood and refuse not burned as a fuel. When any refuse, products, or by-products of a manufacturing process are burned as a fuel rather than refuse, or in conjunction with any fuel, this allowable emission limit shall apply.

(e) For the purpose of this Rule, the maximum heat input shall be the total heat content of all fuels which are burned in a fuel burning indirect heat exchanger, of which the combustion products are emitted through a stack or stacks. The sum of maximum heat input of all fuel burning indirect heat exchangers at a plant site which are in operation, under construction, or permitted pursuant to 15A NCAC 02Q, shall be considered as the total heat input for the purpose of determining the allowable emission limit for particulate matter for each fuel burning indirect heat exchanger. Fuel burning indirect heat exchangers constructed or permitted after February 1, 1983, shall not change the allowable emission limit of any fuel burning indirect heat exchanger whose allowable emission limit has previously been set. The removal of a fuel burning indirect heat exchanger shall not change the allowable emission limit of any fuel burning indirect heat exchanger whose allowable emission limit has previously been established. However, for any fuel burning indirect heat exchanger constructed after, or in conjunction with, the removal of another fuel burning indirect heat exchanger at the plant site, the maximum heat input of the removed fuel burning indirect heat exchanger shall no longer be considered in the determination of the allowable emission limit of any fuel burning indirect heat exchanger constructed after or in conjunction with the removal. For the purposes of this Paragraph, refuse not burned as a fuel and wood shall not be considered a fuel. For residential facilities or institutions, such as military and educational, whose primary fuel burning capacity is for comfort heat, only those fuel burning indirect heat exchangers located in the same power plant or building or otherwise physically interconnected, such as common flues, steam, or power distribution line, shall be used to determine the total heat input.

(f) The emission limit for fuel burning equipment that burns both wood and other fuels in combination, or for wood and other fuel burning equipment that is operated such that emissions are measured on a combined basis, shall be calculated by the equation $Ec = [(EW)(Qw) + (Eo)(Qo)] /Qt$.

(1) Ec = the emission limit for combination or combined emission source(s) in lb/million Btu.

(2) Ew = plant site emission limit for wood only as determined pursuant to 15A NCAC 02D .0504 in lb/million Btu.

(3) Eo = the plant site emission limit for other fuels only as determined by Paragraphs (a), (b) and (c) of this Rule in lb/million Btu.

(4) Qw = the actual wood heat input to the combination or combined emission source(s) in Btu/hr.

(5) Qo = the actual other fuels heat input to the combination or combined emission source(s) in Btu/hr.

(6) Qt = Qw + Qo and is the actual total heat input to combination or combined emission source(s) in Btu/hr.

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

15A NCAC 02D .0506 PARTICULATES FROM HOT MIX ASPHALT PLANTS

(a) The allowable emission rate for particulate matter resulting from the operation of a hot mix asphalt plant that are discharged from any stack or chimney into the atmosphere shall not exceed the level calculated with the equation

$$E = 4.9445(P)^{0.4376}$$

calculated to three significant figures, for process rates less than 300 tons per hour, where "E" equals the maximum allowable emission rate for particulate matter in pounds per hour and "P"

equals the process rate in tons per hour. The allowable emission rate shall be 60.0 pounds per hour for process rates equal to or greater than 300 tons per hour.
(b) Visible emissions from stacks or vents at a hot mix asphalt plant shall not exceed 20 percent opacity when averaged over a six-minute period.
(c) All hot mix asphalt batch plants shall be equipped with a scavenger process dust control system for the drying, conveying, classifying, and mixing equipment. The scavenger process dust control system shall exhaust through a stack or vent and shall be operated and maintained in such a manner as to comply with Paragraphs (a) and (b) of this Rule.
(d) Fugitive non-process dust emissions shall be controlled by 15A NCAC 02D .0540.
(e) Fugitive emissions for sources at a hot mix asphalt plant not covered by Paragraphs (a) through (d) of this Rule shall not exceed 20 percent opacity averaged over six minutes.

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

15A NCAC 02D .0532 SOURCES CONTRIBUTING TO AN AMBIENT VIOLATION

(a) This Rule applies to new major stationary sources and major modifications to which 15A NCAC 02D .0531 does not apply and which would contribute to a violation of a national ambient air quality standard but which would not cause a new violation.
(b) For the purpose of this Rule the definitions contained in Section II.A. of Appendix S of 40 CFR Part 51 shall apply.
(c) The Rule is not applicable to:
- (1) emission of pollutants for which the area in which the new or modified source is located is designated as nonattainment;
- (2) emission of pollutants for which the source or modification is not major;
- (3) emission of pollutants other than sulfur dioxide, PM2.5, nitrogen oxides, ~~and~~ carbon ~~monoxide;~~ monoxide, and PM10;
- (4) a new or modified source whose impact will not increase more than:
  - (A) 1.0 $\mu g/m^3$ of SO_2 on an annual basis;
  - (B) 5 $\mu g/m^3$ of SO_2 on a 24-hour basis;
  - (C) 25 $\mu g/m^3$ of SO_2 on a 3-hour basis;
  - (D) 0.3 $\mu g/m^3$ of PM2.5 on an annual basis;
  - (E) 1.2 $\mu g/m^3$ of PM2.5 on a 24-hour basis;
  - (F) 1.0 $\mu g/m^3$ of NO_2 on an annual basis;
  - (G) 0.5 mg/m^3 of carbon monoxide on an 8-hour basis;
  - (H) 2 mg/m^3 of carbon monoxide on a one-hour basis;
  - (I) 1.0 $\mu g/m^3$ of PM10 on an annual basis; or
  - (J) 5 $\mu g/m^3$ of PM10 on a 24-hour basis

  at any locality that does not meet a national ambient air quality standard;
- (5) sources which are not major unless secondary emissions are included in calculating the potential to emit;
- (6) sources which are exempted by the provision in Section II.F. of Appendix S of 40 CFR Part 51;
- (7) temporary emission sources which will be relocated within two years; and
- (8) emissions resulting from the construction phase of the source.

(d) 15A NCAC 02Q .0102 is not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.
(e) To issue a permit to a new or modified source to which this Rule applies, the Director shall determine that the source will meet the following conditions:
- (1) The sources will emit the nonattainment pollutant at a rate no more than the lowest achievable emission rate;
- (2) The owner or operator of the proposed new or modified source has demonstrated that all major stationary sources in the State that are owned or operated by this person (or any entity controlling, controlled by, or under common control with this person) are subject to emission limitations and are in compliance, or on a schedule for compliance which is federally enforceable or contained in a court decree, with all applicable emission limitations and standards of this Subchapter which EPA has authority to approve as elements of the North Carolina State Implementation Plan for Air Quality; and
- (3) The source will satisfy one of the following conditions:
  - (A) The source will comply with 15A NCAC 02D .0531(i) when the source is evaluated as if it were in the nonattainment area; or
  - (B) The source will have an air quality offset, i.e., the applicant will have caused an air quality improvement in the locality where the national ambient air quality standard is not met by causing reductions in impacts of other sources greater than any additional impact caused by the source for which the application is being made. The emissions reductions creating the air quality offset shall be placed as a condition in the permit for the source reducing emissions. The requirements of this Part may be partially waived if the source is a resource recovery facility burning municipal solid waste, the source must switch fuels due to lack of adequate fuel supplies, or the source is required to be modified as a result of EPA regulations and no exemption from such regulations is available and if:

(i) the permit applicant demonstrates that it made its best efforts to obtain sufficient air quality offsets to comply with this Part;
(ii) the applicant has secured all available air quality offsets; and
(iii) the applicant will continue to seek the necessary air quality offsets and apply them when they become available.

(f) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(g) The version of the Code of Federal Regulations incorporated in this Rule is that as of July 1, 2019, at https://www.govinfo.gov/content/pkg/CFR-2019-title40-vol2/pdf/CFR-2019-title40-vol2-part51-appS.pdf and does not include any subsequent amendments or editions to the referenced material. The publication may be accessed free of charge.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b); 150B-21.6.

SECTION .0600 - MONITORING: RECORDKEEPING: REPORTING

15A NCAC 02D .0613 QUALITY ASSURANCE PROGRAM

(a) Any owner or operator of a facility required to operate a monitoring device by this Subchapters 02D or 02Q of this Chapter shall develop and implement a quality assurance program for the monitoring device.

(b) The Director shall require the owner or operator of a facility required to operate a monitoring device by Subchapters 02D or 02Q of this Chapter to submit a description of the quality assurance program if:

(1) the maximum actual emission rate is more than 75 percent of the applicable emission standard;
(2) the facility has violated an emission standard or a permit condition; or
(3) the facility has failed to obtain quality assured data.

A description of the quality assurance program shall be submitted to the Director within 60 days upon receipt of request.

(c) Except for gaseous continuous emission monitoring systems, the quality assurance program required by Paragraph (a) or (b) of this Rule shall include, if applicable:

(1) procedures and frequencies for calibration;
(2) standards traceability;
(3) operational checks;
(4) maintenance;
(5) auditing;
(6) data validation; and
(7) a schedule for implementing the quality assurance program.

Continuous opacity monitoring systems may satisfy the requirements of Paragraph (a) of this Rule by complying with 40 CFR Part 51, Appendix M, Method 203, ~~as proposed in 57 FR 46114,~~ or 40 CFR Part 60, Appendix F, Procedure 3. Except for opacity monitors and gaseous continuous emission monitoring systems, a manufacturer's recommended quality assurance procedure may be used as a quality assurance program if it includes the applicable requirements in Subparagraphs (c)(1) through (c)(7) of this Paragraph.

(d) Owners or operators that operate continuous emission monitoring systems for a gaseous pollutant may satisfy the requirements of Paragraphs (a) or (b) of this Rule by developing and implementing a written quality assurance program containing information required by 40 CFR Part 60, Appendix F, Section 3, Quality Assurance Procedures.

(e) The owner or operator of a facility shall certify all opacity and gaseous continuous emission monitoring systems following applicable performance specifications in 40 CFR Part 60, Appendix B, within 60 days of monitor installation unless otherwise specified in permit or any other applicable rules. The owner or operator of a facility required to install an opacity or gaseous continuous emission monitoring ~~systems~~ system shall notify the Director at least 60 days before installation unless otherwise specified in permit or in 40 CFR Part 60, 61, 63, or 75. The notification shall include plans or schematic diagrams of the proposed monitor location.

(f) Quality assurance programs for ambient monitors shall comply with the requirements in 40 CFR Part 58.

(g) A description of the quality assurance program shall be available on-site for inspection within 30 days of monitor certification.

(h) The Director shall approve the quality assurance program within 30 days of submittal if he or she finds that the quality assurance program will assure that the precision and accuracy of the data for the pollutants being measured are within the design limits of the instruments being used. If the Director finds that the proposed quality assurance program does not meet the requirements of this Paragraph, he or she shall notify the owner or operator of the facility of any deficiencies in the proposed quality assurance program. The owner or operator shall have 30 days after receiving written notification from the Director to correct the deficiencies.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(4).

15A NCAC 02D .0614 COMPLIANCE ASSURANCE MONITORING

(a) General Applicability. Except as set forth in Paragraph (b) of this Rule, the requirements of this Paragraph shall apply to a pollutant-specific emissions unit at a facility required to obtain a permit pursuant to 15A NCAC 02Q .0500 if the unit:

(1) is subject to an emission limitation or standard for the applicable regulated air pollutant, or a surrogate thereof, other than an emission

limitation or standard that is exempt pursuant to Subparagraph (b)(1) of this Rule;

(2) uses a control device to achieve compliance with any such emission limitation or standard; and

(3) has potential pre-control device emissions of the applicable regulated air pollutant that are equal to or greater than 100 percent of the amount, in tons per year, required for a source to be classified as a major source. For purposes of this ~~Subparagraph,~~ Rule, "potential pre-control device emissions" means the same as "potential to emit" as defined in ~~15A NCAC 02Q .0103,~~ 40 CFR 64.1, except that emission reductions achieved by the applicable control device shall not be taken into account.

(b) The following exemptions to this Rule shall apply.

(1) Exempt emission limitations or standards. The requirements of this Rule shall not apply to any of the following emission limitations or standards:

(A) emission limitations or standards proposed by the Administrator of the Environmental Protection Agency after November 15, 1990, pursuant to section 111 or 112 of the federal Clean Air Act;

(B) stratospheric ozone protection requirements pursuant to Title VI of the federal Clean Air Act;

(C) Acid Rain Program requirements pursuant to sections 404, 405, 406, 407(a), 407(b), or 410 of the federal Clean Air Act;

(D) emission limitations or standards or other applicable requirements that apply solely under an emissions trading program approved under the rules of Subchapters 02D and 02Q of this Chapter and that are incorporated in a permit issued pursuant to 15A NCAC 02Q .0500;

(E) an emissions cap that is approved pursuant to the rules of Subchapters 02D and 02Q of this Chapter and incorporated in a permit issued pursuant to 15A NCAC 02Q .0500; or

(F) emission limitations or standards for which a permit issued pursuant to 15A NCAC 02Q .0500 specifies a continuous compliance determination method, as defined in 40 CFR 64.1. This exemption shall not apply if the applicable compliance method includes an assumed control device emission reduction factor that could be affected by the actual operation and maintenance of the control device, such as a surface coating line controlled by an incinerator for which continuous compliance is determined by calculating emissions on the basis of coating records and an assumed control device efficiency factor based on an initial performance test. In this example, 15A NCAC 02D .0614 would apply to the control device and capture system, but not to the remaining elements of the coating line, such as raw material usage.

(2) Exemption for backup utility power emissions units. The requirements of this Rule shall not apply to a utility unit, as defined in 40 CFR 72.2, that is municipally-owned if the owner or operator provides documentation in a permit application submitted pursuant to 15A NCAC 02Q .0500 that:

(A) the utility unit is exempt from all monitoring requirements in 40 CFR Part 75, including the appendices thereto;

(B) the utility unit is operated for the sole purpose of providing electricity during periods of peak electrical demand or emergency situations and will be operated consistent with that purpose throughout the permit term. The owner or operator shall provide historical operating data and relevant contractual obligations to document that this criterion is satisfied; and

(C) the actual emissions from the utility unit, based on the average annual emissions over the last three calendar years of operation, or such shorter time period that is available for units with fewer than three years of operation, are less than 50 tons per year and are expected to remain so.

(c) For the purposes of this Rule, the definitions in 40 CFR 64.1 shall apply with the following exceptions:

(1) "Applicable requirement" and "regulated air pollutant" shall have the same definition as in 15A NCAC 02Q .0103.

(2) "Part 70 or 71 permit application" means an application, or any supplement to a previously submitted application, submitted by the owner or operator to obtain a permit under 15A NCAC 02Q .0500.

(3) "Part 70 or 71 permit" means a permit issued under 15A NCAC 02Q .0500.

(4) "Permitting authority" means the Division of Air Quality.

(d) The owner or operator subject to the requirements of this rule shall comply with these requirements:

(1) 40 CFR 64.3, Monitoring Design Criteria;

(2) 40 CFR 64.4, Submittal Requirements;

(3) 40 CFR 64.5, Deadlines for Submittals;

(4) 40 CFR 64.7, Operation of Approved Monitoring; and
(5) 40 CFR 64.9, Reporting and Recordkeeping Requirements.

(e) The Division shall follow the procedures and requirements in 40 CFR Part 64.6, Approval of Monitoring, in reviewing and approving or disapproving monitoring plans and programs submitted under this Rule.

(f) Based on the result of a determination made pursuant to 40 CFR 64.7(d)(2), the Director may require the owner or operator to develop and implement a quality improvement plan. If a quality improvement plan is required, the quality improvement plan shall be developed and implemented according to the procedures and requirements of 40 CFR 64.8, Quality Improvement Plan (QIP) Requirements.

Authority G.S. 143-215.3(a)(3); 143-215.65; 143-215.66; 143-215.107(a)(4).

SECTION .0900 - VOLATILE ORGANIC COMPOUNDS

15A NCAC 02D .0918 CAN COATING

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

(1) "End sealing compound" means a synthetic rubber compound that is coated onto can ends and functions as a gasket when the end is assembled on the can.
(2) "Exterior base coating" means a coating applied to the exterior of a can to provide exterior protection to the metal and to provide background for the lithographic or printing operation.
(3) "Interior base coating" means a coating applied by roller coater or spray to the interior of a can to provide a protective lining between the can metal and product.
(4) "Interior body spray" means a coating sprayed on the interior of the can body to provide a protective film between the product and the can.
(5) "Overvarnish" means a coating applied directly over ink to reduce the coefficient of friction, to provide gloss, and to protect the finish against abrasion and corrosion.
(6) "Three-piece can side-seam spray" means a coating sprayed on the exterior and interior of a welded, cemented, or soldered seam to protect the exposed metal.
(7) "Two-piece can exterior end coating" means a coating applied by roller coating or spraying to the exterior end of a can to provide protection to the metal.

(b) This Rule applies to volatile organic compound emissions from coating applicators and ovens of sheet, can, or end coating lines involved in sheet exterior and interior basecoat and overvarnish; two-piece can interior body spray; two-piece spray or roll coat can exterior; and three-piece can side-seam spray and end sealing compound operations.

(c) Unless the exception in Paragraph (d) of this Rule applies, emissions of volatile organic compounds from any can coating line subject to this Rule shall not exceed:

(1) 4.5 pounds of volatile organic compounds per gallon of solids delivered to the coating applicator from sheet exterior and interior basecoat and overvarnish or two-piece can exterior basecoat and overvarnish operations;
(2) 9.8 pounds of volatile organic compounds per gallon of solids delivered to the coating applicator from two and three-piece can interior body spray and two-piece spray or roll coat can exterior end operations;
(3) 21.8 pounds of volatile organic compounds per gallon of solids delivered to the coating applicator ~~from a three-piece applicator from a three-piece can side-seam spray operations;~~ from either a three piece applicator or a three piece can side seam spray operations; or
(4) 7.4 pounds of volatile organic compounds per gallon of solids delivered to the coating applicator from end sealing compound operations.

(d) Any source that has controlled emissions pursuant to 15A NCAC 02D .0518(e) prior to July 1, 2000 and that has installed air pollution control equipment in accordance with an air quality permit in order to comply with this Rule before December 1, 1989 may comply with the limits contained in this Paragraph instead of those contained in Paragraph (c) of this Rule. Emissions of volatile organic compounds from any can coating line subject to this Rule shall not exceed:

(1) 2.8 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to the coating applicator from sheet exterior and interior basecoat and overvarnish or two-piece can exterior basecoat and overvarnish operations;
(2) 4.2 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to the coating applicator from two and three-piece can interior body spray and two-piece can spray or roll coat exterior end operations;
(3) 5.5 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to the coating applicator from a three-piece applicator from a three-piece can side-seam spray operations; or
(4) 3.7 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to the coating applicator from end sealing compound operations.

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

15A NCAC 02D .0926 BULK GASOLINE PLANTS

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

(1) "Average daily throughput" means annual throughput of gasoline divided by 312 days per year.
(2) "Bottom filling" means the filling of a cargo tank or stationary storage tank through an opening flush with the tank bottom.
(3) "Bulk gasoline plant" means a gasoline storage and distribution facility with an average daily throughput of less than 20,000 gallons of gasoline and that typically receives gasoline from bulk terminals by cargo tank transport, stores it in tanks, and subsequently dispenses it via account cargo tanks to farms, businesses, and service stations.
(4) "Bulk gasoline terminal" means a gasoline storage facility that typically receives gasoline from refineries primarily by pipeline, ship, or barge; delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by cargo tank; and has an average daily throughput of greater than or equal to 20,000 gallons of gasoline.
(5) "Cargo tank" means the storage vessels of freight trucks or trailers used to transport gasoline from sources of supply to stationary storage tanks of bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities, and gasoline service stations.
(6) "Gasoline" means any petroleum distillate having a Reid Vapor Pressure (RVP) of 4.0 psi or greater.
(7) "Incoming vapor balance system" means a combination of pipes or hoses that create a closed system between the vapor spaces of an unloading cargo tank and a receiving stationary storage tank such that vapors displaced from the receiving stationary storage tank are transferred to the cargo tank being unloaded.
(8) "Outgoing vapor balance system" means a combination of pipes or hoses that create a closed system between the vapor spaces of an unloading stationary storage tank and a receiving cargo tank such that vapors displaced from the receiving cargo tank are transferred to the stationary storage tank being unloaded.
(9) "Splash filling" means the filling of a cargo tank or stationary storage tank through a pipe or hose whose discharge opening is above the surface level of the liquid in the tank being filled.
(10) "Submerged filling" means the filling of a cargo tank or stationary tank through a pipe or hose whose discharge opening is entirely submerged when the pipe normally used to withdraw liquid from the tank can no longer withdraw any liquid, or whose discharge opening is entirely submerged when the liquid level is six inches above the bottom of the tank.

(b) This Rule applies to the unloading, loading, and storage facilities of all bulk gasoline plants, and of all cargo tanks delivering or receiving gasoline at bulk gasoline plants except stationary storage tanks with capacities less than 528 gallons.

(c) The owner or operator of a bulk gasoline plant shall not transfer gasoline to any stationary storage tanks unless the unloading cargo tank and the receiving stationary storage tank are equipped with an incoming vapor balance system as described in Paragraph (i) of this Rule and the receiving stationary storage tank is equipped with a fill line whose discharge opening is flush with the bottom of the tank.

(d) The owner or operator of a bulk gasoline plant with an average daily gasoline throughput of 4,000 gallons or more shall not load cargo tank at such plant unless the unloading stationary storage tank and the receiving cargo tank are equipped with an outgoing vapor balance system as described in Paragraph (i) of this Rule and the receiving cargo tank is equipped for bottom filling.

(e) The owner or operator of a bulk gasoline plant with an average daily throughput of more than 2,500 gallons but less than 4,000 gallons located in an area with a housing density exceeding the limits in this Paragraph shall not load any cargo tank at such bulk gasoline plant unless the unloading stationary storage tank and receiving cargo tank are equipped with an outgoing vapor balance system as described in Paragraph (i) of this Rule and the receiving cargo tank is equipped for bottom filling. In the counties of Alamance, Buncombe, Cabarrus, Catawba, Cumberland, Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, New Hanover, Orange, Rowan, and Wake, the specified limit on housing density is 50 residences in a square one mile on a side with the square centered on the loading rack at the bulk gasoline plant and with one side oriented in a true North-South direction. In all other counties the specified limit on housing density is 100 residences per square mile. The housing density shall be determined by counting the number of residences using aerial photographs or other methods approved by the Director to provide equivalent accuracy.

(f) The owner or operator of a bulk gasoline plant not subject to the outgoing vapor balance system requirements of Paragraph (d) or (e) of this Rule shall not load cargo tanks at such plants unless:
(1) equipment is available at the bulk gasoline plant to provide for submerged filling of each cargo tank; or
(2) each receiving cargo tank is equipped for bottom filling.

(g) For gasoline bulk plants located in a nonattainment area for ozone, the owner or operator shall continue to comply with Paragraph (d) or (e) of this Rule even if the average daily throughput falls below the applicable threshold if ever the facility throughput triggered compliance.

(h) The owner or operator of a bulk gasoline plant shall ensure a cargo tank that is required to be equipped with a vapor balance system pursuant to Paragraphs (c), (d), or (e) of this Rule shall not transfer gasoline between the cargo tank and the stationary storage tank unless:
(1) the vapor balance system is in good working order and is connected and operating;
(2) cargo tank hatches are closed at all times during loading and unloading operations; and
(3) the cargo tank's pressure/vacuum relief valves, hatch covers, and the cargo tank's and storage

tank's associated vapor and liquid lines are vapor tight during loading or unloading.

(i) Vapor balance systems required under Paragraphs (c), (d), and (e) of this Rule shall consist of the following major components:

(1) a vapor space connection on the stationary storage tank equipped with fittings that are vapor tight and will be automatically and immediately closed upon disconnection to prevent release of volatile organic material;

(2) a connecting pipe or hose equipped with fittings that are vapor tight and will be automatically and immediately closed upon disconnection to prevent release of volatile organic material; and

(3) a vapor space connection on the cargo tank equipped with fittings that are vapor tight and will be automatically and immediately closed upon disconnection to prevent release of volatile organic material.

(j) The owner or operator of a bulk gasoline plant shall paint all tanks used for gasoline storage white or silver.

(k) The pressure relief valves on cargo tanks loading or unloading at bulk gasoline plants shall be set to release at the highest possible pressure in accordance with State or local fire codes or the National Fire Prevention Association Guidelines. The pressure relief valves on stationary storage tanks shall be set at 0.5 psi for storage tanks placed in service on or after November 1, 1992, and 0.25 psi for storage tanks existing before November 1, 1992.

(l) No owner or operator of a bulk gasoline plant may permit gasoline to be spilled, discarded in sewers, stored in open containers, or handled in any other manner that would result in evaporation.

(m) The owner or operator of a bulk gasoline plant shall observe loading and unloading operations and shall discontinue the transfer of gasoline:

(1) if any liquid leaks are observed; or

(2) if any vapor leaks are observed where a vapor balance system is required under Paragraphs (c), (d), or (e) of this Rule.

(n) The owner or operator of a bulk gasoline plant shall not load, or allow to be loaded, gasoline into any cargo tank unless the cargo tank has been certified leak tight in accordance with 15A NCAC 02D ~~.0932, .0960, and .2615.~~ .0932.

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

15A NCAC 02D .0927 BULK GASOLINE TERMINALS

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

(1) "Bulk gasoline terminal" means:

(A) a pipeline breakout station of an interstate oil pipeline facility; or

(B) a gasoline storage facility that typically receives gasoline from refineries primarily by pipeline, ship, or barge; delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by cargo tank; and has an average daily throughput of more than 20,000 gallons of gasoline.

(2) "Cargo tank" means the storage vessels of freight trucks or trailers used to transport gasoline from sources of supply to stationary storage tanks of bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities, and gasoline service stations.

(3) "Contact deck" means a deck in an internal floating roof tank that rises and falls with the liquid level and floats in direct contact with the liquid surface.

(4) "Degassing" means the process by which a tank's interior vapor space is decreased to below the lower explosive limit for the purpose of cleaning, inspection, or repair.

(5) "Gasoline" means a petroleum distillate having a Reid Vapor Pressure (RVP) of 4.0 psi or greater.

(6) "Leak" means a crack or hole letting petroleum product vapor or liquid escape that is identifiable through sight, sound, smell, an explosimeter, or the use of a meter that measures volatile organic compounds. When an explosimeter or meter is used to detect a leak, a leak is a measurement that is equal to or greater than 100 percent of the lower explosive limit, as detected by a combustible gas detector using the test procedure described in Appendix B of EPA-450/2-78-051. This test procedure is incorporated by reference, including any subsequent amendments and editions. A copy of this test procedure may be obtained free of charge at https://nepis.epa.gov/Exe/ZyPDF.cgi/2000M9RD.PDF?Dockey=2000M9RD.PDF.

(7) "Liquid balancing" means a process used to degas floating roof gasoline storage tanks with a liquid whose vapor pressure is below 1.52 psi. This is done by removing as much gasoline as possible without landing the roof on its internal supports, pumping in the replacement fluid, allowing mixing, remove as much mixture as possible without landing the roof, and repeating these steps until the vapor pressure of the mixture is below 1.52 psi.

(8) "Liquid displacement" means a process by which gasoline vapors, remaining in an empty tank, are displaced by a liquid with a vapor pressure below 1.52 psi.

(9) "Pipeline breakout station" means a facility along a pipeline containing storage tanks used to:

(A) relieve surges in a hazardous liquid pipeline system; or

(B) receive and store hazardous liquids transported by pipeline for reinjection and continued transport by pipeline.

(b) This Rule applies to bulk gasoline terminals and the appurtenant equipment necessary to load the cargo tank compartments.

(c) Gasoline shall not be loaded into any cargo tank from any bulk gasoline terminal unless:

(1) the bulk gasoline terminal is equipped with a vapor control system that prevents the emissions of volatile organic compounds from exceeding 35 milligrams per liter. The owner or operator shall obtain from the manufacturer and maintain in the cargo tank's records a pre-installation certification stating the vapor control efficiency of the system in use;

(2) displaced vapors and gases are vented only to the vapor control system or to a flare;

(3) a means is provided to prevent liquid drainage from the loading device when it is not in use or to accomplish complete drainage before the loading device is disconnected; and

(4) all loading and vapor lines are equipped with fittings that make vapor-tight connections and that are automatically and immediately closed upon disconnection.

(d) Sources regulated by this Rule shall not:

(1) allow gasoline to be discarded in sewers or stored in open containers or handled in any manner that would result in evaporation; or

(2) allow the pressure in the vapor collection system to exceed the cargo tank pressure relief settings.

(e) The owner or operator of a bulk gasoline terminal shall paint all tanks used for gasoline storage white or silver.

(f) The owner or operator of a bulk gasoline terminal shall install on each external floating roof tank with an inside diameter of 100 feet or less used to store gasoline a self-supporting roof, such as a geodesic dome.

(g) The following equipment shall be required on all tanks storing gasoline at a bulk gasoline terminal:

(1) rim-mounted secondary seals on all external and internal floating roof tanks;

(2) gaskets on deck fittings; and

(3) floats in the slotted guide poles with a gasket around the cover of the poles.

(h) Decks shall be required on all above ground tanks with a capacity greater than 19,800 gallons storing gasoline at a bulk gasoline terminal. All decks installed after June 30, 1998 shall comply with the following requirements:

(1) deck seams shall be welded, bolted, or riveted; and

(2) seams on bolted contact decks and on riveted contact decks shall be gasketed.

(i) If, upon facility or operational modification of a bulk gasoline terminal that existed before December 1, 1992, an increase in benzene emissions results such that:

(1) emissions of volatile organic compounds increase by more than 25 tons cumulative at any time during the five years following modifications; and

(2) annual emissions of benzene from the cluster where the bulk gasoline terminal is located (including the pipeline and marketing terminals served by the pipeline) exceed benzene emissions from that cluster based upon calendar year 1991 gasoline throughput and application of the requirements of this Subchapter,

then, the annual increase in benzene emissions due to the modification shall be offset within the cluster by reduction in benzene emissions beyond that otherwise achieved from compliance with this Rule, in the ratio of at least 1.3 to 1.

(j) The owner or operators of a bulk gasoline terminal that received an air permit before December 1, 1992 to emit toxic air pollutants under 15A NCAC 02Q .0700 to comply with 15A NCAC 02D .1100 shall continue to follow all terms and conditions of the permit issued under 15A NCAC 02Q .0700 and to bring the terminal into compliance with 15A NCAC 02D .1100 according to the terms and conditions of the permit, in which case the bulk gasoline terminal shall continue to need a permit to emit toxic air pollutants and shall be exempted from Paragraphs (e) through (i) of this Rule.

