

# ***NORTH CAROLINA REGISTER***

**VOLUME 31 • ISSUE 24 • Pages 2438 – 2528**

**June 15, 2017**

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

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215 North Dawson Street

Raleigh, North Carolina 27603

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(919) 715-4000

215 North Dawson Street

Raleigh, North Carolina 27603

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**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2017 – December 2017

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	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 <sup>th</sup> day from publication in the Register
31:13	01/03/17	12/07/16	01/18/17	03/06/17	03/20/17	05/01/17	05/2018	09/30/17
31:14	01/17/17	12/20/16	02/01/17	03/20/17	04/20/17	06/01/17	05/2018	10/14/17
31:15	02/01/17	01/10/17	02/16/17	04/03/17	04/20/17	06/01/17	05/2018	10/29/17
31:16	02/15/17	01/25/17	03/02/17	04/17/17	04/20/17	06/01/17	05/2018	11/12/17
31:17	03/01/17	02/08/17	03/16/17	05/01/17	05/22/17	07/01/17	05/2018	11/26/17
31:18	03/15/17	02/22/17	03/30/17	05/15/17	05/22/17	07/01/17	05/2018	12/10/17
31:19	04/03/17	03/13/17	04/18/17	06/02/17	06/20/17	08/01/17	05/2018	12/29/17
31:20	04/17/17	03/24/17	05/02/17	06/16/17	06/20/17	08/01/17	05/2018	01/12/18
31:21	05/01/17	04/07/17	05/16/17	06/30/17	07/20/17	09/01/17	05/2018	01/26/18
31:22	05/15/17	04/24/17	05/30/17	07/14/17	07/20/17	09/01/17	05/2018	02/09/18
31:23	06/01/17	05/10/17	06/16/17	07/31/17	08/21/17	10/01/17	05/2018	02/26/18
31:24	06/15/17	05/24/17	06/30/17	08/14/17	08/21/17	10/01/17	05/2018	03/12/18
32:01	07/03/17	06/12/17	07/18/17	09/01/17	09/20/17	11/01/17	05/2018	03/30/18
32:02	07/17/17	06/23/17	08/01/17	09/15/17	09/20/17	11/01/17	05/2018	04/13/18
32:03	08/01/17	07/11/17	08/16/17	10/02/17	10/20/17	12/01/17	05/2018	04/28/18
32:04	08/15/17	07/25/17	08/30/17	10/16/17	10/20/17	12/01/17	05/2018	05/12/18
32:05	09/01/17	08/11/17	09/16/17	10/31/17	11/20/17	01/01/18	05/2018	05/29/18
32:06	09/15/17	08/24/17	09/30/17	11/14/17	11/20/17	01/01/18	05/2018	06/12/18
32:07	10/02/17	09/11/17	10/17/17	12/01/17	12/20/17	02/01/18	05/2018	06/29/18
32:08	10/16/17	09/25/17	10/31/17	12/15/17	12/20/17	02/01/18	05/2018	07/13/18
32:09	11/01/17	10/11/17	11/16/17	01/02/18	01/22/18	03/01/18	05/2018	07/29/18
32:10	11/15/17	10/24/17	11/30/17	01/16/18	01/22/18	03/01/18	05/2018	08/12/18
32:11	12/01/17	11/07/17	12/16/17	01/30/18	02/20/18	04/01/18	05/2018	08/28/18
32:12	12/15/17	11/22/17	12/30/17	02/13/18	02/20/18	04/01/18	05/2018	09/11/18

## **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.

**FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:** This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date.

PUBLIC NOTICE  
STATE OF NORTH CAROLINA  
ENVIRONMENTAL MANAGEMENT COMMISSION

The Division of Energy, Mineral, and Land Resources (DEMLR) invites public comment on, or objections to, the permitting actions listed below. Persons wishing to comment or object may submit written comments to the address below by the due dates indicated. All comments received prior to the dates will be considered in the final determinations regarding permit issuance. Public comments may result in changes to the proposed permitting actions. All comments should reference the specific permitting actions listed below and the permit number. DEMLR intends to re-issue the following NPDES industrial General Permits. Please note that for some permits below multiple actions are proposed for the same permit over two separate comment periods.

NCG15000 for establishments primarily engaged in: Furnishing Transportation by Air, or Operating Airports to be revised and re-issued with proposed re-issuance date 09/01/2017; public comment period ends 07/15/2017

The General Permits and Fact Sheets may be viewed 45 days in advance of the scheduled re-issuance dates noted above at: <https://deq.nc.gov/about/divisions/energy-mineral-land-resources/events>

Please direct comments or objections to:  
Stormwater Permitting Program  
NC Division of Energy, Mineral, and Land Resources  
1612 Mail Service Center  
Raleigh, NC 27699-1612  
Telephone Number: (919) 807-6374  
[mike.randall@ncdenr.gov](mailto:mike.randall@ncdenr.gov)

Public Notice  
North Carolina Environmental Management Commission  
Division of Water Resources/Water Quality Permitting Section  
1617 Mail Service Center  
Raleigh, NC 27699-1617  
Notice of Intent to Reissue an NPDES General Wastewater Permit

The North Carolina Environmental Management Commission proposes to reissue the following NPDES wastewater general permit:

NPDES General Permit No. NCG530000 for the discharge of treated wastewater resulting from seafood packing and rinsing operations, as well as from fish farms and hatcheries defined as concentrated aquatic animal production (CAAP) facilities with production levels above specified minimums.

Written comments regarding the proposed general permit will be accepted until 30 days after the publish date of this notice. The Director of the NC Division of Water Resources (DWR) may hold a public hearing should there be a significant degree of public interest. Please mail comments and/or information requests to DWR at the above address. Interested persons may visit the DWR at 512 N. Salisbury Street, Raleigh, NC to review information on file. Additional information on this notice may be found on our website: <http://deq.nc.gov/about/divisions/water-resources/water-resources-permits/wastewater-branch/npdes-wastewater/public-notices>

For questions or comments about NPDES General Permit NCG530000 for the discharge of treated wastewater resulting from seafood packing and rinsing operations, as well as from fish farms and hatcheries defined as concentrated aquatic animal production (CAAP) facilities with production levels above specified minimums, please contact Brianna Young at phone # (919) 807-6333 or via e-mail: [brianna.young@ncdenr.gov](mailto:brianna.young@ncdenr.gov)

**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 04 – DEPARTMENT OF COMMERCE**

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the NC Industrial Commission intends to amend the rule cited as 04 NCAC 10J .0103.

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://www.ic.nc.gov/proposed10J0103Notice-61517.pdf>

**Proposed Effective Date:** October 1, 2017

**Public Hearing:**

**Date:** July 19, 2017

**Time:** 2:30 p.m.

**Location:** 2149, 2<sup>nd</sup> Floor, Dobbs Building, 430 North Salisbury Street, Raleigh, NC 27603

**Reason for Proposed Action:** The Industrial Commission proposes to amend the provisions of Rule 04 NCAC 10J .0103 for several reasons. The proposed amendment to Paragraph (a) is a clarification regarding the qualifications for reimbursement under Paragraphs (c), (d), and (f). Next, there are two primary reasons for the proposed amendments to the provisions related to fees for ambulatory surgical centers, Paragraphs (g) and (h). First, this rule has been the subject of litigation that is ongoing at the time of filing. The provisions of the rule as adopted on April 1, 2015, that relate to fees for ambulatory surgical centers, specifically Paragraphs (g) and (h) and the reference to (h) in Paragraph (i) were held to be invalid by Wake County Superior Court Judge Paul Ridgeway in an August 9, 2016 Decision. The decision was predicated on the court's belief that those provisions of the rule were not adopted in compliance with the Administrative Procedure Act because no fiscal note was prepared. The Industrial Commission has appealed that ruling, and the matter is pending before the North Carolina Court of Appeals. The August 9, 2016 Decision was stayed by Judge Ridgeway by Order dated September 2, 2016. While the Industrial Commission maintains its position that it was not required to complete a fiscal note to adopt and/or amend the challenged provisions, the Industrial Commission has now completed a fiscal note and seeks to amend the ambulatory surgical centers fee provisions of Rule 04 NCAC 10J .0103. Pending the outcome of the litigation, the amendments are sought to restore certainty and balance to the fee schedule for stakeholders, including payers and medical providers, as to future medical expenses. Moreover, the Industrial Commission is statutorily obligated to periodically review the schedule of maximum fees charged for medical treatment in workers' compensation cases and make revisions if necessary. The proposed amendments to Rule 04 NCAC 10J .0103 incorporate feedback from various stakeholders that the addition of a provision setting maximum fees for ambulatory surgical centers,

for additional procedures covered by the Medicare Outpatient Prospective Payment System, would be beneficial to payers, providers, and injured workers.

The fee schedule reimbursement rate for services provided by ambulatory surgical centers covered by the Medicare Ambulatory Surgical Center Payment System will be 200%, in keeping with the rate for 2017 and beyond in the rule as adopted on April 1, 2015. The fee schedule reimbursement rate for additional procedures provided by ambulatory surgical centers that are covered by the Medicare Hospital Outpatient Prospective Payment System will be 135%. The rates were calculated to fall in the estimated median range of workers' compensation fee schedules nationally, as well as within the range of workers' compensation fee schedules in states that base payment to ambulatory surgical centers on a percentage of the Medicare Hospital Outpatient Prospective Payment System and/or the Medicare Ambulatory Surgical Center Payment Systems. The following studies and data sources were reviewed:

- (1) NORTH CAROLINA WORKERS COMPENSATION INSURANCE: A WHITE PAPER REVIEWING MEDICAL COSTS AND MEDICAL FEE REGULATIONS, Prepared for the National Foundation for Unemployment Compensation and Workers' Compensation; prepared by Philip S. Borba, Ph.D. and Robert K. Briscoe, WCP, Milliman, Inc.; May 23, 2013.
- (2) CompScope™ Medical Benchmarks, 15th Edition, for North Carolina, published by the Workers' Compensation Research Institute, August 2014.
- (3) North Carolina Hospital Association/Optum Group Health survey data, June 2013 and July 2014.
- (4) Review of states' fee schedule structures, nationally and regionally.
- (5) CompScope™ Medical Benchmarks for North Carolina, 16th Edition, published by the Workers' Compensation Research Institute, October 2015.
- (6) CompScope™ Medical Benchmarks for North Carolina, 17th Edition, published by the Workers' Compensation Research Institute, October 2016.
- (7) Payments to Ambulatory Surgery Centers, 2nd Edition, published by the Workers' Compensation Research Institute, May 2016.
- (8) Review of medical fee schedules of states that base reimbursement to ambulatory surgical centers on the Medicare Ambulatory Surgical Center Payment System.
- (9) Analysis of Alternatives to the North Carolina Ambulatory Surgical Center Fee Schedule Proposed to Be Effective October 1, 2017, prepared by the National Council on Compensation Insurance, May 2, 2017.
- (10) Analysis of Alternatives to the North Carolina Ambulatory Surgical Center Fee Schedule Proposed to Be Effective January 1, 2017, prepared by the National Council on Compensation Insurance, September 19, 2016.

*(11) Analysis of Proposed Changes to the North Carolina Medical Fee Schedule, prepared by the National Council on Compensation Insurance, December 4, 2014.*

**Comments may be submitted to:** *Kendall M. Bourdon, 4340 Mail Service Center, Raleigh, NC 26799-4340; phone (919) 807-2644; email kendall.bourdon@ic.nc.gov*

**Comment period ends:** *August 14, 2017*

**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 919-431-3000.

**Fiscal impact (check all that apply).**

- ☒ **State funds affected**
- ☐ **Environmental permitting of DOT affected**
- ☐ **Analysis submitted to Board of Transportation**
- ☒ **Local funds affected**
- ☒ **Substantial economic impact (≥\$1,000,000)**
- ☒ **Approved by OSBM**
- ☐ **No fiscal note required by G.S. 150B-21.4**

## CHAPTER 10 - INDUSTRIAL COMMISSION

### SUBCHAPTER 10J – FEES FOR MEDICAL COMPENSATION

#### SECTION .0100 – FEES FOR MEDICAL COMPENSATION

##### 04 NCAC 10J .0103 FEES FOR INSTITUTIONAL SERVICES

(a) Except where otherwise provided, maximum allowable amounts for inpatient and outpatient institutional services shall be based on the current federal fiscal year's facility-specific Medicare rate established for each institutional facility by the Centers for Medicare & Medicaid Services ("CMS"). "Facility-specific" rate means the all-inclusive amount eligible for payment by Medicare for a claim, excluding pass-through payments. An institutional facility may only be reimbursed for hospital outpatient institutional services pursuant to this Paragraph and Paragraphs (c), (d), and (f) of this Rule if it qualifies for payment by CMS as an outpatient hospital.

