

1 15A NCAC 02E .0401 is readopted as published in 36:20 NCR 1612 with changes as follows:

2
3 **SUBCHAPTER 2E - WATER USE REGISTRATION AND ALLOCATION**

4
5 **SECTION .0400 - REGULATION OF SURFACE WATER TRANSFER**

6
7 **15A NCAC 02E .0401 APPLICABILITY PURPOSE**

8 ~~(a) Pursuant to G.S. 143-215.22G(3), the amount of a transfer shall be determined by the amount of water moved~~
9 ~~from the source basin to the receiving basin, less the amount of the water returned to the source basin.~~

10 ~~(b) Pursuant to G.S. 143-215.22G(3)(a) and 143-215.22G(3)(b), and notwithstanding the definition of basin in G.S.~~
11 ~~143-215.22G(1), the following are not transfers:~~

12 (1) ~~The discharge point is situated upstream of the withdrawal point such that the water~~
13 ~~discharged will naturally flow past the withdrawal point.~~

14 (2) ~~The discharge point is situated downstream of the withdrawal point such that water flowing past the~~
15 ~~withdrawal point will naturally flow past the discharge point.~~

16 ~~(c) The withdrawal of surface water from one river basin by one person and the purchase of all or any part of this~~
17 ~~water by another party, resulting in a discharge to another river basin, shall be considered a transfer. The person~~
18 ~~owning the pipe or other conveyance that carries the water across the basin boundary shall be responsible for obtaining~~
19 ~~a certificate from the Commission. Another person involved in the transfer may assume responsibility for obtaining~~
20 ~~the certificate, subject to approval by the Division of Water Resources.~~

21 ~~(d) Under G.S. 143-215.22I(b), a certificate is not required to transfer water from one river basin to another up to the~~
22 ~~full capacity of a facility to transfer water from one basin to another if the facility was existing or under construction~~
23 ~~on July 1, 1993. The full capacity of a facility to transfer water shall be determined as the capacity of the combined~~
24 ~~system of withdrawal, treatment, transmission, and discharge of water, limited by the element of this system with the~~
25 ~~least capacity as existing or under construction on July 1, 1993.~~

26 The purpose of the [Rules] rules in this Section is to implement the provisions of G.S. 143-215.22L.

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28 *History Note: Authority G.S. 143-215.22G; 143-215.22I; 143-215.22L; 143B-282(a)(2);*
29 *Eff. September 1, 1994;*
30 *Readopted Eff. March 1, 2023.*

1 15A NCAC 02E .0402 is readopted as published in 36:20 NCR 1613 with changes as follows:

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3 **15A NCAC 02E .0402 JUDICIAL REVIEW DEFINITIONS**

4 ~~Judicial Review of the Commission's decision shall be as provided in G.S. 143-215.5.~~

5 The following definitions apply to this Section.

6 (1) “Co-applicant” means an entity other than the primary applicant identified on an Interbasin Transfer
7 Certificate, issued after 30 June 1993, as being eligible to send or receive transferred water, often
8 purchased from the primary applicant. A co-applicant is subject to all the terms, conditions,
9 limitations, benefits, and entitlements applicable to the primary applicant.

10 (2) “Commission” means the Environmental Management Commission.

11 (3) “Department” means the North Carolina Department of Environmental Quality.

12 (4) “Division” means the Division of Water Resources.

13 (5) “Emergency transfer” means a temporary transfer of surface water meeting the requirements of,
14 [between river basins, as defined in G.S. 143-215.22G(1b), in order to satisfy water]and satisfying
15 water demand needs, defined in [as defined in] G.S. 143-215.22L(q), for [anticipated or
16 unanticipated] situations in which the public health, safety, or welfare requires a transfer of [water.]
17 water between river basins as defined in G.S. 143-215.22G(1b).

18 ~~(6)~~ “Grandfathered capacity” means the existing water system transfer capacity prior to 1 July 1993, as
19 defined in G.S. 143-15.22L(b). The transfer capacity of a water system is limited by its most
20 restrictive system element: potable water capacity, maximum transfer capacity of distribution
21 system, or discharge capacity in receiving basin.