(k) The owner or operator of a bulk gasoline terminal shall not load, or allow to be loaded, gasoline into any cargo tank unless the cargo tank has been certified leak tight according to 15A NCAC 02D ~~.0932, .0960, and .2615.~~ .0932.

(l) The owner or operator of a bulk gasoline terminal shall have on file at the terminal a copy of the certification test conducted according to 15A NCAC 02D .0932 for each gasoline cargo tank loaded at the terminal.

(m) Emissions of gasoline from degassing of external or internal floating roof tanks at a bulk gasoline terminal shall be collected and controlled by at least 90 percent by weight. Liquid balancing shall not be used to degas gasoline storage tanks at bulk gasoline terminals. Bulk gasoline storage tanks containing not more than 138 gallons of liquid gasoline or the equivalent of gasoline vapor and gasoline liquid are exempted from the degassing requirements if gasoline vapors are vented for at least 24 hours. Documentation of degassing external or internal floating roof tanks shall be made according to 15A NCAC 02D .0903.

(n) According to 15A NCAC 02D .0903, the owner or operator of a bulk gasoline terminal shall visually inspect the following for leaks each day that the terminal is both manned and open for business:

(1) the vapor collection system;

(2) the vapor control system; and

(3) each lane of the loading rack while a gasoline cargo tank is being loaded.

If no leaks are found, the owner or operator shall record that no leaks were found. If a leak is found, the owner or operator shall record the information specified in Paragraph (p) of this Rule. The owner or operator shall repair all leaks found according to Paragraph (q) of this Rule.

(o) The owner or operator of a bulk gasoline terminal shall inspect weekly for leaks:

(1) the vapor collection system;

(2) the vapor control system; and

(3) each lane of the loading rack while a gasoline cargo tank is being loaded.

The weekly inspection shall be done using sight, sound, or smell; a meter used to measure volatile organic compounds; or an explosimeter. An inspection using either a meter used to measure volatile organic compounds or an explosimeter shall be conducted every month. If no leaks are found, the owner or operator shall

record the date that the inspection was done and that no leaks were found. If a leak is found, the owner or operator shall record the information specified in Paragraph (p) of this Rule. The owner or operator shall repair all leaks found according to Paragraph (q) of this Rule.

(p) For each leak found under Paragraph (n) or (o) of this Rule, the owner or operator of a bulk gasoline terminal shall record:

(1) the date of the inspection;

(2) the findings detailing the location, nature, and severity of each leak;

(3) the corrective action taken;

(4) the date when corrective action was completed; and

(5) any other information that the terminal deems necessary to demonstrate compliance.

(q) The owner or operator of a bulk gasoline terminal shall repair all leaks as follows:

(1) The vapor collection hose that connects to the cargo tank shall be repaired or replaced before another cargo tank is loaded at that rack after a leak has been detected originating with the terminal's equipment rather than from the gasoline cargo tank.

(2) All other leaks shall be repaired as expeditiously as possible but no later than 15 days from their detection. If more than 15 days are required to make the repair, the reasons that the repair cannot be made shall be documented, and the leaking equipment shall not be used after the fifteenth day from when the leak detection was found until the repair is made.

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

15A NCAC 02D .0928 GASOLINE SERVICE STATIONS STAGE I

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

(1) "Coaxial vapor recovery system" means the delivery of the gasoline and recovery of vapors occurring through a single coaxial fill tube, which is a tube within a tube. Gasoline is delivered through the inner tube, and vapor is recovered through the annular space between the walls of the inner tube and outer tube.

(2) "Delivery vessel" means cargo tanks used for the transport of gasoline from sources or supply to stationary storage tanks of gasoline dispensing facilities.

(3) "Dual point vapor recovery system" means the delivery of the product to the stationary storage tank and the recovery of vapors from the stationary storage tank occurring through two separate openings in the storage tank and two separate hoses between the cargo tank and the stationary storage tank.

(4) "Gasoline" means a petroleum distillate having a Reid vapor pressure of four psi or greater.

(5) "Gasoline dispensing facility" means any site where gasoline is dispensed to motor vehicle gasoline tanks from stationary storage tanks.

(6) "Gasoline service station" means any gasoline dispensing facility where gasoline is sold to the motoring public from stationary storage tanks.

(7) "Line" means any pipe suitable for transferring gasoline.

(8) "Motor Vehicle" means every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle not including mopeds or electric assisted bicycles in accordance with G.S. 20-4.01.

~~(8)~~(9) "Operator" means any person who leases, operates, controls, or supervises a facility at which gasoline is dispensed.

~~(9)~~(10) "Owner" means any person who has legal or equitable title to the gasoline storage tank at a facility.

~~(10)~~(11) "Poppeted vapor recovery adaptor" means a vapor recovery adaptor that automatically and immediately closes itself when the vapor return line is disconnected and maintains a tight seal when the vapor return line is not connected.

~~(11)~~(12) "Stationary storage tank" means a gasoline storage container that is a permanent fixture.

~~(12)~~(13) "Submerged fill pipe" means any fill pipe with a discharge opening that is entirely submerged when the pipe normally used to withdraw liquid from the tank can no longer withdraw any liquid, or that is entirely submerged when the level of the liquid is:

(A) six inches above the bottom of the tank if the tank does not have a vapor recovery adaptor; or

(B) 12 inches above the bottom of the tank if the tank has a vapor recovery adaptor. If the opening of the submerged fill pipe is cut at a slant, the distance is measured from the top of the slanted cut to the bottom of the tank.

~~(13)~~(14) "Throughput" means the amount of gasoline dispensed at a facility during a calendar month after November 15, 1990.

(b) Applicability. This Rule applies to all gasoline dispensing facilities and gasoline service stations, and to delivery vessels delivering gasoline to a gasoline dispensing facility or gasoline service station.

(c) Exemptions. This Rule does not apply to:

(1) transfers made to storage tanks at gasoline dispensing facilities or gasoline service stations equipped with floating roofs or their equivalent;

(2) stationary tanks with a capacity of not more than 2,000 gallons that are in place before July 1, 1979, if the tanks are equipped with a permanent or portable submerged fill pipe;

(3) stationary storage tanks with a capacity of not more than 550 gallons that are installed after June 30, 1979, if tanks are equipped with a permanent or portable submerged fill pipe;
(4) stationary storage tanks with a capacity of not more than 2,000 gallons located on a farm or a residence and used to store gasoline for farm equipment or residential use if gasoline is delivered to the tank through a permanent or portable submerged fill pipe. This exemption does not apply in ozone non-attainment areas;
(5) stationary storage tanks at a gasoline dispensing facility or gasoline service station where the combined annual throughput of gasoline at the facility or station does not exceed 50,000 gallons, if the tanks are permanently equipped with submerged fill pipes; or
(6) any tanks used exclusively to test the fuel dispensing meters.

(d) With exceptions stated in Paragraph (c) of this Rule, gasoline shall not be transferred from any delivery vessel into any stationary storage tank unless:
(1) the tank is equipped with a submerged fill pipe, and the vapors displaced from the storage tank during filling are controlled by a vapor control system as described in Paragraph (e) of this Rule;
(2) the vapor control system is in good working order and is connected and operating with a vapor tight connection;
(3) the vapor control system is properly maintained and all damaged or malfunctioning components or elements of design are repaired, replaced, or modified;
(4) the gauges, meters, or other specified testing devices are maintained in proper working order;
(5) the delivery vessel and vapor collection system ~~complies~~ comply with 15A NCAC 02D .0932; and
(6) the following records are kept in accordance with 15A NCAC 02D .0903:
(A) the scheduled date for maintenance or the date that a malfunction was detected;
(B) the date the maintenance was performed or the malfunction corrected; and
(C) the component or element of design of the control system repaired, replaced, or modified.

(e) The vapor control system required by Paragraph (d) of this Rule shall include one or more of the following:
(1) a vapor-tight line from the storage tank to the delivery vessel, and:
(A) for a coaxial vapor recovery system, either a poppeted or unpoppeted vapor recovery adaptor;
(B) for a dual point vapor recovery system, a poppeted vapor recovery adaptor; or
(2) a refrigeration-condensation system or equivalent designed to recover at least 90 percent by weight of the volatile organic compounds in the displaced vapor.

(f) If an unpoppeted vapor recovery adaptor is used pursuant to Part (e)(1)(A) of this Rule, the tank liquid fill connection shall remain covered either with a vapor-tight cap or a vapor return line, except when the vapor return line is being connected or disconnected.
(g) If an unpoppeted vapor recovery adaptor is used pursuant to Part (e)(1)(A) of this Rule, the unpoppeted vapor recovery adaptor shall be replaced with a poppeted vapor recovery adaptor when the tank is replaced or is removed and upgraded.
(h) Where vapor lines from the storage tanks are manifolded, poppeted vapor recovery adapters shall be used. No more than one tank is to be loaded at a time if the manifold vapor lines are size 2.5 inches and smaller. If the manifold vapor lines are 3.0 inches and larger, then two tanks at a time may be loaded.
(i) Vent lines on tanks with Stage I controls shall have pressure release valves or restrictors.
(j) The vapor-laden delivery vessel:
(1) shall be designed and maintained to be vapor-tight during loading and unloading operations and during transport with the exception of normal pressure/vacuum venting as required by the Department of Transportation; and
(2) if it is refilled in North Carolina, shall be refilled only at:
(A) bulk gasoline plants complying with 15A NCAC 02D .0926; or
(B) bulk gasoline terminals complying with 15A NCAC 02D .0927 or .0524.

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

15A NCAC 02D .0932 GASOLINE CARGO TANKS AND VAPOR COLLECTION SYSTEMS

(a) For the purposes of this Rule, the following definitions apply:
(1) "Bottom filling" means the filling of a cargo tank or stationary storage tank through an opening flush with the tank bottom.
(2) "Bulk gasoline plant" means a gasoline storage and distribution facility with an average daily throughput of less than 20,000 gallons of gasoline and that typically receives gasoline from bulk terminals by trailer transport, stores it in tanks, and subsequently dispenses it via account cargo tanks to local farms, businesses, and service stations.
(3) "Bulk gasoline terminal" means:
(A) a pipeline breakout station of an interstate oil pipeline facility; or
(B) a gasoline storage facility that typically receives gasoline from refineries primarily by pipeline, ship, or barge; delivers gasoline to bulk

gasoline plants or to commercial or retail accounts primarily by cargo tank; and has an average daily throughput of more than 20,000 gallons of gasoline.

(4) "Cargo tank" means the storage vessels of freight trucks or trailers used to transport gasoline from sources of supply to stationary storage tanks of bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities, and gasoline service stations.

(5) "Cargo tank testing facility" means any facility complying with registration in 49 CFR Part 107, Subpart F.

(6) "Cargo tank vapor collection equipment" means any piping, hoses, and devices on the cargo tank used to collect and route gasoline vapors in the tank to or from the bulk gasoline terminal, bulk gasoline plant, gasoline dispensing facility, or gasoline service station vapor control system or vapor balance system.

(7) "Gasoline" means any petroleum distillate having a Reid Vapor Pressure (RVP) of 4.0 psi or greater.

(8) "Gasoline dispensing facility" means any site where gasoline is dispensed to motor vehicle gasoline tanks from stationary storage tanks.

(9) "Gasoline service station" means any gasoline dispensing facility where gasoline is sold to the motoring public from stationary storage tanks.

(10) "Vapor balance system" means a combination of pipes or hoses that create a closed system between the vapor spaces of an unloading tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.

(11) "Vapor collection system" means a vapor balance system or any other system used to collect and control emissions of volatile organic compounds.

(b) This Rule applies to gasoline cargo tanks that are equipped for vapor collection and to vapor control systems at bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities, and gasoline service stations equipped with vapor balance or vapor control systems.

(c) For cargo tanks, the following requirements shall apply:

(1) Gasoline cargo tanks and their vapor collection systems shall be tested annually by a cargo tank testing facility. The facility shall follow the test procedure as defined by 15A NCAC 02D .2615 to certify the gasoline cargo tank leak tight. The gasoline cargo tank shall not be used unless it is certified leak tight.

(2) Each gasoline cargo tank that has been certified leak tight according to Subparagraph ~~(1) of this Paragraph~~ (c)(1) of this Rule shall display a sticker near the Department of Transportation certification plate required by 49 CFR 180.415.

(3) There shall be no liquid leaks from any gasoline cargo tank.

(4) Any cargo tank with a leak equal to or greater than 100 percent of the lower explosive limit, as detected by a combustible gas detector using the test procedure described in 15A NCAC 02D .2615 shall not be used beyond 15 days after the leak has been discovered, unless the leak has been repaired and the cargo tank has been certified to be leak tight according to Subparagraph ~~(1) of this Paragraph.~~ (c)(1) of this Rule.

(5) The owner or operator of a gasoline cargo tank with a vapor collection system shall maintain records of all leak testing and repairs. The records shall identify the gasoline cargo tank, the date of the test or repair, and, if applicable, the type of repair and the date of retest. The records of leak tests shall include:

(A) the name, address, and telephone number of cargo tank testing facility performing the leak test;

(B) the name and signature of the individual performing the leak test;

(C) the name and address of the owner of the tank;

(D) the identification number of the tank;

(E) the documentation of tests performed including the date and summary of results;

(F) the continued qualification statement and returned to service status; and

(G) a list or description of identified corrective repairs to the tank. If none are performed then the report shall state "no corrective repairs performed."

(6) A copy of the most recent leak testing report shall be kept with the cargo tank. The owner or operator of the cargo tank shall also file a copy of the most recent leak testing report with each bulk gasoline terminal that loads the cargo tank. The records shall be maintained for at least two years after the date of the testing or repair, and copies of such records shall be made available within a reasonable time to the Director upon written request.

(d) For bulk gasoline terminals and bulk gasoline plants equipped with vapor balance or vapor control systems, the following requirements shall apply:

(1) The vapor collection system and vapor control system shall be designed and operated to prevent gauge pressure in the cargo tank from exceeding 18 inches of water and to prevent a vacuum of greater than six inches of water.

(2) During loading and unloading operations there shall be:

(A) no vapor leakage from the vapor collection system such that a reading

equal to or greater than 100 percent of the lower explosive limit at one inch around the perimeter of each potential leak source as detected by a combustible gas detector using the test procedure described in 15A NCAC 02D .2615; and

(B) no liquid leaks.

(3) If a leak is discovered that exceeds the limit in Subparagraph ~~(2) of this Paragraph:~~ (d)(2) of this Rule:

(A) For bulk gasoline plants, the vapor collection system or vapor control system shall not be used beyond 15 days after the leak has been discovered, unless the leak has been repaired and the system has been retested and found to comply with Subparagraph ~~(2) of this Paragraph;~~ (d)(2) of this Rule;

(B) For bulk gasoline terminals, the vapor collection system or vapor control system shall be repaired following the procedures in 15A NCAC 02D .0927.

(4) The owner or operator of a vapor collection system at a bulk gasoline plant or a bulk gasoline terminal shall test, according to 15A NCAC 02D .0912, the vapor collection system at least once per year. If after two complete annual checks no more than 10 leaks are found, the Director shall allow less frequent monitoring. If more than 20 leaks are found, the Director shall require the frequency of monitoring be increased.

(5) The owner or operator of vapor control systems at bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities, and gasoline service stations equipped with vapor balance or vapor control systems shall maintain records of all certification testing and repairs. The records shall identify each vapor collection system, or vapor control system; the date of the test or repair; and, if applicable, the type of repair and the date of retest.

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

15A NCAC 02D .0960 CARGO TANK LEAK TESTER REPORT

~~(a) Purpose. The purpose of this Rule is to establish procedures for cargo tank testing facilities to perform leak tightness tests on gasoline cargo tanks as defined in 15A NCAC 02D .0932.~~

~~(b) Leak testing report. The certified facility performing the test shall give a copy of the leak testing report to the cargo tank owner and shall retain a copy of the leak testing report. The leak testing report shall contain the following information:~~

~~(1) the name, address, and telephone number of cargo tank testing facility performing the leak test;~~

~~(2) the name and signature of the individual performing the leak test;~~

~~(3) the name and address of the owner of the tank;~~

~~(4) the identification number of the tank;~~

~~(5) documentation of tests performed including the date and summary or results;~~

~~(6) continued qualification statement and returned to service status; and~~

~~(7) a list or description of identified corrective repairs to the tank. If none are performed then the report shall state "no corrective repairs performed."~~

~~(c) Record retention. The cargo tank testing facility performing the test and the owner of the cargo tank shall keep the leak testing report for at least two years. Leak testing reports shall be made available to the Division upon request.~~

~~(d) Verification of leak tightness. The Division may use Method 21 of Appendix A to 40 CFR Part 60 to verify the leak tightness of a tank.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (13).

15A NCAC 02D .0961 OFFSET LITHOGRAPHIC PRINTING AND LETTERPRESS PRINTING

(a) For the purposes of this Rule, the definitions listed in this Paragraph and 15A NCAC 02D .0101 and .0902 shall apply.

(1) "Composite partial vapor pressure" means the sum of the partial pressure of the compounds defined as volatile organic compounds. Volatile organic compounds composite partial vapor pressure is calculated as follows:

$$PP_c = \sum_{i=1}^{n} \frac{(W_i)(VP_i)/MW_i}{\frac{W_w}{MW_w} + \frac{W_c}{MW_c} + \sum_{i=1}^{n} \frac{W_i}{MW_i}}$$

Where:

Wi = Weight of the "i" volatile organic compound, in grams

Ww = Weight of water, in grams

Wc = Weight of exempt compound, in grams

MWi = Molecular weight of the "i" volatile organic compound, in g/g-mole

MWw = Molecular weight of water, in g/g-mole

MWc = Molecular weight of exempt compound, in g/g-mole

PPc = Volatile organic compounds composite partial vapor pressure at 20 degrees Celsius (68 degrees Fahrenheit), in mm Hg

VPi = Vapor pressure of the "i" volatile organic compound at 20 degrees Celsius (68 degrees Fahrenheit), in mm Hg

(2) "First installation date" means the actual date when this control device becomes operational. This date does not change if the control device is later redirected to a new press.

(3) "Fountain solution" means water-based solution that applies to lithographic plate to

render the non-image areas unreceptive to the ink.

(4) "Heatset" means any operation in which heat is required to evaporate ink oils from the printing ink, excluding ultraviolet (UV) curing, electron beam curing, and infrared drying.

(5) "Letterpress printing" means a printing process in which the image area is raised relative to the non-image area and the paste ink is transferred to the substrate directly from the image surface.

(6) "Non-heatset" means a lithographic printing process where the printing inks are set by absorption or oxidation of the ink oil, not by evaporation of the ink oils in a dryer. For the purposes of this Rule, use of an infrared heater or printing conducted using ultraviolet-cured or electron beam-cured inks is considered non-heatset.

(7) "Offset lithography" means a printing process that uses sheet-fed or web method of press feeding and transfers ink from the lithographic plate to a rubber-covered intermediate "blanket" cylinder and then from the blanket cylinder to the substrate.

(8) "Press" means a printing production assembly composed of one or more units used to produce a printed substrate including any associated coating, spray powder application, heatset web dryer, ultraviolet or electron beam curing units, or infrared heating units.

(9) "Sheet-fed printing" means offset lithographic printing when individual sheets of paper or other substrate are fed to the press.

(10) "Web printing" means offset lithographic printing when continuous rolls of substrate material are fed to the press and rewound or cut to size after printing.

(b) This Rule applies to any offset lithographic and any letterpress printing operations sources that are not covered by 15A NCAC 02D .0966(c)(1) and whose emissions of volatile organic compounds exceed:

(1) the threshold established in 15A NCAC 02D .0902(b) and (f); or

(2) an equivalent level of three tons per 12-consecutive month rolling period.

(c) Volatile organic compounds content in the fountain solution for on-press (as-applied) heatset web offset lithographic printing shall meet one of the following requirements or equivalent level of control as determined in permit conditions:

(1) contain 1.6 percent alcohol or less, by weight, as applied, in the fountain solution:

(2) contain three percent alcohol or less, by weight, on-press (as-applied) in the fountain solution if the fountain solution is refrigerated to below 60 degrees Fahrenheit; or

(3) contain five percent alcohol substitute or less, by weight, on-press (as-applied) and no alcohol in the fountain solution.

(d) Volatile organic compounds content in the fountain solution for on-press (as-applied) sheet-fed lithographic printing shall meet one of the following requirements or equivalent level of control as determined in permit conditions:

(1) contain five percent alcohol or less, by weight, on-press (as-applied) in the fountain solution;

(2) contain 8.5 percent alcohol or less, by weight, on-press (as-applied) in the fountain solution if the fountain solution is refrigerated to below 60 degrees Fahrenheit; or

(3) contain five percent alcohol substitute or less, by weight, on-press (as-applied) and no alcohol in the fountain solution.

(e) Volatile organic compounds content in emissions from fountain solution from non-heatset web offset lithographic printing shall not exceed five percent alcohol substitute (by weight) on-press (as-applied) and contain no alcohol in the fountain solution.

(f) An owner or operator of an individual web offset lithographic printing press dryer or letterpress-printing heatset press subject to this Rule that emits 25 or more tons per year potential emissions of volatile organic compounds shall:

(1) use an enforceable limitation on potential emissions to keep individual heatset press below 25 tons per year potential to emit volatile organic compounds (petroleum ink oil) threshold, which can be achieved by using inks and coatings that contain less than 31.25 tons per year volatile organic compound (petroleum ink oil) where 20 percent retention factor of petroleum ink oil applies, or by using other methods established by permit conditions; or

(2) use an add-on control system that meets one of the following requirements:

(A) reduces volatile organic compounds emissions from each dryer by at least 90 percent volatile organic compounds emissions control efficiency established by procedures defined in Paragraph (h) of this Rule for a control device from heatset dryers whose first installation date was prior to July 1, 2010, at facilities with potential to emit 100 tons or more of volatile organic compounds per year;

(B) reduces volatile organic compounds emissions from each dryer by at least 90 percent volatile organic compounds emissions control efficiency established by procedures defined in Paragraph (h) of this Rule for a control device from heatset dryers whose first installation date was prior to May 1, 2013, at facilities with potential to emit less than 100 tons of volatile organic compounds per year;

(C) reduces volatile organic compounds emissions from each dryer by at least 95 percent volatile organic

compounds emissions control efficiency established by procedures defined in Paragraph (h) of this Rule for a control device from heatset dryers whose first installation date was on or after July 1, 2010, at facilities with potential to emit 100 tons or more of volatile organic compounds per year;

(D) reduces volatile organic compounds emissions from each dryer by at least 95 percent volatile organic compounds emissions control efficiency established by procedures defined in Paragraph (h) of this Rule for a control device from heatset dryers whose first installation date was on or after May 1, 2013, at facilities with potential to emit less than 100 tons of volatile organic compounds per year; or

(E) maintains a maximum volatile organic compounds outlet concentration of 20 parts per million by volume (ppmv), as hexane (C_6H_{14}) on a dry basis.

(g) The control limits established in:

(1) Paragraphs (c), (d), and (e) of this Rule shall not be applied to any press with total fountain solution reservoir of less than one gallon;

(2) Paragraph (d) of this Rule shall not be applied to sheet-fed presses with maximum sheet size 11x 17 inches or smaller; and

(3) Subparagraph (f)(2) of this Rule shall not be applied to a heatset press used for book printing, or to a heatset press with maximum web width of 22 inches or less.

(h) If the owner or operator of a printing press is required by permit conditions to determine:

(1) the volatile organic compounds content, Method 24 of Appendix A to 40 CFR Part 60 or approved alternative methods pursuant to 15A NCAC 02D .2602(h) shall be used; and

(2) the control efficiency by measuring volatile organic compounds at the control device inlet and outlet, Methods 18, 25, or 25A of Appendix A to 40 CFR Part 60, or approved alternative methods pursuant to 15A NCAC 02D .2602(h) shall be used.

(i) All test methods defined in Paragraph (h) of this Rule shall be conducted at typical operating conditions and flow rates.

(j) The owner or operator of any facility subject to this Rule shall demonstrate compliance with RACT applicability requirements by calculating volatile organic compounds emissions and keep records of the basis of the calculations required by 15A NCAC 02D .0605 and .0903. Volatile organic compounds emissions from offset lithographic printing and letterpress printing shall be determined by permit condition requirements or by using the following retention and capture efficiency factors:

(1) the retention factors are:

(A) 20 percent for heatset petroleum ink oils;

(B) 100 percent for heatset vegetable ink oils;

(C) 95 percent for sheet-fed and coldset web petroleum ink oils; and

(D) 100 percent for sheet-fed and coldset web vegetable ink oils.

(2) the retention factor is 50 percent for low volatile organic compounds composite vapor pressure cleaning materials in shop towels where:

(A) volatile organic compounds composite vapor pressure of the cleaning material is less than 10 mm Hg at ~~20ºC;~~ 20 degrees Celsius; and

(B) cleaning materials and used shop towels are kept in closed containers.

(3) carryover (capture) factors of volatile organic compounds from automatic blanket wash and fountain solution to offset lithographic heatset dryers are:

(A) 40 percent VOC carryover (capture) factor for automatic blanket washing when the volatile organic compounds composite vapor pressure of the cleaning material is less than 10mm Hg at ~~20ºC.~~ 20 degrees Celsius.

(B) 70 percent VOC carryover (capture) factor for alcohol substitutes in fountain solution.

(4) capture efficiency for volatile organic compounds (petroleum ink oils) from oil-based paste inks and oil-based paste varnishes (coatings) in heatset web offset lithographic presses and heatset web letterpress presses shall be demonstrated by showing that the dryer is operating at negative pressure relative to the surrounding pressroom. As long as the dryer is operated at negative pressure, the capture efficiency for VOC from the heatset lithographic inks and varnishes (coatings) formulated with low volatility ink oils is 100 percent of the VOC (ink oils) volatilized in the dryer. Capture efficiency test is not required in this situation.

(k) Except as specified in this Paragraph, all cleaning materials used for cleaning a press, press parts, or to remove dried ink from areas around the press shall meet one of the following requirements:

(1) the volatile organic compounds content shall be less than 70 percent by weight; or

(2) composite partial vapor pressure of volatile organic compounds shall be less than 10 mm Hg at 20 degrees Celsius.

No more than 110 gallons per year of cleaning materials that do not meet the requirements of Subparagraph ~~(1) or (2) of this Paragraph~~ (k)(1) or (k)(2) of this Rule shall be used during any 12 consecutive months.

(l) The owner or operator of any facility subject to this Rule shall maintain the following records for a minimum of five years:

(1) parametric monitoring for processes and control devices as determined and at the frequency specified in the permit or by Paragraph (f) of this Rule;
(2) the total amount of each individual or class of fountain solution and ink used monthly for the printing operations and the percentage of volatile organic compounds, alcohol, and alcohol substitute as applied in it;
(3) the total amount of each individual or class of cleaning solutions used monthly with vapor pressure and the percentage of volatile organic compounds as applied in it;
(4) the total amount of cleaning solutions used monthly with the vapor pressure and the percentage of volatile organic compounds as applied ~~that does not meet~~ not meeting the vapor pressure or percentage of volatile organic compounds ~~requirements of~~ as required in Paragraph (k) of this Rule;
(5) the temperature of fountain solutions for lithographic printing presses using alcohol at the frequency specified in the permit; and
(6) any other parameters required by the permit in accordance with 15A NCAC 02D .0605 and .0903.

(m) The owner or operator of any source subject to this Rule shall comply with 15A NCAC 02D .0903 and .0958.

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

15A NCAC 02D .0964 MISCELLANEOUS INDUSTRIAL ADHESIVES

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

(1) "Air-assisted airless spray" means a system that consists of an airless spray gun with a compressed air jet at the gun tip to atomize the adhesive.
(2) "Airless spray" means the application ~~of~~ using a pump forcing an adhesive through an atomizing nozzle at high pressure of 1,000 to 6,000 pounds per square ~~inch by a pump forces.~~ inch.
(3) "Application process" means a process that consists of a series of one or more adhesive applicators and any associated drying area or oven where an adhesive is applied, dried, and cured.
(4) "Dip coating" means application where substrates are dipped into a tank containing the adhesive. The substrates are then withdrawn from the tank and any excess adhesive is allowed to drain.
(5) "Electrocoating" means a specialized form of dip coating where opposite electric charges are applied to the waterborne adhesive and the substrate.
(6) "Electrostatic spray" means application where the adhesive and substrate are oppositely charged.
(7) "Flow coating" means conveying the substrate over an enclosed sink where the adhesive is applied at low pressure as the item passes under a series of nozzles.
(8) "HVLP" means a system with specialized nozzles that provide better air and fluid flow than conventional air atomized spray systems at low air pressure, shape spray pattern, and guide high volumes of atomized adhesive particles to the substrate using lower air pressure of 10 pounds per square inch or less at the spray cap.
(9) "Miscellaneous industrial adhesives" means adhesives, including adhesive primers used in conjunction with certain types of adhesives used at industrial manufacturing and repair facilities for a wide variety of products and equipment that operate adhesives application processes.
(10) "Roll coating," "brush coating," and "hand application" means application of high viscosity adhesives onto small surface area.

(b) Control of volatile organic compounds emissions from miscellaneous industrial adhesives product categories covered by 15A NCAC 02D .0923, .0935, .0961, .0962, .0963, .0965, .0966, .0967, and .0968 are exempted from the requirements of this Rule.

(c) This Rule applies to miscellaneous industrial adhesive application sources whose volatile organic compounds emissions meet the threshold established in 15A NCAC 02D .0902(b).

(d) With the exception established in Paragraph (b) of this Rule, all volatile organic compounds containing materials applied by each miscellaneous industrial adhesive application processes before control shall:

(1) not exceed limits established in Table 1 of this Rule; and
(2) be used in one of the following application methods in conjunction with using low volatile organic compounds adhesives or adhesive primers:
    (A) electrostatic spray;
    (B) HVLP spray;
    (C) flow coat;
    (D) roll coat or hand application, including non-spray application methods similar to hand or mechanically powered caulking gun, brush, or direct hand application;
    (E) dip coat including electrodesposition;
    (F) airless spray;
    (G) air-assisted airless spray; or
    (H) any other adhesive application method capable of achieving a transfer efficiency equivalent to or better than that achieved by HVLP spraying.