(b) The schedule of maximum reimbursement rates for hospital inpatient institutional services is as follows:

- (1) Beginning April 1, 2015, 190 percent of the hospital's Medicare facility-specific amount.
  - (2) Beginning January 1, 2016, 180 percent of the hospital's Medicare facility-specific amount.
  - (3) Beginning January 1, 2017, 160 percent of the hospital's Medicare facility-specific amount.
- (c) The schedule of maximum reimbursement rates for hospital outpatient institutional services is as follows:
- (1) Beginning April 1, 2015, 220 percent of the hospital's Medicare facility-specific amount.
  - (2) Beginning January 1, 2016, 210 percent of the hospital's Medicare facility-specific amount.
  - (3) Beginning January 1, 2017, 200 percent of the hospital's Medicare facility-specific amount.
- (d) Notwithstanding the Paragraphs (a) through (c) of this Rule, maximum allowable amounts for institutional services provided by critical access hospitals ("CAH"), as certified by CMS, are based on the Medicare inpatient per diem rates and outpatient claims payment amounts allowed by CMS for each CAH facility.
- (e) The schedule of maximum reimbursement rates for inpatient institutional services provided by CAHs is as follows:
- (1) Beginning April 1, 2015, 200 percent of the hospital's Medicare CAH per diem amount.
  - (2) Beginning January 1, 2016, 190 percent of the hospital's Medicare CAH per diem amount.
  - (3) Beginning January 1, 2017, 170 percent of the hospital's Medicare CAH per diem amount.
- (f) The schedule of maximum reimbursement rates for outpatient institutional services provided by CAHs is as follows:
- (1) Beginning April 1, 2015, 230 percent of the hospital's Medicare CAH claims payment amount.
  - (2) Beginning January 1, 2016, 220 percent of the hospital's Medicare CAH claims payment amount.
  - (3) Beginning January 1, 2017, 210 percent of the hospital's Medicare CAH claims payment amount.
- (g) Notwithstanding Paragraphs (a) through (f) of this Rule, the maximum allowable amounts for institutional services provided by ambulatory surgical centers ("ASC") shall be based on the ~~Medicare ASC reimbursement amount determined by applying the most recently adopted and effective Medicare Payment System Policies for Services Furnished in Ambulatory Surgical Centers and Outpatient Prospective~~ most recently adopted and effective Medicare Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment System Systems reimbursement formula and factors factors, including all Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems Addenda, as published annually in the Federal Register and on the CMS website at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html> ("the Medicare ASC facility-specific amount") ("the OPPI/ASC Medicare rule"). An ASC's specific Medicare wage index value as set out in the OPPI/ASC Medicare rule shall be applied in the calculation of the maximum allowable amount for any institutional service it provides. Reimbursement shall be based on the fully implemented payment amount in Addendum AA, Final ASC Covered Surgical



~~Procedures for CY 2015, and Addendum BB, Final ASC Covered Ancillary Services Integral to Covered Surgical Procedures for 2015, as published in the Federal Register, or their successors.~~

(h) The schedule of maximum reimbursement rates for institutional services provided by ambulatory surgical centers is as follows:

- ~~(1) Beginning April 1, 2015, 220 percent of the Medicare ASC facility specific amount.~~
- ~~(2) Beginning January 1, 2016, 210 percent of the Medicare ASC facility specific amount.~~
- ~~(3) Beginning January 1, 2017, 200 percent of the Medicare ASC facility specific amount.~~
- (1) A maximum reimbursement rate of 200 percent shall apply to institutional services that are eligible for payment by CMS when performed at an ASC.
- (2) A maximum reimbursement rate of 135 percent shall apply to institutional services performed at an ASC that are eligible for payment by CMS if performed at an outpatient hospital facility, but would not be eligible for payment by CMS if performed at an ASC.

(i) If the facility-specific Medicare payment includes an outlier payment, the sum of the facility-specific reimbursement amount and the applicable outlier payment amount shall be multiplied by the applicable percentages set out in Paragraphs (b), (c), (e), (f), and (h) of this Rule.

(j) Charges for professional services provided at an institutional facility shall be paid pursuant to the applicable fee schedules in Rule .0102 of this Section.

(k) If the billed charges are less than the maximum allowable amount for a Diagnostic Related Grouping ("DRG") payment pursuant to the fee schedule provisions of this Rule, the insurer or managed care organization shall pay no more than the billed charges.

(l) For specialty facilities paid outside Medicare's inpatient and outpatient Prospective Payment System, the payment shall be determined using Medicare's payment methodology for those specialized facilities multiplied by the inpatient institutional acute care percentages set out in Paragraphs (b) and (c) of this Rule.

*Authority G.S. 97-25; 97-26; 97-80(a); S.L. 2013-410.*

## **TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES**

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Medical Care Commission intends to readopt with substantive changes the rules cited as 10A NCAC 13J .0901, .1004, .1007, .1107, .1110, .1202, .1402, and .1502.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://www2.ncdhhs.gov/dhsr/ruleactions.html>

**Proposed Effective Date:** January 1, 2018

### **Public Hearing:**

**Date:** August 9, 2017

**Time:** 10:00 a.m.

**Location:** Dorothea Dix Park, Brown Building, Room 104, 801 Biggs Drive, Raleigh, NC 27603

**Reason for Proposed Action:** Pursuant to G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. As a result of the periodic review of Subchapter 10A NCAC 13J, The Licensing of Home Care Agencies, eight rules were determined as "Necessary With Substantive Public Interest," thus necessitating readoption. With input from stakeholders, substantial changes have been proposed to these rules to provide clarity and remove ambiguity, address objections from the Rules Review Commission identified in the history notes for five of the rules, and make technical changes and formatting changes. The proposed changes also include updates to the definitions to refer to North Carolina General Statutes definitions.

**Comments may be submitted to:** Nadine Pfeiffer, 2701 Mail Service Center, Raleigh, NC 27699-2701; email [DHSR.RulesCoordinator@dhhs.nc.gov](mailto:DHSR.RulesCoordinator@dhhs.nc.gov)

**Comment period ends:** August 14, 2017

### **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 919-431-3000.

### **Fiscal impact (check all that apply).**

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Substantial economic impact (≥\$1,000,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required by G.S. 150B-21.4
- ☒ No fiscal note required by G.S. 150B-21.3A(d)(2)

## **CHAPTER 13 – NC MEDICAL CARE COMMISSION**

### **SUBCHAPTER 13J – THE LICENSING OF HOME CARE AGENCIES**

#### **SECTION .0900 - GENERAL**

**10A NCAC 13J .0901 DEFINITIONS**

Terms used in this Subchapter have the meanings as defined in G.S. 131E-136 and as follows:

- (1) "Activities of Daily Living" (ADL) means mobility, eating, bathing, dressing, ~~toileting, and continence, and toileting.~~
- (2) "Agency" means a home care agency.
- (3) "Agency director" means the person having administrative responsibility for the operation of the agency.
- (4) ~~"Allied health personnel" means licensed practical nurses, physical therapy assistants, occupational therapy assistants or other health professionals as defined in occupational licensure laws that are subject to supervision by a health professional.~~
- (5) ~~"Appropriate professional means a licensed health care professional or a person with a baccalaureate degree in social work or an individual who meets the job specifications established for a social worker by the Office of State Personnel.~~
- (6)(4) "Client" means ~~a home care client.~~ as defined in G.S. 131E-136 (2b).
- (7)(5) "Clinical respiratory services" means the provision of respiratory equipment and services that involve the assessment of a client's pulmonary status, monitoring of a client's response to ~~therapy~~ therapy, and reporting to the client's physician. Procedures include: oximetry, blood gases, delivery of medication via aerosolization, management of ventilatory support equipment, pulmonary function ~~testing~~ testing, and infant monitoring.
- (8)(6) "Department" means the North Carolina Department of Health and Human Services.
- (9)(7) "Extensive Assistance" means a client is ~~totally~~ totally dependent or requires ~~weight bearing support~~ hands on assistance more than half the time while performing part of an activity, ~~such as guiding or maneuvering of limbs,~~ and meets one of the following criteria:
  - (a) ~~Requires~~ requires extensive assistance in more than two activities of daily living (ADLs), as defined in Item (1) of this Rule; ~~or~~
  - (b) ~~Needs~~ needs an in-home aide to perform at least one task at the nurse aide II level; or
  - (c) ~~Requires~~ requires extensive assistance in more than one ADL and has a medical or cognitive impairment as defined in ~~Item (19)~~ Item (20) of this Rule.
- (10)(8) "Follow-up care" means services provided to a licensed hospital's discharged ~~clients~~ client in their ~~homes~~ home by a hospital's employees. No services except pulmonary care, pulmonary ~~rehabilitation~~ rehabilitation, or ventilator services shall exceed three visits in any two month period and shall not extend beyond a 12 month period following discharge.
- (11)(9) "Governing body" means the person or group of persons having legal authority for the operation of the agency.
- (12)(10) "Hands-on care" means any home care service ~~which~~ that involves touching the patient in order to implement the patient's plan of care.
- (11) "Health care practitioner" means as defined in G.S. 90-640(a).
- (13)(12) "Infusion nursing services" means those services related to the administration of pharmaceutical agents directly into a body organ or cavity. Routes of administration include ~~but are not limited to~~ sub-cutaneous intravenous, intraspinal, ~~epidural~~ epidural, or intrathecal infusion. Administration shall be by or under the supervision of a registered nurse in accordance with their legal scope of practice.
- (14) ~~"In-home aide" means an individual who provides hands on care to home care clients.~~
- (15)(13) "In-home aide services" are hands-on ~~paraprofessional~~ services ~~which~~ that assist individuals, their ~~family~~ family, or both with home management tasks, personal care tasks, or supervision of the client's activities, or all of the above, to enable the individual, their family or both, to remain and function ~~effectively at home as long as possible.~~ home.
- (16)(14) "In-home care provider" means any individual who provides home care services as enumerated in G.S. 131E-136.
- (15) "Instrumental Activities of Daily Living" (IADL) means meal preparation, housekeeping, medication reminders, shopping, errands, transportation, money management, phone use, reading, and writing.
- (16) "Licensed Clinical Social Worker" means as defined in G.S. 90B-3(6a).
- (17) "Licensed practical nurse" means ~~a person licensed as such, pursuant to~~ as defined in G.S. 90-171.30, G.S. 90-171.30 or G.S 90-171.32.
- (18) "Limited Assistance" means care to a client who requires hands-on care involving guided maneuvering of limbs with eating, toileting, bathing, dressing, personal hygiene, self-monitoring of ~~medications~~ medications, or other tasks assigned that require weight bearing assistance half the time or less during the activity and does not meet the definition of extensive assistance in ~~Item (9)~~ Item (8) of this Rule.
- (19) "Medical or cognitive impairment" means a diagnosis and client assessment that documents at least one of the following:
  - (a) ~~Pain~~ pain that is present more than half the time that interferes with an