22 (a) Potable water (treatment and/or purchase) capacity is the sum of all surface water inputs to
23 the system including, water treatment plant capacity and regular surface water contracts.

24 (b) Maximum transfer capacity of the distribution network is the calculation of the physical
25 ability of the distribution system to transmit water across a basin boundary, based on pipe
26 sizing or pump systems.

27 (c) Discharge capacity in the receiving basin is a combination of wastewater discharges and
28 consumptive losses.

29 ~~(7)~~~~(6)~~ “Interbasin Transfer Certificate” or “IBT Certificate” means an authorization issued by the
30 Commission to transfer up to a specified amount of water between two river basins as defined in
31 G.S. 143-215.22G(1b).

32 ~~(8)~~~~(7)~~ “Large community water system” means a community water system, as defined in G.S. 130A-
33 313(10), that regularly serves 1,000 or more service connections or 3,000 or more individuals.

34 ~~(9)~~~~(8)~~ “Major river basin” means the combination of the river basins, as defined in G.S. ~~[143-215.22G(1b)]~~
35 .143-215.22G(1b), sharing the numerical digits preceding the hyphen.

36 (9) “Preexisting transfer capacity” means the existing water system transfer capacity prior to 1 July
37 1993, as defined in G.S. 143-215.22L(b). The transfer capacity of a water system is limited by its

1 most restrictive system element: potable water capacity, maximum transfer capacity of distribution
2 system, or discharge capacity in receiving basin.

3 (a) Potable water (treatment and/or purchase) capacity is the sum of all surface water
4 inputs to the system, including water treatment plant capacity and regular surface
5 water contracts.

6 (b) Maximum transfer capacity of the distribution network is the calculation of the
7 physical ability of the distribution system to transmit water across a basin
8 boundary, based on pipe sizing or pump systems.

9 (c) Discharge capacity in the receiving basin is a combination of wastewater
10 discharges and consumptive losses.

11 (10) “Primary applicant” means the entity who owns an existing or planned water line used to transmit
12 raw or finished water from one river basin to another, as defined in G.S. 143-215.22G(1b). For water
13 systems that involve crossing multiple river basin boundaries, the primary applicant represents the
14 transfer pipe owner where the first river basin boundary crossing occurs.

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16 *History Note:* Authority G.S. ~~143-215.5~~; 143-215.22L; 143B-282(a)(2);
17 Eff. September 1, 1994;
18 Readopted Eff. March 1, 2023.

1 15A NCAC 02E .0403 is adopted as published in 36:20 NCR 1613 with changes as follows:

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3 **15A NCAC 02E .0403 APPLICABILITY**

4 (a) The amount of a transfer shall be calculated as a net total, determined by the amount of surface water moved from
5 the source river basin to the receiving basin, minus any water returned to the source river basin.

6 (b) Notwithstanding the definition of “river basin” in G.S. ~~143-215.22G~~ 143-215.22G, the following are not ~~transfers:~~
7 transfers that require issuance of an IBT Certificate:

8 (1) The discharge point is situated upstream of the withdrawal point such that the water discharged will
9 naturally flow past the withdrawal point.

10 (2) The discharge point is situated downstream of the withdrawal point such that water flowing past the
11 withdrawal point will naturally flow past the discharge point.

12 (3) The withdrawal and discharge points are located in the same water impoundment.

13 (c) The withdrawal of surface water from one river basin by one entity and the transmission of all or any part of this
14 water between river basins by one or more entities, resulting in a discharge to another river basin, shall be considered
15 a transfer. The entity owning the pipe or other conveyance that carries the surface water across the basin boundary
16 shall be responsible for obtaining an IBT Certificate from the Commission. Another entity involved in the transfer
17 may assume responsibility for obtaining the IBT Certificate, with approval by the Department.

18 (d) The full capacity of a facility to transfer water shall be determined by the facility’s potable water treatment
19 capacity, ~~as the capacity of the system’s potable water capacity,~~ maximum transfer capacity of distribution system, or
20 discharge capacity in the receiving basin, limited by the element of this system with the least capacity as existing or
21 under construction on 1 July 1993. Existing conveyances and infrastructure for basin transfers in place before 1 July
22 1993 are deemed a preexisting transfer capacity ~~grandfathered,~~ per G.S. 143-215.22L(b).