(e) Emission limits established in Subparagraph (d)(1) of this Rule shall be:

(1) met by averaging the volatile organic compounds content of materials used on a single application unit for each day; and
(2) calculated as mass of volatile organic compounds per volume of adhesive primer, excluding water and exempt compounds, as applied.

(f) If an adhesive is used to bond dissimilar substrates together in general adhesive application process as set forth in Table 1, then the applicable substrate category with the highest volatile organic compounds emission limit shall be established as the limit for such application.

Table 1. Volatile Organic Compounds Emission Limits for General and Specialty Adhesive Application Process.

General Adhesive Application Processes	VOC Emission Limit (lb/gal)
Reinforced Plastic Composite	1.7
Flexible vinyl	2.1
Metal	0.3
Porous Material (Except Wood)	1
Rubber	2.1
Wood	0.3
Other Substrates	2.1
Specialty Adhesive Application Processes	**VOC Emission Limit (lb/gal)**
Ceramic Tile Installation	1.1
Contact Adhesive	2.1
Cove Base Installation	1.3
Floor Covering Installation (Indoor)	1.3
Floor Covering Installation (Outdoor)	2.1
Floor Covering Installation (Perimeter Bonded Sheet Vinyl)	5.5
Metal to Urethane/Rubber Molding or Casting	7.1
Motor Vehicle Adhesive	2.1
Motor Vehicle Weatherstrip Adhesive	6.3
Multipurpose Construction	1.7
Plastic Solvent Welding (ABS)	3.3
Plastic Solvent Welding (Except ABS)	4.2
Sheet Rubber Lining Installation	7.1
Single-Ply Roof Membrane Installation/Repair (Except EPDM)	2.1
Structural Glazing	0.8
Thin Metal Laminating	6.5
Tire Repair	0.8
Waterproof Resorcinol Glue	1.4
Adhesive Primer Application Processes	VOC Emission ~~Limit1~~ Limit (lb/gal)
Motor Vehicle Glass Bonding Primer	7.5
Plastic Solvent Welding Adhesive Primer	5.4
Single-Ply Roof Membrane Adhesive Primer	2.1
Other Adhesive Primer	2.1

(g) Any miscellaneous industrial adhesive application processes subject to this Rule, which chooses to use add-on control for adhesive application processes rather than to comply with the emission limits established in Paragraph (d) of this Rule, shall install control equipment with overall control efficiency of 85 percent or use a combination of adhesives and add-on control equipment on an application process to meet limits established in Paragraph (d) of this Rule.
(h) EPA Method 24 or 25A of Appendix A to 40 CFR Part 60 shall be used to determine the volatile organic compounds content of adhesives, other than reactive adhesives, and the procedure established in Appendix A of the NESHAP for surface coating of plastic parts (40 CFR Part 63, Subpart PPPP) shall be used to determine the volatile organic compounds content of reactive adhesives unless the facility maintains records to document the volatile organic compounds content of adhesives from the manufacturer.

(i) The owner or operator of any facility subject to this Rule shall comply with ~~the~~ 15A NCAC 02D .0903 and .0958.

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

SECTION .1400 – NITROGEN OXIDES

15A NCAC 02D .1403 COMPLIANCE SCHEDULES

(a) Applicability. This Rule applies to sources regulated by 15A NCAC 02D .1402(d), (e), (f), or (g).

(b) Maintenance area and Charlotte ozone nonattainment area contingency plan. The owner or operator of a source subject to this Rule because of the applicability of 15A NCAC 02D .1402(d), (e), (f), or (g) shall adhere to the following increments of progress and schedules:

(1) If compliance with this Section is to be achieved through a demonstration to certify compliance without source modification:
  (A) The owner or operator shall notify the Director in writing within six months after the Director's notice in the North Carolina Register that the source is in compliance with the applicable limitation or standard;
  (B) The owner or operator shall perform any required testing, pursuant to 15A NCAC 02D .1415, within 12 months after the Director's notice in the North Carolina Register to demonstrate compliance with the applicable limitation; and
  (C) The owner or operator shall implement any required recordkeeping and reporting requirements pursuant to 15A NCAC 02D .1404, within 12 months after the Director's notice in the North Carolina Register to demonstrate compliance with the applicable limitation.

(2) If compliance with this Section is to be achieved through the installation of combustion modification technology or other source modification:
  (A) The owner or operator shall submit a permit application and a compliance schedule within six months after the Director's notice in the North Carolina Register.
  (B) The compliance schedule shall contain the following increments of progress:
    (i) a date by which contracts for installation of the modification shall be awarded or orders shall be issued for purchase of component parts;
    (ii) a date by which installation of the modification shall begin;
    (iii) a date by which installation of the modification shall be completed; and
    (iv) if the source is subject to a limitation, a date by which compliance testing shall be completed.
  (C) Final compliance shall be achieved within three years after the Director's notice in the North Carolina Register unless the owner or operator of the source petitions the Director for an alternative limitation pursuant to 15A NCAC 02D .1412. If a petition has been submitted and approved, final compliance shall be achieved within four years after the Director's notice in the North Carolina Register.

(3) If compliance with this Section is to be achieved through the implementation of an emissions averaging plan pursuant to 15A NCAC 02D .1410;
  (A) The owner or operator shall abide by the applicable requirements of ~~Subparagraphs (1) or (2) of this Paragraph~~ Subparagraphs (b)(1) or (b)(2) of this Rule for certification or modification of each source to be included under the averaging plan.
  (B) The owner or operator shall submit a plan to implement an emissions averaging plan pursuant to 15A NCAC 02D .1410 within six months after the Director's notice in the North Carolina Register.
  (C) Final compliance shall be achieved within one year after the Director's notice in the North Carolina Register unless implementation of the emissions averaging plan requires the modification of one or more of the averaging sources. If modification of one or more of the averaging sources is required, final compliance shall be achieved within three years.

(4) If compliance with this Section is to be achieved through the implementation of a seasonal fuel switching program pursuant to 15A NCAC 02D .1411:
  (A) The owner or operator shall make all necessary modifications according to ~~Subparagraph (2) of this Paragraph.~~ Subparagraph (b)(2) of this Rule.
  (B) The owner or operator shall include a plan for complying with the requirements of 15A NCAC 02D

.1411 with the permit application required ~~under Part (2)(A) of this Subparagraph.~~ in Subparagraph (b)(2) of this Rule.

(C) Final compliance shall be achieved within three years after the Director's notice in the North Carolina Register.

(5) Increments of progress certification. The owner or operator shall certify to the Director, within five days after each increment deadline of progress in this Paragraph, whether the required increment of progress has been met.

(c) Nonattainment areas. The owner or operator of a source subject to this Rule because of the applicability of 15A NCAC 02D .1402(d), shall adhere to the following:

(1) If compliance with this Section is to be achieved through a demonstration to certify compliance without source modification:

(A) The owner or operator shall notify the Director in writing by August 1, 2007;

(B) The owner or operator shall perform any required testing, according to 15A NCAC 02D .1415, by January 1, 2008; and

(C) The owner or operator shall implement any required recordkeeping and reporting requirements, according to 15A NCAC 02D .1404, by January 1, 2008.

(2) If compliance with this Section is to be achieved through the installation of combustion modification technology or other source modification:

(A) The owner or operator shall submit a permit application and a compliance schedule by August 1, 2007.

(B) The compliance schedule shall contain a date by which contracts for installation of the modification shall be awarded or orders shall be issued for purchase of component parts.

(C) The compliance schedule shall contain a date by which installation of the modification shall begin.

(D) The compliance schedule shall contain a date by which installation of the modification shall be completed.

(E) If the source is subject to a limitation, the compliance schedule shall contain, a date by which compliance testing shall be completed.

(F) Final compliance shall be achieved no later than April 1, 2009.

(3) If compliance with this Section is to be achieved through the implementation of an emissions averaging plan as provided for in 15A NCAC 02D .1410:

(A) The owner or operator shall abide by the applicable requirements of ~~Subparagraph (1) or (2) of this Paragraph~~ Subparagraphs (c)(1) or (c)(2) of this Rule for certification or modification of each source to be included under the averaging plan.

(B) The owner or operator shall submit a plan to implement an emissions averaging plan according to 15A NCAC 02D .1410 by August 1, 2007.

(C) Final compliance shall be achieved within one year no later than January 1, 2008.

(4) If compliance with this Section is to be achieved through the implementation of a seasonal fuel switching program as provided for in 15A NCAC 02D .1411:

(A) The owner or operator shall make all necessary modifications according to ~~Subparagraph (2) of this Paragraph.~~ Subparagraph (c)(2) of this Rule.

(B) The owner or operator shall include a plan for complying with the requirements of 15A NCAC 02D .1411 with the permit application required ~~under Part (2)(A) of this Subparagraph.~~ in Subparagraph (c)(2) of this Rule.

(C) Final compliance shall be achieved no later than April 1, 2009.

(5) Increments of progress certification. The owner or operator shall certify to the Director, within five days after the deadline for each increment of progress in this Paragraph, whether the required increment of progress has been met.

(d) Sources already in compliance.

(1) Maintenance area and Charlotte ozone nonattainment area contingency plan. Paragraph (b) of this Rule shall not apply to sources ~~that~~ that:

(A) are in compliance with the applicable rules of this Section when the Director notices in the North Carolina Register the implementation of rules ~~in the North Carolina Register~~ that resolves a violation of the ambient air quality standard for ~~ozone~~ ozone; and

(B) ~~that has~~ have determined and certified compliance to the Director within six months after the Director notices in the North Carolina Register the implementation of rules ~~in the North Carolina Register~~ that resolves a violation of the ambient air quality standard for ozone.

(2) Nonattainment areas. Paragraph (c) of this Rule shall not apply to sources in an area named in 15A NCAC 02D .1402(d) that are in compliance with applicable rules of this Section on March 1, 2007.

(e) New sources.

(1) Maintenance area and Charlotte ozone nonattainment area contingency plan. The owner or operator of any new source of nitrogen oxides not permitted before the date the Director notices in the North Carolina Register according to 15A NCAC 02D .1402(e), (f), or (g) shall comply with all applicable rules in this Section upon start-up of the source. The owner or operator of any new source covered by 15A NCAC 02D .1407, .1408, .1409, .1413, or .1418 shall comply with all applicable rules in this Section upon start-up of the source.

(2) Nonattainment areas. The owner or operator of any new source of nitrogen oxides not permitted before March 1, 2007 in an area identified in 15A NCAC 02D .1402(d) shall comply with all applicable rules in this Section upon start-up of the source.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143.215.107(a)(5); 143.215.107(a)(7); 143.215.107(a)(10).

SECTION .1700 - MUNICIPAL SOLID WASTE LANDFILLS

15A NCAC 02D .1708 REPORTING REQUIREMENTS

(a) The owner or operator of an existing MSW landfill subject to this Rule according to 15A NCAC 02D .1702 shall submit a design capacity report to the Director as follows:

(1) The initial design capacity report shall be submitted no later than 90 days after the effective date of the EPA approval of the State Plan pursuant to Section 111(d) of the Clean Air Act.

(2) The initial design capacity report shall contain the information given in 40 CFR 60.38f(a)(1) and 40 CFR 60.38f(a)(2).

(b) The owner or operator of an existing MSW landfill subject to this Section shall submit an amended design capacity report providing notification of an increase in the design capacity of the landfill, within 90 days of an increase in the maximum design capacity of the landfill to meet or exceed 2.5 million megagrams and 2.5 million cubic meters. An increase in design capacity may result from an increase in the permitted volume of the landfill or an increase in the density as documented in the annual recalculation required in 15A NCAC 02D .1709(j).

(c) The owner or operator of an existing MSW landfill subject to this Rule shall submit a NMOC emission report to the Director no later than 90 days after the effective date of EPA approval of the State plan pursuant to Section 111(d) of the Clean Air Act and annually thereafter, except as provided for in 40 CFR 60.38f(c). The NMOC emission rate report shall:

(1) contain an annual or five-year estimate of the NMOC emission rate calculated using the formula and procedures provided in 40 CFR 60.35f(a) or (b), as applicable;

(2) include all the data, calculations, sample reports, and measurements used to estimate the annual or five-year emissions; and

(3) if the estimated NMOC emission rate as reported in the annual report is less than 34 megagrams per year in each of the next five consecutive years, the owner or operator may elect to submit an estimate of the NMOC emission rate for the next five-year period in lieu of the annual report. This estimate shall include the current amount of solid waste-in-place and the estimate waste acceptance rate for each year of the five years for which an NMOC emission rate is estimated. All data and calculations shall be provided. This estimate shall be revised at least once every five years. If the actual waste acceptance rate exceeds the estimated waste acceptance rate in any year reported in the five-year estimate, a revised five-year estimate shall be submitted. The revised estimate shall cover the five-year period beginning with the year in which the actual waste acceptance rate exceeded the estimated waste acceptance rate.

Each owner and operator subject to the requirements of this Rule shall be exempted from the requirements to submit an NMOC emission rate report, after installing a compliant collection and control system, during such time as the collection and control system is in operation and in compliance with 15A NCAC 02D .1705 and .1706.

(d) The owner or operator of an existing MSW landfill subject to 15A NCAC 02D .1703(b) shall submit a collection and control system design plan to the Director within one year of the first NMOC emission rate report, required under Paragraph (c) of this Rule, in which the emission rate equals or exceeds 34 megagrams per year, except as provided for in 40 CFR 60.38f(d)(4)(i), 60.38f(d)(4)(ii), and 60.38f(d)(4)(iii). The collection and control system design plan shall include:

(1) a description of the collection and control system;

(2) a description of any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping, or reporting provisions provided in this Rule; and

(3) a description indicating how the plan conforms to specifications for active collection systems or a demonstration of sufficient alternative provisions as given in 40 CFR 60.40f.

(e) The owner or operator of an existing MSW landfill who ~~has already~~ previously submitted a design plan pursuant to Paragraph (d) of this Rule, pursuant to 40 CFR Part 60, Subpart WWW, or a State plan implementing 40 CFR Part 60, Subpart Cc, shall submit a revised design plan that includes the information in Subparagraphs (d)(1) through ~~(d)(3).~~ (d)(3) of this Rule. The revised design plan shall be submitted to the Director as follows:

(1) at least 90 days before expanding operations to an area no covered by the previously approved design plan; and

(2) prior to installing or expanding the gas collection system in a way that is not consistent with the design plan that was submitted to the Director in Paragraph (d) of this Rule.

(f) The owner or operator of a controlled landfill shall submit a closure report to the Director within 30 days of cessation of waste acceptance. If a closure report has been submitted to the Director, no additional waste shall be placed into the landfill without first filing a notification of modification as described pursuant to 40 CFR 60.7(a)(4). The Director may request such additional information to verify that permanent closure of the MSW landfill has taken place pursuant to the requirements of 40 CFR 258.60.

(g) The owner or operator of a controlled MSW landfill shall submit an equipment removal report 30 days prior to removal or cessation of operation of the control equipment according to 15A NCAC 02D .1703(f). The report shall contain the items listed in 40 CFR 60.38f(g). The Director may request such additional information to verify that all the conditions for removal in 40 CFR 60.33f(f) have been met.

(h) The owner or operator of a MSW landfill seeking to comply with 15A NCAC 02D .1703(b) using an active collection system designed in accordance with 40 CFR 60.33f(b) shall submit, following the procedures pursuant to 60.38f(j)(2), annual reports of the recorded information in 40 CFR 60.38f(h)(1) through (h)(7). The initial annual report shall be submitted within 180 days of installation and start-up of the collection and control system, and shall include the initial performance test report required under 40 CFR 60.8. The initial performance test report shall be submitted by following the procedures pursuant to 60.38f(j)(1). Each owner or operator that chooses to comply with the operational provisions of 40 CFR 63.1958, 63.1960, and 63.1961, as allowed by 15A NCAC 02D .1705, .1706, and .1707 the owner or operator shall follow the semi-annual reporting requirements in 40 CFR 63.1981(h) in lieu of this Paragraph.

(i) The owner or operator of an existing MSW landfill required to comply with 15A NCAC 02D .1703(b) shall include the information given in 40 CFR 60.38f(i)(1) through (i)(6) with the initial performance test report required pursuant to 40 CFR 60.8.

(j) The owner or operator of an existing MSW landfill shall submit a report within 60 days after the date of completing each performance test pursuant to 40 CFR 60.38f(j).

(k) The owner or operator of an existing MSW landfill required to implement corrective ~~active,~~ action, shall submit reports to the Director pursuant to 40 CFR 60.38f(k)(1) and (k)(2). Each owner or operator that chooses to comply with the operational provisions of 40 CFR 63.1958, 63.1960, and 63.1961, as allowed by 15A NCAC 02D .1705, .1706, and .1707 shall follow the corrective action and the corresponding timeline reporting requirements in 40 CFR 63.1981(j) in lieu of this Paragraph.

(l) The owner or operator of an affected landfill with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters that has employed leachate recirculation or added liquids based on a Research, Development, and Demonstration permit within the last 10 years shall submit an annual report to the Director that includes the information pursuant to 40 CFR 60.38f(l)(1) through (l)(10). The annual report shall be submitted by following the procedures pursuant to 60.38f(j)(2).

(m) The owner or operator of an affected landfill with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters that intends to demonstrate site-specific surface methane emissions are below 500 parts per million methane, based on Tier 4 provisions of 40 CFR 60.35f(a)(6), shall provide notifications to the Director in accordance with 40 CFR 60.38f(m)(1) and (m)(2).

(n) Each owner or operator that chooses to comply with the operational provisions of 40 CFR 63.1958, 63.1960, and 63.1961, as allowed by 15A NCAC 02D .1705, .1706, and .1707, shall submit the 24-hour high temperature report according to 40 CFR 63.1981(k).

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5); 143-215.107(a)(10).

SUBCHAPTER 02Q - AIR QUALITY PERMITS PROCEDURES

15A NCAC 02Q .0102 ACTIVITIES EXEMPTED FROM PERMIT REQUIREMENTS

(a) For the purposes of this Rule, the definitions listed in 15A NCAC 02D .0101 and 15A NCAC 02Q .0103 shall apply.

(b) This Rule shall not apply to:

(1) facilities whose potential emissions require a permit pursuant to 15A NCAC 02Q .0500 (Title V Procedures); or

(2) a source emitting a pollutant that is part of the facility's 15A NCAC 02D .1100 (Control of Toxic Air Pollutants) modeling demonstration if that source is not exempted pursuant to 15A NCAC 02Q .0702.

(c) The owner or operator of an activity exempt from permitting pursuant to this Rule shall not be exempt from demonstrating compliance with any other applicable State or federal requirement.

(d) Any facility whose actual emissions of particulate matter (PM10), sulfur dioxide, nitrogen oxides, volatile organic compounds, carbon monoxide, hazardous air pollutants, and toxic air pollutants are each less than five tons per year and whose actual total aggregate emissions are less than 10 tons per year shall not be required to obtain a permit pursuant to 15A NCAC 02Q .0300. This Paragraph shall not apply to synthetic minor facilities that are regulated pursuant to 15A NCAC 02Q .0315.

(e) Any facility that is not exempted from permitting pursuant to Paragraph (d) of this Rule and whose actual total aggregate emissions of particulate matter (PM10), sulfur dioxide, nitrogen oxides, volatile organic compounds, carbon monoxide, hazardous air pollutants, and toxic air pollutants are greater than or equal to five tons per year and less than 25 tons per year may register their facility pursuant to 15A NCAC 02D .0202 instead of obtaining a permit pursuant to 15A NCAC 02Q .0300. This Paragraph shall not apply to:

(1) synthetic minor facilities that are regulated pursuant to 15A NCAC 02Q .0315;

(2) facilities with a source subject to maximum achievable control technology pursuant to 40 CFR Part 63;

(3) facilities with sources of volatile organic compounds or nitrogen oxides that are located in a nonattainment area; or

(4) facilities with a source regulated pursuant to New Source Performance Standards (NSPS), unless the source is exempted pursuant to Paragraph (g) or (h) of this Rule.

(f) The Director may require the owner or operator of a facility to register such facility pursuant to 15A NCAC 02D .0200 or obtain a permit pursuant to 15A NCAC 02Q .0300, if necessary to obtain compliance with any other applicable State or federal requirement.

(g) The following activities shall not require a permit or permit modification pursuant to 15A NCAC 02Q .0300:

(1) maintenance, upkeep, and replacement:
  (A) maintenance, structural changes, or repair activities that do not increase the capacity of such process and do not cause any change in the quality or nature or an increase in quantity of an emission of any regulated air pollutant;
  (B) housekeeping activities or building maintenance procedures, including painting buildings, paving parking lots, resurfacing floors, repairing roofs, washing, using portable vacuum cleaners, sweeping, using and associated storing of janitorial products, or removing insulation;
  (C) using office supplies, supplies to maintain copying equipment, or blueprint machines;
  (D) using firefighting equipment (excluding engines regulated pursuant to 40 CFR 63, Subpart ZZZZ); or
  (E) replacing existing equipment with equipment of the same size (or smaller), type, and function that does not result in an increase to the actual or potential emission of regulated air pollutants, does not affect the facility's compliance with any other applicable State or federal requirements, and that fits the description of the existing equipment in the permit, including the application, such that the replacement equipment can be lawfully operated pursuant to that permit without modifying the permit;

(2) air conditioning or ventilation: comfort air conditioning or comfort ventilating systems that do not transport, remove, or exhaust regulated air pollutants to the atmosphere;

(3) laboratory or classroom activities:
  (A) bench-scale, on-site equipment used for experimentation, chemical or physical analysis for quality control purposes or for diagnosis of illness, training, or instructional purposes;
  (B) research and development activities that produce no commercial product or feedstock material; or
  (C) educational activities, including wood working, welding, and automotive repair;

(4) storage tanks with no applicable requirements other than Stage I controls pursuant to 15A NCAC 02D .0928, Gasoline Service Stations Stage I;

(5) combustion and heat transfer equipment:
  (A) heating units used for human comfort, excluding space heaters burning used oil, that have a heat input of less than 10 million Btu per hour and that do not provide heat for any manufacturing or other industrial process;
  (B) residential wood stoves, heaters, or fireplaces; or
  (C) water heaters that are used for domestic purposes only and are not used to heat process water;

(6) wastewater treatment processes: industrial wastewater treatment processes or municipal wastewater treatment processes for which there are no state or federal air requirements;

(7) dispensing equipment: equipment used solely to dispense gasoline, diesel fuel, kerosene, lubricants, or cooling oils;

(8) electric motor burn-out ovens with secondary combustion chambers or afterburners;

(9) electric motor bake-on ovens;

(10) burn-off ovens with afterburners for paint-line hangers;

(11) hosiery knitting machines and associated lint screens, hosiery dryers and associated lint screens, and hosiery dyeing processes that do not use bleach or solvent dyes;

(12) woodworking operations processing only green wood;

(13) solid waste landfills: This does not apply to flares and other sources of combustion at solid waste landfills. These flares and other combustion sources shall obtain a permit pursuant to 15A NCAC 02Q .0300 unless they qualify for another exemption pursuant to this Paragraph; or

(14) miscellaneous:
  (A) equipment that does not emit any regulated air pollutants;
  (B) sources for which there are no applicable requirements;
  (C) motor vehicles, aircraft, marine vessels, locomotives, tractors, or other self-propelled vehicles with internal combustion engines;

(D) engines regulated pursuant to Title II of the Federal Clean Air Act (Emission Standards for Moving Sources);
(E) equipment used for preparing food for direct on-site human consumption;
(F) a source whose emissions are regulated only pursuant to Section 112(r) or Title VI of the Federal Clean Air Act;
(G) exit gases from in-line process analyzers;
(H) stacks and vents that prevent the escape of sewer gases from domestic waste through plumbing traps;
(I) refrigeration equipment that complies with the regulations set forth in Sections 601 through 618 of Title VI (Stratospheric Ozone Protection) of the Federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA pursuant to Title VI for stratospheric ozone protection, except refrigeration equipment used as or in conjunction with air pollution control equipment. Refrigeration equipment used as or in conjunction with air pollution control equipment shall obtain a permit pursuant to 15A NCAC 02Q .0300 unless it qualifies for another exemption pursuant to this Paragraph;
(J) equipment not vented to the outdoor atmosphere, with the exception of equipment that emits volatile organic compounds. Equipment that emits volatile organic compounds shall obtain a permit pursuant to 15A NCAC 02Q .0300 unless it qualifies for another exemption pursuant to this Paragraph;
(K) animal operations not required to have control technology pursuant to 15A NCAC 02D .1800. If an animal operation is required to have control technology, it shall obtain a permit pursuant to this Subchapter;
(L) any incinerator that meets the requirements set forth in 15A NCAC 02D .1201(c)(4); or
(M) dry cleaning operations, regardless of NSPS or NESHAP applicability.

(h) The following activities shall not require a permit or permit modification pursuant to 15A NCAC 02Q .0300. These activities shall be included in determining applicability of any rule or standard that requires facility-wide aggregation of source emissions, including activities regulated by 15A NCAC 02D .0530, 15A NCAC 02D .0531, 15A NCAC 02Q .0500, and 15A NCAC 02Q .0700:

(1) combustion and heat transfer equipment (including direct-fired equipment that only emit regulated pollutants from fuel combustion):
(A) fuel combustion equipment (excluding internal combustion engines) not regulated pursuant to 40 CFR Part 60, NSPS, firing exclusively unadulterated liquid fossil fuel, wood, or an approved equivalent unadulterated fuel as defined in 15A NCAC 02Q .0103;
(B) fuel combustion equipment (excluding internal combustion engines) firing exclusively natural gas or liquefied petroleum gas or a mixture of these fuels; or
(C) space heaters burning waste oil if:
(i) the heater burns only oil that the owner or operator generates or used oil from do-it-yourself oil changers who generate used oil as household wastes; and
(ii) the heater is designed to have a maximum heat input of not more than 500,000 Btu per hour;
(2) gasoline distribution: bulk gasoline plants, as defined in 15A NCAC 02D .0926(a)(3), with an average daily throughput of less than 4,000 gallons;
(3) paint spray booths or graphic arts operations, coating operations, and solvent cleaning operations, as defined in 15A NCAC 02Q .0803, located at a facility whose facility-wide actual uncontrolled emissions of volatile organic compounds are less than five tons per year, except that such emission sources whose actual uncontrolled emissions of volatile organic compounds are less than 100 pounds per year shall qualify for this exemption regardless of the facility-wide emissions. For the purpose of this exemption, water wash and filters that are an integral part of the paint spray booth shall not be considered air pollution control devices;
(4) electrostatic dry powder coating operations with filters or powder recovery systems;
(5) miscellaneous: any source whose potential uncontrolled emissions of particulate matter (PM10), sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide shall each be no more than five tons per year; or
(6) case-by-case exemption: activities that the applicant demonstrates to the Director do not violate any applicable emission control standard.

(i) The owner or operator of a facility or source claiming that an activity is exempt pursuant to Paragraphs (d), (e), (g) or (h) of this Rule shall submit emissions data, documentation of equipment type, or other supporting documents to the Director upon request that the facility or source is qualified for that exemption.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.108.

SECTION .0700 – TOXIC AIR POLLUTANT PROCEDURES

15A NCAC 02Q .0706 MODIFICATIONS

(a) The owner or operator shall comply with Paragraphs (b) and (c) of this Rule for a modification that is subject to a Section in 15A NCAC 02D other than 15A NCAC 02D .1100 and that:

(1) requires a permit pursuant to 15A NCAC 02Q ~~.0300;~~ .0300 or .0500; or

(2) occurs at a facility with a permit pursuant to 15A NCAC 02Q .0500 and emits a pollutant that is part of the facility's previous modeling demonstration conducted pursuant to 15A NCAC 02D .1104 and 15A NCAC 02Q .0709, if that modification is not exempted pursuant to 15A NCAC 02Q .0702.

This Rule shall not apply to facilities whose emissions of toxic air pollutants result only from insignificant activities, as defined in 15A NCAC 02Q .0103(20), or result only from sources exempted pursuant to 15A NCAC 02Q .0102.

(b) The owner or operator of the facility shall submit a permit application ~~to~~ that complies with 15A NCAC 02D .1100 if the modification results in:

(1) a net increase in emissions or ambient concentration as previously determined pursuant to 15A NCAC 02D .1106 and 15A NCAC 02Q .0709 of any toxic air pollutant that the facility was emitting before the modification; or

(2) emissions of any toxic air pollutant that the facility was not emitting before the modification if such emissions exceed the levels set forth in 15A NCAC 02Q .0711.

(c) The permit application filed pursuant to this Rule shall include an evaluation for all toxic air pollutants identified pursuant to Paragraph (b) of this Rule.

All sources at the facility, excluding sources exempt from evaluation pursuant to 15A NCAC 02Q .0702, emitting these toxic air pollutants shall be included in the evaluation. Sources meeting the exemption set forth in 15A NCAC 02Q .0702(a)(27) shall be reviewed by the Division pursuant to G.S. 143-215.107(a)(5)b.

(d) If a source is included in an air toxic evaluation but is not the source that is being added or modified at the facility, and if the emissions from this source must be reduced in order for the facility to comply with the rules in this Section and 15A NCAC 02D .1100, the emissions from this source shall be reduced by the time the new or modified source begins operating such that the facility shall be in compliance with the rules of this Section and 15A NCAC 02D .1100.

Authority G.S. 143-215.3(a)(1); 143-215.107; 143-215.108; 143B-282.

TITLE 20 – OFFICE OF THE STATE TREASURER

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Local Governmental Employees' Retirement System Board of Trustees intends to adopt the rules cited as 20 NCAC 02C .0210 and .0211.*

Link to agency website pursuant to G.S. 150B-19.1(c): *https://www.nctreasurer.com/about/transparency/commitment-transparency/nc-administrative-code-rules*

Proposed Effective Date: *October 1, 2023*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Submit a written request for a public hearing within 15 days after publication of the Notice of Text to: Department of State Treasurer, Attn: Rulemaking Coordinator, 3200 Atlantic Avenue, Raleigh, NC 27604 or DST.NCAC@nctreasurer.com*

Reason for Proposed Action: *In 2022, the General Assembly enacted Session Law 2022-70, adding subsection G.S. 128-23(i) to the General Statutes. That subsection provides: "Notwithstanding any provision of this section or G.S. 128-21(11), or any other provision of law to the contrary, any eligible employer that is not a taxing authority and is not a participating employer in the Retirement System on September 1, 2023, is not eligible to commence participation in the Retirement System without obtaining a surety as defined in rules adopted by the Board of Trustees. The rules adopted by the Board of Trustees shall address how an eligible employer that is not a taxing authority will cover a withdrawal liability that could be incurred by the employer if the employer ceases participation in the Retirement System." Session Law 2022-70 provided that the Board "shall adopt rules necessary to enforce this [provision] by August 1, 2023."*

Accordingly, this proposal includes recommended administrative rules addressing how an otherwise eligible employer that is not a taxing unit, as defined by G.S. 105-273, may provide surety to the Board establishing that any withdrawal liability that the employer may incur will be paid.