- individual's activity or ~~movement~~  
movement;
- (b) ~~Dyspnea~~ dyspneic or noticeably short of breath with minimal exertion during the performance of ADLs and requires continuous use of ~~oxygen~~ oxygen; or
- (c) ~~Individual~~ individual is not alert and oriented or is unable to shift attention and recall directions more than half the time.
- (20) ~~"Medical social services" means those professional services provided to individuals in their homes by a medical social worker, or by a medical social worker assistant under the supervision of a medical social worker, when provided by an agency in conjunction with other nursing or therapy services provided by the same agency.~~
- (21) ~~"Medical social worker" means a person with a master's degree from a school of social work approved by the Council on Social Work Education who is eligible for certification by the North Carolina Social Work Certification Licensure Board as a Certified Master Social Worker.~~
- (22) ~~"Medical social worker assistant" means a person who has a baccalaureate degree in social work, psychology, sociology, or other field related to social work, and has had at least one year of social work experience.~~
- (23)(20) ~~"Nursing registry" means a person or organization that maintains a list of nurses or in-home aides or both that is made available to persons seeking nursing care or in-home aide services~~ service, but does not collect a placement fee from the worker or client, coordinate the delivery of services or supervise or control the provision of services.
- (24)(21) ~~"Nursing services" means professional services provided by a registered nurse or a licensed practical nurse under the supervision of a registered nurse.~~
- (25)(22) ~~"Occupational therapist" means a person licensed as such, pursuant to as defined in G.S. 90-270.70, G.S. 90-270.67(2) or G.S. 90-270.72.~~
- (26)(23) ~~"Occupational therapist assistant" means a person licensed as such, pursuant to as defined in G.S. 90-270.70, G.S. 90-270.67(3) or G.S. 90-270.72.~~
- (27)(24) ~~"Occupational therapy services" means professional services provided by a licensed occupational therapist or a licensed occupational therapist assistant under the supervision of a licensed occupational therapist, as defined in G.S. 90-270.67(4).~~
- (28) ~~"Paraprofessional" means an in-home care provider who does not hold a professional~~
- ~~license or professional certification and through the nature of their duties assists a professional.~~
- (29)(25) ~~"On-call services" means unscheduled home care services made available to clients on a 24-hour basis.~~
- (30)(26) ~~"Personal care" includes tasks that range from means assistance to an individual with basic personal hygiene, grooming, feeding and ambulation to Activities of Daily Living and medical monitoring and other health care related tasks.~~ monitoring.
- (31)(27) ~~"Physical therapist" means a person licensed as such, pursuant to as defined in G.S. 90-270.29, G.S. 90-270-24(2), G.S. 90-270-30, or G.S. 90-270-31(b).~~
- (32)(28) ~~"Physical therapist assistant" means a person licensed as such pursuant to as defined in G.S. 90-270.29, G.S. 90-270.24(2) or G.S. 90-270-31(b).~~
- (33)(29) ~~"Physical therapy services" means professional services provided by a licensed physical therapist or a licensed physical therapist assistant under the supervision of a licensed physical therapist, as defined in G.S. 90-270.24(4).~~
- (34)(30) ~~"Physician" means a person licensed as such, pursuant to as defined in G.S. 90-15, G.S. 90-9.1 or G.S. 90-9.2.~~
- (35)(31) ~~"Plan of care" means the written description of the authorized home care services and tasks to be provided to a client.~~
- (32) ~~"Practice of respiratory care" means as defined in G.S. 90-648(10).~~
- (36)(33) ~~"Premises" means the location or licensed site from which that the agency provides home care services or maintains client service records or advertises itself as a home care agency.~~
- (37)(34) ~~"Qualified" means suitable for employment as a consequence of having met the standards of education, experience, licensure licensure, or certification established in the applicable job description created and adopted by the agency.~~
- (38)(35) ~~"Registered nurse" means a person licensed as such, pursuant to as defined in G.S. 90-171.30, G.S. 90-171.30 or G.S. 90.171.32.~~
- (39) ~~"Respiratory therapist" means a person who is credentialed by the National Board for Respiratory Care.~~
- (40)(36) ~~"Respiratory care practitioner" means those persons licensed in the state of North Carolina who provide clinical respiratory services in a client's home, as defined in G.S. 90-648(12).~~
- (41)(37) ~~"Scope of services" means those specific services provided by a licensed agency as listed on their home care license.~~
- (42)(38) ~~"Survey" means an inspection by the Division of Health Service Regulation in order to assess the compliance of agencies with the home care licensure rules.~~

- ~~(43)~~(39) "Social worker" means ~~a person who meets the qualifications of the North Carolina Office of State Personnel for social workers, as defined in G.S. 90B-3(8).~~
- ~~(44)~~(40) "Speech and language pathologist" means ~~a person licensed as such, pursuant to G.S. 90-294, as defined in G.S. 90-293(5).~~
- ~~(45)~~ Speech therapy means ~~professional services provided by a licensed speech and language pathologist.~~
- ~~(46)~~(41) "Skilled Services" means all home care services enumerated in G.S. 131E-136(3) with the exception of in-home aide services.
- ~~(42)~~ "The practice of speech and language pathology" means as defined in G.S. 90-293(7).

*Authority G.S. 131E-136; 131E-140.*

## SECTION .1000 - ADMINISTRATION

### 10A NCAC 13J .1004 EVALUATION

- (a) The agency's governing body or its designee shall, at least annually, conduct a comprehensive evaluation of the agency's total operation.
- (b) The evaluation shall ~~assure~~ review the ~~appropriateness and~~ quality of the agency's services with findings used to verify policy implementation, to identify problems, and to establish problem resolution and policy revision as necessary.
- (c) The evaluation shall consist of ~~an overall policy~~ a policy and administration review, including the scope of services offered, arrangements for services with other agencies or individuals, admission and discharge policies, supervision and plan of care, emergency care, service records, personnel ~~qualifications~~ qualifications, and program evaluation. Data to be assessed shall include ~~at a minimum~~ the following:
- (1) number of clients receiving each services;
  - (2) number of visits or hours for each service;
  - (3) client outcomes;
  - (4) adequacy of staff to meet client needs;
  - (5) numbers and reasons for nonacceptance of clients; and
  - (6) reasons for discharge.
- (d) ~~An evaluation of the agency's client records shall be carried out at least quarterly by appropriate professionals representing the scope of the agency's program. The agency's governing body or its designee shall evaluate the agency's client records quarterly.~~ The evaluation shall include a review of sample active and closed client records to ensure that agency policies are followed in providing services, both direct and under arrangement, and to assure that the quality of service is satisfactory and appropriate service meets the client's needs. The review shall consist of a representative sample of all home care services provided by the agency.
- (e) Documentation of the evaluation shall include the names and qualifications of the persons carrying out the evaluation, the criteria and methods used to accomplish it, and any action taken by the agency as a result of its findings.

*Authority G.S. 131E-140.*

### 10A NCAC 13J .1007 CLIENT RIGHTS AND RESPONSIBILITIES

- (a) An agency ~~must~~ shall provide each client with a written notice of the client's rights and responsibilities in advance of furnishing care to the client or during the initial evaluation visit before the initiation of services. The agency shall maintain documentation showing that all clients have been informed of their rights and responsibilities, ~~responsibilities as defined in G.S. 131E-144.3.~~
- (b) ~~Clients' rights shall include at a minimum clients' rights to:~~
- ~~(1) be informed and participate in their plan of care;~~
  - ~~(2) voice grievances about their care and not be subjected to discrimination or reprisal for doing so;~~
  - ~~(3) confidentiality of their records;~~
  - ~~(4) be informed of their liability for payment for services;~~
  - ~~(5) be informed of the process for acceptance and continuance of service and eligibility determination;~~
  - ~~(6) accept or refuse services;~~
  - ~~(7) be informed of the agency's on-call service;~~
  - ~~(8) be informed of supervisory accessibility and availability; and~~
  - ~~(9) be advised of the agency's procedures for discharge.~~
- ~~(e)~~(b) An agency shall provide ~~all clients with a telephone number for information, questions, or complaints about services provided by the agency. The agency shall also provide the Division of Health Service Regulation complaints hotline number or the Department of Health and Human Services Caroline number.~~ notice to clients as defined in G.S. 131E-144.4. The Division of Health Service Regulation shall investigate all allegations of non-compliance with ~~the rules.~~ rules of this Subchapter.
- ~~(d)~~(c) An agency shall investigate, within 72-hours, complaints made to the agency by a client or the client's family, and ~~must~~ shall document both the existence of the complaint and the resolution of the complaint.

*Authority G.S. 131E-140; 131E-144.3.*

## SECTION .1100 - SCOPE OF SERVICES

### 10A NCAC 13J .1107 IN-HOME AIDE SERVICES

- (a) If an agency provides in-home aide services, the services shall be provided in accordance with the client's plan of care. The plan of care shall be signed and dated by the registered nurse and the client or designee. A copy of the signed and dated plan of care shall be left in the home. ~~Agencies participating in the Home and Community Care Block Grant or Social Services Block Grant through the Division of Aging and Adult Services shall comply, for those clients, with the in home aide service level rules contained in 10A NCAC 06A and 10A NCAC 06X which are hereby incorporated by reference with all subsequent amendments. All other agencies providing in home aide services shall comply with the provisions in Paragraphs (b) and (c) of this Rule.~~

(b) The plan of care shall contain the level of assistance required by the client for each ADL. If the client's plan of care requires the in-home aide to provide extensive assistance, as defined in Rule .0901(9) of this Subchapter the in-home aide shall be listed on the Nurse Aide Registry pursuant to G.S. 131E-255. However, if the client's plan of care requires the in-home aide to provide only limited assistance as defined in Rule .0901(18) of this Subchapter assistance, the in-home aide is not required to be listed on the Nurse Aide Registry.

(c) In-home aides shall follow instructions for client care written by the health care practitioner required for the services provided. registered nurse. In-home aide duties may include the following:

- (1) help with prescribed exercises which that the client and in-home aides have been taught by a health care practitioner licensed pursuant to G.S. 90; practitioner;
- (2) provide or assist with personal care (i.e., bathing, care of mouth, skin and hair); ADLs;
- (3) assist with ambulation;
- (4)(3) assist client with self-administration of medications which that are ordered by a physician or other person authorized by state law to prescribe;
- (5)(4) perform incidental household services which IADLs that are essential to the client's care at home; and
- (6)(5) record and report changes in the client's condition, family situation situation, or needs to an appropriate health care practitioner. the registered nurse.

(d) For agencies providing in-home aide services, the initial assessment shall be conducted in the client's home by the registered nurse. The initial assessment shall include the client's functional status in the areas of social, mental, physical health, environmental, economic, ADLs, and IADLs.

(e) The initial assessment shall be conducted prior to the development of the plan of care and signed and dated by the registered nurse.

(f) Agencies providing in-home aide services shall provide availability of the registered nurse for supervision and consultation.

(g) Agencies participating in the Home and Community Care Block Grant or Social Services Block Grant through the Division of Aging and Adult Services shall comply with the in-home aide service level rules contained in 10A NCAC 06A and 10A NCAC 06X are hereby incorporated by reference with all subsequent amendments and editions. Copies of these Rules may be accessed electronically at [http://reports.oah.state.nc.us/ncac.asp?folderName=Title 10A - Health and Human Services\Chapter 06 - AGING - PROGRAMS OPERATIONS](http://reports.oah.state.nc.us/ncac.asp?folderName=Title%2010A%20-%20Health%20and%20Human%20Services%20Chapter%2006%20-%20AGING%20-%20PROGRAMS%20OPERATIONS) at no cost. All other agencies providing in-home aide services shall comply with the provisions in Paragraphs (a) through (f) of this Rule.

(h) In order to assure supervision of services provided by in-home aides, geographic service areas for these services shall be limited to the area that includes the county where the agency is located, counties that are contiguous with the county where the agency is located, or within 90 minutes driving time from the site where the agency is located, whichever is greater. Agencies providing

services to any client prior to January 1, 2006 who resides in a geographic service area that prior to January 1, 2006 is beyond the counties that are contiguous with the county where the agency is located or greater than 90 minutes driving time from the site where the agency is located, may continue to provide services to the client in these areas until the client is discharged from the agency.

*Authority G.S. 131E-140.*

## **10A NCAC 13J .1110 SUPERVISION AND COMPETENCY OF IN-HOME CARE PROVIDERS**

(a) In-home aides or other allied health personnel In-home care providers subject to occupational licensing laws shall meet requirements consistent with the rules established by the occupational licensing board to which that they are subject. Each agency shall document that its in-home aides and other in-home care providers are competent to perform client care tasks or activities to which that they are assigned. Meeting competency includes a demonstration of tasks to the health care practitioner. Such individuals In-home care providers shall perform delegated activities under the supervision of persons authorized by state law to provide such supervision.