23 (e) To calculate a preexisting transfer capacity ~~grandfathered transfer,~~ the applicant shall provide data regarding the
24 movement of water within and outside of the water system distribution system. The applicant shall provide to the
25 Department a current and projected water balance that includes:

26 (1) the total withdrawal from the surface water source;

27 (2) the treatment capacities;

28 (3) the consumptive losses, meaning water withdrawn from a stream, reservoir, river, or other surface
29 water source for any use which is not directly returned to a waterbody, for both the source and
30 receiving river basins;

31 (4) the treated wastewater discharges in both the source and receiving river basins;

32 (5) the total return to the source river basin; and

33 (6) the total surface water transfer.

34 The applicant shall provide this information for the current or baseline year and projected data for a minimum of 30-
35 years into the future in no less than 10-year intervals. Water balances are to be conducted on an annual average day
36 basis and a maximum-month average day basis. The applicant may use the ~~Grandfathered~~ Preexisting Transfer
37 Capacity Worksheet as a guide to complete the required information to help calculate and document a system’s transfer

1 capacity. A copy of the ~~Grandfathered~~ Preexisting Transfer Capacity Worksheet can be obtained free of charge from
2 the Water Supply Planning Branch, located in the Archdale Building at 512 N. Salisbury Street, Raleigh, NC 27604.

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4 *History Note: Authority G.S. ~~143-215.22G~~; 143-215.22L; 143B-282(a)(2);*

5 *Eff. March 1, 2023.*

1 15A NCAC 02E .0404 is adopted as published in 36:20 NCR 1614 as follows:

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3 **15A NCAC 02E .0404 NOTIFICATION**

4 (a) As used in G.S. 143-215.22L(c)(3)(c), notification of the “governing body of any public water system” refers to
5 public water systems that use surface water as their source rather than groundwater. The governing body may be
6 located in a state adjoining North Carolina that is located in whole or in part of the surface drainage basin area of the
7 source river basin.

8 (b) Notice shall be provided to all persons who hold a National Pollutant Discharge Elimination System (NPDES)
9 wastewater discharge permit for 100,000 gallons per day or more for a discharge located within the area denoted by
10 one of the eight-digit cataloging units listed in G.S. 143-215.22L(c)(2)(b) in which the withdrawal or discharge will
11 occur.

12 (c) Comments submitted pursuant to G.S. 143-215.22L(c), (e), and (j) that are received after the 30-calendar day
13 comment period shall not be considered in making determinations unless the Department extends the comment period.

14 (d) Notification is to be printed in a single newspaper of general circulation, as defined in G.S. 1-597, for each county
15 in which notification is required as defined in G.S. 143-215.22L(c)(2)(b).

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17 *History Note: Authority G.S. 143-215.22L; 143B-282(a)(2);*

18 *Eff. March 1, 2023.*

1 15A NCAC 02E .0405 is adopted as published in 36:20 NCR 1614 with changes as follows:

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3 **15A NCAC 02E .0405 ENVIRONMENTAL DOCUMENTS**

4 (a) An evaluation of beneficial and adverse impacts pursuant to G.S. 143-215.22L(d) ~~(4)-(3)~~ shall include, but not be
5 limited to, the results of an approved basinwide hydrologic model specified in G.S. 143-355(o), if available. The
6 Applicant is responsible for any necessary model modifications, scenario development, and analysis of results. All
7 model modifications and scenarios must be approved by the Department. All basinwide models used and the
8 corresponding modeling results shall be made publicly available. ~~The corresponding modeling results shall be made~~
9 ~~publicly available.~~

10 (b) For purposes of this Rule, an alternative is considered economically infeasible if the demonstrated financial costs
11 exceed the applicants' ability to cover the cost of the alternative over the span of the planning horizon ~~the action, even~~
12 ~~when considered on at least a 30-year or other appropriate projection.~~

13 (c) The required environmental document shall include projections of future water supply, transfers, and demands
14 with a planning horizon of at least 30-years ~~30 years~~. ~~The current or baseline year shall be determined by the Division~~
15 ~~based on available data and estimated timing of environmental document submittal.~~ The baseline year for the planning
16 horizon shall be determined based on project-specific considerations, including the applicant's proposed baseline year,
17 the timing of the submission of the environmental documents required by G.S. 143-215.22L(d), the applicant's
18 demonstrated current and projected water demand, and other any other project-specific considerations related to the
19 needs of the requested transfer. Projections shall be conducted on 10-year increments, at a minimum.