Comments may be submitted to: *Laura Rowe, 3200 Atlantic Avenue, Raleigh, NC 27604; email DST.NCAC@nctreasurer.com*

Comment period ends: *May 1, 2023*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the

legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

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

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

CHAPTER 02 - RETIREMENT SYSTEMS

SUBCHAPTER 02C - LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM

SECTION .0200 - ADMINISTRATION

20 NCAC 02C .0210 DEFINITIONS

(a) "Surety" means a written agreement given for the fulfillment and guarantee of the withdrawal payment to cease participation in the Retirement System under G.S. 128-30(i).

(b) "Estimated Withdrawal Liability" means the withdrawal liability under the terms of G.S. 128-30(i) estimated by the Division's consulting actuary. The estimate shall be prepared under the assumption that the participating employer will cease participation 10 years after initial participation.

(c) "Non-taxing authority" ("NTA") means as an otherwise eligible employer that is not a taxing unit, as defined by G.S. 105-273(16).

Authority G.S. 128-23(i).

20 NCAC 02C .0211 SURETY FOR NON-TAXING AUTHORITY PARTICIPATION

(a) An NTA shall provide surety to the Board establishing that any withdrawal liability that the NTA may incur will be paid by submitting a duly adopted resolution stating that the NTA is maintaining an amount equal to or greater than the Estimated Withdrawal Liability in a secure financial instrument and will maintain the funds in such instrument throughout its participation in the Retirement System. A secure financial instrument may include: an escrow account, a letter of credit, a bond, a deed of trust, or a deposit in the Ancillary Governmental Participant Investment Program (AGPIP) under G.S. 147-69.3 to the extent such an investment by the NTA is permitted by the Internal Revenue Code and State law.

(b) Any entity submitting a resolution required under Paragraph (a) of this Rule must also submit to the Division an "acknowledgement and acceptance letter" signed by every member of the entity's governing board. The letter must acknowledge the specific amount of the Estimated Withdrawal Liability; acknowledge that the actual amount of the withdrawal liability, if incurred, will differ from the Estimated Withdrawal Liability; accept the obligation to pay the withdrawal liability, if incurred; and attest that the entity has reviewed the withdrawal-related requirements of G.S. 128-30(i).

Authority G.S. 128-23(i).

Note from the Codifier: *The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.*
This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Rule-making Agency: *Department of Environmental Quality*

Rule Citation: *15A NCAC 01T .0101-.0107, .0201-.0206, .0301-.0306*

Effective Date: *February 8, 2023*

Date Filed with the Codifier: *January 31, 2023*

Reason for Action: *S.L. 2022-74 (12.1) requires the Department of Environmental Quality to adopt temporary rules to implement the policies or guidelines for the administration of funds from G.S. 143-215.73F(b1) and G.S. 143-215.73M(b1). These temporary rules are being proposed to satisfy this requirement by specifying how to apply for funds, what information is necessary to apply, and Department's procedure for deciding fund allocation.*
Funds appropriated in G.S. 143-215.73F(b1) and G.S. 143-215.73M(b1) are allocated to three programs - the Shallow Draft Navigation Channel Dredging Fund for dredging projects designed to keep shallow draft navigation channels navigable and safe; the Coastal Storm Damage Mitigation Fund, which provides grants to units of local government for costs associated with beach nourishment, artificial dunes, etc. to mitigate or remediate storm damage to the ocean beaches and dune systems; and the Aquatic Weed Control Fund, which provides grants to control, eradicate, and regulate noxious aquatic weeds so as to protect and preserve human health, safety, and beneficial uses of State waters.
S.L. 2022-74(12.1c) states "The Department is exempt from the fiscal note requirement of G.S. 150B 21.4 and from the Rules Review Commission review under Part 3 of Chapter 150B of the General Statutes in adopting rules to implement this section."

SUBCHAPTER 01T - WATER RESOURCES GRANT PROGRAMS

SECTION .0100 - AQUATIC WEED FUND

15A NCAC 01T .0101 APPLICABILITY
The rules in this Section apply to the Aquatic Weed Fund in G.S. 143-215.73F.

History Note Authority G.S. 113A-223; 113A-227; 143-215.73F;
Temporary Adoption Eff. February 8, 2023.

15A NCAC 01T .0102 DEFINITIONS
For purposes of the rules in this Section,

(1) "Department" means the North Carolina Department of Environmental Quality;
(2) "Division" means the Division of Water Resources, which is within the North Carolina Department of Environmental Quality; and
(3) "Council" means the North Carolina Aquatic Weed Control Council.

History Note Authority G.S. 113A-223; 113A-227; 143-215.73F;
Temporary Adoption Eff. February 8, 2023.

15A NCAC 01T .0103 PROJECT ELIGIBILITY
An aquatic weed control project proposed by a unit of local, state, or federal government; academic institution; public utility; or other entity may be eligible for grant funds from the Aquatic Weed Fund provided that:

(1) the project targets one or more aquatic weed species included on the Noxious Aquatic Weed List in 15A NCAC 02G .0602 with subsequent amendments;
(2) the cost share requirements of G.S. 143-215.73F(c)(3) are met; and
(3) the project provides at least one of the following benefits:
  (A) protects and preserves human health;
  (B) protects public safety;
  (C) protects the beneficial use of the water(s) of the State;
  (D) prevents injury to property; or
  (E) prevents injury to beneficial plant and animal life.

History Note Authority G.S. 113A-223; 113A-227; 143-215.73F;
Temporary Adoption Eff. February 8, 2023.

15A NCAC 01T .0104 AQUATIC WEED CONTROL GRANT APPLICATIONS
(a) To request state cost share funding for an eligible aquatic weed control project, an application shall be sent to the Division of Water Resources Aquatic Weeds Control Program, at 1611 Mail Service Center, Raleigh, NC 27699-1611 or electronically to aquaticweeds@ncdenr.gov. The application shall be made on a form provided by the Division, available electronically via the following website: https://deq.nc.gov/about/divisions/water-resources/water-planning/water-supply-planning/aquatic-weed-control-program. The application form can also be obtained by emailing a request to aquaticweeds@ncdenr.gov; by contacting the Division of Water Resources Aquatic Weeds Control Program, 1611 Mail Service Center, Raleigh, NC, 27699-1611; or

by calling 919-707-9000. The application shall include the following:

(1) the date of application;
(2) the name, address and phone number of the applicant;
(3) the project name and location;
(4) if applicable, the specific waterbody or waterbodies in which the proposed project will occur;
(5) the aquatic ~~weed~~ weed(s) ~~or weeds to be targeted by~~ associated with the project ;
(6) acknowledgement that the applicant will fund no less than 50 percent of the project cost and that full obligation for project cost share will be assumed;
(7) the anticipated benefit or benefits the project will provide as outlined in Rule ~~.0102(3)~~ .0103 of this Section; and
(8) a signature by the applicant.

(b) In signing the application, the applicant(s) certifies that all information contained therein and in support thereof is accurate and true to the best of their knowledge.

History Note Authority G.S. 113A-223; 113A-227; 143-215.70; 143-215.72; 143-215.73F;
Temporary Adoption Eff. February 8, 2023.

15A NCAC 01T .0105 GRANT APPLICATION REVIEW AND APPROVAL

(a) To be eligible for funding from the Aquatic Weed Fund, applications shall be received before October 16 of the year prior to when the project will occur.

(b) All applications shall be reviewed by the Council. Following review by the Council, the Council shall provide a list of recommended projects proposed for cost share funding to the Director of the Division, with total funding by the Department for all cost shared projects not to exceed the amount in G.S. 143-215.73F(b)(2).

(c) Recommendations from the Council and project selection by the Director of the Division shall be based on the extent to which the project meets the criteria listed in G.S. 143-215.72(b).

History Note Authority G.S. 113A-223; 113A-227; 143-215.70; 143-215.72; 143-215.73; 143-215.73F;
Temporary Adoption Eff. February 8, 2023.

15A NCAC 01T .0106 INSTRUMENT OF AGREEMENT

(a) For a project sponsored by a unit of local government, the applicant shall provide a resolution from the local government's governing board and, per G.S. 143-6-23(b), a copy of their conflict of interest policy prior to the Department beginning any approved cost share project or fund disbursement. The resolution shall include:

(1) the specific waterbody or location in which the proposed project will occur;
(2) the aquatic weed(s) ~~to be targeted by~~ associated with the project;
(3) a statement of assumption for the full obligation for payment of the balance of project costs, to be no less than fifty percent of the total cost of the project;
(4) a statement of agreement to assist the Department in determining the full scope of the aquatic weed control project.
(5) when applicable, assurance that the public will have access to the waters that are included in the proposed project;
(6) a statement that the Department will be held harmless from any damages that may result from the implementation of the project.
(7) when applicable, a statement that the applicant will be responsible for notifying all landowners with property adjacent to the waterbody on which the project will be located, providing details of the project to those landowners, and for sponsoring any necessary public information meetings and outreach; and
(8) when applicable, an agreement to notify the public of any temporary water-use restrictions associated with the project.

(b) For a project sponsored by an entity that is not a unit of local government, the applicant shall sign a binding written agreement with the Department prior to the Department beginning any approved cost share project or fund disbursement. The cost sharing agreement shall include the items listed in Paragraph (a) of this Rule.

History Note Authority G.S. 113A-223; 143-215.73; 143-215.73F; 143-6-23;
Temporary Adoption Eff. February 8, 2023.

15A NCAC 01T .0107 NORTH CAROLINA AQUATIC WEED CONTROL COUNCIL

The Council shall serve as an advisory group for the Division regarding the control, eradication, and regulation of noxious weeds. The Division shall invite each of the following agencies to designate one representative to serve on the Council:

(1) Department of Agriculture and Consumer Services – Plant Industry Division;
(2) Department of Agriculture and Consumer Services – Structural Pest Control & Pesticides Division;
(3) Department of Environmental Quality – Division of Coastal Management;
(4) Department of Environmental Quality – Division of Marine Fisheries;
(5) Department of Environmental Quality – Division of Water Resources – Water Sciences Section;
(6) Department of Environmental Quality – Division of Water Resources – Water Planning Section;
(7) Department of Natural and Cultural Resources – Division of Parks and Recreation;
(8) Department of Natural and Cultural Resources – Natural Heritage Program;
(9) Department of Transportation;

(10) North Carolina State University – Crop and Soil Science Department;
(11) North Carolina State University – North Carolina Agricultural Research Service;
(12) U.S. Fish and Wildlife Service; and
(13) Wildlife Resources Commission.

History Note Authority G.S. 113A-223; Temporary Adoption Eff. February 8, 2023.

SECTION .0200 - SHALLOW DRAFT NAVIGATION CHANNEL DREDGING FUND

15A NCAC 01T .0201 APPLICABILITY

(a) The rules in this Section apply to the Shallow Draft Navigation Channel Dredging Fund in G.S. 143-215.73F.
(b) The rules in this Section do not apply to projects funded by the Shallow Draft Navigation Channel Dredging Fund that are related to dredging federally authorized channels where the work is performed by the United States Army Corps of Engineers.

History Note Authority G.S. 143-215.73F; Temporary Adoption Eff. February 8, 2023.

15A NCAC 01T .0202 DEFINITIONS

For purposes of the rules in this Section,
(1) "Department" means the North Carolina Department of Environmental Quality;
(2) "Division" means the Division of Water Resources, which is within the North Carolina Department of Environmental Quality; and
(3) "shallow draft navigation channel" has the same meaning as set forth in G.S. 143-215.73F(e).

History Note Authority G.S. 143-215.73F; Temporary Adoption Eff. February 8, 2023.

15A NCAC 01T .0203 PROJECT ELIGIBILITY

(a) A shallow draft navigation channel dredging project proposed by a local government may be eligible for grant funds from the Shallow Draft Navigation Channel Dredging Fund provided that:
(1) the project is designed to keep shallow draft navigation channels located in State waters or waters of the state located within lakes navigable and safe or the project is for siting and acquisition of dredged disposal easement sites associated with the maintenance of the Atlantic Intracoastal Waterway between the border with the state of South Carolina and the border with the Commonwealth of Virginia, under a Memorandum of Agreement between the state and the federal government; and
(2) the cost share requirements of G.S. 143-215.73F(c) are met.

(b) The following are ineligible costs that may not be reimbursed from the Shallow Draft Navigation Channel Dredging Fund:
(1) dredging underneath or immediately adjacent to privately owned ship berths, piers, docks, or similar facilities or businesses;
(2) costs incurred for fines, penalties, legal fees, or litigation costs (including but not limited to litigation of a permit, penalty, enforcement action, or contract dispute);
(3) costs incurred outside of the term of the grant contract between the Department and the local government;
(4) purchase of equipment (including but not limited to barges and excavators);
(5) indirect or overhead costs of the municipality, such as rent, telephone service, and general administrative support; or
(6) salaries and other expenses of elected officials, whether incurred for purposes of project direction, execution, or legislation.

History Note Authority G.S. 143-215.73F; Temporary Adoption Eff. February 8, 2023.

15A NCAC 01T .0204 GRANT APPLICATIONS FOR THE SHALLOW DRAFT NAVIGATION CHANNEL DREDGING FUND

(a) To apply for grant funds from the Shallow Draft Navigation Channel Dredging Fund, the application shall be on forms provided by the Division and submitted to the Division's Coastal Infrastructure Grant Coordinator. The grant coordinator's contact information and the application forms are available at https://deq.nc.gov/about/divisions/water-resources/water-resources-grants/water-resources-development-grant-program. The application shall include the following:
(1) the applicant's primary contact or project manager's name, title, organization, tax ID number (if applicable), email address, mailing address, telephone number;
(2) the contact and address to which the Department should send grant reimbursements and grant/project correspondence;
(3) project title, description, scope and location;
(4) description of existing conditions and land use within the project area;
(5) anticipated contract start and end dates;
(6) address the criteria in Rule .0205 of this Section;
(7) description of the location and method of dredge spoil disposal;
(8) itemized project budget;
(9) project plans and location maps;
(10) official resolution in accordance with 15A NCAC 02G .0104; and
(11) the local government's conflict of interest policy.

(b) In signing the application, the applicant(s) certifies that all information contained therein and in support thereof is accurate and true to the best of their knowledge.

History Note Authority G.S. 143-215.73F; 143C-6-23; Temporary Adoption Eff. February 8, 2023.

15A NCAC 01T .0205 GRANT APPLICATION REVIEW AND APPROVAL

(a) The Division shall review grant applications and may either approve, approve in part, or disapprove applications based on the following criteria:

(1) the economic, social, and environmental benefits to be provided by the projects;

(2) regional benefits of projects to an area greater than the area under the jurisdiction of the local sponsoring entity;

(3) the financial resources of the local sponsoring entity;

(4) the environmental impact of the project; and

(5) any direct benefit to the State-owned lands.

(b) Notwithstanding the criteria set forth in this Rule, the Division shall prioritize funding those projects that improve shallow draft navigation channels that are accessible by and used by the general boating public.

History Note Authority G.S. 143-215.73F; Temporary Adoption Eff. February 8, 2023.

15A NCAC 01T .0206 POST FUNDING AWARD

(a) If the Division awards a grant from the Shallow Draft Navigation Channel Dredging Fund and the local government accepts the grant award, then a grant contract must be executed prior to any grant ~~reimbursements~~ reimbursements. ~~are made.~~

(b) Any changes to the scope of the project or project budget after submission of a grant application will, at minimum, require written approval by the Division and the Division may require a grant contract amendment.

(c) The term of the grant contract may be extended at the discretion of the Division. A request from a grantee to extend the grant contract shall be submitted at least 45 days prior to the grant contract expiration date and shall include:

(1) justification for the extension request;

(2) summary of the current project status; and

(3) anticipated project schedule moving forward.

(d) The grantee shall use the funds for only those purposes set forth in G.S. 143-215.73F and shall return ~~unpent~~ unspent grant funds.

History Note Authority G.S. 143-215.73F; Temporary Adoption Eff. February 8, 2023.

SECTION .0300 - COASTAL STORM DAMAGE MITIGATION FUND

15A NCAC 01T .0301 APPLICABILITY

The rules in this Section apply to the Coastal Storm Damage Mitigation Fund in G.S. 143-215.73M.

History Note Authority G.S. 143-215.73M; Temporary Adoption Eff. February 8, 2023.

15A NCAC 01T .0302 DEFINITIONS

For purposes of the rules in this Section,

(1) "Department" means the North Carolina Department of Environmental Quality and

(2) "Division" means the Division of Water Resources, which is within the North Carolina Department of Environmental Quality.

History Note Authority G.S. 143-215.73M; Temporary Adoption Eff. February 8, 2023.

15A NCAC 01T .0303 PROJECT ELIGIBILITY

(a) A coastal storm damage mitigation project proposed by a local government may be eligible for grant funds from the Coastal Storm Damage Mitigation Fund provided that:

(1) the project is for beach nourishment, artificial dunes, and other projects to mitigate or remediate coastal storm damage to the ocean beaches and dune systems of the State; and

(2) the cost share requirements of G.S. 143-215.73M(c) are met.

(b) The following are ineligible costs that may not be funded from the Coastal Storm Damage Mitigation Fund:

(1) indirect or overhead costs of the local government, such as rent, telephone service, and general administrative support;

(2) costs incurred for fines, penalties, legal fees, or litigation costs (including but not limited to litigation of a permit, penalty, enforcement action, or contract dispute);

(3) any activities related to a terminal groin and its accompanying beach fill project permitted pursuant to G.S. 113A-115.1; or

(4) salaries and other expenses of elected officials, whether incurred for purposes of project direction, execution, or legislation.

History Note Authority G.S. 143-215.73M; Temporary Adoption Eff. February 8, 2023.

15A NCAC 01T .0304 COASTAL STORM DAMAGE MITIGATION FUND APPLICATION

(a) To apply for grant funds from the Coastal Storm Damage Mitigation Fund, the application shall be on forms provided by the Division and submitted to the Division's Coastal Infrastructure Grant Coordinator. The grant coordinator's contact information and the application forms are available at https://deq.nc.gov/about/divisions/water-resources/water-resources-grants/water-resources-development-grant-program.

(b) The application shall include the following:

(1) primary contact or project manager's name, title, organization, tax ID number (if applicable), email address, mailing address, telephone number;

(2) the contact and address to which the Department should sent grant funds and grant/project correspondence;

(3) project title, description, scope and location;

(4) description of existing conditions and land use within project area;

(5) anticipated contract start and end dates;

(6) address the criteria in Rule .0305 of this Section;

(7) itemized project budget;
(8) project plans and locations maps;
(10) official resolution in accordance with 15A NCAC 02G .0104 with subsequent amendments; and
(11) the local government's conflict of interest policy.

(c) In signing the application, the applicant(s) certifies that all information contained therein and in support thereof is accurate and true to the best of their knowledge.

History Note Authority G.S. 143-215.73M; 143C-6-23; Temporary Adoption Eff. February 8, 2023.

15A NCAC 01T .0305 GRANT APPLICATION REVIEW AND APPROVAL

The Division shall review grant applications and may either approve, approve in part, or disapprove applications based on the following criteria:

(1) the economic, social, and environmental benefits to be provided by the project;
(2) mitigation measures to be implemented to avoid and minimize detrimental environmental impacts
(3) expected useful life of the project;
(4) the source and availability of other funding sources for the project; and
(5) viability and efficiencies of the project, including but not limited to regional planning, beneficial use of clean, beach quality dredged material from navigation channels within the nearshore, beach or inlet shoal system, and readiness to process based on the project phase, permitting status, property access, and construction schedule.

History Note Authority G.S. 143-215.73M; Temporary Adoption Eff. February 8, 2023.

15A NCAC 01T .0306 POST FUNDING AWARD

(a) If the Division awards a grant from the Coastal Storm Damage Mitigation Fund and the local government accepts the grant award, then a grant contract must be executed prior to any grant funds being dispersed.

(b) Any changes to the scope of the project or project budget after submission of a grant application will, at minimum, require written approval by the Division and the Division may require a grant contract amendment.

(c) The term of the grant contract may be extended at the discretion of the Division. A request from a grantee to extend the grant contract shall be submitted at least 45 days prior to the grant contract expiration date and shall include:

(1) justification for the extension request;
(2) summary of the current project status; and
(3) anticipated project schedule moving forward.

(b) The grantee shall use the funds for only those purposes set forth in G.S. 143-215.73M and shall return unspent grant funds.

History Note Authority G.S. 143-215.73M; Temporary Adoption Eff. February 8, 2023.

*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 January 19, 2023 Meeting.

					REGISTER CITATION TO THE NOTICE OF TEXT
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Definitions	07	NCAC	13C	.0102*	37:08 NCR
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Commercial Enterprises and Activities	07	NCAC	13C	.0201*	37:08 NCR
Scientific or Educational Research and Noncommercial Acti...	07	NCAC	13C	.0202	37:08 NCR
Commercial Activities in or Upon State Lakes	07	NCAC	13C	.0203	37:08 NCR
State Lake Permits	07	NCAC	13C	.0301*	37:08 NCR
Structures Prohibited on Certain State Lakes	07	NCAC	13C	.0302	37:08 NCR
Permissible Structural Dimensions	07	NCAC	13C	.0303*	37:08 NCR
Limits on Elevated Structures	07	NCAC	13C	.0304	37:08 NCR
Permits for Structures Existing as of February 1, 1974	07	NCAC	13C	.0305	37:08 NCR
Fees	07	NCAC	13C	.0306	37:08 NCR
Condition of Structures	07	NCAC	13C	.0307*	37:08 NCR
Eligibility for Permits	07	NCAC	13C	.0309	37:08 NCR
Revocation of Permits	07	NCAC	13C	.0310	37:08 NCR
Application for Structural Permits	07	NCAC	13C	.0311	37:08 NCR
Permits for Structures Existing on February 1, 1974	07	NCAC	13C	.0312	37:08 NCR
Liability	07	NCAC	13C	.0313	37:08 NCR
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Application Denial and Permit Revocation Procedures	07	NCAC	13C	.0315	37:08 NCR
Water Level; Discharge	07	NCAC	13C	.0406*	37:08 NCR
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State Park Regulations	07	NCAC	13C	.0408	37:08 NCR
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Committee Accounts	08	NCAC	21	.0201	37:04 NCR
Requesting a Waiver of a Civil Late Penalty	08	NCAC	21	.0206*	37:04 NCR
Procedures for Committees with Missing Reports	08	NCAC	21	.0207*	37:04 NCR
INDUSTRIAL COMMISSION					
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WILDLIFE RESOURCES COMMISSION					
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New Hanover County	15A	NCAC	10F	.0314*	37:06 NCR
Pamlico County	15A	NCAC	10F	.0326*	37:06 NCR
Montgomery County	15A	NCAC	10F	.0327*	37:06 NCR
Northampton and Warren Counties	15A	NCAC	10F	.0336*	37:06 NCR
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Endangered Species Listed	15A	NCAC	10I	.0103*	37:06 NCR

Threatened Species Listed	15A NCAC	10I	.0104*	37:06 NCR
Special Concern Species Listed	15A NCAC	10I	.0105	37:06 NCR
BEHAVIOR ANALYST LICENSURE BOARD				
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The following rules are subject to Legislative Review:

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Requirements for Inspections and Evaluations	21 NCAC	16Q	.0104*	37:07 NCR
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Moderate Pediatric Conscious Sedation Clinical Requiremen...	21 NCAC	16Q	.0405*	37:07 NCR
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TITLE 07 – DEPARTMENT OF NATURAL AND CULTURAL RESOURCES

07 NCAC 13C .0102 DEFINITIONS

The following definitions apply to this Chapter:

(1) "Appliances" means any major electrical, gas, heating, or cooling device including refrigerators, stoves, heaters, freezers, air conditioners, or any other device designed to be permanently situated or attached; Appliances shall not be construed to include lights or boats hoists;

(2) "Boat" means any vessel equipped with any propulsion machinery, whether or not any such machinery is the principal source of propulsion;

(3) "Boat Ramp" means any permanent or temporary structure which is placed on the floor of a state lake for the purpose of allowing boats to enter or be removed from a state lake;

(4) "Boat Slip" means any structure adjoining, attached to, or part of a pier which has the capacity to store one boat;

(5) "Commercial" means, when applied to any permit issued or application submitted under this Subchapter, that a structure or activity shall be used primarily for gain or profit;

(6) "Floor Level" means the level of the structure closest to the water;

(7) "Joint Private" means, when applied to any permit issued or application submitted under

this Subchapter, that a structure is in joint ownership between two or more waterfront property owners and constructed on the owner's waterfront property in accordance with Rule .0301(h)(1) of this Subchapter;

(8) "Major Modification" means replacement of 50 percent or more of the existing structure, or a modification which would change the existing dimensions of the structure;

(9) "Mooring Buoy" means a device to which a vessel can be moored consisting of
  (1) a closed cell foam buoy with a hard shell,
  (2) a screw anchor capable of attaching to the lake floor,
  (3) a swivel device affixed into the anchoring, and
  (4) chains capable of anchoring the buoy and a vessel;

(10) "No Wake Zone" means, an area created in accordance with G.S. 75A-15, within which vessels are required to travel at a speed that creates no appreciable wake;

(11) "Owner" means any person or entity owning, leasing, operating, or having the exclusive use of a structure or any waterfront property;

(12) "Patio" means any floor area of a pier, whether covered or uncovered, which directly adjoins the shoreline without using a walkway, not including walkways;

(13) "Pavilion" means any roofed structure erected above the floor level of a pier and which does not directly adjoin the shoreline other than via a walkway;

(14) "Pier" means an entire structure, permitted under a state lake permit pursuant to Rule .0301 of this Subchapter, leading out from the shore into a state lake, which may include walkways, patios, platforms, pavilions, and boat slips;

(15) "Pier Agent" means a representative acting on behalf of a homeowner's association, corporation, street association, or in a multiple-owner situation who is the sole contact and authority regarding a permitted structure;

(16) "Platform" means any floor area of a pier, other than walkways, which does not directly adjoin the shoreline;

(17) "Private" means, when applied to any permit issued or application submitted under this Subchapter, that such structure shall be used for the primary enjoyment of the owner and his or her personal guests, invitees, tenants, or lessees;

(18) "Projected Property Lines" means a linear projection of the property boundaries at each of the two property corners touching at the mean high water mark of the shoreline;

(19) "Public" means, when applied to any permit issued under this Subchapter, a government-owned structure or a structure open to the public with no fee;

(20) "Seawall" means a wall or embankment erected to prevent the water of a state lake from encroaching on or eroding an area of land;

(21) "State Lake" means all property up to the mean high water mark, whether covered by water or not, in any body of water identified in Rule .0101 of this Section;

(22) "Structure" means any pier, seawall, boat ramp, boat stall, mooring buoy, or other object constructed over, upon, or attached to the floor of a state lake;

(23) "Swim Line" means a line or rope with a series of floatation devices used to delineate an area of surface water for the purpose of swimming;

(24) "Vessel" means any watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation or habitation on the water;

(25) "Walkway" means the floored area of a pier, excluding a patio, platform, pavilion, and boat stall, used for egress and ingress on the pier; and

(26) "Waterfront Property" means any real property abutting upon a state lake.

History Note: Authority G.S. 143B-135.16;
Eff. February 1, 1976;
Amended Eff. August 1, 1988; April 4, 1979;
Transferred from 15A NCAC 12C .0102 Eff. April 1, 2017;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;
Amended Eff. February 1, 2023.

07 NCAC 13C .0105 PERMITS

History Note: Authority G.S. 143B-135.16;
Eff. February 1, 1976;
Transferred from 15A NCAC 12C .0105 Eff. April 1, 2017;
Repealed Eff. February 1, 2023.

07 NCAC 13C .0201 COMMERCIAL ENTERPRISES AND ACTIVITIES

No person shall engage in any business, or erect any building or other structure for commercial purposes in or upon any state lake or within or upon any structure on or attached to the floor of any state lake, except as authorized:

(1) by a permit issued in accordance with 07 NCAC 13B .0104;
(2) under a long-term contract with the State; or
(3) by the rules of this Subchapter.

History Note: Authority G.S. 143B-135.16;
Eff. February 1, 1976;
Transferred from 15A NCAC 12C .0201 Eff. April 1, 2017;
Readopted Eff. February 1, 2023.

07 NCAC 13C .0202 SCIENTIFIC OR EDUCATIONAL RESEARCH AND NONCOMMERCIAL ACTIVITIES

No person shall engage in scientific or educational research, as defined in 07 NCAC 13B .0104(f), or any noncommercial activity listed in 07 NCAC 13B .0104(b) and (d) in or upon a state lake without a permit issued under 07 NCAC 13B .0104.

History Note: Authority G.S. 143B-135.16;
Eff. February 1, 1976;
Transferred from 15A NCAC 12C .0202 Eff. April 1, 2017;
Readopted Eff. February 1, 2023.

07 NCAC 13C .0203 COMMERCIAL ACTIVITIES IN OR UPON STATE LAKES

History Note: Authority G.S. 143B-135.16;
Eff. February 1, 1976;
Transferred from 15A NCAC 12C .0203 Eff. April 1, 2017;
Repealed Eff. February 1, 2023.

07 NCAC 13C .0301 STATE LAKE PERMITS

(a) No structure shall be built upon the floor of, erected in, or floating upon any state lake without a state lake permit.

(b) Applications for a state lake permit may be made by submitting a completed application to the park office that manages the state lake which will be the subject of the permit.

(c) The following uses of Division property, as defined in 07 NCAC 13B .0101(2), on a state lake shall require a state lake permit authorized by the Division:

(1) initial construction of a structure;
(2) major modification of an existing structure; and
(3) transfer of ownership rights or interest in an existing structure.

(d) State lake permits shall be available only to the following classes of persons and only for the state lake appurtenant to the applicant's property interest:

(1) owners of waterfront property;
(2) owners of an exclusive right to use waterfront property; and
(3) towns, municipalities, or county governments at a public beach or at the end of a dedicated street abutting upon the waters of a state lake.