(b) Those in-home aides and other in-home care providers who are not subject to occupational licensing laws, shall only be assigned client care activities for which that they have demonstrated competency, the documentation of which competency is maintained by the agency. Meeting competency includes a correct demonstration of tasks to an appropriate professional. the health care practitioner. Each agency shall document that its in-home aides and other in-home care providers demonstrate competence for all assigned client care tasks or activities. Such individuals In-home care providers shall be supervised by the appropriate professional health care practitioner who may further delegate specific supervisory activities to a paraprofessional in-home care providers as designated by agency policy, provided that the following criteria are met:

- (1) there is continuous availability of the appropriate professional health care practitioner for supervision and consultation; and
- (2) accountability for supervisory activities delegated is maintained by the appropriate professional health care practitioner.

(c) Staff who are not licensed by the North Carolina Respiratory Care Board shall only be assigned duties for which they have demonstrated competency and shall not engage in providing Respiratory Care as that term is defined in the Respiratory Care Practice Act, G.S. 90-648(11). Agencies that are providing clinical respiratory care services must provide supervision by a licensed respiratory care practitioner or a registered nurse with sufficient education and clinical experience in the scope of the services offered.

(d)(c) The appropriate supervisor health care practitioner shall supervise an in-home care provider as specified in Paragraph (a) or (b) of this Rule by making a supervisory visit to each client's place of residence at least every three months, quarterly with or without the in-home care provider's presence, and at least annually, while the in-home care provider is providing care to

each client. The supervisory visit shall include review of the client's general condition, and progress and response to the services provided by the specified type of in-home care provider.  
~~(e) A quarterly supervisory visit to the home of each client, by the appropriate professional supervisor for each type of in-home care provider as specified in Paragraphs (a) and (b) of this Rule, shall meet the minimum requirement for supervision of any and all of the specified type of in-home care providers who have provided service to the client within the quarter. The supervisory visit shall include review of the client's general condition, progress and response to the services provided by the specified type of in-home care provider.~~

~~(f)(d)~~ Documentation of supervisory visits shall be maintained in the agency's records and shall ~~contain~~ contain date of visit, findings of visit, and signature of person performing the visit.

- (1) date of visit;
- (2) findings of visit; and
- (3) signature of person performing the visit.

~~In order to assure effective supervision of services provided by in-home aides, geographic service areas for these services shall be limited to the area which includes the county where the agency is located, counties that are contiguous with the county where the agency is located or within 90 minutes driving time from the site where the agency is located, whichever is greater. Agencies providing services to any client prior to January 1, 2006 who resides in a geographic service areas which prior to January 1, 2006 which are is beyond the counties that are contiguous with the county where the agency is located or greater than 90 minutes driving time from the site where the agency is located, may continue to provide services to the client these areas until the client is discharged from the agency.~~

~~(g)(e)~~ When follow-up corrective action is needed for any ~~or all~~ of a specified type of in-home care provider based on findings of the supervisory visit, documentation of such corrective action by the ~~appropriate supervisor~~ health care practitioner shall be maintained in the employee(s) or other agency record.

~~(h)(f)~~ An appropriate professional A health care practitioner conducting a supervisory visit for any ~~and all of a~~ specified type of in-home care provider may simultaneously conduct the quarterly case review as required in Rule .1202 of this Subchapter.

~~(i)(g)~~ The appropriate professional health care practitioner shall be continuously available for supervision, supervision on-site where services are provided when necessary, during the hours that in-home care services are provided.

*Authority G.S. 131E-140.*

## **SECTION .1200 - CASE REVIEW AND PLAN OF CARE**

### **10A NCAC 13J .1202 CASE REVIEW AND PLAN OF CARE**

(a) The plan of care shall be established in collaboration with the client and incorporated in the service record. The plan of care must shall be reviewed at least every three months quarterly by the ~~appropriate agency professional~~ health care practitioner and revised as needed based on the client's needs. If the client record is thinned, the original and updated authorization or orders for care as appropriate shall be maintained in the client's ~~current~~ record. All records shall be readily available to Department staff

for review if requested. ~~If physician orders are needed for the services, a home care health professional~~ The health care practitioner shall notify the physician of any changes in the client's condition ~~which~~ that indicates the need for altering the plan of care or for terminating services. Based upon the findings of the client assessment, the plan of care shall include ~~at a minimum~~ the following:

- (1) type of service(s) and care to be delivered;
- (2) frequency and duration of service;
- (3) activity restrictions;
- (4) safety measures; and
- (5) service objectives and goals.

(b) Where applicable, the plan of care shall ~~include, but is not limited to:~~ include:

- (1) equipment required;
- (2) functional limitations;
- (3) rehabilitation potential;
- (4) diet and nutritional needs;
- (5) medications and treatments;
- (6) specific therapies;
- (7) pertinent diagnoses; and
- (8) prognosis.

~~(c) So long as ongoing hands-on care is being provided to a client, a registered nurse, social worker or other appropriate professional shall visit the client in the client's residence at least quarterly to assess the client's general condition, progress and response to services provided. Documentation of these visits shall be maintained in the client's service record.~~

~~(d)(c)~~ If the ~~same professional~~ health care practitioner is assigned responsibility for two or more of the following, these functions may be conducted during the same home visit:

- (1) quarterly assessment of client's condition and response;
- (2) provision of regularly scheduled professional services; or
- (3) supervision of ~~in-home aide or other allied health personnel.~~ in-home care provider.

*Authority G.S. 131E-140.*

## **SECTION .1400 - SERVICE RECORDS**

### **10A NCAC 13J .1402 CONTENT OF RECORD**

(a) If the agency is providing services to a ~~client which do not require a physician's order,~~ client, the service record shall contain the following ~~information at a minimum:~~ information:

- (1) Admission data:
  - (A) identification data such as name, address, telephone number, date of birth, sex, and marital status, ~~social security number;~~ all information essential to the identification of the client; and a copy of the signed client's right's form or documentation of its delivery; status;
  - (B) ~~names of next of kin or legal guardian;~~ a copy of the signed client's rights form or documentation of its delivery;

- (C) names of next of kin, legal guardian, or other family members;
- (D) source of referral; and
- (E) assessment of home environment.
- (2) Service data:
  - (A) initial assessments by appropriate professional the health care practitioner of the client's functional status in the areas of social, mental, physical health, environmental, economic, activities of daily living ADLs, and instrumental activities of daily living IADLs;
  - (B) identification of problems, the establishment of goals and proposed intervention intervention, and indication of the client's understanding of and approval for services to be provided. If the client is diagnosed as not competent to understand the treatment plan, competent, the approval of the client's responsible party shall be recorded;
  - (C) a record of all services provided, provided directly and by contract, with entries dated and signed by the individual providing the service. Records shall include dates and times of services provision; service;
  - (D) discharge summary which that includes an overall summary of services provided by the agency and the date and reason for discharge. When a specific service to a client is terminated and other services continue, there shall be documentation of the date and reason for terminating the specific service; and
  - (E) evidence of coordination of services when the client is receiving more than one home in-home care service.

(b) If the agency is providing services to a client which that require a physician's order, the service record shall include at a minimum all of the items described in Paragraph (a) of this Rule and the following items:

- (1) Admission data:
  - (A) admission and discharge dates from hospital or other institution when applicable; and
  - (B) names of physician(s) responsible for the client's care.
- (2) Service data:
  - (A) client's diagnoses;
  - (B) physician's orders for pharmaceuticals and medical treatments; and
  - (C) If if the agency is providing services to a hospital or nursing facility patient, the agency's record shall include at a minimum the following items: referral

information, dates and times of services, and documentation of services provided.

- (i) referral information;
- (ii) dates and times of services; and
- (iii) documentation of services provided.

*Authority G.S. 131E-140.*

## **SECTION .1500 – COMPANION, SITTER, AND RESPITE SERVICES**

### **10A NCAC 13J .1502 SCOPE OF SERVICES**

(a) If an agency provides In-home companion, sitter, or respite services, the services shall be provided in accordance with the client's plan of care. Agencies participating in the Home and Community Care Block Grant or Social Services Block Grant through the Division of Aging and Adult Services shall comply, for those clients, comply with the companion or sitter service level rules contained in 10A NCAC 06A and 10A NCAC 06X, 10A NCAC 06X, which are hereby incorporated by reference with all including subsequent amendments and editions. Copies of 10A NCAC 06A and 06X are available at <http://reports.oah.state.nc.us/ncac.asp?folderName=\Title 10A - Health and Human Services\Chapter 06 - AGING - PROGRAMS OPERATIONS> at no cost. All other agencies providing companion and sitter in-home companion, sitter, or respite services shall comply with the provisions of the rules in this Section Section, unless exempt from these rules. subject to the provisions of the rules of this Subchapter.

(b) In-home Companion, companion, sitter, or respite services personnel shall follow the service plan of care written by personnel required by agency policy for the services provided. the in-home companion, sitter, or respite services supervisor.

*Authority G.S. 131E-140.*

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the Medical Care Commission intends to adopt the rules cited as 10A NCAC 13P .0224 and .0410.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://www2.ncdhhs.gov/dhsr/ruleactions.html>

**Proposed Effective Date:** *January 1, 2018*

#### **Public Hearing:**

**Date:** *August 9, 2017*

**Time:** *1:00 p.m.*

**Location:** *Dorothea Dix Park, Wright Building, Room 131, 1201 Umstead Drive, Raleigh, NC 27603*

**Reason for Proposed Action:** *The NC Medical Care Commission is proposing these rule adoptions to support growth in the EMS industry and changes that have occurred with national*

*EMS standards. Minimum manufacturing standards are being established for ground ambulance vehicles used for the transport of emergent and non-emergent patients in North Carolina to ensure ambulances operating in the State are safe and reliable. Medical oversight criteria for air medical programs in North Carolina are being clarified to abide by the terms of a federal injunction involving the regulation of air medical programs. These rule adoptions will benefit the quality of care and safety provided to the citizens of North Carolina.*

**Comments may be submitted to:** Nadine Pfeiffer, 2701 Mail Service Center, Raleigh, NC 27699-2700; email [DHSR.RulesCoordinator@dhhs.nc.gov](mailto:DHSR.RulesCoordinator@dhhs.nc.gov)

**Comment period ends:** August 14, 2017

**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 919-431-3000.

**Fiscal impact (check all that apply).**

- ☒ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☒ Local funds affected
- ☒ Substantial economic impact (≥\$1,000,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required by G.S. 150B-21.4

## CHAPTER 13 - NC MEDICAL CARE COMMISSION

### SUBCHAPTER 13P – EMERGENCY MEDICAL SERVICES AND TRAUMA RULES

#### SECTION .0200 – EMS SYSTEMS

#### 10A NCAC 13P .0224 GROUND AMBULANCE VEHICLE MANUFACTURING STANDARDS

(a) In addition to the terms defined in Rule .0102 of this Subchapter, the following definitions apply to this Rule:

- (1) "Remounted" means a ground ambulance patient compartment module that has been removed from its original chassis and mounted onto a different chassis.
- (2) "Refurbished" means upgrading or repairing an existing ground ambulance patient care module

or chassis that may not involve replacement of the chassis.

(b) Ground ambulances as defined in Rule .0102 of this Subchapter manufactured after July 1, 2018, based and operated in North Carolina shall meet one of the following manufacturing standards:

- (1) the Commission on Accreditation of Ambulance Services (CAAS) "Ground Vehicle Standard for Ambulances" (GVS - v.1.0), incorporated herein by reference including all subsequent amendments and editions. This document is available online at no cost at [www.groundvehiclestandard.org](http://www.groundvehiclestandard.org); or
- (2) the National Fire Protection Association (NFPA) 1917-2016 "Standard for Automotive Ambulances," incorporated herein by reference including all subsequent amendments and editions. This document is available for purchase online at [www.nfpa.org](http://www.nfpa.org) for a cost of fifty-two dollars (\$52.00).