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21 *History Note: Authority G.S. 143-215.22L; 143B-282(a)(2);*

22 *Eff. March 1, 2023.*

1 15A NCAC 02E .0406 is adopted as published in 36:20 NCR 1614 with changes as follows:

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3 **15A NCAC 02E .0406 PETITION**

4 (a) Pursuant to G.S. 143-215.22L(g)(7), the petition shall include an ~~The~~ evaluation of impacts to reservoir water
5 levels ~~shall~~ that take into consideration the purposes for which the reservoir was constructed, and any mandatory
6 management activities required to maintain the reservoir per any binding agreements between two or more parties
7 related to such purposes.

8 (b) Reasonably foreseeable future water supply needs shall mean the projected water transfers necessary to meet
9 demands for not less than 30-years ~~30-years~~ from the year in which the Notice of Intent is filed in compliance with
10 G.S. 143-215.22L(c).

11 (c) Unless already approved by the Division, an updated local water supply plan meeting the requirements set forth
12 in G.S. 143-355(l) for the previous full calendar year shall be submitted to the Division for review and approval. Once
13 approved, the plan shall be adopted by the local ~~government,~~ government or large community water system governing
14 board. ~~board, or other appropriate governing board.~~

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16 *History Note: Authority G.S. 143-215.22L; 143B-282(a)(2);*

17 *Eff. March 1, 2023.*

1 15A NCAC 02E .0407 is adopted as published in 36:20 NCR 1614 as follows:

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3 **15A NCAC 02E .0407 SETTLEMENT/MEDIATION**

4 The Commission may appoint a mediation officer to initiate settlement discussions. The mediation officer shall follow
5 the most recent guidance or mediation and settlement procedures approved by the Commission.

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7 *History Note: Authority G.S. 143-215.22L; 143B-282(a)(2);*

8 *Eff. March 1, 2023.*

1 15A NCAC 02E .0408 is adopted as published in 36:20 NCR 1614 with changes as follows:

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3 **15A NCAC 02E .0408 FINAL DETERMINATION**

4 (a) The water conservation plan shall meet all the requirements of G.S. 143-215.22L(n)(1). Any proposed ordinances,
5 initiatives, or programs shall be approved by the unit of local government within 90 calendar days of issuance of the
6 IBT Certificate to document the water conservation efforts.

7 ~~(1) An applicant shall review the existing water conservation measures for all public water systems~~
8 ~~who utilize surface water in the source basin.~~

9 ~~(2) Based upon this review, the~~ Consistent with the requirements contained in G.S. 143-215.22L(n)(1)
10 an applicant shall demonstrate, through its ~~in the water~~ conservation plan, that ~~their~~ its existing or
11 proposed water conservation measures are equal to or exceed the most stringent water conservation
12 plan implemented by any public water system in the source basin. The required demonstration shall
13 be based on the existing water conservation measures implemented by each of the public water
14 supply systems that withdraw from the source river basin. The water conservation plan is subject to
15 approval by the Department.

16 (b) Examples of metrics for supply-side water conservation measures may include:

- 17 (1) regularly conducted water system water audits, where the schedule and methodology used are
- 18 outlined;
- 19 (2) a flushing optimization plan and accounting of use by a fire department;
- 20 (3) a leak detection program where the repair program abilities are described;
- 21 (4) storage tank level and pressure management;
- 22 (5) water meter replacement;
- 23 (6) metering testing schedule;
- 24 (7) a plan to identify failing meters; and
- 25 (8) details of any existing water reuse programs.