(e) Applicants shall obtain an approved state lake permit signed by the Park Superintendent or his or her designee prior to beginning construction or major modification of a structure. A completed application for a state lake permit shall include the following information:

(1) the name, permanent address, and phone number of the applicant;
(2) the address of the waterfront property for which the permit is requested;
(3) the name, address, and phone number of a pier agent, if applicable;
(4) a written description of the structure for which the permit is desired, or if the structure already exists, the modification to be made to the structure;
(5) a drawing, photograph, diagram, or other illustration depicting the structure for which the permit is requested. The drawing, photograph, diagram, or other illustration shall locate the structure relative to the waterfront property which gives rise to the right to apply for the permit and show compliance with the requirements of Rule .0303 of this Section. If the application is for modification of an existing structure, the applicant shall also locate in the drawing, photograph, diagram or other illustration the proposed modification with respect to the existing structure. The Division may request the applicant to provide professional drawings created by a licensed engineer or architect if the Division is not able to determine if the structure will comply with the rules of this Subchapter from the submitted drawing, photograph, diagram or other illustration; and
(6) a copy of the waterfront-property deed to which the structure would be appurtenant, or if the structure is not to be attached to the waterfront property at the water line, the waterfront property which gives rise to the right to apply for the permit. If the applicant does not own the property, applicant shall also provide proof of the applicant's property rights which authorize them to apply for the permit.

(f) Except as prohibited in Rule .0407(h) of this Subchapter, applicants shall obtain an approved state lake permit transfer signed by the Park Superintendent or his or her designee in order to transfer any permit for a structure permitted under these Rules. A completed application to transfer a state lake permit shall include the following information:

(1) the name, permanent address, and phone number of the transferee;
(2) the address of the waterfront property for which the permit is requested;
(3) the permit number of the structure for which the permit transfer is requested;
(4) the name, address, and phone number of the transferor;
(5) the name, address, and phone number of a pier agent, if applicable; and
(6) proof of the conveyance, devise, or other mode of transfer of title to the property giving rise to the right to the permit.

(g) The Park Superintendent or their designee shall issue a state lake permit on receipt of a completed application unless:

(1) the construction, modification, or transfer will threaten the health or safety of persons using the state lake;
(2) the construction, modification, or transfer would be detrimental to the protection or use of state property;
(3) the construction, modification, or transfer would constitute a violation of applicable law or rule;

(4) the applicant has an outstanding balance resulting from unpaid state lake permit fees; or

(5) the construction or modification of the structure does not comply with the rules of this Subchapter.

(h) All structures permitted under this Rule shall be subject to the following additional provisions:

(1) No structure or any portion thereof, except boat ramps, shall be located closer than 15 feet from the corners of the property for which the structure is permitted. Where adjoining waterfront properties do not conform to the 15-foot requirement, the owners of said property shall submit an application for a joint private state lake permit, including a copy of a written agreement between the property owners to share the structure, and request a waiver of the 15-foot requirement from the Division. The Division shall waive the 15-foot requirement unless a safety hazard would be created by permitting the structure or granting the waiver would create noncompliance with the rules of this Subchapter;

(2) No structure may be located within 25 feet of another structure, except a seawall;

(3) Permit holders shall not collect any charges or fees for the use of structures that are permitted under private, joint private, or public state lake permits, except for a homeowner association in accordance with Rule .0407(e) of this Subchapter;

(4) Boats shall not be moored or tethered to a boat ramp;

(5) Swim lines shall require a Special Activity Permit issued in accordance with 07 NCAC 13B .0104(d)(7);

(6) All permitted structures shall prominently display the structure's assigned permit number at all times; and

(7) The following items shall not be stored or installed in storage boxes, lofts, and compartments on any structure:

(A) electrical appliances or their components;

(B) fireworks or other explosives; or

(C) gasoline, oil, or any other petroleum-based or hazardous materials.

(i) All structures which meet the following requirements shall be considered non-conforming structures:

(1) existed on February 1, 1974;

(2) are not conforming to permissible structural dimensions, as set forth in Rule .0303 of this Section, at the time of the adoption of this Rule; and

(3) have previously been permitted by the Division.

Notwithstanding Paragraph (k) of this Rule, non-conforming structures shall continue to be permitted as long as the structure is not the subject of a major modification. If a non-conforming structure is subject to a major modification, then the entire structure shall be brought into compliance with the dimension requirements set forth in Rule .0303 of this Section. Should a non-conforming structure be destroyed or substantially damaged (greater than 50 percent or more of the existing structure) from any causes, the structure shall be brought into compliance with the dimension requirements set forth in Rule .0303 of this Section.

(j) All permits issued in accordance with this Rule are valid for one year from the date of issuance. Permit holders shall renew their state lake permits on an annual basis to remain valid. All permit fees shall be paid at the time of issuance or renewal in order for the permit to remain valid.

(k) Permits issued in accordance with this Rule may be revoked by the Division for one or more of the following reasons:

(1) failure to pay any permit fee within 60 days after the due date thereof; or

(2) failure to bring a permitted structure into compliance with rules of this Subchapter, unless excepted under Paragraph (i) of this Rule, or with any term or condition imposed by the permit within 30 days after receipt of a notice from the Division setting forth the corrective measures, in accordance with Rule .0315 of this Section.

History Note: Authority G.S. 143B-135.16;
Eff. February 1, 1976;
Transferred from 15A NCAC 12C .0301 Eff. April 1, 2017;
Readopted Eff. February 1, 2023.

07 NCAC 13C .0302 STRUCTURES PROHIBITED ON CERTAIN STATE LAKES

History Note: Authority G.S. 143B-135.16;
Eff. February 1, 1976;
Transferred from 15A NCAC 12C .0302 Eff. April 1, 2017;
Repealed Eff. February 1, 2023.

07 NCAC 13C .0303 PERMISSIBLE STRUCTURAL DIMENSIONS

Dimensions of a structure shall include all attachments to the structure, including lifts and floating docks. In order to be eligible for permit approval, all structures in or on state lakes shall conform to within the following structural dimensions:

(1) Commercial Piers. Maximum measurements for a commercial pier shall be as follows:

(a) walkways, 16 feet wide;

(b) length of pier, 375 feet;

(c) platform, pavilion; 32 feet in width;

(d) platform, pavilion; 50 feet in length;

(e) patio, 20 feet in length extending towards the water from the mean high water mark.

(2) Private Piers. Maximum measurements for a private pier shall be as follows:

(a) walkways, 8 feet wide;

(b) length of pier, 225 feet;

(c) platform, pavilion; 20 feet in width;

(d) platform, pavilion; 32 feet in length;

(e) patio, 20 feet in length extending towards the water from the mean high water mark;

(3) Joint Private Piers. Maximum measurements for a joint private pier shall be as follows:
(a) walkways, 16 feet wide;
(b) length of pier, 225 feet;
(c) platform, pavilion; 32 feet in width;
(d) platform, pavilion, 50 feet in length;
(e) patio, 20 feet in length extending towards the water from the mean high water mark.

(4) Public Piers. Maximum measurements for a public pier shall be as follows:
(a) walkway, 16 feet wide;
(b) length of pier, 225 feet;
(c) platform, pavilion; 32 feet in width;
(d) platform, pavilion; 50 feet in length;
(e) patio, 20 feet in length extending towards the water from the mean high water mark.

(5) Boat Ramps. No boat ramp shall exceed 25 feet in length nor 25 feet in width.

(6) Boat Slips. A private pier shall not exceed one boat slip. The dimension of the boat slip shall not exceed 32 feet in length by 12 feet in width. Boat slips are prohibited on joint private, public, and commercial piers.

(7) Overall structure height may not exceed 15 feet above the floor level, with the exception of flag poles, semaphores, and light poles which may extend to a height of 20 feet above the floor level.

History Note: Authority G.S. 143B-135.16;
Eff. February 1, 1976;
Transferred from 15A NCAC 12C .0303 Eff. April 1, 2017;
Readopted Eff. February 1, 2023.

07 NCAC 13C .0304 LIMITS ON ELEVATED STRUCTURES
07 NCAC 13C .0305 PERMITS FOR STRUCTURES EXISTING AS OF FEBRUARY 1, 1974
07 NCAC 13C .0306 FEES

History Note: Authority G.S. 143B-135.16;
Eff. February 1, 1976;
Amended Eff. April 4, 1979;
Temporary Amendment Eff. August 12, 1991 For a Period of 180 Days to Expire on February 8, 1992;
Amended Eff. March 1, 1992; August 1, 1998;
Transferred from 15A NCAC 12C .0304, .0305, .0306 Eff. April 1, 2017;
Repealed Eff. February 1, 2023.

07 NCAC 13C .0307 CONDITION OF STRUCTURES

(a) All structures must be maintained in accordance with applicable state and local fire and building codes and regulations.

(b) Permit holders shall make their respective structures available for inspection by the Division to ensure compliance with the terms and conditions of their permit and the Rules of this Subchapter. Within 60 days of the date of inspection, a notice of the results of such inspection shall be sent to the permit holder. This notice shall indicate either that the structure is in compliance with the permit and the Rules of this Subchapter or, if not, shall specify:

(1) what noncompliance issues are noted;

(2) the rules or statutes that give rise to the noncompliance; and

(3) what corrective actions are required in order to come into compliance.

Corrective actions shall include providing proof of inspection by a licensed inspector with regard to any structural or electrical components of the structure within 60 days of the delivery of notice to the permit holder.

(c) Permit holders shall provide proof of inspection by a licensed inspector with regard to any structural or electrical components of their structure to the Division within 60 days of completion of construction or modification of a structure that is the subject of a permit for initial construction of a structure or major modification of an existing structure.

History Note: Authority G.S. 143B-135.16;
Eff. February 1, 1976;
Transferred from 15A NCAC 12C .0307 Eff. April 1, 2017;
Readopted Eff. February 1, 2023.

07 NCAC 13C .0309 ELIGIBILITY FOR PERMITS
07 NCAC 13C .0310 REVOCATION OF PERMITS
07 NCAC 13C .0311 APPLICATION FOR STRUCTURAL PERMITS
07 NCAC 13C .0312 PERMITS FOR STRUCTURES EXISTING ON FEBRUARY 1, 1974
07 NCAC 13C .0313 LIABILITY
07 NCAC 13C .0314 RIGHT OF ENTRY RESERVED

History Note: Authority G.S. 143B-135.16;
Eff. February 1, 1976;
Amended Eff. April 4, 1979;
Transferred from 15A NCAC 12C .0309, .0310, .0311, .0312, .0313, .0314 Eff. April 1, 2017;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;
Repealed Eff. February 1, 2023.

07 NCAC 13C .0315 APPLICATION DENIAL AND PERMIT REVOCATION PROCEDURES

(a) Before revoking any state lake permit under these Rules, the Division shall give written notice of its intent to revoke to the permit holder by U.S. mail or electronic mail at the address provided by the permit holder on the permit application. Upon the denial of any application for a state lake permit under these Rules, the Division shall give written notice of its action to the applicant by U.S. mail or electronic mail at the address provided by the applicant on the application.

(b) The notice required by Paragraph (a) of this Rule shall contain the following:

(1) facts:

(A) in the case of a state lake permit revocation, the facts relied upon by the Division to support its intended revocation; and
(B) in the case of a state lake permit application denial, the facts relied upon as the basis for the denial;

(2) rules: the rules or statutes under which the Division acts or intends to act;

(3) corrective action: a statement of the corrective action, if any action is possible, to bring the permit holder, or applicant's application, into compliance. In the case of a permit revocation for failure to pay a fee in the time provided, late payment, including payment of any additional late fees, shall constitute corrective action;

(4) final date: the date on which the revocation or denial shall become final if the permit holder or applicant does not request a hearing in accordance with Chapter 150B, Article 3, of the North Carolina General Statutes, and 26 NCAC 03. The final date shall be no sooner than the 61st day after service of notice on the permit holder or applicant;

(5) right to a hearing: a statement informing the permit holder or applicant of the right, the procedure, and the time limit to file a contested case petition made in accordance with Chapter 150B, Article 3 of the North Carolina General Statutes, and 26 NCAC 03; and

(6) failure to exhaust remedies: a statement that the failure to request a hearing in the form, manner, and time required by Chapter 150B, Article 3 of the North Carolina General Statutes, and 26 NCAC 03 constitutes a failure to exhaust all administrative remedies and shall preclude judicial review under G.S. 150B of any denial or revocation by the Division.

History Note: Authority G.S. 143B-135.16; 150B-23;
Eff. February 1, 1976;
Amended Eff. October 1, 1988; April 4, 1979;
Transferred from 15A NCAC 12C .0315 Eff. April 1, 2017;
Readopted Eff. February 1, 2023.

07 NCAC 13C .0406 WATER LEVEL; DISCHARGE

(a) No person shall in any way damage or alter drainage ditches, drainage gates, or any other outlet from or inlet to a state lake; nor in any way change the water level of a state lake.

(b) No person shall discharge any of the following into a state lake:

(1) wastewater, stormwater or anything that causes water pollution, as defined in G.S. 143-213;
(2) other unfiltered or untreated drainage; or
(3) fill material, including sand, rock, or gravel, except as permitted pursuant to the rules of this Subchapter.

History Note: Authority G.S. 143B-135.16;
Eff. February 1, 1976;
Transferred from 15A NCAC 12C .0406 Eff. April 1, 2017;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;
Amended Eff. February 1, 2023.

07 NCAC 13C .0407 MOORING BUOYS

(a) No stakes, poles, or posts shall be driven or placed into the floor of any state lake for any purpose, except to anchor a structure permitted by the Division pursuant to Rule .0301 of this Subchapter.

(b) No mooring buoy shall be placed outside any posted no wake zone or, where a posted no wake zone does not exist, placed farther than 375 feet from the shore of the waterfront property for which the mooring buoy is permitted in accordance with Rule .0301 of this Subchapter.

(c) The Division may authorize the temporary placement of mooring buoys for recreational purposes, such as shows, tournaments, and other recreational activities, through the Special Activity Permit process outlined in 07 NCAC 13B .0104.

(d) Except as permitted in Paragraph (e) of this Rule, waterfront property owners may apply for and hold permits for no more than two mooring buoys.

(e) Commercial waterfront property owners and homeowner associations may apply for and hold permits for more than two mooring buoys, in accordance with Rule .0301 of this Subchapter. All mooring buoys within the projected property lines of the permit holder must be owned and paid for by the waterfront property owner or homeowner association.

(f) Mooring buoys are private property that shall be the responsibility of the owner to maintain. Maintaining a mooring buoy shall mean ensuring that the mooring buoy remains in working order, free of rust or damage, and securely fastened to the lake floor.

(g) In addition to the requirements of Rule .0301(h)(6) of this Subchapter, all permitted mooring buoys shall display the permit holder's full name and phone number at all times or the buoy shall be subject to removal by the Division.

(h) Transfer of a state lake permit for a mooring buoy shall not be permitted.

(i) When a state lake permit for a mooring buoy is terminated, the permit holder shall remove the mooring buoy from the state lake.

History Note: Authority G.S. 143B-135.16;
Eff. February 1, 1976;
Transferred from 15A NCAC 12C .0407 Eff. April 1, 2017;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;
Amended Eff. February 1, 2023.

07 NCAC 13C .0408 STATE PARKS REGULATIONS

History Note: Authority G.S. 143B-135.16;
Eff. February 1, 1976;
Transferred from 15A NCAC 12C .0408 Eff. April 1, 2017;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;
Repealed Eff. February 1, 2023.

TITLE 08 - BOARD OF ELECTIONS

08 NCAC 21 .0201 COMMITTEE ACCOUNTS

All bank accounts, safety deposit boxes, and other depositories utilized by political committees and referendum committees listed on the statement of organization as required by G.S. 163-278.7(b)(8) or G.S. 163-278.8(b) must be maintained in North Carolina.

History Note: Authority G.S. 163-278.7; 163-278.8; 163-278.21;
Eff. December 1, 1982;
Amended Eff. February 1, 1990;
Readopted Eff. October 1, 2018;
Transferred from 08 NCAC 01 .0104 Eff. May 1, 2020;
Amended Eff. April 1, 2023; May 1, 2020.

08 NCAC 21 .0206 REQUESTING A WAIVER OF A CIVIL LATE PENALTY

(a) A political committee, referendum committee, individual, or entity requesting a waiver of a civil late penalty under G.S. 163-278.34(a) shall complete and file the form available on the State Board's website within 60 days of service of the notice of penalty assessment. The form shall be signed and notarized and set forth any facts or circumstances that support good cause for a waiver of the penalty.

(b) Waiver requests shall be filed with the State Board using one of the following methods:

(1) Hand-delivery during regular business hours to the State Board's offices.
(2) United States Postal Service to the mailing address listed on the State Board's website.
(3) Delivery service authorized by G.S. 1A-1, Rule 4 to the physical address published on the State Board's website.
(4) Email to campaign.reporting@ncsbe.gov so long as the original signed copy is retained by the political committee, referendum committee, individual or entity for at least two years counting from the date of the election to which the late report affects.

(c) A waiver request is considered filed on the date it is postmarked by the United States Postal Service or marked with an equivalent marking by a delivery service authorized by G.S. 1A-1, Rule 4. A waiver request filed by email must be sent to campaign.reporting@ncsbe.gov by 11:59 pm to be considered filed on that date.

(d) Examples of factors considered by the State Board in determining the presence of good cause include but are not limited to:

(1) Whether the late report was the first late report of the committee or the first late report within the last 10 years.
(2) Whether the late report was due prior to or after the election for a candidate.
(3) Whether the late report resulted in any contribution or expenditure not being disclosed to the public.
(4) Whether the late report resulted from a family emergency, severe illness or hospitalization, natural disaster, or similar unforeseen circumstance.
(5) Whether the treasurer or assistant treasurer received insufficient guidance from the State Board office or county board office in attempting to file reports.
(6) Whether documented issues with the U.S. Postal Service or other delivery service inhibited the committee from filing a timely report.

(e) If a waiver request is denied by the State Board, a notice of the denial shall be served by any means authorized under G.S. 1A-1, Rule 4. The notice of the denial shall direct the political committee, referendum committee, individual or entity to pay the assessment within 30 days.

History Note: Authority G.S. 163-278.34; 163-278.21;
Eff. February 1, 2023.

08 NCAC 21 .0207 PROCEDURES FOR COMMITTEES WITH MISSING REPORTS

(a) A political committee or referendum committee that fails to file a report required by Article 22A within 30 days after service of the Notice of Penalty Assessment under G.S. 163-278.34(e) shall be issued a Notice of Noncompliance directing the treasurer to file the missing report. A copy of the Notice of Noncompliance shall be posted to the State Board's website.

(b) If a political committee or referendum committee fails to file a missing report within 30 days after service of the Notice of Noncompliance, the State Board shall consider an order requiring the committee to file the missing report and to cease receiving contributions and making expenditures if the missing report is not filed within 30 days of the order. Prior to any decision, the State Board shall give notice to the treasurer and an opportunity for the treasurer or other representative of the committee to provide a written affidavit stating any facts or circumstances for why an order should not be issued.

(c) Any order issued by the State Board of Elections under Paragraph (b) of this Rule shall be served by any means authorized under G.S. 1A-1, Rule 4. A copy of the order shall be posted to the State Board's website.

(d) A political committee or referendum committee that fails to file the missing report within 30 days of the State Board's order under Paragraph (b) of this Rule shall have the committee's status changed from active to suspended. While suspended, the committee shall not receive any contributions or make any expenditures except for the payment of any civil penalties or forfeitures under G.S. 163-278.14 or G.S. 163-278.34. To be removed from suspended status, the political committee or referendum committee shall file all missing reports identified in any order of the State Board and pay all civil late penalties incurred pursuant to G.S. 163-278.34.

History Note: Authority G.S. 163-278.34; 163-278.21;
Eff. April 1, 2023.

TITLE 11 - DEPARTMENT OF INSURANCE

11 NCAC 23G .0104 DUTIES OF PARTIES, REPRESENTATIVES, AND ATTORNEYS

(a) Attendance. The following persons shall attend the mediated settlement conference:

(1) all individual parties;

(2) in a workers' compensation case, a representative of the employer at the time of injury if:

(A) the employer, instead of or in addition to the insurance company or administrator, has decision-making authority with respect to settlement;

(B) the employer is offering the claimant employment and the suitability of that employment is at issue; or

(C) the employer and the claimant have agreed to simultaneously mediate non-compensation issues arising from the injury.

(3) an officer, employee, or agent of any party, that is not a natural person or a governmental entity, who is not the party's outside counsel and who has the authority to decide on behalf of the party whether and on what terms to settle the action;

(4) in a workers' compensation case, an employee or agent of any party that is a governmental entity who is not the party's outside counsel or Attorney General's counsel responsible for the case and who has the authority to decide on behalf of the party whether and on what terms to settle the action;

(5) when the governing law prescribes that the terms of a proposed settlement may be approved only by a board, an employee or agent who is not the party's outside counsel or Attorney General's counsel responsible for the case and who has the authority to negotiate on behalf of and to make a recommendation to the board. In claims with settlements subject to the review and approval by the Industrial Commission under G.S. 143-295, an employee or agent of the named governmental entity or agency is not required to attend the mediated settlement conference. The Attorney General shall attempt to make an employee or agent of the named governmental entity or agency in a State tort claim available via telecommunication, and mediation shall not be delayed due to the absence or unavailability of the employee or agent of the named governmental entity or agency;

(6) the counsels of record. Appearance by counsel does not dispense with or waive the required attendance of the parties listed in Subparagraphs (1) through (5);

(7) a representative of each defendant's primary workers' compensation or liability insurance carrier or self-insured that may be obligated to pay all or part of any claim presented in the action. Each carrier or self-insured shall be represented at the conference by an officer, employee, or agent who is not the party's outside counsel and who has the authority to decide on behalf of the carrier or self-insured whether and on what terms to settle the action, or who has been authorized to negotiate on behalf of the carrier or self-insured and can communicate during the conference with persons who have the decision making authority.

(8) any employer or carrier who may be obligated to pay all or part of any claim presented in the action and who is not required to attend the mediated settlement conference pursuant to Subparagraphs (1) through (7) of this Paragraph may attend the conference if the employer or carrier elects to attend. If, during the conference, the mediator determines that the attendance of one or more additional persons is necessary to resolve the matters in dispute in the subject action, the mediator may recess the conference and reconvene the conference at a later date and time to allow the additional person or persons to attend.

(b) Any party or person required to attend a mediated settlement conference shall attend the conference until an agreement is reduced to writing and signed as provided in Paragraph (e) of this Rule, or until an impasse has been declared. The attendance method for Industrial Commission mediations shall be the same as the attendance method set forth in Rule 4 of the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions, which is hereby incorporated by reference and includes subsequent amendments and editions. A copy of the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions may be obtained at no charge from the North Carolina Judicial Branch website, at https://www.nccourts.gov/courts/supreme-court/court-rules/rules-for-mediated-settlement-conferences-and-other-settlement-procedures-in-superior-court-civil-actions, or upon request at the main office of the Industrial Commission, located on the 6th floor of the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27603, between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, excluding holidays established by the State Human Resources Commission. All parties and persons required to attend the conference, including the mediator, shall comply with all public health and safety requirements set forth in the mediation rules approved by the North Carolina Supreme Court for use in the Superior Court division that are in effect at the time of the mediation.

(c) In appropriate cases, the Commission or the mediator, with the consent of the parties, may allow a party or insurance carrier representative who is required to attend a mediated settlement conference in person under this Rule to attend the conference by telephone, conference call, speaker telephone, or videoconferencing. The attending party or representative shall

bear all costs of the telephone calls or videoconferencing. In addition, the mediator may communicate directly with the insurance representative with regard to matters discussed in mediation, and the mediator may set a subsequent mediated settlement conference at which all parties and representatives shall attend the mediated settlement conference in person, subject to Paragraph (b) of this Rule. The failure to appear by telephone or videoconferencing in accordance with this Paragraph shall subject the responsible party or representative to sanctions pursuant to Rule .0105 of this Subchapter.

(d) Notice of Mediation Order. Within seven days after the receipt of an order for a mediated settlement conference, the carrier or self-insured named in the order shall provide a copy of the order to the employer and all other carriers who may be obligated to pay all or part of any claim presented in the workers' compensation case or any related third-party tortfeasor claims, and shall provide the mediator and the other parties in the action with the name, address, and telephone number of all such carriers.

(e) Finalizing Agreement. If an agreement is reached in the mediated settlement conference, the parties shall reduce the agreement to writing, specifying all terms of the agreement that bear on the resolution of the dispute before the Commission, and shall sign the agreement along with their counsel. The parties may use IC Form MSC8, Mediated Settlement Agreement, or MSC9, Mediated Settlement Agreement – Alternative Form, for this purpose. Execution by counsel of a mediated settlement agreement for an employer or carrier who does not physically attend the mediated settlement conference shall be deemed to be in compliance with this Rule and 11 NCAC 23A .0502. By stipulation of the parties and at the parties' expense, the agreement may be electronically or stenographically recorded. All agreements for payment of compensation shall be submitted for Commission approval in accordance with 11 NCAC 23A .0501 and .0502.

(f) Payment of Mediator's Fee. The mediator's fee shall be paid at the conclusion of the mediated settlement conference, unless otherwise provided by Rule .0107 of this Subchapter, or by agreement with the mediator.

(g) Related Cases. Upon application by any party or any person as defined in G.S. 97-2(4), and upon notice to all parties, the Commission may, in the interests of justice, order an attorney of record, party, or representative of an insurance carrier who may be liable for all or any part of a claim pending in a Commission case to attend a mediated settlement conference convened in another related pending case, regardless of the forum in which the other case may be pending, provided that all parties in the other pending case consent to the attendance ordered pursuant to this Paragraph. Any disputed issues concerning such an order shall be addressed to the Commission's Dispute Resolution Coordinator. Unless otherwise ordered, any attorney, party, or carrier representative who attends a mediated settlement conference pursuant to this Paragraph shall not be required to pay any of the mediation fees or costs related to that conference. Requests that a party, attorney of record, or insurance carrier representative in a related case attend a mediated settlement conference in a Commission case shall be addressed to the court or agency where the related case is pending, provided that all parties in the Commission case consent to the requested attendance.

History Note: Authority G.S. 97-80; 143-296; 143-300;
Eff. January 16, 1996;
Amended Eff. October 1, 1998;
Recodified from 04 NCAC 10A .0616;
Amended Eff. July 1, 2014; January 1, 2011; June 1, 2000;
Recodified from 04 NCAC 10G .0104 Eff. June 1, 2018;
Emergency Amendment Eff. June 16, 2020;
Amended Eff. August 1, 2020;
Temporary Amendment Eff. August 28, 2020;
Amended Eff. February 1, 2023; March 1, 2021.

TITLE 15A - DEPARTMENT OF ENVIRONMENTAL QUALITY

15A NCAC 10B .0201 PROHIBITED TAKING AND MANNER OF TAKE

(a) No person shall take, or have in their possession, any wild animal or wild bird listed in this Section except during the open seasons and in accordance with the limits herein prescribed, or as prescribed by 15A NCAC 10B .0300 pertaining to trapping or 15A NCAC 10D applicable to game lands managed by the Wildlife Resources Commission, unless otherwise permitted by law.

(b) Lawful seasons and bag limits for each species apply beginning with the first day of the established season and continue through the last day of the listed season, with all dates being included.

(c) When any hunting season ends on a January 1 that falls on a Sunday, that season shall be extended to Monday, January 2.

(d) On Sundays, the following manners of take shall be allowed subject to the restrictions in G.S. 103-2:

(1) archery equipment as described in 15A NCAC 10B .0116;
(2) falconry; and
(3) dogs where and when allowed the other days of the week.

(e) Migratory game birds shall not be taken on Sundays.

(f) Sunday hunting restrictions in Paragraph (d) of this Rule shall not apply to military reservations.

(g) Those animals not classified as game animals in G.S. 113-129(7c), and for which a season is set under this Section, may be taken during the hours and methods authorized for taking game animals.

(h) No person shall possess or use any substance or material that contains or is labeled as containing any excretion collected from a cervid, including feces, urine, blood, gland oil, or other bodily fluid for the purposes of taking or attempting to take, attracting, or scouting wildlife. This prohibition shall not apply to the following substances:

(1) Products containing synthetic analogs of cervid excretions and labeled as such.
(2) Products consisting of or containing natural substances collected by a hunter from a legally harvested cervid in North Carolina.
(3) Natural substances collected from facilities within North Carolina that have a valid Farmed Cervid License from the North Carolina

Department of Agriculture and Consumer Services and are labeled as such.

(4) Natural deer urine products containing excretions from facilities within North Carolina that have a valid Farmed Cervid License from the North Carolina Department of Agriculture and Consumer Services and are labeled as such.

(5) Natural deer urine products containing excretions from facilities that meet all the following requirements and are labeled as such:

(A) Determined to be free of chronic wasting disease (CWD) based on testing by an independent laboratory using a method that may help detect the presence of CWD prions.

(B) Complies with a federally approved CWD herd certification program and any federal CWD protocols.

(C) Participates in additional herd management requirements as specified by the Wildlife Resources Commission.

(i) Where laws with local effect govern hunting, or conflict with this Subchapter, that law shall prevail.

History Note: Authority G.S. 103-2; 113-291.1(a); 113-134; 113-291.2; 113-291.3; S.L. 2021-176;
Eff. February 1, 1976;
Amended Eff. May 1, 2016; August 1, 2012; July 10, 2010; July 1, 1996; July 1, 1987
Amended Eff. Pending Legislative Review.

15A NCAC 10F .0301 GENERAL PROVISIONS

(a) Definitions. The definitions used in G.S. 75A-2 shall apply in this Subchapter. In addition, the following definitions shall apply:

(1) "Executive Director" means the Executive Director of the Commission;

(2) "USATONS" means the U. S. Aids to Navigation System, which prescribes regulatory markers and aids to navigation that mark navigable waters of the United States. The rules governing USATONS in 33 CFR 62, are hereby incorporated by reference including all subsequent amendments and editions and can be found free of charge online at www.ecfr.gov;

(3) "Designated agency" means a subdivision of the State that the Commission designates for placement of markers that conform to USATONS standards;

(4) "Regulatory Marker" and "Information Marker" means markers with an orange geometric shape against a white background, used to alert a mariner to warnings or regulatory matters, as defined in 33 CFR 62.33;

(5) "Swimming area" means an enclosed area on the water for swimming that is marked against entry by vessels;

(6) "Mooring area" means an area on the water delineated by speed zone markers where vessels may be tied to objects anchored on the seabed;

(7) "Restricted area" means an area on the water that is marked to limit recreational activity and vessel speed; and

(8) "Safety Zone" means a water area or shore area where, for safety or environmental purposes, access is limited to authorized persons and vessels, as defined in 33 CFR 165.20.