(c) The following are exempt from the criteria set forth in Paragraph (b) of this Rule:

- (1) ambulances owned and operated by an agency of the United States government;
- (2) ambulances manufactured prior to July 1, 2018;
- (3) convalescent ambulances as defined in Rule .0102 of this Subchapter;
- (4) remounted and refurbished ambulances; and
- (5) Medical Ambulance/Evacuation/Bus as set forth in Rule .0217 of this Section.

(d) Effective July 1, 2018, the National Highway Traffic Safety Administration (NHTSA) KKK-A-1822F- Ambulance Manufacturing Standard will no longer meet the minimum manufacturing standard for new ambulances as set forth in Paragraph (b) of the Rule.

(e) Ground ambulances that do not meet the criteria set forth in this Rule shall be ineligible for permitting as set forth in Rule .0211 of this Section.

Authority G.S. 131E-156; 131E-157; 143-508(d)(8).

## SECTION .0400 - MEDICAL OVERSIGHT

### 10A NCAC 13P .0410 COMPONENTS OF MEDICAL OVERSIGHT FOR AIR MEDICAL PROGRAMS

(a) In addition to the terms defined in Rule .0102 of this Subchapter, the following definition applies to this Rule, a "Specialized Ambulance Protocol Summary (SAPS) form" means a document completed by the Medical Director of the Air Medical Program that contains a listing of all medications, equipment, and supplies.

(b) Licensed EMS providers seeking to offer rotary-wing or fixed-wing air medical program services within North Carolina shall make application and receive approval from the OEMS prior to beginning operation.

(c) Licensed EMS providers seeking to offer multiple air medical programs under separate medical oversight processes as set forth in Paragraph (d) of this Rule shall make application for each



program and receive approval from the OEMS as set forth in Paragraph (b) of this Rule.

(d) Each Air Medical Program providing services within North Carolina shall meet the following requirements for the provision of medical oversight:

- (1) a Medical Director as set forth in Rules .0402 and .0404 of this Section;
- (2) treatment protocols approved by the OEMS, to be utilized by the provider as required by Rule .0406 of this Section;
- (3) a peer review committee as required by Rule .0409 of this Section;
- (4) notify all North Carolina EMS Systems where services will be provided to enable each EMS System to include the provider in their EMS System plan, as set forth in Rule .0201(a)(11) of this Subchapter;
- (5) permit inspections of all aircraft used within North Carolina as set forth in Rule .0209 of this Subchapter including the supplemental information contained on the program's SAPS form;
- (6) populate and maintain a current roster in the North Carolina Credentialing Information System database for all air medical crew members, Medical Directors, and staff identified by the program to serve as primary and secondary administrative contacts;
- (7) all medical crew members operating in North Carolina shall maintain a current and active North Carolina license or credential in accordance with the rules and regulations of the appropriate licensing or credentialing body. Any medical crew member suspended by the Department shall be barred from patient contact when operating in North Carolina until such time as the case involving the medical crew member has been adjudicated or resolved;
- (8) continued membership and active participation in each Trauma RAC containing the majority of hospitals where the program transports patients for admission;
- (9) submit patient care data into the PreHospital Medical Information System (PreMIS) for all interstate and intrastate transports as set forth in Rule .0204(b)(6) of this Subchapter;
- (10) provide information regarding procedures performed during transport within North Carolina to OEMS to allow review by the North Carolina OEMS Medical Director;
- (11) submit peer review materials to the receiving hospital's peer review committee for each patient transported for admission; and
- (12) a method providing for the organized and coordinated dispatch of resources between air medical programs to enhance scene safety, ensure only the number of air medical resources needed respond to the incident location are

provided, and arrange for the receiving hospital to prepare for the incoming patient.

(e) In addition to the requirements set forth in Paragraph (d) of this Rule, Air Medical Program whose base of operation is outside of North Carolina who operate fixed-wing or rotary-wing air medical programs within the State shall meet the following conditions for the provision of medical oversight:

- (1) submit to the OEMS all existing treatment protocols utilized by the program in the state that it is based for comparison with North Carolina standards as set forth in the "North Carolina College of Emergency Physicians: Medical Oversight and Data Collection" standards, and make any modifications identified by the OEMS to ensure compliance with the North Carolina standards as set forth in Subparagraph (d)(2) of this Rule;
- (2) permit inspections of all aircraft used within North Carolina as set forth in Subparagraph (b)(5) of this Rule, to be conducted at a location inside North Carolina at a time mutually agreed upon by the Department and the air medical program;
- (3) submit written notification to the Department within three business days of receiving notice of any arrests or regulatory investigations for the diversion of drugs or patient care issues involving a North Carolina credentialed or licensed medical crew member; and
- (4) any medical crew member suspended by the Department shall be barred from patient contact when operating in North Carolina until such time as the case involving the medical crew member has been adjudicated or resolved;

(d) Significant failure to comply with the criteria set forth in this Rule shall result in revocation of the Air Medical Program approval.

*Authority G.S. 131E-155.1; 131E-156; 131E-157(a); 131E-161; 143-508(d)(8).*

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## **TITLE 11 – DEPARTMENT OF INSURANCE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to amend the rule cited as 11 NCAC 06A .0802.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
*<http://www.ncdoi.com/LS/Rules.aspx>*

**Proposed Effective Date:** *October 1, 2017*

**Public Hearing:**

**Date:** *July 24, 2017*

**Time:** *10:00 a.m.*

**Location:** *1<sup>st</sup> Floor Hearing Room, Room 131 (Albemarle Building) located at 325 N. Salisbury Street, Raleigh, NC 27603*

**Reason for Proposed Action:** *This amendment is being proposed to increase the continuing education credit that an agent can receive for participation in an approved professional industry organization from the current 2 credits to 4 credits. In addition, to allow credit to be awarded for participation in a national industry association meetings.*

**Comments may be submitted to:** *Loretta Peace-Bunch, 1201 Mail Service Center, Raleigh, NC 27699-1201; phone (919) 807-6004; email [loretta.peace-bunch@ncdoi.gov](mailto:loretta.peace-bunch@ncdoi.gov)*

**Comment period ends:** *August 14, 2017*

**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 919-431-3000.

**Fiscal impact (check all that apply).**

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Substantial economic impact ( $\geq \$1,000,000$ )
- ☒ Approved by OSBM
- ☐ No fiscal note required by G.S. 150B-21.4

**CHAPTER 06 - AGENT SERVICES DIVISION**

**SUBCHAPTER 06A - AGENT SERVICES DIVISION**

**SECTION .0800 - CONTINUING EDUCATION**

**11 NCAC 06A .0802 LICENSEE REQUIREMENTS**

(a) Each person holding a life, accident and health or sickness, property, casualty, personal lines, or adjuster license shall obtain 24 ICECs during each biennial compliance period. Each person holding one or more life, accident and health or sickness, property, casualty, personal lines, variable life and variable annuity products or adjuster license shall complete an ethics course or courses within two years after January 1, 2008, and every biennial compliance period thereafter as defined in this Section. The course or courses shall comprise three ICECs.

(b) Each person holding one or more property, personal lines, or adjuster license, shall complete a continuing education course or courses on flood insurance and the National Flood Insurance Program, or any successor programs, within the first biennial

compliance period after January 1, 2008, and every other biennial compliance period thereafter. The course or courses shall comprise three ICECs.

(c) Each licensee shall, before the end of that licensee's biennial compliance year, furnish evidence as set forth in this Section that the continuing education requirements have been satisfied.

(d) An instructor shall receive the maximum ICECs awarded to a student for the course.

(e) Licensees shall not receive ICECs for the same course more often than one time in any biennial compliance period.

(f) Licensees shall receive ICECs for a course only for the biennial compliance period in which the course is completed. Any course requiring an examination shall not be considered completed until the licensee passes the examination.

(g) Licensees shall maintain records of all ICECs for five years after obtaining those ICECs, which records shall be available for inspection by the Commissioner.

(h) Nonresident licensees who meet continuing education requirements in their home states meet the continuing education requirements of this Section. Nonresident adjusters who qualify for licensure by passing the North Carolina adjuster examination pursuant to G.S. 58-33-30(h)(2)a shall meet the same continuing education requirements as a resident adjuster including mandatory flood and ethics courses. Nonresident adjusters who qualify for licensure by passing an adjuster examination in another state pursuant to G.S. 58-33-30(h)(2)b and are in good standing in that state shall be credited with having met the same continuing education requirements as resident adjusters, including mandatory flood and ethics courses.

(i) Only a licensed insurance producer who is unable to comply with continuing education requirements due to military service, or long-term medical disability may request a waiver for continuing education requirements. A long-term medical disability means that it is certified on an annual basis by an attending physician to the licensee. The Commissioner shall grant an exemption from Continuing Education requirements for up to one year if the producer submits the following:

- (1) ~~Deployment~~ deployment orders from the United States Department of Defense; or
- (2) ~~A~~ a notarized statement from a licensed physician stating the producer is unable to do the work he is licensed to do.

(j) A licensee who was granted an exemption from the requirements of this Section prior to October 1, 2010 continues to be exempt from continuing education requirements for as long as the licensee certifies to the Commissioner that he:

- (1) is age 65 or older;
- (2) has been continuously licensed in the line of insurance for at least 25 years; and
- (3) either:
  - (A) holds a professional designation specified in 11 NCAC 06A .0803; or
  - (B) certifies to the Commissioner annually that the licensee is an inactive agent who neither solicits applications for insurance nor takes part in the day to day operation of an agency.

(k) Courses completed before the issue date of a new license do not meet the requirements of this Section for that new license.

(l) No credit shall be given for courses taken before they have been approved by the Commissioner.

(m) Each person with an even numbered birth year shall meet continuing education requirements in an even numbered compliance year. Each person with an odd numbered birth year shall meet continuing education requirements in an odd numbered compliance year. The licensee shall complete 24 hours of continuing education by the last day of the licensee's birth month in the compliance year.

(n) An existing licensee requiring continuing education is an individual who holds any of the following licenses on or before December 31, 2007: life and health, property and liability, personal lines, or adjuster. The licensee's birth year determines if an individual must satisfy continuing education requirements in an even-numbered or odd-numbered year. (Example: 1960 is an even-numbered year; 1961 is an odd-numbered year.) The

licensee's birth month determines the month that continuing education is due. (Example: An individual born in October would need to complete 24 hours of continuing education by the end of October in the licensee's compliance year.) The number of ICECs required by this Rule is prorated based on one ICEC per month, up to 24 months. This conversion shall be completed within four years. (Example: An individual with a birth date of February 16, 1960, would have the following two compliance periods during the continuing education conversion: 1st – two ICECs by the end of February 2008; the 2nd – 24 ICECs by the end of February 2010. An individual with a birth date of April 4, 1957, would have the following two compliance periods during the continuing education conversion: 1st – 16 ICECs by the end of April 2009; the 2nd – 24 ICECs by the end of April 2011.) The chart below reflects the number of hours an existing licensee requiring continuing education must have during the four-year conversion.

Compliance Year	EXISTING LICENSEE MONTH OF BIRTH EVEN/ODD YEAR OF BIRTH																							
	JAN		FEB		MAR		APR		MAY		JUN		JUL		AUG		SEPT		OCT		NOV		DEC	
	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd
	2008																							
	1		2		3		4		5		6		7		8		9		10		11		12	
2009		13		14		15		16		17		18		19		20		21		22		23		24
2010	24		24		24		24		24		24		24		24		24		24		24		24	
2011		24		24		24		24		24		24		24		24		24		24		24		24

(o) A new licensee requiring continuing education is an individual who is issued any of the following licenses on or after January 1, 2008: life, accident and health or sickness, property, casualty, personal lines or adjuster. The licensee's birth year determines if an individual must satisfy continuing education requirements in an even-numbered or odd-numbered year. (Example: 1960 is an even-numbered year; 1961 is an odd-numbered year.) The licensee's birth month determines the month that continuing education is due. (Examples: An individual born

in October would need to complete 24 hours of continuing education by the end of October in the licensee's compliance year. An individual with a birth date of December 1, 1960, licensed in 2008, is required to meet 24 hours of continuing education by December 31, 2010. An individual with a birth date of October 1, 1957, licensed in 2008, is required to meet 24 hours of continuing education by October 31, 2011.) The chart below shows the first deadline by which a new licensee would be required to complete 24 hours of continuing education.