26 (c) Examples of metrics for demand-side water conservation measures may include:

- 27 (1) a ~~tiered-rate pricing structure~~ rate pricing structure that incentivizes and promotes customer
28 conservation ~~customers to use less water than they typically do while discouraging the wasting of~~
29 ~~water;~~
- 30 (2) public outreach and education programs;
- 31 (3) encouraging all households to conduct simple water audits to improve individual water
32 conservation and efficiency measures;
- 33 (4) the use of irrigation controls, including schedule restrictions, a ban on watering impervious
34 surfaces, a separate conservation rate pricing structure;
- 35 (5) encourage the use of mulch, and the use of drought tolerant plants and grass species;
- 36 (6) the use of water conservation irrigation devices including rain or soil moisture sensors, rain
37 ~~barrels~~ barrels, or cisterns to collect rainwater for outdoor irrigation;

- 1 (7) registration of, and accounting for, pre-arranged (bulk) potable water usage sales;
- 2 (8) separate meters for outdoor irrigation; and
- 3 (9) encouraging the replacement of older, inefficient water fixtures with more water-efficient fixtures
- 4 and devices.

5 (d) Pursuant to G.S 143-215.22L(n)(7), the certificate shall include all current and anticipated applicants and co-
6 applicants. To be eligible to receive transferred water under a certificate, any public water system not listed as the
7 primary applicant on a certificate but is anticipated to receive transferred water made available through a certificate at
8 any time, present or future, shall be identified as a co-applicant on the certificate. All water systems beyond the
9 applicant, that serve customers or sell transferred water in the receiving basin, shall be listed as co-applicants in the
10 petition document. This shall include any projected water sales that are anticipated to occur during the planning period
11 identified in the Petition. A modification to the certificate shall be necessary for sales to entities not listed on the
12 certificate.

13 (e) Pursuant to G.S 143-215.22L(n)(7), water sales to water systems or wholesale customers not listed as co-applicants
14 in receiving basins, or are not listed in a modification, shall be considered a violation of the terms of the certificate
15 and could result in the Commission rescinding the certificate. Allowable emergency transfers as outlined in Rule
16 .0409 of this Section are not subject to this Paragraph.

17 (f) As used in G.S.143-215.22L(m), detriment means harmful or damaging conditions not caused by a natural
18 condition where an entity with a Department approved water use cannot carry out the beneficial uses for which the
19 water use was granted.

20 (g) As used in G.S. 143-215.22L(k) ~~143-215.22L(k)~~, ~~143-215.22L(m)~~, and G.S. 143-215.22L(n), detrimental effects
21 means harmful or damaging effects to the water quality, water quantity, fish and wildlife habitat, wastewater
22 assimilation, navigation, electric power generation, public water supplies, and other industrial, economic, recreational,
23 or agricultural water supply needs within either the source or receiving river basins due to the proposed water transfer.

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25 *History Note: Authority G.S. 143-215.22L; 143B-282(a)(2);*
26 *Eff. March 1, 2023.*

1 15A NCAC 02E .0409 is adopted as published in 36:20 NCR 1615 with changes as follows:

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3 **15A NCAC 02E .0409 EMERGENCY TRANSFERS**

4 (a) Pursuant to G.S.143-215.22L(q), ~~An an emergency or temporary~~ transfer of water may be requested in situations
5 resulting from water supply problems caused by a water quality incident, temporary failure of a water plant or
6 infrastructure, or any other temporary condition in which the public health, safety, or welfare requires the transfer of
7 water. drought, unexpected events such as drought, water quality event, damage to waterlines, water treatment plant
8 failure, casualty, or other unanticipated situation. An emergency or temporary transfer of water may also be requested
9 ~~in short term anticipated and necessary situations such as pipeline testing for capability or capacity to avoid~~
10 ~~unexpected line failures, hydrostatic testing, testing the emergency connections of interconnected systems, or making~~
11 ~~necessary repair to service lines to avoid disruption of service. Emergency transfers shall not take the place of, or be~~
12 ~~issued in lieu of, a permanent or modified transfer certificate. With the understanding that these proposed actions are~~
13 ~~occurring under emergency situations, the Secretary shall make reasonable attempts to consult with parties described~~
14 ~~in G.S.143-215.22L(3)(c) G.S. 143-215.22L(3)(c) prior to making a determination. Emergency transfers shall not~~
15 ~~take the place of, or be issued in lieu of, a permanent or modified transfer certificate. In all situations, Per G.S. 143-~~
16 ~~215.22L(q), as a condition of the transfer, the applicant shall demonstrate and convey to the Department that the~~
17 ~~amount of water transferred shall be minimized through water efficiency measures to the best extent practicable for~~
18 ~~the duration of the transfer.~~