(b) Formal application for water safety rulemaking. Any subdivision of the State may, after public notice, apply to the Commission for rules on waters within the subdivision's territorial limits on an application provided by the Commission at www.ncwildlife.org. The completed application and supporting documents shall be mailed to the No Wake Zone Coordinator at North Carolina Wildlife Resources Commission, 1701 Mail Service Center, Raleigh, North Carolina 27699-1701 or submitted via email to nowakezonecoordinator@ncwildlife.org. The application shall contain the following information:

(1) the name of the subdivision of the State applying for water safety rulemaking;

(2) the date of the application;

(3) the contact person's name, telephone number, and mailing address;

(4) descriptive information for the body of water;

(5) location of the proposed no wake zone, marked swimming area, or other regulated area;

(6) a statement that the subdivision of the State has given public notice of its intention to apply for rulemaking on waters within its territorial limits;

(7) a resolution from the subdivision of the State requesting water safety rulemaking; and

(8) an affirmation that the subdivision of the State or its designee will bear the cost for purchase and placement of markers that conform to USATONS standards.

(c) Marking Regulated Areas. The Commission may designate agencies for the placement of markers in areas established by rules in this Section. The designated agency or its designee shall be responsible for the purchase and placement of markers conforming to USATONS required to implement a water safety rule.

(d) Placement of Markers. Except where done by supervening federal authority, it shall be unlawful for anyone to place or maintain regulatory markers or navigational aids without authorization from the Commission; or to place information markers without permission from the Executive Director or his or her designee.

(e) Mooring Areas. The boundaries of mooring areas shall be defined by the placement of speed zone markers.

(f) Swimming Areas. No vessel entry shall be permitted in the waters of marked swimming areas. Marked swimming areas shall meet the following requirements:

(1) the enclosed swimming area in the water shall not exceed 5,000 square feet;

(2) the enclosed area shall be marked with float lines that, in conjunction with the shoreline, form an enclosed area;
(3) the swimming area shall not extend into a navigational channel or interfere with navigation of vessels;
(2) float lines shall have white, international orange, or alternating white and international orange floats along their length at intervals of not less than one every 10 feet;
(3) floats shall be buoyant enough to float at the surface of the water while attached to the float line, and no float shall exceed a size of 18 inches in length or diameter;
(4) buoys or floating signs bearing the USATONS "boat exclusion area" symbol shall be attached to float lines to give warning to vessels approaching the swimming area from all directions; and
(5) float lines and warning markers shall be anchored.

(g) Safety Zones. Markers prohibiting entry or use by vessels and swimmers in waters surrounding impoundment structures and powerhouses associated with hydroelectric generating facilities shall be buoys or floating signs placed in the water. Markers shall meet USATONS standards in number and size to give warning of the restriction to vessels approaching from all directions.

(h) Enforcement. If an agent of the Commission discovers markers and navigational aids that do not conform to USATONS standards, that are placed without lawful authority or permission, or that fail to mark the defined regulated area, written notice shall be served upon the individuals responsible for the improper placement of the markers or navigational aids. Individuals served a written notice of violation shall have 10 days to correct any deficiency before the Commission issues a citation.

(i) Miscellaneous Restrictions. Except for mooring buoys or markers that are specifically permitted by State or federal law, it shall be unlawful to tie a vessel to any waterway marker, as specified in 33 CFR 70.05. It shall be unlawful for any unauthorized person to move, remove, damage, block, paint over, or tamper with any marker lawfully placed in the waters of North Carolina in conformity with these rules or USATONS standards.

History Note: Authority G.S. 75A-15;
Eff. February 1, 1976;
Amended Eff. November 1, 1993; March 25, 1978;
Temporary Amendment Eff. July 1, 1998;
Amended Eff. April 1, 1999;
Readopted Eff. November 1, 2018;
Amended Eff. February 1, 2023.

15A NCAC 10F .0314 NEW HANOVER COUNTY

(a) Regulated Areas. This Rule shall apply to the following waters in New Hanover County:
(1) the area bounded on the north by the US 74-76 Bridge crossing the Intracoastal Waterway, on the south by a line shore to shore intersecting Intracoastal Waterway channel marker number 127, on the west by the shore of Wrightsville Sound, and on the east by a line perpendicular to US Highway 74-76 and intersecting channel marker number 25 in Motts Channel;
(2) the area of Motts Channel between channel marker number 25 at the Intracoastal Waterway on the west and channel marker number 16 at the entrance from Banks Channel on the east;
(3) the waters of the navigation channel in that portion of Bradley Creek in the City of Wilmington between the US 76 Bridge crossing Bradley Creek and channel marker 8, near the mouth of Bradley Creek at 34.20858 N, 77.82272 W;
(4) Lee's Cut from its western intersection with the Intracoastal Waterway at 34.21979 N, 77.80965 W, to its eastern intersection with Banks Channel at 34.21906 N, 77.79645 W;
(5) the unnamed channel lying between the shore west of Bahama Drive in the Town of Wrightsville Beach and an unnamed island located approximately 500 feet northeast of the US 74 bridge over Banks Channel; and
(6) the waters of the Northeast Cape Fear River between the US Hwy. 117 bridge and the railroad trestle 60 yards east of the Castle Hayne Boating Access Area.

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

(c) Placement of Markers. The Board of Commissioners of New Hanover County shall be the designated agency for placement of the no-wake markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.

History Note: Authority G.S. 75A-3; 75A-15;
Eff. February 1, 1976;
Amended Eff. July 1, 1993; May 1, 1989; June 1, 1987; May 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016;
Amended Eff. February 1, 2023; October 1, 2018; April 1, 2017.

15A NCAC 10F .0326 PAMLICO COUNTY

(a) Regulated Areas. This Rule shall apply to the following waters or portions of waters in Pamlico County:
(1) Silverthorn Bay off Burton Creek in Merritt, north of a line at a point on the east shore at 35.09531 N, 76.60791 W to a point on the west shore at 35.09572 N, 76.60883 W.
(2) Alligator Gut Basin and its access channel extending 30 yards beyond the outermost rock jetties in Neuse River, east of Neuse River Drive, Minnesott Beach.
(3) Within 50 yards of Lee's Landing Boating Access Area on Upper Broad Creek, at 3337 Lee Landing Road, Reelsboro.
(4) Within 50 yards of the Vandemere Waterfront Park and Boat Ramp's eastern end at the

concrete walkway, at 86 Griffin Road, Vandemere.

(5) Within 50 yards of the Dawson Creek Boating Access Area on Dawson Creek, at 303 Creek Place Road, Oriental.

(6) Within 50 yards of the Oriental Boating Access Area on Smith Creek, at 100 Midyette Street, Oriental.

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

(c) Placement of Markers. The following agencies shall be the designated agencies for placement of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers:

(1) The Board of Commissioners of Pamlico County for the regulated areas designated in Subparagraphs (a)(1) and (2) of this Rule; and

(2) The North Carolina Wildlife Resources Commission for the regulated areas designated in Subparagraphs (a)(3) through (6) of this Rule.

History Note: Authority G.S. 75A-3; 75A-15;
Eff. May 1, 1977;
Amended Eff. December 1, 1985; November 1, 1977;
Temporary Amendment Eff. March 15, 2003;
Temporary Amendment Expired October 12, 2003;
Amended Eff. May 1, 2014; May 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016;
Amended Eff. February 1, 2023; October 1, 2018.

15A NCAC 10F .0327 MONTGOMERY COUNTY

(a) Regulated Areas. This Rule shall apply to the waters and portions of waters described as follows:

(1) Badin Lake:

(A) Lake Forest Drive Cove shore to shore, west of a point 50 yards east of the fueling site at the marina at 35.48739 N, 80.10918 W;

(B) Garr Creek shore to shore, north of a line beginning at a point on the east shore at 35.47952 N, 80.13633 W to a point on the west shore at 35.47946 N, 80.13932 W;

(C) the channel between Beyer's Island and the mainland, shore to shore beginning at a line from a point on Beyer's Island at 35.49102 N, 80.10221 W to a point on the mainland at 35.49230 N, 80.10241 W, ending at a line westward, from a point on Beyer's Island at 35.48988 N, 80.10573 W to a point on the mainland at 35.49077 N, 80.10702 W;

(D) within 50 yards of the fueling station at the Old North State Marina at the entrance to a cove within the Uwharrie Point community at 139 Marina Lane in New London;

(E) within 50 yards of the Circle Drive Boating Access Area, at 724 Shoreline Drive in New London;

(F) within 50 yards of Lakemont Boating Access Area, at 241 Lakemont Road in New London; and

(G) within 50 yards of the Cove Boat Ramp at 400 Cove Road in New London.

(2) Lake Tillery:

(A) the waters within 50 yards of the boat ramp in the south end of Woodrun Cove at 35.33113 N, 80.06277 W;

(B) Carolina Forest Cove shore to shore and the waters within 50 yards of the boat ramps and boat slips at the end of Arroyo Drive in Carolina Forest Community, from a point on the south shore at 35.36276 N, 80.05386 W, northeast to a point on the north shore at 35.36405 N, 80.05304 W;

(C) Lilly's Bridge Boating Access Area shore to shore, from line 25 feet north of the SR 1110 bridge otherwise known as Lillys Bridge Road at a point on the east shore at 35.23223 N, 80.06166 W, to a point on the west shore at 35.23289 N, 80.06318 W, to a line 200 feet southwest of the Lilly's Bridge Boating Access Area, from a point on the east shore at 35.23067 N; 80.06262 W, to a point on the west shore at 35.23156 N; 80.06437 W; and

(D) within 50 yards of Swift Island Boating Access Area at 4917 NC Highway 24/27 in Mount Gilead.

(3) Tuckertown Reservoir. Pee Dee River, within 50 yards of the Clarks Creek Boating Access Area at 177 Tillery Dam Road in Mount Gilead.

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

(c) Swimming Area. No person operating or responsible for the operation of a vessel shall permit it to enter the marked swimming area on Badin Lake at the Pinehaven Village beach area at 370 Pinehaven Drive in New London, within 50 feet of the shoreline between points at 35.49927 N, 80.11428 W; and 35.49934 N, 80.11437 W.

(d) Placement of Markers. The following agencies shall be responsible for placement or placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and United States Army Corps of Engineers:

(1) the Board of Commissioners of Montgomery County for placement of the markers implementing Parts (a)(1)(A), (B), (C), (D), and (a)(2)(A), and (B) of this Rule;

(2) the North Carolina Wildlife Resources Commission for placement and maintenance of the markers implementing Parts (a)(1)(E), (F), (a)(2)(C), (D), and Subparagraph (a)(3) of this Rule;

(3) the Board of Commissioners of Montgomery County shall be the designated agency for placement and maintenance of the ropes and markers implementing Paragraph (c) of this Rule; and

(4) the U.S. Forest Service for placement and maintenance of the markers implementing Part (a)(1)(G) of this Rule.

History Note: Authority G.S. 75A-3; 75A-15;
Eff. November 1, 1977;
Amended Eff. December 1, 1990; May 1, 1989; March 25, 1978;
Temporary Amendment Eff. June 1, 1998;
Amended Eff. April 1, 1999; July 1, 1998;
Temporary Amendment Eff. July 1, 2002;
Amended Eff. August 1, 2006; June 1, 2005; April 1, 2003;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016;
Amended Eff. October 1, 2018; April 1, 2017;
Emergency Amendment Eff. July 30, 2019;
Temporary Amendment Eff. October 1, 2019;
Amended Eff. May 1, 2020;
Temporary Amendment Eff. June 1, 2020;
Temporary Amendment Expired March 12, 2021;
Amended Eff. February 1, 2023; June 1, 2022; October 1, 2021.

15A NCAC 10F .0336 NORTHAMPTON AND WARREN COUNTIES

(a) No person shall operate a vessel at greater than no-wake speed in the following waters of Lake Gaston and the Roanoke River in Northampton and Warren counties.

(1) Lake Gaston:

(A) the cove on the north shore of Lake Gaston in Northampton County east of SR 1252 otherwise known as Vincent Lane, shore to shore from a point on the north shore at 36.51660 N, 77.82226 W to a point on the south shore at 36.51578 N, 77.82269 W;

(B) Jimmies Creek in Northampton County shore to shore, north of a line from a point on the east shore at 36.52450 N, 77.82600 W to a point on the west shore at 36.52445 N, 77.82810 W;

(C) within 50 yards of the Henrico Boating Access Area in Northampton County, 142 Wildlife Landing Road, Henrico, N.C.;

(D) within 50 yards of the Vultare Boating Access Area in Northampton County, 773 Old Gaston Road, Gaston, N.C;

(E) within 50 yards east and west of the N.C. Highway 903 Eaton Ferry Road Bridge in Warren County;

(F) within 50 yards of the Hawtree Creek Boating Access Area in Warren County, 1200 Peete Farm Road, Warrenton, N.C.;

(G) within 50 yards of the Salmons Landing Boating Access area in Warren County, 129 Salmon Landing Road, Littleton, N.C.;

(H) within 50 yards of the Wildwood Point boat ramp in Warren County,184 N. Oak Drive, Littleton, N.C.;

(I) within 50 yards of the Lizard Creek boat ramp in Warren County, 417 Lizard Creek Road, Littleton, N.C.;

(J) Songbird Creek in Warren County within 50 yards of the culvert under N.C. Highway 903 at 36.53260 N, 77.97330 W; and

(K) Sixpound Creek in Warren County within 50 yards of the culvert under SR 1704 otherwise known as Nocarva Road at 36.52950 N, 78.07283 W;

(L) Lizard Creek in Warren County within 50 yards of the culvert under SR 1362 otherwise known as Lizard Creek Road at 36.52501 N, 77.91187 W;

(M) within 50 yards of the Waters View Restaurant adjacent to the northwest end of the N.C. Highway 903 bridge in Warren County;

(N) the cove west of the Pointe at Lake Gaston at the southwest end of the N.C. Highway 903 bridge in Warren County, south of a point at 36.50937 N, 77.96644 W;

(O) Camp Willow Run Canoe and Sail Cove in Warren County, beginning at a line shore to shore from a point on the southwest shore at 36.49355 N, 77.91795 W, to a point on the north shore at 36.49534 N, 77.91508 W;

(P) the cove on Hubquarter Creek in Warren County, shore to shore beginning at a line from a point on the northeast shore at 36.50030 N, 78.00474 W to a point on the southwest shore at 36.49947 N, 78.00553 W; and

(Q) the waters of the cove east of the Stonehouse Timber Lodge Marina, 154 Stonehouse Lodge Drive, Littleton, N.C., shore to shore south of a point at 36.49206 N, 77.94085 W.

(2) Roanoke River:

(A) within 50 yards of the Gaston Boating Access Area, 601 Roanoke Rapids Road, Gaston, N.C.; and
(B) within 50 yards of the Odom Boating Access Area, 1017 Striper Lane, Jackson, N.C.

(b) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a marked mooring area on the waters of Lake Gaston within Northampton and Warren counties.

(c) Placement of Markers. The following agencies shall be the designated agencies for placement of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers:

(1) The Boards of Commissioners of Northampton County and Warren County shall be responsible for placement of markers for the regulated areas designated in Parts (a)(1)(A), (B), and (H) through (Q) of this Rule; and
(2) The North Carolina Wildlife Resources Commission shall be responsible for placement of markers for the regulated areas designated in Parts (a)(1)(C) through (G) and Subparagraph (a)(2)(A) and (B) of this Rule.

History Note: Authority G.S. 75A-3; 75A-15;
Eff. March 29, 1981;
Amended Eff. June 1, 1994; March 1, 1993; September 1, 1989;
Temporary Amendment Eff. March 15, 2003;
Temporary Amendment Expired October 12, 2003;
Amended Eff. May 1, 2014; May 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016;
Amended Eff. February 1, 2023; June 1, 2022; February 1, 2020; October 1, 2018.

15A NCAC 10F .0361 WILKES COUNTY

(a) Regulated Areas. This Rule shall apply to the following waters on W. Kerr Scott Reservoir in Wilkes County:

(1) the waters of Dam Site Park Cove at Dam Site Shelter, 499 Reservoir Road, Wilkesboro, south of a line at the mouth of the cove from a point on the east shore at 36.13090 N, 81.22955 W to a point on the west shore at 36.13040 N, 81.23122;
(2) the waters of the cove at Skyline Marina, 4008 W. N.C. Hwy 268, Wilkesboro, south of a line at the mouth of the cove from a point on the east shore at 36.12738 N, 81.23530 W to a point on the west shore at 36.12608 N, 81.23847 W;
(3) the waters of the cove north and west of Berry Mountain Park, 4732 W. N.C. Hwy 268, Wilkesboro, south of a line at the mouth of the cove from a point on the east shore at 36.12558 N, 81.24025 W to a point on the west shore at 36.12545 N, 81.24245 W, surrounding the Berry Mountain swim beach, and to the southwest to the end of the cove;
(4) within 50 yards of the Boomer Park boat ramp, 400 Boomer Road, Boomer;
(5) within 50 yards of the Keowee boat ramp, 7659 N.C. Hwy 268, Boomer;
(6) the waters of the cove where Smithey's Creek boat ramp and Fort Hamby boat ramp are located, northwest of a line at the mouth of the cove from a point on the east shore at 36.12612 N, 81.26129 W to a point on the west shore at 36.12361 N, 81.26404 W;
(7) the waters within 50 yards north and 50 yards south of the N.C. Hwy 268 Bridge, at 36.09902 N, 81.28070 W;
(8) the waters within 50 yards surrounding the Boomer Park Beach Swim Area located at 400 Boomer Road, Boomer;
(9) the waters within 50 yards surrounding the Fort Hamby Swim Area located at 36.12314 N, 81.26870 W, near 1534 S. Recreation Road, Wilkesboro; and
(10) the waters of the cove where the Warrior Creek Swim Area is located, southwest of a line at the mouth of the cove from a point on the south shore at 36.10494 N, 81.28304 W to a point on the north shore at 36.10591 N, 81.28412 W.

(b) Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter the waters of the following swim areas:

(1) the waters of the Fort Hamby Swim Area located at 36.12314 N, 81.26870 W, near 1534 S. Recreation Road, Wilkesboro;
(2) the waters of Warrior Creek Swim Area located at 36.10367 N, 81.28664 W, at 7659 W. Hwy 268, Boomer;
(3) the waters of Boomer Park Beach Swim Area located at 36.09271 N, 81.27967 W, 400 Boomer Road, Boomer;
(4) the waters of the Berry Mountain Park Swim Beach located at 36.12498 N, 81.24010 W, 4732 W. N.C. Hwy 268, Wilkesboro; and
(5) the waters of the Bandit's Roost Park Swim Area located at 36.12425 N, 81.25172 W, 667 Jess Walsh Road, Wilkesboro.

(c) Safety Zone. Except for authorized persons and vessels, no entry shall be allowed in the waters 50 yards downstream from the W. Kerr Scott Dam and Intake Tower.

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

(e) Placement of Markers. The Wilkes County Board of Commissioners and the U.S. Army Corps of Engineers shall be the designated agencies for placement and maintenance of the markers implementing this Rule, subject to the authority of the U.S. Army Corps of Engineers.

History Note: Authority G.S. 75A-3; 75A-15;
Eff. September 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016;

Amended Eff. February 1, 2023; October 1, 2018.

15A NCAC 10I .0103 ENDANGERED SPECIES LISTED

(a) The following species of resident wildlife shall be designated as federally-listed endangered species:

(1) Amphibians: None listed.
(2) Birds:
  (A) Bachman's warbler (Vermivora bachmanii);
  (B) Ivory-billed woodpecker (Campephilus principalis);
  (C) Piping plover (Charadrius melodus circumcinctus);
  (D) Red-cockaded woodpecker (Dryobates borealis); and
  (E) Roseate tern (Sterna dougallii dougallii).
(3) Crustacea: None listed.
(4) Fish:
  (A) Cape Fear shiner (Notropis mekistocholas);
  (B) Carolina madtom (Noturus furiosus);
  (C) Roanoke logperch (Percina rex);
  (D) Shortnose sturgeon (Acipenser brevirostrum), when found in inland fishing waters as defined in G.S. 113-129(9); and
  (E) Atlantic sturgeon (Acipenser oxyrinchus oxyrinchus), when found in inland fishing waters as defined in G.S. 113-129(9).
(5) Mammals:
  (A) Carolina northern flying squirrel (Glaucomys sabrinus coloratus);
  (B) Eastern cougar (Puma concolor);
  (C) Gray bat (Myotis grisescens);
  (D) Indiana bat (Myotis sodalis);
  (E) Manatee (Trichechus manatus), when found in inland fishing waters as defined in G.S. 113-129(9); and
  (F) Virginia big-eared bat (Corynorhinus townsendii virginianus).
(6) Mollusks:
  (A) Appalachian elktoe (Alasmidonta raveneliana);
  (B) Carolina heelsplitter (Lasmigona decorata);
  (C) Dwarf wedgemussel (Alasmidonta heterodon);
  (D) James spinymussel (Parvaspina collina);
  (E) Littlewing pearlymussel (Pegias fabula);
  (F) Tan riffleshell (Epioblasma florentina walkeri); and
  (G) Tar River spinymussel (Parvaspina steinstansana).
(7) Reptiles:
  (A) Kemp's ridley sea turtle (Lepidochelys kempii);
  (B) Atlantic hawksbill sea turtle (Eretmochelys imbricata); and
  (C) Leatherback sea turtle (Dermochelys coriacea).

(b) The following species of resident wildlife shall be designated as State-listed endangered species:

(1) Amphibians:
  (A) Gopher frog (Rana [=Lithobates] capito);
  (B) Hickory Nut Gorge green salamander (Aneides caryaenis);
  (C) Ornate chorus frog (Pseudacris ornata); and
  (D) River frog (Rana [=Lithobates] heckscheri).
(2) Birds:
  (A) American peregrine falcon (Falco peregrinus anatum);
  (B) Bewick's wren (Thryomanes bewickii);
  (C) Common tern (Sterna hirundo);
  (D) Henslow's sparrow (Centronyx henslowii); and
  (E) Wayne's black-throated green warbler (Setophaga virens waynei).
(3) Crustacea:
  (A) Bennett's Mill cave water slater (Caecidotea carolinensis); and
  (B) Waccamaw crayfish (Procambarus braswelli).
(4) Fish:
  (A) Blotchside logperch (Percina burtoni);
  (B) Bridle shiner (Notropis bifrenatus);
  (C) Orangefin madtom (Noturus gilberti);
  (D) Paddlefish (Polyodon spathula);
  (E) Robust redhorse (Moxostoma robustum);
  (F) Rustyside sucker (Thoburnia hamiltoni);
  (G) Sharpnose darter (Percina oxyrhyncus); and
  (H) Stonecat (Noturus flavus).
(5) Mammals:
  (A) Little brown bat (Myotis lucifugus); and
  (B) Tricolored bat (Perimyotis subflavus).
(6) Mollusks:
  (A) Barrel floater (Utterbackiana couperiana);
  (B) Brook floater (Alasmidonta varicosa);
  (C) Carolina creekshell (Villosa vaughaniana);
  (D) Fragile glyph (Glyphyalinia clingmani);
  (E) Green floater (Lasmigona subviridis);
  (F) Greenfield rams-horn (Helisoma eucosmium)

(G) Knotty elimia (Elimia christyi);
(H) Longsolid (Fusconaia subrotunda);
(I) Magnificent rams-horn (Planorbella magnifica);
(J) Purple wartyback (Cyclonaias tuberculata);
(K) Savannah lilliput (Toxolasma pullus);
(L) Slippershell mussel (Alasmidonta viridis);
(M) Tennessee clubshell (Pleurobema oviforme);
(N) Tennessee heelsplitter (Lasmigona holstonia);
(O) Tennessee pigtoe (Pleuronaia barnesiana); and
(P) Yellow lampmussel (Lampsilis cariosa).

(7) Reptiles:
(A) Eastern coral snake (Micrurus fulvius fulvius); and
(B) Eastern diamondback rattlesnake (Crotalus adamanteus); and
(C) Mimic glass lizard (Ophisaurus mimicus).

History Note: Authority G.S. 113-134; 113-333;
Eff. June 11, 1977;
Amended Eff. October 1, 2017; August 1, 2016; May 1, 2008; April 1, 2001; February 1, 1994; November 1, 1991; April 1, 1991; June 1, 1990;
Readopted Eff. October 1, 2021;
Amended Eff. February 1, 2023.

15A NCAC 10I .0104 THREATENED SPECIES LISTED

(a) The following species of resident wildlife shall be designated as federally-listed threatened species:
(1) Amphibians: Neuse River waterdog (Necturus lewisi).
(2) Birds:
(A) Eastern black rail (Laterallus jamaicensis jamaicensis);
(B) Piping plover (Charadrius melodus melodus);
(C) Red knot (Calidris canutus rufa); and
(D) Wood stork (Mycteria americana).
(3) Crustacea: None listed.
(4) Fish:
(A) Spotfin chub (Erimonax monachus); and
(B) Waccamaw silverside (Menidia extensa).
(5) Mammals: Northern long-eared bat (Myotis septentrionalis)
(6) Mollusks:
(A) Atlantic pigtoe (Fusconaia masoni);
(B) Noonday globe (Patera clarki nantahala); and
(C) Yellow lance (Elliptio lanceolata).
(7) Reptiles:
(A) Bog turtle (Glyptemys muhlenbergii);
(B) American alligator (Alligator mississipiensis);
(C) Green sea turtle (Chelonia mydas); and
(D) Loggerhead sea turtle (Caretta caretta).

(b) The following species of resident wildlife are designated as State-listed threatened species:
(1) Amphibians:
(A) Eastern tiger salamander (Ambystoma tigrinum tigrinum);
(B) Green salamander (Aneides aeneus);
(C) Junaluska salamander (Eurycea junaluska);
(D) Long-tailed salamander (Eurycea longicauda);
(E) Mabee's salamander (Ambystoma mabeei);
(F) Pine Barrens tree frog (Hyla andersonii); and
(G) Wehrle's salamander (Plethodon wehrlei).
(2) Birds:
(A) Bald eagle (Haliaeetus leucocephalus);
(B) Caspian tern (Hydroprogne caspia);
(C) Gull-billed tern (Gelochelidon nilotica aranea); and
(D) Northern saw-whet owl (Aegolius acadicus).
(3) Crustacea:
(A) Broad River spiny crayfish (Cambarus spicatus);
(B) French Broad crayfish (Cambarus reburrus);
(C) Pamlico crayfish (Procambarus medialis);
(D) Sandhills crayfish (Procambarus pearsei); and
(E) South Mountains crayfish (Cambarus franklini).
(4) Fish:
(A) Bigeye jumprock (Moxostoma ariommum);
(B) Blotched chub (Erimystax insignis);
(C) Carolina pygmy sunfish (Elassoma boehlkei);
(D) Carolina redhorse (Moxostoma sp.);
(E) Ironcolor shiner (Notropis chalybaeus)
(F) Least brook lamprey (Lampetra aepyptera);
(G) Logperch (Percina caprodes);
(H) Mimic shiner (Notropis volucellus);
(I) Rosyface chub (Hybopsis rubrifrons);
(J) Sharphead darter (Etheostoma acuticeps);

(K) Santee chub (Cyprinella zanema);
(L) Sicklefin redhorse (Moxostoma sp.);
(M) Thicklip chub (Cyprinella labrosa);
(N) Turquoise darter (Etheostoma inscriptum); and
(O) Waccamaw darter (Etheostoma perlongum).

(5) Mammals:
(A) Eastern woodrat (Neotoma floridana floridana);
(B) Rafinesque's big-eared bat (Corynorhinus rafinesquii rafinesquii); and
(C) Red wolf (Canis rufus).

(6) Mollusks:
(A) Alewife floater (Utterbackiana implicata);
(B) Big-tooth covert (Fumonelix jonesiana);
(C) Cape Fear threetooth (Triodopsis soelneri);
(D) Eastern lampmussel (Lampsilis radiata);
(E) Eastern pondmussel (Ligumia nasuta);
(F) Engraved covert (Fumonelix orestes);
(G) Mountain creekshell (Villosa vanuxemensis);
(H) Notched rainbow (Villosa constricta);
(I) Rainbow (Villosa iris);
(J) Roan supercoil (Paravitrea varidens);
(K) Sculpted supercoil (Paravitrea ternaria);
(L) Smoky Mountain covert (Inflectarius ferrissi);
(M) Creeper (Strophitus undulatus);
(N) Tidewater mucket (Leptodea ochracea);
(O) Triangle floater (Alasmidonta undulata); and
(P) Waccamaw ambersnail (Catinella waccamawensis).

(7) Reptiles:
(A) Northern pine snake (Pituophis melanoleucus melanoleucus); and
(B) Southern hognose snake (Heterodon simus).

History Note: Authority G.S. 113-134; 113-333;
Eff. March 17, 1978;
Amended Eff. June 1, 2008; April 1, 2001; November 1, 1991;
April 1, 1991; June 1, 1990; September 1, 1989;
Temporary Amendment Eff. February 27, 2015;
Amended Eff. October 1, 2017; July 1, 2016; August 1, 2016;
Readopted Eff. October 1, 2021;
Amended Eff February 1, 2023.

15A NCAC 10I .0105 SPECIAL CONCERN SPECIES LISTED

The following species of resident wildlife shall be designated as State-listed special concern species:

(1) Amphibians:
(a) Collinses' mountain chorus frog (Pseudacris collinsorum);
(b) Crevice salamander (Plethodon longicrus);
(c) Dwarf salamander (Eurycea quadridigitata);
(d) Dwarf black-bellied salamander (Desmognathus folkertsi);
(e) Eastern hellbender (Cryptobranchus alleganiensis alleganiensis);
(f) Four-toed salamander (Hemidactylium scutatum);
(g) Gray treefrog (Hyla versicolor);
(h) Mole salamander (Ambystoma talpoideum);
(i) Mudpuppy (Necturus maculosus);
(j) Southern chorus frog (Pseudacris nigrita);
(k) Southern zigzag salamander (Plethodon ventralis); and
(l) Weller's salamander (Plethodon welleri).