License Issue Year	NEW LICENSEE MONTH OF BIRTH EVEN/ODD YEAR OF BIRTH																							
	JAN		FEB		MAR		APR		MAY		JUN		JUL		AUG		SEPT		OCT		NOV		DEC	
	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd	even	odd
2008	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011	2010	2011
2009	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011
2010	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013
2011	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013	2014	2013

(p) A member of a professional insurance association may receive no more than ~~two~~ **four** ICECs during the biennial compliance period based solely on membership in the association. The professional insurance association shall be approved as a continuing education provider, shall have been in existence for at least five years, and shall have been formed for purposes other than providing continuing education. The professional insurance association shall:

- (1) ~~Provide~~ provide the Commissioner or the Administrator with the association's Articles of Incorporation on file with the N.C. Secretary of State;
- (2) ~~Certify~~ certify to the Commissioner or Administrator that the licensee's membership is active during the biennial compliance period;
- (3) ~~Certify~~ certify to the Commissioner or Administrator that the licensee attended 50 percent of the regular meetings;
- (4) ~~Certify~~ certify to the Commissioner or Administrator that the licensee attended a statewide or intrastate regional educational meeting on an annual basis, where the regional meeting covered an area of at least 25 counties of the State; ~~and~~
- (5) certify to the Commissioner or Administrator that the licensee attended a national meeting on an annual basis (i.e., National Convention, Legislative "Day on the Hill" in Washington, DC, or other qualifying national event.); and
- ~~(5)(6)~~ Pay ~~pay~~ the one dollar (\$1.00) per ICEC to the Commissioner or Administrator.

Authority G.S. 58-2-40; 58-2-185; 58-2-195; 58-33-130; 58-33-133.

## TITLE 12 - DEPARTMENT OF JUSTICE

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to amend the rules cited as 12 NCAC 09A .0206; 09B .0101, .0104, .0205, .0209, .0301, .0302, .0410; 09C .0306; 09E .0106; 09G .0206, .0313, .0414 and repeal the rule cited as 12 NCAC 09C .0210.

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://ncdoj.gov/getdoc/9257bcd6-5d7a-47b4-bfa9-3e2d14c80de7/Public-hearing-8-16-17.aspx>

**Proposed Effective Date:** October 1, 2017

**Public Hearing:**

**Date:** August 16, 2017

**Time:** 10:30 a.m.

**Location:** Wake Technical Community College-Public Safety Training Center, 321 Chapanoke Rd., Raleigh, NC 27603

**Reason for Proposed Action:** The repeal of 12 NCAC 09C .0210 due to the ambiguity regarding intended course accreditation (Commission or Third-party vendors). 12 NCAC 09C .0306 Lateral Transfer of Law Enforcement Officers to provide full time certified employed officers a 60-day waiver for specified screenings to expedite the hiring process. The proposed change impacted 12 NCAC 09A .0206; 12 NCAC 09B .0101; 12 NCAC 09B .0104 therefore warrant minor language change. 12 NCAC 09B .0205 Basic Law Enforcement Training modify to increase mental illness topic hours. Recommended General Instructor Training changes to reflect curriculum revisions 12 NCAC 09B .0209 Criminal Justice Instructor Training; 12 NCAC 09B .0410 Criminal Justice Instructor Training Course; 12 NCAC 09G .0313 Corrections Instructors; Training Course; 12 NCAC 09G .0414 Instructor Training. 12 NCAC 09E .0106 Annual In-Service Firearms Qualifications Specifications to add day and night firearms qualifications for all weapons. To provide consistent language in both 12 NCAC 09G .0206 Moral Character and 12 NCAC 09B .0101 Minimum Standards for Criminal Justice Officers

**Comments may be submitted to:** Charminique Williams, P.O. Drawer 149, Raleigh, NC 27602; phone (919) 779-8206; fax (919) 779-8210; email [cdwilliams@ncdoj.gov](mailto:cdwilliams@ncdoj.gov)

**Comment period ends:** August 16, 2017

**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 919-431-3000.

**Fiscal impact (check all that apply).**

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Substantial economic impact (≥\$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

**CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS**

**SUBCHAPTER 09A - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION**

**SECTION .0200 - ENFORCEMENT OF RULES**

**12 NCAC 09A .0206 SUMMARY SUSPENSIONS**

(a) The Commission, by and through the Probable Cause Committee, may summarily suspend the certification of a criminal justice officer or instructor before the commencement of proceedings for suspension or revocation of the certification when the public health, safety, or welfare requires action pursuant to G.S. 150B-3. The Commission has determined that the following conditions specifically affect the public health, safety, or welfare and therefore it, by and through the Probable Cause Committee, may utilize summary suspension when:

- (1) the person has committed or been convicted of a violation of the criminal code that would require a permanent revocation or denial of certification;
- (2) the certified officer fails to satisfactorily complete the in-service training requirements as prescribed in 12 NCAC 09E; or

- (3) the certified officer has produced a positive result on a urinalysis test, conducted in accordance with 12 NCAC 09B .0101(5).

(b) For the purpose of considering a summary suspension of certification, the Probable Cause Committee may meet upon notice given by mail, telephone, or other means not less than 48 hours in advance of the meeting.

(c) A summary suspension shall be effective on the date specified in the order of summary suspension or on service of the certified copy of the order at the last known address of the person, whichever is later. The summary suspension shall remain effective during the proceedings.

(d) The Director, upon receipt of information showing the existence of a basis for summary suspension provided for in Subparagraph (a)(1), (2), or (3) of this Rule, shall coordinate the meeting described in Paragraph (b) of this Rule. Any affected person shall be notified, if feasible, that the person may submit any pertinent matters to the Probable Cause Committee for its consideration before the Committee acts on the summary suspension issue. No person shall be allowed more than 48 hours to submit information to the Probable Cause Committee.

(e) Upon verbal notification by the Director that the certification of an officer or instructor is being summarily suspended by written order, the Department Head of the Criminal Justice Agency or the executive officer of the institution shall take such steps as are necessary to ensure that the officer or instructor does not perform duties requiring certification by the Commission.

(f) The Commission, by and through the Director, upon determining that a Commission-certified Concealed Carry Handgun Instructor has conducted a concealed carry handgun training course as mandated by G.S. 14-415(a)(4) that is not in compliance with 12 NCAC 09F .0102 and negatively affects the public safety and welfare may summarily suspend the instructor's Concealed Carry Handgun Instructor certification until such time as the training course has been brought into compliance or reported to the Probable Cause Committee for action. For each instance the Director shall:

- (1) summarily suspend the Concealed Carry Handgun Instructor certification, prohibiting him or her from delivering concealed carry handgun training until the Director determines the training program is brought into compliance with 12 NCAC 09F .0102 and 12 NCAC 09F .0105; of this Chapter; and
- (2) inform the instructor that he or she may appeal the Director's suspension by requesting, in writing, a formal hearing before the Probable Cause Committee at the next scheduled Commission meeting.

(g) The Commission, by and through the Director, upon determining that a criminal justice officer who was issued a waiver of the requirements of 12 NCAC 09C .0306 has not met those requirements within 60-days of being awarded general certification by the Commission, shall summarily suspend the officer's certification until such time the officer meets the requirements of 12 NCAC 09C .0306.

*Authority G.S. 17C-6; 17C-10; 150B-3.*

**SUBCHAPTER 09B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT; EDUCATION; AND TRAINING**

**SECTION .0100 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT**

**12 NCAC 09B .0101 MINIMUM STANDARDS FOR CRIMINAL JUSTICE OFFICERS**

Every criminal justice officer employed by an agency in North Carolina shall:

- (1) be a citizen of the United States;
- (2) be at least 20 years of age;
- (3) be of good moral character pursuant to G.S. 17C-10 and as ~~determined by a thorough background investigation; evidenced by the following:~~
  - (a) not having been convicted of a felony;
  - (b) not having been convicted of a misdemeanor as defined in 12 NCAC 09B .0111(1) for five years or the completion of any corrections supervision imposed by the courts whichever is later;
  - (c) not having been convicted of an offense that, under 18 U.S.C. 922 (1996), which is hereby incorporated by reference and all subsequent amendments (<http://www.gpo.gov/fdsys/pkg/USCO-DE-2011-title18-part1-chap44-sec922.pdf>), would prohibit the possession of a firearm or ammunition;
  - (d) having submitted to and produced a negative result on a drug test within 60 days of employment or any in-service drug screening required by the appointing agency that meets the certification standards of the Department of Health and Human Services for Federal Workplace Drug Testing Programs. A list of certified drug testing labs that meet this requirement may be obtained, at no cost, at [http://workplace.samhsa.gov/DrugTesting/Level\\_1\\_Pages/CertifiedLabs.html](http://workplace.samhsa.gov/DrugTesting/Level_1_Pages/CertifiedLabs.html);
  - (e) submitting to a background investigation consisting of the verification of age and education; and a criminal history check of local, state, and national files;
  - (f) being truthful in providing information to the appointing agency and to the Standards Division for the purpose of obtaining probationary or general certification;
  - (g) not having pending or outstanding felony charges which, if convicted of, would disqualify the applicant from holding such certification, pursuant to G.S. 17C-13; and

(h) not engage in any conduct that brings into question the truthfulness or credibility of the officer, reflects poorly on the officer's profession, or conduct that involved "moral turpitude." "Moral Turpitude" is conduct that is contrary to justice, honesty, or morality. This conduct may include conduct as defined in: re Willis, 299 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (1975); in re State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); in re Legg, 325 N.C. 658, 386 S.E. 2d 174(1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); in re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and their progeny.

- (4) have been fingerprinted and a search made of local, state, and national files to disclose any criminal record;
- (5) have been examined and certified by a licensed physician or surgeon to meet physical requirements necessary to properly fulfill the officer's particular responsibilities and shall have produced a negative result on a drug screen administered according to the following specifications:
  - (a) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other reliable initial and confirmatory tests as may, from time to time, be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs;
  - (b) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen;
  - (c) the drug screen shall test for the presence of at least cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites;
  - (d) the test threshold values established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs, as found in 59 F.R. 29916(1994), are hereby incorporated by reference, and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6;
  - (e) the test conducted shall be not more than 60 days old, calculated from the

- time when the laboratory reports the results to the date of employment;
- (f) the laboratory conducting the test must be certified for federal workplace drug testing programs, and must adhere to applicable federal rules, regulations and guidelines pertaining to the handling, testing, storage and preservation of samples;
- (6) have been administered a psychological screening examination by a clinical psychologist or psychiatrist licensed to practice in North Carolina or by a clinical psychologist or psychiatrist authorized to practice in accordance with the rules and regulations of the United States Armed Forces within one year prior to employment by the employing agency to determine the officer's mental and emotional suitability to properly fulfill the responsibilities of the position;
- (7) have been interviewed personally by the Department head or his representative or representatives, to determine such things as the applicant's appearance, demeanor, attitude, and ability to communicate;
- (8) notify the Standards Division of all criminal offenses which the officer is arrested for or charged with, pleads no contest to, pleads guilty to or is found guilty ~~of~~ of as well as Domestic Violence Orders (50B) which are issued by a judicial official. This shall include all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under The Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for purposes of this Subparagraph, as an offense where the maximum punishment allowable by law is 60 days or less. Other offenses under Chapter 20 (Motor Vehicles) of the General Statutes of North Carolina or similar laws of other jurisdictions which shall be reported to the Standards Division expressly include G.S. 20-139 (persons under influence of drugs). G.S. 20-28(b)(driving while license permanently revoked or permanently suspended) and G.S. 20-166 (duty to stop in event of accident). The notifications required under this Subparagraph must be in writing, must specify the nature of the offense, the court in which the case was handled, the date of the arrest or criminal charge, the final disposition, and the date thereof. The notifications required under this Subparagraph must be received by the Standards Division within 30 days of the date of arrest or charge and case disposition ~~the case was disposed of in court.~~ The requirements of this Subparagraph shall be applicable at all times during which the officer is certified by the Commission and shall also apply to all

applications for certification. Officers required to notify the Standards Division under this Subparagraph shall also make the same notification to their employing or appointing executive officer within 20 days of the date the case was disposed of in court. The executive officer, provided he has knowledge of the officer's arrest(s) or criminal charge(s) and final disposition(s), shall also notify the Standards Division of all arrests or criminal charges and final dispositions within 30 days of the date the case was disposed of in court. Receipt by the Standards Division of a single notification, from either the officer or the executive officer, is sufficient notice for compliance with this Subparagraph.