19 (b) ~~To request~~ When possible, a request for Notice of an emergency or temporary transfer shall be supplied submitted
20 to the Department prior to the transfer. transfer. If possible, such as in the case of drought, drought or plant
21 maintenance, or other planned or foreseeable activities. etc., the applicant shall notify the Department prior to an
22 emergency transfer; however, if not possible due to the nature of the emergency, the Department shall be notified
23 within ten (10) business days of the transfer. The ~~Prior to starting the emergency transfer, the applicant shall submit a~~
24 ~~request to the Department for Secretary approval, either in writing, writing or electronically, to the Department which~~
25 shall include:

- 26 (1) the nature ~~or circumstances~~ of the event that is prompting the transfer request;
- 27 (2) the affected river basins between which the requested emergency ~~or temporary~~ transfer would
28 occur;
- 29 (3) the estimated quantity of water to be transferred; and
- 30 (4) the anticipated duration of the requested emergency ~~or temporary~~ transfer.

31 No water shall be transferred prior to Secretary approval.

32 (c) ~~It shall be demonstrated in the request that The request shall demonstrate and convey to the Department that~~
33 ~~practices and policies are in effect with the purpose of reducing water usage for the duration of the approved~~
34 ~~emergency or temporary transfer. Where an unplanned situation necessitates a transfer of water and a request cannot~~
35 ~~be made to the Secretary prior to the transfer event, the applicant, within 72 hours of the start of the transfer, shall~~
36 ~~provide to the Department the information in SubParagraph (b)(1) through (b)(4) of this Rule. Provided conditions of~~
37 this Paragraph are met, the Secretary shall consider the emergency transfer approved.

1 (d) ~~With any emergency transfer approval, the applicant shall, within~~ Within 60 calendar days from the end of the
2 ~~approved transfer period, the transfer recipient shall~~ submit to the Department a summary report detailing the transfer
3 event. The report shall include, to the extent possible, updated information required in Subparagraph (b)(1) through
4 (b(4) of this Rule as they pertain to all of the items required in the initial request. based on the actual event.

5 (e) ~~In cases of an emergency where~~ When a transfer cannot be requested beforehand due to extenuating circumstances,
6 the transfer recipient shall notify the Division that the transfer has occurred within 72 hours. ~~Within 60 calendar days~~
7 ~~after the transfer is completed, the applicant shall submit to the Department a summary report detailing the transfer~~
8 ~~event. the~~ The report shall be submitted either in writing or electronically to the Department and shall include:

9 (1) ~~the nature of the event initiating the transfer;~~

10 (2) ~~the affected river basins between which the transfer occurred;~~

11 (3) ~~the estimated quantity of water transferred; and~~

12 (4) ~~the duration of the transfer.~~

13 (f) ~~Public water systems with existing conveyances or infrastructure to conduct a transfer, but do not have an IBT~~
14 ~~Certificate or grandfathered allowance, may request an emergency or temporary transfer, whereby the transfer can be~~
15 ~~initiated without immediate notice should an emergency or temporary event arise. These plans must be resubmitted to~~
16 ~~the Department for renewal every six months. The transfer may occur all at once, at a regular recurring interval, or on~~
17 ~~an irregular basis. Summary reports will be required for all emergency or temporary transfers within 60 days following~~
18 ~~any event.~~

19
20 *History Note: Authority G.S. 143-215.22L; 143B-282(a)(2);*
21 *Eff. March 1, 2023.*