(2) Birds:
(a) American oystercatcher (Haematopus palliatus);
(b) Bachman's sparrow (Peucaea aestivalis);
(c) Barn owl (Tyto alba);
(d) Black-capped chickadee (Poecile atricapillus);
(e) Black skimmer (Rynchops niger);
(f) Brown creeper (Certhia americana nigrescens);
(g) Cerulean warbler (Setophaga cerulea);
(h) Glossy ibis (Plegadis falcinellus);
(i) Golden-winged warbler (Vermivora chrysoptera);
(j) Least bittern (Ixobrychus exilis);
(k) Least tern (Sternula antillarum);
(l) Little blue heron (Egretta caerulea);
(m) Loggerhead shrike (Lanius ludovicianus);
(n) Painted bunting (Passerina ciris);
(o) Red crossbill (Loxia curvirostra);
(p) Snowy egret (Egretta thula);
(q) Tricolored heron (Egretta tricolor);
(r) Vesper sparrow (Pooecetes gramineus); and
(s) Wilson's plover (Charadrius wilsonia).

(3) Crustacea:
(a) Carolina skistodiaptomus (Skistodiaptomus carolinensis);
(b) Carolina well diacyclops (Diacyclops jeannelli putei);

(c) Chowanoke crayfish (Faxonius virginiensis);
(d) Graceful clam shrimp (Lynceus gracilicornis);
(e) Greensboro burrowing crayfish (Cambarus catagius);
(f) Hiwassee headwaters crayfish (Cambarus parrishi);
(g) Little Tennessee River crayfish (Cambarus georgiae);
(h) North Carolina spiny crayfish (Faxonius carolinensis); and
(i) Oconee stream crayfish (Cambarus chaugaensis).

(4) Fish:
(a) American brook lamprey (Lethenteron appendix);
(b) "Atlantic" Highfin carpsucker (Carpiodes sp. cf. velifer);
(c) Banded sculpin (Cottus carolinae);
(d) Blue Ridge sculpin (Cottus caeruleomentum);
(e) Blueside darter (Etheostoma jessiae);
(f) Broadtail madtom (Noturus sp.);
(g) Carolina darter (Etheostoma collis);
(h) Cutlip minnow (Exoglossum maxillingua);
(i) Freshwater drum (Aplodinotus grunniens);
(j) Kanawha minnow (Phenacobius teretulus);
(k) Lake sturgeon (Acipenser fulvescens);
(l) Least killifish (Heterandria formosa);
(m) Mooneye (Hiodon tergisus);
(n) Mountain madtom (Noturus eleutherus);
(o) Ohio lamprey (Ichthyomyzon bdellium);
(p) Olive darter (Percina squamata);
(q) Pinewoods darter (Etheostoma mariae);
(r) River carpsucker (Carpiodes carpio);
(s) Sandhills chub (Semotilus lumbee);
(t) Seagreen darter (Etheostoma thalassinum);
(u) Sickle darter (Percina williamsi);
(v) Smoky dace (Clinostomus sp.);
(w) Striped shiner (Luxilus chrysocephalus);
(x) Snubnose darter (Etheostoma simoterum);
(y) "Thinlip" chub (Cyprinella sp. cf. zanema);
(z) Waccamaw killifish (Fundulus waccamensis);
(aa) Westfall's Darter (Percina westfalli);
(bb) Wounded darter (Etheostoma vulneratum); and
(cc) Yellowfin shiner (Notropis lutipinnis).

(5) Mammals:
(a) Allegheny woodrat (Neotoma magister);
(b) Buxton Woods white-footed mouse (Peromyscus leucopus buxtoni);
(c) Coleman's oldfield mouse (Peromyscus polionotus colemani);
(d) Eastern big-eared bat (Corynorhinus rafinesquii macrotis);
(e) Eastern small-footed bat (Myotis leibii leibii);
(f) Florida yellow bat (Lasiurus intermedius floridanus);
(g) Southeastern bat (Myotis austroriparius);
(h) Southern rock vole (Microtus chrotorrhinus carolinensis); and
(i) Star-nosed mole (Condylura cristata parva).

(6) Mollusks:
(a) Appalachian gloss (Zonitoides patuloides);
(b) Bidentate dome (Ventridens coelaxis);
(c) Black mantleslug (Pallifera hemphilli);
(d) Blackwater ancylid (Ferrissia hendersoni);
(e) Blue-foot lancetooth (Haplotrema kendeighi);
(f) Cape Fear spike (Elliptio marsupiobesa);
(g) Clingman covert (Fumonelix wheatleyi clingmanicus);
(h) Dark glyph (Glyphyalinia junaluskana);
(i) Dwarf proud globe (Patera clarki clarki);
(j) Dwarf threetooth (Triodopsis fulciden);
(k) Fringed coil (Helicodiscus fimbriatus);
(l) Glossy supercoil (Paravitrea placentula);
(m) Great Smoky slitmouth (Stenotrema depilatum);
(n) High mountain supercoil (Paravitrea andrewsae);
(o) Honey glyph (Glyphyalinia vanattai);
(p) Lamellate supercoil (Paravitrea lamellidens);
(q) Mirey Ridge supercoil (Paravitrea clappi);
(r) Open supercoil (Paravitrea umbilicaris);
(s) Pink glyph (Glyphyalinia pentadelphia);
(t) Pod lance (Elliptio folliculata);
(u) Queen crater (Appalachina chilhoweensis);

(v) Ramp Cove supercoil (Paravitrea lacteodens);
(w) Ridged lioplax (Lioplax subcarinata);
(x) Roanoke slabshell (Elliptio roanokensis);
(y) Saw-tooth disc (Discus bryanti);
(z) Seep mudalia (Leptoxis dilatata);
(aa) Spike (Eurynia dilatata);
(bb) Spiral coil (Helicodiscus bonamicus);
(cc) Velvet covert (Inflectarius subpalliatus);
(dd) Waccamaw amnicola (Amnicola sp.);
(ee) Waccamaw siltsnail (Cincinnatia sp.); and
(ff) Wavy-rayed lampmussel (Lampsilis fasciola).

(7) Reptiles:
(a) Carolina pigmy rattlesnake (Sistrurus miliarius miliarius);
(b) Carolina swamp snake (Liodytes pygaea paludis);
(c) Carolina watersnake (Nerodia sipedon williamengelsi);
(d) Cumberland slider (Trachemys scripta troostii);
(e) Diamondback terrapin (Malaclemys terrapin);
(f) Eastern chicken turtle (Deirochelys reticularia reticularia);
(g) Eastern coachwhip (Coluber (=Masticophis) flagellum flagellum);
(h) Eastern slender glass lizard (Ophisaurus attenuatus longicaudus);
(i) Eastern spiny softshell (Apalone spinifera spinifera);
(j) Northern map turtle (Graptemys geographica);
(k) Outer Banks kingsnake (Lampropeltis getula sticticeps);
(l) Stripeneck musk turtle (Sternotherus minor peltifer); and
(m) Timber rattlesnake (Crotalus horridus).

History Note: Authority G.S. 113-134; 113-333;
Eff. September 1, 1989;
Amended Eff. October 1, 2017; August 1, 2016; May 1, 2008; July 18, 2002; April 1, 2001; November 1, 1991; April 1, 1991; June 1, 1990;
Readopted Eff. October 1, 2021;
Amended Eff. February 1, 2023.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 05 – BEHAVIORAL ANALYST LICENSURE BOARD

21 NCAC 05 .0102 BOARD ADDRESS AND WEBSITE

(a) Unless otherwise directed, all correspondence shall be mailed to the following address:

701 Exposition Place
Suite 206
Raleigh, NC 27615

(b) The Board website shall be www.ncbehavioranalystboard.org.

History Note: Authority G.S. 90-734;
Eff. February 1, 2023.

21 NCAC 05 .0201 APPLICATION FOR LICENSURE OF LICENSED BEHAVIOR ANALYST AND LICENSED ASSISTANT BEHAVIOR ANALYST

(a) The Behavior Analyst License applicant shall submit the following to the Board:

(1) Documentation of all previous professional human services licenses held by the applicant;
(2) Attestation that the applicant has read and agrees to adhere to the current version of the Ethics Code for Behavior Analysts published by the certifying entity;
(3) Documentation of all work experience in the field of behavior analysis, including internships, practicum, and other field experience completed as part of an educational course of study;
(4) Documentation of all certifications of behavior analysis currently or previously granted by national or other state certification bodies as described in Rule .0203 of this Section.
(5) Payment of all required fees;
(6) Signed consent form provided by the State Bureau of Investigation or NC Department of Justice authorizing the completion of a certified criminal records check based on the applicant's fingerprints provided to a local law enforcement office; and
(7) Two letters of reference as described in Rule .0202 of this Section.

(b) The Assistant Behavior Analyst License applicant shall submit the following to the Board:

(1) Documentation of all previous professional human services licenses held by the applicant;
(2) Attestation that the applicant has read and agrees to adhere to the current version of the Ethics Code for Behavior Analysts published by the certifying entity;
(3) Documentation of all work experience in the field of behavior analysis, including internships, practicum, and other field experience completed as part of an educational course of study;
(4) Documentation of all certifications of behavioral analysis currently or previously granted by national or other state certification bodies as described in Rule .0203 of this Section.

(5) Payment of all required fees;
(6) Signed consent form provided by the State Bureau of Investigation or NC Department of Justice authorizing the completion of a certified criminal records check based on the applicant's fingerprints provided to a local law enforcement office; and
(7) Two letters of reference as described in Rule .0202 of this Section.

History Note: Authority G.S. 90-734; 90-736; 90-737; 90-738;
Eff. February 1, 2023.

21 NCAC 05 .0202 REFERENCES
The application for Behavior Analyst License and Assistant Behavior Analyst shall include two letters of reference, to be submitted to the Board by the applicant. The two letters of references shall include:
(1) name of reference and applicant;
(2) period of time the reference has known the applicant;
(3) nature of professional relationship; and
(4) knowledge of the applicant's training, experience, professional skills, and adherence to legal and ethical standards.

History Note: Authority G.S. 90-734; 90-736;
Eff. February 1, 2023.

21 NCAC 05 .0203 CERTIFICATION
(a) The applicant for Behavior Analyst License or Assistant Behavior Analyst shall submit an official copy of the applicant's Behavior Analyst certification to the Board.
(b) The Board shall accept electronic submissions of the Behavior Analyst certification.

History Note: Authority G.S. 90-734; 90-736; 90-737; 90-738;
Eff. February 1, 2023.

21 NCAC 05 .0301 FEES
(a) The fees to obtain a Behavior Analyst License shall be:
(1) Application Fee – Two hundred fifty dollars ($250.00);
(2) Renewal Fee – Two hundred dollars ($200.00);
(3) Late Renewal Fee – Fifty dollars ($50.00);
(4) Reciprocity Fee – Two hundred fifty dollars ($250.00); and
(5) Temporary License Fee – One hundred dollars ($100.00).
(b) The fees to obtain an Assistant Behavior Analyst License shall be:
(1) Application Fee – Two hundred dollars ($200.00);
(2) License renewal Fee – One hundred fifty dollars ($150.00);
(3) Late renewal Fee – Fifty dollars ($50.00);
(4) Reciprocal license application Fee – Two hundred dollars ($200.00); and
(5) Temporary license application Fee – One hundred dollars ($100.00).
(c) The Board may amend any fee imposed on an applicant or licensee in accordance with G.S. 93B-15.

History Note: Authority G.S. 90-743;
Eff. February 1, 2023.

21 NCAC 05 .0401 SUPERVISION OF ASSISTANT BEHAVIOR ANALYST
(a) Applicants for licensure as an assistant behavior analyst shall provide to the Board a supervisory agreement between the licensed behavior analyst and the licensed assistant behavior analyst.
(b) Applicants for licensure as an assistant behavior analyst shall maintain a copy of the supervisory agreement while supervised. The supervisor of the licensed assistant behavior analyst shall maintain a copy of the signed supervisor agreement, supervision logs, and evaluations for at least seven years following the termination of the supervisory relationship This documentation shall be made available to the Board upon request.
(c) Supervision activities by the licensed behavior analyst include:
(1) Direct observation of the supervisee implementing behavior analytic assessment and intervention procedures with clients in natural environments or training others to implement them, with feedback from the supervisor. The observation may be done in-person, on-site, or using asynchronous or synchronous formats.
(2) One-to-one, live, person-to-person, or synchronous virtual interactions between supervisor and supervisee to review and discuss assessment and treatment plans and procedures, client assessment and progress data and reports, published research, ethical and professional standards and guidelines, professional development needs and opportunities, and relevant laws, regulations, and policies.
(3) Live, person-to-person, or synchronous virtual interactions between a supervisor and a group of supervisees to review and discuss assessment and treatment plans and procedures, client assessment and progress data and reports, published research, ethical and professional standards and guidelines, professional development needs and opportunities, and relevant laws, regulations, and policies.
(4) The frequency and nature of supervision interactions shall be consistent with the supervisory requirements set forth by the certifying entity in the Board Certified Assistant Behavior Analyst (BCaBA) handbook, which is hereby incorporated by reference, including subsequent amendments and editions, and may be found at https://www.bacb.com/ at no cost.

History Note: Authority G.S. 90-734; 90-738; 90-732; 90-739;
Eff. February 1, 2023.

21 NCAC 05 .0402 SUPERVISION OF BEHAVIOR TECHNICIANS

(a) Behavior technicians shall be supervised by a licensed behavior analyst or a licensed assistant behavior analyst.

(b) Any licensed behavior analyst or licensed assistant behavior analyst employing or supervising behavior technicians who are implementing applied behavior analysis interventions designed by the licensed behavior analyst or licensed assistant behavior analyst shall maintain professional responsibility for the quality of the interventions rendered and for the effects of the interventions upon the client, patient, or other individuals.

(c) The behavior analyst shall have face-to-face contact, including in-person or synchronous virtual interactions, during the course of services with all patients, clients, or other recipients of services delivered by behavior technicians as part of the interventions designed by the licensed behavior analysts or licensed assistant behavior analysts.

(d) Any licensed behavior analyst or licensed assistant behavior analyst employing or supervising behavior technicians who are implementing applied behavior analysis interventions designed by the licensed behavior analyst or licensed assistant behavior analyst shall maintain documentation to demonstrate their adherence to this Rule. This documentation shall be supervision contracts, supervision logs, and meeting notes. The licensed behavior analyst or licensed assistant behavior analyst shall maintain this documentation for at least seven years following the termination of applied behavior analysis services by the behavior technician.

(e) Behavior technicians shall be utilized to perform only:

(1) non-client-related tasks, clerical tasks, maintenance activities, and the preparation of the work area and equipment; and

(2) client-related tasks that, in the opinion of and under the supervision of a licensed behavior analyst or a licensed assistant behavior analyst, have no potential to adversely impact the client or the client's treatment plan and do not constitute the practice of behavior analysis. The behavior technician shall not design assessment or intervention plans or procedures.

(f) Failure of any licensed behavior analyst or licensed assistant behavior analyst to supervise behavior technicians shall subject that licensed behavior analyst or licensed assistant behavior analyst to disciplinary action pursuant to 21 NCAC 05 .0603.

History Note: Authority G.S. 90-734; 90-732; 90-745;
Eff. February 1, 2023.

21 NCAC 05 .0501 ETHICS

The Board shall use The Ethics Code for Behavior Analysts, which is hereby incorporated by reference, including subsequent amendments and editions, and may be found at https://www.bacb.com/ at no cost, in determining whether ethical violations have occurred.

History Note: Authority G.S. 90-731; 90-734; 90-742;
Eff. February 1, 2023.

21 NCAC 05 .0601 COMPLAINT PROCEDURES

(a) Initiation. Any individual with personal knowledge that any person has violated the Code of Conduct, any other rules of this Chapter, or G.S. 90, Article 43, may file a complaint by submitting the Ethics Complaint Form found on the Board's website.

(b) Form. The complaint shall be in typed or handwritten format stating the nature of the alleged offense and signed by the complainant. The complaint shall include:

(1) the name, address, and telephone number of the complainant;

(2) the name and address of the person against whom the complaint is made ("respondent"); and

(3) a statement of the facts that describe the allegations against the person.

(c) The complaint shall be investigated as set out in Rule .0602 of this Section.

(d) Upon completion of the investigation of the complaint, the ethics committee shall take action as set out in Rule .0602 of this Section.

(e) If the ethics committee concludes there is a basis to schedule a disciplinary hearing before the Board, the committee chairperson shall notify the respondent. The notice to the respondent shall include the following:

(1) the sections of the Code of Conduct, other rules of this Chapter, or G.S. 90, Article 43 that the complaint alleges has been violated;

(2) direct that the respondent reply to the Board in writing and by certified mail within 15 days of receipt of this notice; and

(3) inform the respondent that failure to respond in writing within 15 days may result in revocation of a license.

(f) The Board shall issue notice by regular postage mail, certified mail, or personal service at the last known address of the respondent. If given by certified mail, notice shall be deemed to have been given on the delivery date appearing on the return receipt.

(g) The Board may receive correspondence in an ethics case through e-mail in order to conduct the investigation or when the subject of an investigation is unable to use or has been unresponsive to certified mail or other methods of delivery. The Board may use local law enforcement or a private investigator licensed by the Private Protective Services Board to personally serve a respondent.

(h) If notice cannot be given either by regular postage mail, personal service, or by certified mail, a notice that a complaint has been brought against the respondent shall then be given by publication. Service of notice by publication shall consist of publication once a week for three successive weeks in a newspaper that is qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and circulated in the area where the respondent is believed to be located. The notice shall include a statement by the Board that a complaint has been made against the respondent that is scheduled to be heard by the Board within

90 days. The notice shall inform respondent that respondent shall be given 30 days from the date of the last date of publication in which to respond to the service by publication for the purpose of notifying the Board of respondent's whereabouts. Response shall be made in writing to the Board at the address provided by the Board in its notice. If respondent provides the Board with information whereby he or she can be served by the deadline specified in the notice, the Board shall provide notice either personally or by certified mail as provided in Paragraph (g) of this Rule. Failure of respondent notified by publication of a complaint brought by the Board shall be treated as a failure of respondent to reply to the charges.

(i) Failure of the respondent to reply to the charges, including each specific allegation, may be considered an admission of the facts contained in the allegation(s).

History Note: Authority G.S. 90-731; 90-734; 90-742; 90-744; 90-746; 90-747;
Eff. February 1, 2023.

21 NCAC 05 .0602 INVESTIGATION OF COMPLAINT

(a) The ethics committee shall consist of a member of the Board as chairperson, the Board administrator and the Board's legal counsel. The ethics committee shall investigate the allegations in the complaint. The chairperson may appoint another Board member or name a subcommittee of the Board to serve on the ethics committee, if they determine there is a conflict of interest or that the complaint is outside of their investigatory skillset.

(b) The ethics committee may contact the complainant and person against whom the complaint is made.

(c) Upon completion of the investigation, the ethics committee may determine that:

(1) the person against whom the complaint is made is not a licensee or applicant of the Board, and does not qualify for an exemption pursuant to G.S. 90-745. The ethics committee shall cease disciplinary action and the chairperson shall refer the matter for prosecution pursuant to G.S. 90-746.

(2) the complaint is without merit. The ethics committee shall dismiss the complaint. The chairperson shall notify both parties of the dismissal; and

(3) upon completion of an investigation wherein the complaint is found to have merit or is not dismissed, the ethics committee chairperson may:

(A) offer a settlement resolution pursuant to G.S. 150B-22;

(B) schedule a meeting with the respondent;

(C) notice a formal hearing before the Board; or

(D) take a voluntary dismissal of the case where the respondent relinquishes their license for an agreed upon period of time through a consent order.

History Note: Authority G.S. 90-734; 90-742; 150B-22; 150B-38; 150B-39; 150B-40; 150B-41; 150B-42;
Eff. February 1, 2023.

21 NCAC 05 .0603 METHOD OF DISCIPLINE

(a) Following an investigation or hearing the Board may:

(1) deny a license;

(2) revoke a license;

(3) suspend a license until further order of the Board or for a specified period of time;

(4) reprimand the Respondent; or

(5) take other actions not to be considered a disciplinary action, including a letter of caution or letter of warning without the consent of the Respondent.

(b) Disciplinary or other actions by the Board with the Respondent's consent may be stayed while the Respondent satisfies all of the conditions of the consent order.

History Note: Authority G.S. 90-734; 90-742;
Eff. February 1, 2023.

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CHAPTER 16 – BOARD OF DENTAL EXAMINERS

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

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

(b) Before performing sedation procedures in a facility other than a hospital or credentialed surgery center, the permit holder shall ensure that the Board has been notified that the permit holder intends to administer anesthesia or moderate sedation at the facility and shall ensure that the facility has passed a facility inspection by the Board in accordance with this Subchapter. For purposes of these Rules, "credentialed surgery center" means a surgical facility accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Accreditation Association for Ambulatory Health Care, or the American Association for Accreditation of Ambulatory Surgery Facilities.

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

(1) The permit holder shall ensure the facility is equipped as follows and that the following listed equipment is immediately available and accessible from the operatory and recovery rooms:

(A) an operatory of size and design to permit access of emergency equipment and personnel and to permit emergency management;

(B) a CPR board or dental chair suitable for providing emergency treatment;
(C) lighting as necessary for the procedure to be performed, and back-up lighting;
(D) suction equipment as necessary for the procedure to be performed, including non-electrical back-up suction;
(E) positive pressure oxygen delivery system, including full face masks for small, medium, and large patients, and back-up E-cylinder portable oxygen tank apart from the central system;
(F) small, medium, and large oral and nasal airways;
(G) a blood pressure monitoring device;
(H) an EKG monitor;
(I) a pulse oximeter;
(J) an automatic external defibrillator (AED);
(K) a capnograph;
(L) a precordial or pretracheal stethoscope;
(M) a thermometer;
(N) vascular access set-up as necessary for the procedure to be performed, including hardware and fluids;
(O) a laryngoscope with working batteries;
(P) intubation forceps and advanced airway devices;
(Q) tonsillar suction with back-up suction;
(R) syringes as necessary for the procedure to be performed; and
(S) tourniquet and tape.

(2) The permit holder shall ensure all monitoring and other equipment in the facility receives preventive maintenance no less frequently than once per year, including safety and function checks per the manufacturers' recommendations. The permit holder shall maintain documentation of all preventive maintenance performed, and shall ensure equipment is replaced upon its expiration or as clinically required.

(3) The permit holder shall ensure the following unexpired drugs are immediately available and are accessible from the operatory and recovery rooms:
(A) epinephrine;
(B) atropine;
(C) an antiarrhythmic;
(D) an antihistamine;
(E) an antihypertensive;
(F) a bronchodilator;
(G) an antihypoglycemic agent;
(H) a vasopressor;
(I) a corticosteroid;
(J) an anticonvulsant;
(K) appropriate reversal agents;
(L) nitroglycerine; and
(M) an antiemetic.

(4) The permit holder shall maintain written emergency and patient discharge protocols accessible from the operatory and recovery rooms. The written emergency manual shall include a protocol for activation of emergency management services for life-threatening complications along with the information set out in Rule .0101(17) of this Section.

(5) The permit holder shall satisfy any additional facility requirements applicable to the level of the permit, as set out in Rule .0202, .0206, .0302, or .0405 of this Subchapter.

(d) The permit holder shall ensure that the following staffing, education, and training requirements are met prior to performing a sedation procedure:

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

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

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

(4) The requirement set out in Subparagraph (d)(3) of this Rule shall not apply if the permit holder or an additional sedation provider is dedicated to patient care and monitoring regarding anesthesia or moderate sedation throughout the sedation procedure and is not performing the surgery or other dental procedure. The additional sedation provider shall be:
(A) a dentist holding a permit or mobile permit in satisfaction of this

Subchapter to administer the anesthesia or sedation level at the facility where the sedation procedure is performed;

(B) an anesthesiologist licensed and practicing in accordance with the rules of the North Carolina Medical Board; or

(C) a CRNA licensed and practicing in accordance with the rules of the North Carolina Board of Nursing, under the supervision and direction of the permit holder who shall ensure the level of sedation administered does not exceed the level of the sedation allowed by the permit holder's permit.

(5) The permit holder shall satisfy any additional staffing, education, and training requirements applicable to the level of the permit, as set out in Rule .0202, .0302, or .0405 of this Subchapter.

(e) Before starting any sedation procedure, the permit holder shall conduct a pre-operative patient evaluation which shall include the following:

(1) evaluating the patient for health risks relevant to the potential sedation procedure;

(2) evaluating the patient's food and fluid intake following the ASA guidelines for pre-operative fasting applicable to elective procedures involving the administration of anesthesia or moderate sedation. The ASA guidelines are incorporated by reference, including subsequent amendments and editions, and may be accessed at https://www.asahq.org at no cost; and

(3) satisfying any additional requirements for pre-operative patient evaluation and procedures applicable to the level of the permit, as set out in Rule .0202, .0302, or .0405 of this Subchapter.

(f) During the sedation procedure:

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

(2) If IV sedation is used, IV infusion shall be administered before the start of the procedure and maintained until the patient is ready for discharge.

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

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

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

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

(7) The permit holder shall satisfy any additional requirements for operative procedures applicable to the level of the permit, as set out in Rule .0202, .0302, or .0405 of this Subchapter.

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

(1) The permit holder or an auxiliary under his or her direct supervision shall monitor the patient's post-operative vital sign information until the patient is recovered and is ready for discharge from the office. Recovery from anesthesia or moderate sedation shall include documentation of the following:

(A) stable cardiovascular function;

(B) uncompromised airway patency;

(C) patient arousable and protective reflexes intact;

(D) state of hydration within normal limits;

(E) patient can talk, if applicable;

(F) patient can sit unaided, if applicable;

(G) patient can ambulate with minimal assistance, if applicable; and

(H) for a special needs patient, the pre-sedation level of responsiveness or the level as close as possible for that patient shall be achieved.

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

(A) oxygenation, circulation, activity, skin color, and level of consciousness are stable and have been documented;

(B) explanation and documentation of written post-operative instructions have been provided to the patient or a person responsible for the patient at time of discharge; and

(C) a person authorized by or responsible for the patient is available to transport the patient after discharge.

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

(1) the patient's current written medical history, including known allergies and previous surgeries;
(2) a pre-operative assessment as set out in Paragraph (e) of this Rule;
(3) consent to the procedure and to the anesthesia or sedation, signed by the patient or guardian, identifying the procedure and its risks and benefits, the level of anesthesia or sedation and its risks and benefits, and the date signed;
(4) the anesthesia or sedation record that shall include:
(A) the patient's baseline vital signs and intraoperative vital sign information as set out in Subparagraphs (f)(4)-(6) of this Rule;
(B) the printed or downloaded vital sign information from the capnograph. A permit holder's failure to maintain capnograph documentation, except as set out in Subparagraph (f)(3) of this Rule, shall be deemed a failure to monitor the patient as required pursuant to this Subchapter;
(C) procedure start and end times;
(D) gauge of needle and location of IV on the patient, if used;
(E) the total amount of any local anesthetic administered during the procedure;
(F) any analgesic, sedative, pharmacological, or reversal agent, or other drugs administered during the procedure, including route of administration, dosage, strength, time, and sequence of administration, with separate entries for each increment of medication that is titrated to effect;
(G) documentation of complications or morbidity, and clinical responses; and
(H) status of patient upon discharge, including documentation of satisfying the requirements set out in Paragraph (g) of this Rule; and
(5) any additional documentation applicable to the level of the permit, as set out in Rule .0202, .0302, or .0405 of this Subchapter.

History Note: Authority G.S. 90-28; 90-30.1; 90-31.1; 90-48; Eff. Pending Legislative Review.

21 NCAC 16Q .0104 REQUIREMENTS FOR INSPECTIONS AND EVALUATIONS

(a) During a facility inspection pursuant to the rules of this Subchapter, for a dentist applying for or holding a permit to administer general anesthesia, moderate conscious sedation, or moderate pediatric conscious sedation, the applicant or permit holder shall demonstrate satisfaction of the requirements set forth in Rule .0103(c) and (d) of this Section.

(b) During an evaluation, for a dentist applying for or holding a permit to administer general anesthesia, moderate conscious sedation, or moderate pediatric conscious sedation, the applicant or permit holder shall demonstrate the administration of anesthesia or sedation in accordance with the level of the permit, and shall demonstrate competency in the following areas:

(1) pre-operative patient evaluation and procedures, including the requirements set forth in Rule .0103(e) of this Section;
(2) operative procedures, including the deployment of an intravenous delivery system and the requirements set forth in Rule .0103(f) of this Section;
(3) post-operative patient monitoring and discharge, including the requirements set forth in Rule .0103(g) of this Section; and
(4) treatment of the clinical emergencies set out in Rule .0103(d)(1) of this Section.

(c) During the evaluation, the applicant shall take a written examination on the topics set forth in Subparagraphs (b)(1)-(4) of this Rule. The applicant shall obtain a passing score on the written examination by answering 80 percent of the examination questions correctly. If the applicant fails to obtain a passing score on the written examination, he or she may be re-examined in accordance with Rule .0204(h), .0306(h), or .0408(h) of this Subchapter.

(d) The permit holder shall be subject to re-evaluation every five years. Each facility where the permit holder administers anesthesia or sedation shall be subject to a facility inspection upon annual renewal of the permit.

History Note: Authority G.S. 90-28; 90-30.1; 90-48; Eff. Pending Legislative Review.

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

(a) A dentist holding or applying for a permit to administer general anesthesia shall be subject to the requirements set out in Section .0100 of this Subchapter.

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

History Note: Authority G.S. 90-28; 90-30.1; 90-48; Eff. February 1, 1990; Amended Eff. June 1, 2017; November 1, 2013; August 1, 2002; August 1, 2000; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018; Amended Eff. February 1, 2019; August 1, 2018; Amended Eff. Pending Legislative Review.

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

(a) A dentist holding or applying for a permit to administer moderate conscious sedation or supervising any CRNA employed to administer or RN employed to deliver moderate conscious sedation shall be subject to the requirements set out in Section .0100 of this Subchapter.

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

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

(1) a patient who is medically stable and who is ASA I or II shall be evaluated by reviewing the patient's current medical history and medication use; or

(2) a patient who is not medically stable or who is ASA III or higher shall be evaluated by the permit holder's consultation with the patient's primary care physician or consulting medical specialist regarding the potential risks posed by the planned dental procedure.

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

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

(2) determined by the manufacturer to be contraindicated for use in moderate conscious sedation; or

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

History Note: Authority G.S. 90-28; 90-30.1; 90-48;
Eff. February 1, 1990;
Amended Eff. August 1, 2002; August 1, 2000;
Temporary Amendment Eff. December 11, 2002;
Amended Eff. June 1, 2017; November 1, 2013; July 1, 2010; July 3, 2008; August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;
Amended Eff. February 1, 2019; August 1, 2018;
Amended Eff. Pending Legislative Review.

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

(a) A dentist holding or applying for a permit to administer moderate pediatric conscious sedation shall be subject to the requirements set out in Section .0100 of this Subchapter.