*Authority G.S. 17C-6; 17C-10.*

#### **12 NCAC 09B .0104 MEDICAL EXAMINATION**

(a) Each applicant for employment as a criminal justice officer shall complete the Commission's Medical History Statement Form within one year prior to employment by the employing agency and shall be examined by either a physician or surgeon licensed to practice medicine in North Carolina or by a physician or surgeon authorized to practice medicine in accordance with the rules and regulations of the United States Armed Forces to help determine one's fitness in carrying out the physical requirements of the criminal justice officer position.

(b) The examining physician shall record the results of the examination on the Commission's Medical Examination Report Form and shall include notation of any evidence of past or present defects, diseases, injuries, operations, or conditions of an abnormal or unusual nature.

(c) An applicant for employment as a law enforcement officer seeking general certification may not be employed or placed in a sworn law enforcement position prior to the date on which the employing agency receives the report of the results of the medical examination unless all of the following requirements are met:

- (1) The applicant has completed and signed the applicant's certificate (Section A) of the Commission's Report of Appointment, wherein the applicant's temporary employment and probationary law enforcement officer certification is acknowledged to be contingent on the completion of the drug screening reported to the Commission of the individual being issued general certification.
- (2) The requirements of this section shall be met within 60-days of the law enforcement officer being issued general certification.

*Authority G.S. 17C-6; 17C-10.*

#### **SECTION .0200 – MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOLS AND CRIMINAL JUSTICE TRAINING PROGRAMS OR COURSES OF INSTRUCTION**

*Note: The text in italics is pending review by the Rules Review Commission.*

**12 NCAC 09B .0205 BASIC LAW ENFORCEMENT TRAINING**

(a) The basic training course for law enforcement officers consists of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function in law enforcement.

(b) The course entitled "Basic Law Enforcement Training" shall consist of a minimum of ~~616~~ 632 hours of instruction and shall include the following identified topical areas and minimum instructional hours for each:

(1)	LEGAL UNIT	
	(A) Motor Vehicle Laws	20 Hours
	(B) Preparing for Court and Testifying in Court	12 Hours
	(C) Elements of Criminal Law	24 Hours
	(D) Juvenile Laws and Procedures	8 Hours
	(E) Arrest, Search and Seizure/Constitutional Law	28 Hours
	(F) Alcohol Beverage Control (ABC)Laws and Procedures	4 Hours
	UNIT TOTAL	96 Hours
(2)	PATROL DUTIES UNIT	
	(A) Techniques of Traffic Law Enforcement	24 Hours
	(B) Explosives and Hazardous Materials Emergencies	12 Hours
	(C) Traffic Crash Investigation	20 Hours
	(D) In-Custody Transportation	8 Hours
	(E) Crowd Management	12 Hours
	(F) Patrol Techniques	28 Hours
	(G) Law Enforcement Communication and Information Systems	8 Hours
	(H) Anti-Terrorism	4 Hours
	(I) Rapid Deployment	8 Hours
	UNIT TOTAL	124 Hours
(3)	LAW ENFORCEMENT COMMUNICATION UNIT	
	(A) Responding to Victims and the Public	10 Hours
	(B) Domestic Violence Response	12 Hours
	(C) Ethics for Professional Law Enforcement	4 Hours
	(D) Individuals with Mental Illness and Developmental Disabilities	<del>8</del> <u>24</u> Hours
	(E) Crime Prevention Techniques	6 Hours
	(F) Communication Skills for Law Enforcement Officers	8 Hours
	UNIT TOTAL	48 Hours
(4)	INVESTIGATION UNIT	
	(A) Fingerprinting and Photographing Arrestee	6 Hours
	(B) Field Note-taking and Report Writing	12 Hours
	(C) Criminal Investigation	34 Hours
	(D) <del>Interviews: Field and In-Custody</del> <u>Interviews</u>	16 Hours
	(E) Controlled Substances	12 Hours
	(F) Human Trafficking	2 Hours
	UNIT TOTAL	82 Hours
(5)	PRACTICAL APPLICATION UNIT	
	(A) First Responder	32 Hours
	(B) Firearms	48 Hours
	(C) Law Enforcement Driver Training	40 Hours
	(D) Physical Fitness (classroom instruction)	8 Hours
	(E) Fitness Assessment and Testing	12 Hours
	(F) Physical Exercise 1 hour daily, 3 days a week	34 Hours
	(G) Subject Control Arrest Techniques	40 Hours
	UNIT TOTAL	214 Hours
(6)	SHERIFF-SPECIFIC UNIT	
	(A) Civil Process	24 Hours
	(B) Sheriffs' Responsibilities: Detention Duties	4 Hours
	(C) Sheriffs' Responsibilities: Court Duties	6 Hours
	UNIT TOTAL	34 Hours
(7)	COURSE ORIENTATION	2 Hours
(8)	TESTING	16 Hours
	TOTAL COURSE HOURS	<del>616</del> <u>632</u> Hours



(c) The "Basic Law Enforcement Training Manual" published by the North Carolina Justice Academy shall be used as the curriculum for this training course. Copies of this publication may be inspected at the office of the agency:

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

and may be obtained at the cost of printing and postage from the North Carolina Justice Academy at the following address:

North Carolina Justice Academy  
Post Office Drawer 99  
Salemberg, North Carolina 28385

(d) The "Basic Law Enforcement Training Course Management Guide" published by the North Carolina Justice Academy shall be used by school directors in planning, implementing, and delivering basic training courses. Copies of this guide may be

obtained at the cost of printing and postage from the Justice Academy.

*Authority G.S. 17C-6; 17C-10.*

## **12 NCAC 09B .0209 CRIMINAL JUSTICE INSTRUCTOR TRAINING**

(a) The instructor training course required for general instructor certification shall consist of a minimum of ~~75~~ 78 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice instructor.

(c) Each instructor training course shall include the following identified topic areas and minimum instructional hours for each area:

(1)	Orientation/ <del>Self Assessment</del> and Pre-Test	3 Hours
(2)	<del>Curriculum Development: ISD Model</del> Instructional Systems Design (ISD)	<del>3</del> <u>6</u> Hours
(3)	Law Enforcement Instructor Liabilities and Legal Responsibilities	<del>2</del> <u>3</u> Hours
(4)	<del>Interpersonal Communication in Instruction</del> Instructional Leadership	4 Hours
(5)	Lesson Plan Preparation: Professional Resources	<del>2</del> <u>3</u> Hours
(6)	Lesson Plan <del>Preparation:</del> <u>Development:</u> Format and Objectives	<del>6</del> <u>4</u> Hours
(7)	<del>Teaching Adults</del> <u>Adult Learning</u>	4 Hours
(8)	<del>Principles of Instruction: Demonstration Methods and Practical Exercise</del> <u>Instructional Styles and Platform Skills</u>	<del>6</del> <u>4</u> Hours
(9)	<u>Classroom Management</u>	<u>4</u> Hours
(10)	<del>Methods and Strategies of Instruction</del> <u>Active Learning: Demonstration and Practical Exercises</u>	<del>4</del> <u>6</u> Hours
<del>(10)</del> (11)	<u>The Evaluation Process of Learning</u>	4 Hours
<del>(11)</del> (12)	<u>Principles of Instruction: Audio-Visual Aids</u>	<del>6</del> <u>4</u> Hours
<del>(12)</del> (13)	<u>Student 10-Minute 8-Minute</u> Talk and Video Critique	6 Hours
<del>(13)</del> (14)	Student Performance:	
	First 30-Minute Presentation	<del>6</del> <u>5</u> Hours
	Second 30-Minute Presentation	<del>6</del> <u>5</u> Hours
	Final <del>80-Minute</del> <u>70-Minute</u> Presentation and Review	12 Hours
<del>(14)</del> (15)	Course Closing	1 Hour

(d) The "Instructor Training" manual published by the North Carolina Justice Academy shall be the curriculum for instructor training courses. Copies of this publication may be inspected at the agency:

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

and may be purchased at the cost of printing and postage from the Academy at the following address:

North Carolina Justice Academy  
Post Office Drawer 99  
Salemberg, North Carolina 28385

*Authority G.S. 17C-6.*

## **SECTION .0300 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE INSTRUCTORS**

### **12 NCAC 09B .0301 CERTIFICATION OF INSTRUCTORS**

(a) Any person participating in a Commission-certified criminal justice training course or program as an instructor, teacher, professor, lecturer, or other participant making presentations to the class shall first be certified by the Commission as an instructor.

(b) The Commission shall certify instructors under the following categories: General Instructor Certification, Specialized Instructor Certification or Professional Lecturer Certification as outlined in Rules .0302, .0304 and 0306 of this Section. Instructor certification shall be granted on the basis of documented qualifications of experience, education, and training in accord with the requirements of this Section and reflected on the applicant's Request for Instructor Certification Form.

(c) In addition to all other requirements of this Section, each instructor certified by the Commission to teach in a Commission-certified course shall remain competent in his/her specialized areas. Such competence includes remaining current in the instructor's area of expertise, which shall be demonstrated by attending and successfully completing all instructor updates issued by the Commission.

(d) The Standards Division may notify an applicant for instructor certification or a certified instructor that a deficiency appears to exist and attempt, in an advisory capacity, to assist the person in correcting the deficiency.

(e) When any person certified as an instructor by the Commission is found to have knowingly and willfully violated any provision or requirement of the rules in this Subchapter, the Commission may take action to correct the violation and to ensure that the violation does not recur, including:

- (1) issuing an oral warning and request for compliance;
- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual; and
- (5) revoking the individual's certification.

(f) The Commission may deny, suspend, or revoke an instructor's certification when the Commission finds that the person:

- (1) has failed to meet and maintain any of the requirements for qualification;
- (2) has failed to remain knowledgeable in the person's areas of expertise;
- (3) has failed to deliver training in a manner consistent with the instructor lesson plans outlined in the "Basic Instructor Training Manual" as found in 12 NCAC 09B .0209;
- (4) has failed to follow specific guidelines outlined in the "Basic Law Enforcement Training Course Management Guide" as found in 12 NCAC 09B .0205;
- (5) has demonstrated in the delivery of commission-mandated training, unprofessional personal conduct, defined as an act that is: conduct for which no reasonable person should expect to receive prior warning; job-related conduct which constitutes a violation of State or federal law; conviction or commission of a criminal offense as set out in 12 NCAC 09A .0204; the willful violation of Rules of this Chapter; conduct that is detrimental to instruction in the Commission's mandated courses; the abuse of client(s), student(s) over whom the instructor has charge; or falsification of an instructor application or in other employment documentation;
- (6) has demonstrated instructional incompetence;
- (7) has knowingly and willfully obtained, or attempted to obtain instructor certification by deceit, fraud, or misrepresentation;

- (8) has failed to meet or maintain good moral character as defined in: re Willis, 299 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (9175); State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); in re Legg, 325 N.C. 658, 386 S.E. 2d 174(1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); in re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and their progeny, as required to effectively discharge the duties of a criminal justice instructor;

- (9) has failed to deliver training in a manner consistent with the Qualified Retired Law Enforcement Officers Firearms Qualification Certification Program as found in 12 NCAC 09H .0102; or

- (10) has knowingly and willfully aided or attempted to aid any person in obtaining qualification/certification under the Qualified Retired Law Enforcement Officers Firearms Qualification Certification Program by deceit, fraud or misrepresentation.

- (11) has committed or been convicted of an offense which could result in the [denial,] suspension or revocation of an officer's law enforcement certification pursuant to 12 NCAC 02A .0204 or 12 NCAC 09G .0504.