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

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

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

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

(1) a patient who is medically stable and who is ASA I or II shall be evaluated by reviewing the patient's current medical history and medication use; or

(2) a patient who is not medically stable or who is ASA III or higher shall be evaluated by the permit holder's consultation with the patient's primary care physician or consulting medical specialist regarding the potential risks posed by the planned dental procedure.

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

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

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

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

(4) the patient is under observation by the permit holder or a BLS-certified auxiliary at all times.

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

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

(2) determined by the manufacturer to be contraindicated for use in moderate pediatric conscious sedation; or

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

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

(1) objectives of the sedation;

(2) anticipated changes in patient behavior during and after sedation;

(3) instructions to the person responsible for a patient transported in a child safety seat regarding patient head position to avoid airway obstruction;
(4) a 24-hour telephone number for the permit holder or his or her BLS-certified auxiliaries; and
(5) instructions on limitations of activities and dietary precautions.

(i) For purposes of Rule .0104(b)(2) of this Subchapter, during an evaluation, a moderate pediatric conscious sedation permit holder or applicant shall demonstrate competency in the deployment of an intravenous delivery system as follows:
(1) a permit holder or applicant who uses intravenous sedation shall demonstrate the administration of moderate pediatric conscious sedation on a live patient, including the deployment of an intravenous delivery system; and
(2) a permit holder or applicant who does not use intravenous sedation shall describe the proper deployment of an intravenous delivery system and shall demonstrate the administration of moderate pediatric conscious sedation on a live patient.

History Note: Authority G.S. 90-28; 90-30.1; 90-48; Eff. June 1, 2017; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018; Amended Eff. February 1, 2019; August 1, 2018; Amended Eff. Pending Legislative Review.

21 NCAC 16Q .0703 REPORTS OF ADVERSE OCCURRENCES

(a) A dentist who holds a permit to administer general anesthesia or sedation shall submit an adverse occurrence report to the Board within 72 hours after each adverse occurrence if the patient dies or has permanent organic brain dysfunction within 24 hours after the administration of general anesthesia or sedation. Sedation permit holders shall cease administration of sedation until the Board has investigated the death or permanent organic brain dysfunction and approved resumption of permit privileges. General anesthesia permit holders shall cease administration of general anesthesia and sedation until the Board has reviewed the adverse occurrence report and approved resumption of permit privileges.
(b) A dentist who holds a permit to administer general anesthesia or sedation shall submit an adverse occurrence report to the Board within 30 days after each adverse occurrence if the patient is admitted to a hospital on inpatient status for a medical emergency or physical injury within 24 hours after the administration of general anesthesia or sedation.
(c) The adverse occurrence report shall be in writing and shall include the following:
(1) dentist's name, license number and permit number;
(2) date and time of the occurrence;
(3) facility where the occurrence took place;
(4) name and address of the patient;
(5) surgical procedure involved;
(6) type and dosage of sedation or anesthesia utilized in the procedure;
(7) circumstances involved in the occurrence; and
(8) the entire patient treatment record including anesthesia records.

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

History Note: Authority G.S. 90-28; 90-30.1; 90-41; 90-48; Eff. April 1, 2016; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018; Amended Eff. Pending Legislative Review.

* *

CHAPTER 25 - INTERPRETER AND TRANSLITERATOR LICENSING BOARD

21 NCAC 25 .0205 RENEWAL OF A PROVISIONAL LICENSE

(a) An application for the renewal of a provisional license is not timely filed unless it is received by the Board on or before the expiration date of the license being renewed.
(b) If a licensee does not timely file an application for the renewal of a provisional license, the licensee shall not practice or offer to practice as an interpreter or transliterator for a fee or other consideration, represent himself or herself as a licensed interpreter or transliterator, use the title "Licensed Interpreter for the Deaf," "Licensed Transliterator for the Deaf," or use any other title or abbreviation to indicate that the person is a licensed interpreter or transliterator until he or she receives either a renewed provisional license, as described in Paragraph (c) of this Rule, or an initial full license as described in 21 NCAC 25 .0204.
(c) An application to renew an expired provisional license shall be approved by the Board if it is received by the Board within one year after the provisional license expired and if the application demonstrates that the applicant continues to qualify for a provisional license, by meeting the requirements of G.S. 90D-8. A provisional license shall not be renewed after it has expired a second time.
(d) If the provisional license being renewed has been suspended by the Board, any renewed provisional license issued to the applicant shall also be suspended until the term of the suspension has expired.
(e) The Board shall renew a provisional license no more than three times upon receipt of timely applications that demonstrate that the applicant continues to qualify for a provisional license. The Board may extend a provisional license on an annual basis after the third renewal if the applicant timely files an application prior to the expiration of the third renewal, and on an annual basis thereafter if further extension is sought by the applicant that demonstrates that the applicant's progress toward full licensure was delayed by:

(1) a life-altering event, such as the birth or adoption of a child to the applicant or the applicant's spouse or an acute or chronic illness suffered by either the applicant or a member of the applicant's immediate family;
(2) active military service;
(3) a catastrophic natural event, such as a pandemic, flood, hurricane, or tornado; or
(4) the certifying organizations identified in G.S. 90D-7 having imposed a moratorium on testing or certification that has prevented the applicant from sitting for the qualifying examination and obtaining the results thereof prior to the expiration of the provisional license or any annual extension.

(f) The Board shall not for any reason renew or extend a provisional license for a fifth time, with the exception of servicemembers who qualify for an extension under Paragraph (h) of this Rule.

(g) The Board shall not issue an initial provisional license to anyone who has previously held a provisional license.

(h) The Board shall extend the deadline for filing a license renewal application for any individual who currently holds a provisional license and is in good standing with the Board if the individual is serving in the armed forces of the United States and if G.S. 105-249.2 grants the individual an extension of time to file a tax return. The extension shall be in effect for any period that is disregarded under Section 7508 of the Internal Revenue Code in determining the taxpayer's liability for a federal tax.

History Note: Authority G.S. 90D-6; 90D-8; 90D-11; 90D-12; 93B-15;
Eff. March 21, 2005;
Amended Eff. July 1, 2016; May 1, 2011; August 1, 2007;
Readopted Eff. June 1, 2018;
Amended Eff. February 1, 2023.

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CHAPTER 53 – BOARD OF LICENSED CLINICAL MENTAL HEALTH COUNSELORS

21 NCAC 53 .0206 GRADUATE COUNSELING EXPERIENCE

(a) Applicants who apply prior to July 1, 2022, shall complete a graduate counseling experience, which shall consist of the following separate courses:

(1) one or more courses in practicum totaling at least three semester hours or five quarter hours;
(2) one or more courses in internship totaling at least three semester hours or five quarter hours; and
(3) at least 17 hours of graduate counseling supervision as defined in Rules .0210 and .0211 of this Section.

Supervised graduate counseling shall comply with the requirements of Rule .0212 of this Section, shall be verified by a university faculty member on the Verification of Graduate Counseling Experience Form as described in Paragraph (d) of this Rule, and shall consist of 300 hours of graduate counseling experience at a rate of not less than one hour of clinical supervision per 40 hours of graduate counseling experience, as defined by Rule .0701(2)(b) of this Chapter. At least 180 hours of this counseling experience shall be direct counseling experience as defined in Rule .0205 of this Section.

(b) Applicants who apply on or after July 1, 2022, shall complete a graduate counseling experience, which shall consist of the following separate courses:

(1) one or more courses in practicum that meet the standards related to practicum of the current edition of the Council for Accreditation of Counseling and Related Educational Programs (CACREP) at the time of the receipt of application as defined in Rule .0308(a) of this Chapter. All CACREP course standards are hereby incorporated by reference, including subsequent amendments and editions. The standards may be accessed at www.cacrep.org at no cost. The practicum courses shall include graduate counseling supervision as defined by the current edition of the CACREP standards at the time of application; and
(2) one or more courses in internship that meet the standards related to internship of the current edition of CACREP at the time of the receipt of application as defined in Rule .0308(a) of this Chapter. The internship courses shall include graduate counseling supervision as defined by the current edition of the CACREP standards at the time of application.

(c) Applicants who apply on or after July 1, 2025, shall complete all internship experiences in a clinical mental health setting that provides substantial opportunities to assess, appraise, diagnose, and treat mental health disorders and shall consist of "direct counseling experience" as defined in Rule .0205(a) of this Section. Clinical mental health settings may include private practices; college counseling centers; community agencies; managed behavioral health care organizations; integrated delivery systems hospitals; employee assistance programs; specialty treatment centers; vocational rehabilitation centers; marriage, couple, and family practices; addiction counseling sites; or school-based clinical mental health counseling sites.

(d) All applicants for licensure shall submit a Verification of Graduate Counseling Experience Form that shall contain:

(1) the name, title, contact information and signature of the person verifying graduate counseling experience;
(2) the name of agency where graduate counseling experience occurred;
(3) information regarding university supervisor for the graduate counseling experience;
(4) the name, title and credentials of the site supervisor;
(5) total hours of individual and group clinical supervision received during graduate counseling experience;
(6) whether the experience is practicum or internship;

(7) the beginning and end dates of clinical experience;
(8) the total number of direct and indirect hours, as defined by CACREP;
(9) the total hours of direct and indirect client contact as defined by CACREP; and
(10) For applicants applying on or after July 1, 2025, identify the type of clinical mental health setting and describe the counseling experience acquired by the applicant in the following areas: assessment, appraisal, diagnosis, and treatment of mental health disorders.
(11) The form is available on the Board's website at www.ncblcmhc.org.

History Note: Authority G.S. 90-332.1(a)(3); 90-334(h); 90-334(i); 90-336(b1); 90-336(b2);
Eff. July 1, 1995;
Amended Eff. July 1, 2014; January 1, 2010;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019;
Amended Eff. February 1, 2023; March 1, 2022.

21 NCAC 53 .0701 LICENSED CLINICAL MENTAL HEALTH COUNSELOR ASSOCIATE

The Board shall grant a license as a licensed clinical mental health counselor associate to persons preparing for the practice of counseling who have:

(1) if applied before July 1, 2025, completed graduate training as defined in G.S. 90-336(b1) or (b2), as applicable; and three semester hours or five quarter hours in each of the required coursework areas of study as follows:
(a) Coursework in Helping Relationships in Counseling. Studies in this area provide an understanding of counseling and consultation processes, including the following:
(i) counseling and consultation theories, including both individual and systems perspectives, as well as coverage of relevant research and factors considered in applications;
(ii) basic interviewing, assessment, and counseling skills;
(iii) counselor or consultant characteristics and behaviors that influence mental health counseling relationships, including age, gender, and ethnic differences; verbal and nonverbal behaviors; personal behaviors; and personal characteristics, orientations, and skills;
(iv) client or consultee characteristics and behaviors that influence mental health counseling relationships, including age, gender, and ethnic differences; verbal and nonverbal behaviors; and personal behaviors; personal characteristics, orientations and skills; and
(v) ethical considerations.
(b) Coursework in Practicum and Internship. Practicum and internship experience shall be provided in a supervised graduate counseling experience in a regionally accredited program of study. This graduate counseling experience shall be completed as defined in Rule .0206 of this Chapter.
(c) Coursework in Professional Orientation to Counseling. Studies in this area provide an understanding of all aspects of professional functioning, including history, roles, organizational structures, ethics, standards, and credentialing, including the following:
(i) history of the counseling profession, including significant factors and events;
(ii) professional roles and functions of counselors, including similarities and differences with other types of professionals;
(iii) professional organizations (primarily the ACA, its divisions, branches and affiliates), including membership benefits, activities, services to members, and current emphases;
(iv) ethical standards of the National Board for Certified Counselors (NBCC) or ACA and related ethical and legal issues, and their applications to various professional activities (e.g., appraisal, group work);
(v) clinical mental health counselor preparation standards, their evolution, and current applications;
(vi) clinical mental health counselor credentialing, including counselor

certification, licensure and accreditation practices and standards, and the effects of public policy on these issues;

(vii) public policy processes, including the role of the clinical mental health counselor advocating on behalf of the profession and its clientele; and

(viii) ethical considerations.

(d) Coursework in Human Growth and Development Theories in Counseling. Studies in this area provide an understanding of the nature and needs of individuals at all developmental levels, relevant to counseling practice, including the following:

(i) theories of individual and family development, and transitions across the life span;

(ii) theories of learning and personality development;

(iii) human behavior, including an understanding of developmental crises, disability, addictive behavior, psychopathology, and environmental factors as they affect both normal and abnormal behavior;

(iv) counseling strategies for facilitating development over the life span; and

(v) ethical considerations.

(e) Coursework in Social and Cultural Foundations in Counseling. Studies in this area provide an understanding of issues and trends in a multicultural and diverse society that impact clinical mental health counselors and the counseling profession, including, the following:

(i) multicultural and pluralistic trends, including characteristics and concerns of counseling individuals from diverse groups;

(ii) attitudes and behavior based on factors such as age, race, religious preferences, physical disability, sexual orientation, ethnicity and culture, family patterns, gender, socioeconomic status, and intellectual ability;

(iii) individual, family, and group counseling strategies with diverse populations; and

(iv) ethical considerations.

(f) Coursework in Group Counseling Theories and Processes. Studies in this area provide an understanding of group development, dynamics, and counseling theories; group counseling methods and skills; and other group work approaches, including the following:

(i) principals of group dynamics, including group counseling components, developmental stage theories, and group members' roles and behaviors;

(ii) group leadership styles and approaches, including characteristics of various types of group leaders and leadership styles;

(iii) theories of group counseling, including commonalities, distinguishing characteristics, and pertinent research and literature;

(iv) group counseling methods, including group counselor orientations and behaviors, ethical standards, appropriate selection criteria, and methods of evaluation of effectiveness;

(v) approaches used for other types of group work in counseling, including task groups, support groups, and therapy groups; and

(vi) ethical considerations.

(g) Coursework in Career Counseling and Lifestyle Development. Studies in this area provide an understanding of career counseling, development, and related life factors, including the following:

(i) career-counseling theories and decision-making process;

(ii) career, avocational, educational, and labor market information resources; visual and print media; and computer-based career information systems;

(iii) career-counseling program planning, organization, implementation,

administration, and evaluation;

(iv) interrelationships among work, family, and other life roles and factors, including multicultural and gender issues as related to career counseling;

(v) career and educational placement counseling, follow-up, and evaluation;

(vi) assessment instruments and techniques relevant to career counseling;

(vii) computer-based career-development applications and strategies, including computer-assisted career-counseling systems;

(viii) career-counseling processes, techniques and resources, including those applicable to specific populations; and

(ix) ethical considerations.

(h) Coursework in Assessment in Counseling. Studies in this area provide an understanding of individual and group approaches to assessment and evaluation in counseling practice, including the following:

(i) theoretical and historical bases for assessment techniques in counseling;

(ii) validity, including evidence for establishing content, construct, and empirical validity;

(iii) reliability, including methods of establishing stability, internal, and equivalence reliability;

(iv) appraisal methods, including environmental assessment, performance assessment, individual and group test and inventory methods, behavioral observations, and computer-managed and computer-assisted methods;

(v) psychometric statistics, including types of assessment scores, measures of central tendency, indices of variability, standard errors, and correlations;

(vi) age, gender, ethnicity, language, disability, and cultural factors related to the use of assessment and evaluation in counseling services;

(vii) strategies for selecting, administering, interpreting, and using assessment and evaluation instruments, and techniques in counseling; and

(viii) ethical considerations.

(i) Coursework in Research and Program Evaluation. Studies in this area provide an understanding of types of research methods, basic statistics, and ethical and legal consideration in research, including the following:

(i) basic types of research methods to include qualitative and quantitative research designs;

(ii) basic parametric and nonparametric statistics;

(iii) principles, practices, and applications of needs assessment and program evaluation;

(iv) uses of computers for data management and analysis; and

(v) ethical and legal considerations; or

(2) If applied on or after July 1, 2025, completed graduate training as defined in G.S. 90-336(b2) and the required content areas of study of the current standards set by the Council for Accreditation of Counseling and Related Educational Programs (CACREP), as incorporated in Rule .0206 of this Chapter, at the time of the receipt of application as defined in Rule .0308(a)of this Chapter. The graduate coursework shall also include three semester hours or five quarter hours in each of the required content areas of study as follows:

(a) introduction to clinical mental health counseling with professional issues and ethics;

(b) practicum and clinical mental health internship; and

(c) appraisal and assessment of mental health disorders with use and application of the current edition of Diagnostic and Statistical Manual of Mental Disorders (DSM), to include psychopharmacology and differential diagnosis; and

(3) passed an examination as defined in Rule .0305 of this Chapter;

(4) submitted a complete application for licensed clinical mental health counselor associate; and

(5) earned 60 semester hours or 90 quarter hours of graduate training in counseling or related field from a program that is accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP).

To prevent a lapse in licensure, licensed clinical mental health counselor associates who desire to become licensed clinical mental health counselors shall complete the application process for the licensed clinical mental health counselor licensure no earlier than 60 days prior to expiration of their licensed clinical mental health counselor associate license or upon completion of the supervised professional practice hours as set forth in Rule .0208 of this Chapter to allow for administrative processing and Board action.

History Note: Authority G.S. 90-334(h); 90-336(a); 90-336(b1); 90-336(b2);
Eff. January 1, 2010;
Amended Eff. July 1, 2014; January 1, 2010;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019;
Amended Eff. February 1, 2023; January 1, 2020 (S.L. 2019-240, s. 3.(k)).

This Section contains information for the meeting of the Rules Review Commission March 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

March 16, 2023	May 18, 2023
April 20, 2023	June 15, 2023

AGENDA
RULES REVIEW COMMISSION
Thursday, March 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. Department of Public Safety - 14B NCAC 03 .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, .0409, .0410 (Liebman)
- C. Department of Environmental Quality - 15A NCAC 01E .0101, .0102, .0103, .0104, .0105, .0106, .0107, .0108, .0109, .0110, .0111, .0112, .0113, .0114, .0115 (Duke)
- D. Environmental Management Commission - 15A NCAC 02H .1301, .1401, .1402, .1403, .1404, .1405 (Liebman)
- E. Coastal Resources Commission - 15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510; 07I .0406, .0506, .0702; 07J .0203, .0204, .0206, .0207, .0208, .0312 (Liebman)
- F. Coastal Resources Commission - 15A NCAC 07H .2305 (Duke)
- G. Coastal Resources Commission - 15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0701, .0703, .0704, .1001, .1002, .1101 (Peaslee)
- H. State Board of Education - 16 NCAC 06E .0204 (Liebman)

IV. Review of Filings (Permanent Rules) for rules filed between January 21, 2023 through February 20, 2023
- Commission for Public Health 10A NCAC 41C (Liebman)
- Commission for Public Health 15A NCAC 18A (Ascher)
- Board of Cosmetic Art Examiners (Duke)
- Landscape Contractors' Licensing Board (Liebman)
- Locksmith Licensing Board (Liebman)
- Board of Nursing (Liebman)

- Office of Administrative Hearings

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: April 20, 2023

Commission Review

Log of Permanent Rule Filings
January 21, 2023 through February 20, 2023

PUBLIC HEALTH, COMMISSION FOR

The rules in Chapter 41 concern epidemiology health.

The rules in Subchapter 41C concern occupational health including general provisions (.0100); dusty trades program (.0200); industrial hygiene consultation program (.0300); occupational health nursing consultation program (.0400); asbestos hazard management program (.0600); occupational health surveillance (.0700); lead-based paint hazard management program (.0800); lead-based paint hazard management program for renovation, repair and painting (.0900); and lead and asbestos inspection, testing, abatement, and remediation in North Carolina public schools and licensed child care facilities (.1000).

Definitions	10A	NCAC 41C	.1001
Adopt*			
Funding	10A	NCAC 41C	.1002
Adopt*			
Asbestos Inspections and Abatement in North Carolina Publ...	10A	NCAC 41C	.1003
Adopt*			
Lead-Based Paint Inspections and Abatement in North Carol...	10A	NCAC 41C	.1004
Adopt*			
Lead Poisoning Hazards in Drinking Water in North Carolin...	10A	NCAC 41C	.1005
Adopt*			
Certified Risk Assessors	10A	NCAC 41C	.1006
Adopt*			
Incorporation by Reference	10A	NCAC 41C	.1007
Adopt*			

The rules in Chapter 18 cover environmental aspects of health such as sanitation (18A), mosquito control (18B), water supplies (18C), and water treatment facility operators (18D).

The rules in Subchapter 18A deal with sanitation and include handling, packing and shipping of crustacean meat (.0100) and shellfish (.0300 and .0400); operation of shellstock plants and reshippers (.0500); shucking and packing plants (.0600); depuration mechanical purification facilities (.0700); wet storage of shellstock (.0800); shellfish growing waters (.0900); summer camps (.1000); grade A milk (.1200); hospitals, nursing homes, rest homes, etc. (.1300); mass gatherings (.1400); local confinement facilities (.1500); residential care facilities (.1600); protection of water supplies (.1700); lodging places (.1800); sewage treatment and disposal systems (.1900); migrant housing (.2100); bed and breakfast homes (.2200); delegation of authority to enforce rules (.2300); public, private and religious schools (.2400); public swimming pools (.2500); restaurants, meat markets, and other food handling establishments (.2600); child day care facilities (.2800); restaurant and lodging fee collection program (.2900); bed and breakfast inns (.3000); lead poisoning prevention (.3100); tattooing (.3200); adult day service facilities (.3300); primitive camps (.3500); rules governing the sanitation of resident camps (.3600); and private drinking water well sampling (.3800).

Definitions	15A	NCAC 18A	.2801
Readopt with Changes*			
Approval of Construction and Renovation Plans	15A	NCAC 18A	.2802

Readopt with Changes*

Handwashing 15A NCAC 18A .2803
Readopt with Changes*

Food Supplies 15A NCAC 18A .2804
Readopt with Changes*

Food Storage and Protection 15A NCAC 18A .2806
Readopt with Changes*

Food Preparation 15A NCAC 18A .2807
Readopt with Changes*

Food Service 15A NCAC 18A .2808
Readopt with Changes*

Food Service Equipment and Utensils 15A NCAC 18A .2809
Readopt with Changes*

Specifications for Kitchens, Food Preparation Areas and F... 15A NCAC 18A .2810
Readopt with Changes*

Cleaning and Sanitizing of Equipment and Utensils 15A NCAC 18A .2812
Readopt with Changes*

Food Service Equipment and Utensil Storage 15A NCAC 18A .2814
Readopt with Changes*

Water Supply 15A NCAC 18A .2815
Readopt with Changes*

Lead Poisoning Hazards in Child Care Centers 15A NCAC 18A .2816
Readopt with Changes*

Toilets 15A NCAC 18A .2817
Readopt with Changes*

Lavatories 15A NCAC 18A .2818
Readopt with Changes*

Diapering and Diaper Changing Facilities 15A NCAC 18A .2819
Readopt with Changes*

Storage 15A NCAC 18A .2820
Readopt with Changes*

Beds, Cots, Mats, and Linens 15A NCAC 18A .2821
Readopt with Changes*

Toys, Equipment and Furniture 15A NCAC 18A .2822
Readopt with Changes*

Personnel 15A NCAC 18A .2823
Readopt with Changes*

Floors 15A NCAC 18A .2824
Readopt with Changes*

Walls and Ceilings 15A NCAC 18A .2825
Readopt with Changes*

Lighting and Thermal Environment 15A NCAC 18A .2826
Readopt with Changes*

Communicable Diseases and Conditions 15A NCAC 18A .2827
Readopt with Changes*

Wastewater 15A NCAC 18A .2829
Readopt with Changes*

Solid Wastes 15A NCAC 18A .2830
Readopt with Changes*

Animal and Vermin Control 15A NCAC 18A .2831
Readopt with Changes*

Outdoor Learning Environment and Premises 15A NCAC 18A .2832

Readopt with Changes*

Swimming and Wading Pools 15A NCAC 18A .2833
Readopt with Changes*

Compliance, Inspections and Reports 15A NCAC 18A .2834
Readopt with Changes*

Appeals Procedure 15A NCAC 18A .2835
Readopt with Changes*

Mildly Sick Children 15A NCAC 18A .2836
Readopt with Changes*

COSMETIC ART EXAMINERS, BOARD OF

The rules in Subchapter 14A are the Cosmetic Art Board of Examiners departmental rules including organizational rules (.0100); and license renewal waiver for armed forces (.0400).

Definitions 21 NCAC 14A .0101
Amend*

The rules in Subchapter 14H are sanitation rules for both operators and facilities including sanitation (.0100); shop licensing and physical dimensions (.0200); cosmetic art shop and equipment (.0300); sanitation procedures and practices (.0400); and enforcement, maintenance of licensure (.0500).

Application for Shop License 21 NCAC 14H .0201
Amend*

Newly Established Shops 21 NCAC 14H .0203
Amend*

Licensees and Students 21 NCAC 14H .0401
Amend*

Cosmetic Art Shops and Schools 21 NCAC 14H .0402
Amend*

Disinfection Procedures 21 NCAC 14H .0403
Amend*

Inspection of Cosmetic Art Shops 21 NCAC 14H .0501
Amend*

Sanitary Ratings and Posting of Ratings 21 NCAC 14H .0503
Amend*

Systems of Grading Beauty Establishments 21 NCAC 14H .0504
Amend*

Rule Compliance and Enforcement Measures 21 NCAC 14H .0505
Repeal*

The rules in Subchapter 14P are civil penalty rules.

Renewals: Expired Licenses: Licenses Required 21 NCAC 14P .0105
Amend*

Licenses Required 21 NCAC 14P .0106
Amend*

Revocation of Licenses and Other Disciplinary Measures 21 NCAC 14P .0108
Amend*

Establishment of Cosmetic Art Schools 21 NCAC 14P .0111
Amend*

Operations of Schools of Cosmetic Art 21 NCAC 14P .0113
Amend*

Civil Penalty Procedures 21 NCAC 14P .0116
Amend*

Rule Compliance and Enforcement Measures 21 NCAC 14P .0117
Adopt*

The rules in Subchapter 14T concern cosmetic art schools including the scope of the rules and school applications (.0100); physical requirements for cosmetic art schools (.0200); school equipment and supplies (.0300); student equipment (.0400); record keeping (.0500); curricula for all cosmetic art disciplines (.0600); school licensure, operations, closing and relocating schools (.0700); school inspections (.0800); and disciplinary actions (.0900).

Scope and Definitions 21 NCAC 14T .0101
Amend*

New School Applications 21 NCAC 14T .0102
Amend*

All Cosmetic Art Schools 21 NCAC 14T .0201
Amend*

Cosmetology Schools 21 NCAC 14T .0202
Repeal*

Equipment for All Cosmetic Art Schools 21 NCAC 14T .0301
Amend*

Equipment for Cosmetology Schools 21 NCAC 14T .0302
Amend*

Equipment for Esthetics Schools 21 NCAC 14T .0303
Amend*

Equipment for Manicuring Schools 21 NCAC 14T .0304
Amend*

Equipment for Natural Hair Care Styling Schools 21 NCAC 14T .0305
Amend*

Permanent Records, Forms and Documentation 21 NCAC 14T .0502
Amend*

Cosmetic Art Curricula 21 NCAC 14T .0601
Amend*

Cosmetology Curriculum 21 NCAC 14T .0602
Amend*

Apprentice Cosmetology Curriculum 21 NCAC 14T .0603
Amend*

Esthetics Curriculum 21 NCAC 14T .0604
Amend*

Manicuring Curriculum 21 NCAC 14T .0605
Amend*

Natural Hair Care Curriculum 21 NCAC 14T .0606
Amend*

Cosmetology Teacher Trainee Curriculum 21 NCAC 14T .0607
Amend*

Esthetic Teacher Trainee Curriculum 21 NCAC 14T .0608
Amend*

Manicurist Teacher Trainee Curriculum 21 NCAC 14T .0609
Amend*

Natural Hair Care Teacher Curriculum 21 NCAC 14T .0610
Amend*

Online Instruction 21 NCAC 14T .0611
Amend*

Instruction Guidelines 21 NCAC 14T .0612
Amend*

Uniforms and Identification 21 NCAC 14T .0613

Amend*

Internships 21 NCAC 14T .0614
Amend*

Field Trips 21 NCAC 14T .0615
Amend*

Additional Hours 21 NCAC 14T .0616
Amend*

Teacher Trainees 21 NCAC 14T .0617
Amend*

School Operations/Licensure Maintenance 21 NCAC 14T .0701
Amend*

Transfer of Credit 21 NCAC 14T .0702
Amend*

School Approval Changes and School Closing 21 NCAC 14T .0706
Amend*

School Infection Control Grades 21 NCAC 14T .0802
Amend*

School Inspections 21 NCAC 14T .0803
Amend*

LANDSCAPE CONTRACTORS' LICENSING BOARD

The rules in Subchapter 28B are from the Landscape Contractors' Licensing Board and include board meetings and definitions (.0100); licensure, reciprocity and seal (.0200); license renewal and reinstatement (.0300); continuing education (.0400); minimum standards (.0500); fees (.0600); complaints and investigations (.0700); and hearings process and summary suspension (.0800).

Continuing Education Units 21 NCAC 28B .0402
Amend*

LOCKSMITH LICENSING BOARD

The rules in Chapter 29 include general rules (.0100); rules about examinations (.0200); licensing requirements (.0400); code of ethics (.0500); administrative law procedures (.0600); license renewal requirements (.0700); and continuing education (.0800).

Obligation of Licensed Locksmiths 21 NCAC 29 .0501
Amend*

Inactive License Status Due to Active Military Deployment 21 NCAC 29 .0705
Adopt*

NURSING, BOARD OF

The rules in Chapter 36 include rules relating to general provisions (.0100); licensure (.0200); approval of nursing programs (.0300); unlicensed personnel and nurses aides (.0400); professional corporations (.0500); articles of organization (.0600); nurse licensure compact (.0700); and approval and practice parameters for nurse practitioners (.0800).

Clinical Nurse Specialist Practice 21 NCAC 36 .0228
Amend*

COVID-19 Drug Preservation Rule 21 NCAC 36 .0817
Repeal*

ADMINISTRATIVE HEARINGS, OFFICE OF

The rules in Chapter 3 are from the Hearings Division and cover procedure (.0100); mediated settlement conferences (.0200); simplified procedures for medicaid applicant and recipient repeals (.0400); and electronic filing (.0500).

Commencement of Contested Case: Notice and Filing Fee	26	NCAC 03	.0103
Amend*			
Discovery	26	NCAC 03	.0112
Amend*			
Official Record	26	NCAC 03	.0123
Amend*			