- (12) has knowingly made a material misrepresentation of any information required for certification or accreditation.

(g) When any person certified as a law enforcement officer by the North Carolina Criminal Justice Education and Training Standards Commission (Commission), the North Carolina Sheriffs Education and Training Standards Commission (Sheriffs' Commission), or the North Carolina Department of Insurance, Office of State Fire Marshal, Fire and Rescue Commission (Fire Commission) has his or her law enforcement officer or fire and rescue certification suspended or revoked by their respective Commission, shall report to Criminal Justice Standards within 30-days. They shall also have their General Instructor certification (if applicable) similarly and automatically suspended/revoked for the same time period as their respective Commission certification.

- (1) This suspension/revocation of the General Instructor certification shall also include suspension/revocation to any Commission recognized Specialized or additional Instructor certification as outlined in 12 NCAC 09B .0304 Specialized Instructor Certification.

- (2) If the term of suspension/revocation exceeds the expiration date of the Instructor's initial certification expiration date, they shall forfeit their certification(s) as a General Instructor/Specialized Instructor(s) and shall be required to obtain certification pursuant to all requirements as established in 12 NCAC 09B .0302 before any instruction may be delivered within any commission approved/mandated training, including the completion of a

- (3) subsequent General Instructor training course in it's entirety.  
If the term of suspension/revocation does not exceed the expiration date of the Instructor's initial certification expiration date, they shall be reinstated as a General Instructor only upon reinstatement of their law enforcement officer certification by the Commission. The terms of renewal for the existing General Instructor/Specialized Instructor certification(s) shall remain subject to all renewal requirements pursuant to 12 NCAC 09B .0303(c) by the next immediate expiration date.

*Authority G.S. 17C-6.*

### **12 NCAC 09B .0302 GENERAL INSTRUCTOR CERTIFICATION**

(a) General Instructor Certification issued after December 31, 1984, shall be limited to those topics that are not expressly incorporated under the Specialized Instructor Certification category. Individuals certified under the general instructor category shall not teach any of the subjects specified in Rule .0304 of this Subchapter, entitled "Specialized Instructor Certification." To qualify for issuance of General Instructor Certification, an applicant shall demonstrate a combination of education and experience in criminal justice and proficiency in the instructional process by meeting the following requirements:

- (1) Present documentary evidence showing that the applicant:
  - (A) is a high school, college or university graduate, or has received a high school equivalency credential as recognized by the issuing state; and
  - (B) has acquired four years of practical experience as a Criminal Justice Officer, an administrator or specialist in a field directly related to the criminal justice system, or as an employee of a Criminal Justice Agency.
- (2) Present evidence showing completion of a Commission-accredited instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise; and
- (3) Achieve a passing score on the comprehensive written examination administered by the Commission, as required by Rule .0413(d) of this Subchapter.

(b) Applications for General Instructor Certification shall be submitted to the Standards Division within 60 days of the date the applicant passed the state comprehensive examination administered at the conclusion of the Commission-accredited instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an

international model with applications in education, military training, and private enterprise.

(c) Persons having completed a Commission-accredited instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, and not having made application within 60 days of completion of the course shall complete a subsequent Commission-accredited instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, in its entirety.

(d) Applicants for Speed Measuring Instrument Instructor courses shall possess probationary or General Instructor Certification.

*Authority G.S. 17C-6.*

### **SECTION .0400 - MINIMUM STANDARDS FOR COMPLETION OF TRAINING**

#### **12 NCAC 09B .0410 CRIMINAL JUSTICE INSTRUCTOR TRAINING COURSE**

(a) To acquire successful completion of the "Criminal Justice Instructor Training Course" the trainee shall:

- (1) satisfactorily complete all of the required coursework, specifically including each of the introductory trainee presentations with video taping, playback, and critique as specified in the ~~"Basic Instructor Training Manual"~~ "Instructor Training Manual" as published by the North Carolina Justice Academy. All trainee presentations must have met the criteria and conditions specified in the course orientation of the ~~"Basic Instructor Training Manual;"~~ and
- (2) attain the minimum score on each performance area as specified in the course abstract of the ~~"Basic Instructor Manual"~~ "Instructor Training Manual" for the final written lesson plan and final ~~80-minute~~ 70-minute presentation; and, presentation.
- (3) ~~achieve a score of 75 percent correct answers on the Commission administered comprehensive written examination.~~

(b) Should a trainee fail to meet the minimum criteria on the final lesson plan or the final ~~80-minute~~ 70-minute presentation, he/she shall be authorized one opportunity to correct either of these deficiencies by the end of the original two-week course.

*Authority G.S. 17C-6; 17C-10.*

### **SUBCHAPTER 09C - ADMINISTRATION OF CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS**

#### **SECTION .0200 - FORMS**

**12 NCAC 09C .0210 REQUEST FOR TRAINING COURSE ACCREDITATION**

~~The Request for Training Course Accreditation, is used to obtain accreditation for a school's particular offering of a criminal justice training course. It requests information regarding the administration of the course, the particular facilities to be used, and the proposed curriculum of the course.~~

*Authority G.S. 17C-6; 150B-11.*

**SECTION .0300 - CERTIFICATION OF CRIMINAL JUSTICE OFFICERS**

**12 NCAC 09C .0306 LATERAL TRANSFER OF LAW ENFORCEMENT OFFICERS**

(a) A law enforcement officer with general certification from either the Criminal Justice Education and Training Standards Commission or the Sheriffs' Education and Training Standards Commission may transfer from one law enforcement agency to another law enforcement agency with less than a 12 month break in law enforcement service. Prior to employing the officer, the employing agency shall:

- (1) verify the certification of the officer with the Criminal Justice Standards Division or the Sheriffs' Standards Division.
- (2) submit a new fingerprint check to the North Carolina State Bureau of Investigation, in compliance with the requirements set forth in 12 NCAC 09B .0103(a) and (b), in the same manner as prescribed for non-certified new applicants. No certification shall be transferred if the holder has been convicted since initial certification of any offense for which revocation or suspension of certification is authorized.
- (3) advise the officer that he will be serving under a probationary appointment with the agency for one year.
- (4) notify the Commission, by submitting a Report of Appointment that the officer is being employed and stating the date on which employment will commence.

(b) Prior to transfer of certification, the law enforcement officer shall:

- (1) complete a Medical History Statement Form within one year prior to the transfer to the employing agency;
- (2) submit to examination by a physician licensed to practice medicine in North Carolina in the same manner prescribed for non-certified new applicants in 12 NCAC 09B .0104 within one year prior to the transfer to the employing agency;
- (3) submit results of the physical examination to the employing agency for placement in the officer's permanent personnel file;
- (4) produce a negative result on a drug screen administered according to the specifications outlined in 12 NCAC 09B .0101(5); and

(5) either:

- (A) submit a copy of the Commission's annual in-service training report form to the employing agency for placement in the officer's permanent personnel file when the duty and off duty weapon(s) remain the same as those previously used to qualify. Such in-service training compliance must have occurred within the 12 month period preceding transfer; or
- (B) satisfactorily complete the employing agency's in-service firearms training program as prescribed in 12 NCAC 09E .0105 and .0106.

(c) Officers previously certified who were not previously required to meet the educational or basic training requirements are not required to meet such requirements when laterally transferring to another agency with less than a 12-month break in law enforcement service.

(d) For currently certified full time officers with no break in service, upon written request from the department head of the agency, the Division may waive for a period of no more than 60-days from the receipt of the Report of Appointment by the Standards Division the requirements of Subparagraphs of (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) of this Rule. The Report of Appointment Form is located on the agency's website: [http://www.ncdoj.gov/getdoc/64d263a3-a598-4c45-9541-04ef088cf288/F-5A-\(DJJD\)--6-11.aspx](http://www.ncdoj.gov/getdoc/64d263a3-a598-4c45-9541-04ef088cf288/F-5A-(DJJD)--6-11.aspx).

*Authority G.S. 17C-6; 17C-10.*

**SUBCHAPTER 09E - IN-SERVICE TRAINING PROGRAMS**

**SECTION .0100 - LAW ENFORCEMENT OFFICER'S IN-SERVICE TRAINING PROGRAM**

**12 NCAC 09E .0106 ANNUAL IN-SERVICE FIREARMS QUALIFICATION SPECIFICATIONS**

(a) All certified law enforcement officers shall qualify for both day and night use with their individual and department-approved service handgun(s) at least once each calendar year. For the purpose of this specification, service handgun shall include any semi-automatic pistol or revolver. In addition to the requirements specified in Rule 09E .0105 of this Subchapter, the course of fire shall not be less stringent than the "Basic Training - Law Enforcement Officers" course requirements for firearms qualification.

(b) All certified law enforcement officers who are issued or authorized to use a shotgun, rifle or automatic weapon shall qualify with each weapon respectively for both day and night use at least once each calendar year.

(c) The qualifications required by Paragraphs (a) and (b) of this Rule shall be completed with duty equipment and duty ammunition or ballistic equivalent ammunition to include lead-free ammunition that meets the same point of aim, point of impact, and felt recoil of the duty ammunition, for all weapons.

(d) All certified law enforcement officers who are authorized to carry an off-duty handgun(s) shall qualify with each such handgun consistent with the specifications as outlined in Rules .0105(1) and .0106(a) and (g) of this Section.

(e) To satisfy the training requirements for all in-service firearms qualifications, an officer shall attain at least 70 percent accuracy with each weapon.

(f) The qualifications required by Paragraphs (a) and (b) of this Rule must be achieved at least once in a single day in no more than three attempts in a single day for each course of fire and for each weapon for which qualification is required. Individuals not qualifying in a single day for each course of fire or for a certain weapon for which qualification is required shall be deemed as having failed and 12 NCAC 09E .0103(4) and (5) shall apply.

(g) The In-Service Firearms Qualification Manual as published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms qualification. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
~~114 West Edenton Street~~  
~~Old Education Building~~  
1700 Tryon Park Drive  
~~Post Office Drawer 149~~

Raleigh, North Carolina ~~27602~~ 27610

and may be viewed and downloaded at no cost from the Academy's website at the following address:

<http://www.jus.state.nc.us/NCJA>

*Authority G.S. 17C-6; 17C-10.*

## **SUBCHAPTER 09G - STANDARDS FOR CORRECTIONS EMPLOYMENT, TRAINING, AND CERTIFICATION**

### **SECTION .0200 - MINIMUM STANDARDS FOR CERTIFICATION OF CORRECTIONAL OFFICERS, PROBATION/PAROLE OFFICERS, AND PROBATION/PAROLE OFFICERS-SURVEILLANCE**

#### **12 NCAC 09G .0206 MORAL CHARACTER**

Every person employed as a correctional officer or probation/parole officer by the Department of Public Safety, Division of Adult Correction and Juvenile Justice shall demonstrate good moral character as evidenced by the following:

- (1) not having been convicted of a felony;
- (2) not having been convicted of a misdemeanor as defined in 12 NCAC 09G .0102(10) for three years or the completion of any corrections supervision imposed by the courts whichever is later;
- (3) not having been convicted of an offense that, under 18 U.S.C. 922 (1996), which is hereby incorporated by reference and all subsequent amendments  
(<http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18-part1-chap44-sec922.pdf>), would prohibit the possession of a firearm or ammunition;

- (4) having submitted to and produced a negative result on a drug test within 60 days of employment or any in-service drug screening required by the Department of Public Safety, Division of Adult Correction and Juvenile Justice that meets the certification standards of the Department of Health and Human Services for Federal Workplace Drug Testing Programs. A list of certified drug testing labs that meet this requirement may be obtained, at no cost, at [http://workplace.samhsa.gov/DrugTesting/Level\\_1\\_Pages/CertifiedLabs.html](http://workplace.samhsa.gov/DrugTesting/Level_1_Pages/CertifiedLabs.html).
- (5) submitting to a background investigation consisting of the following:
  - (a) verification of age;
  - (b) verification of education; and
  - (c) criminal history check of local, state, and national files;
- (6) being truthful in providing information to the Department of Public Safety, Division of Adult Correction and Juvenile Justice and to the Standards Division for the purpose of obtaining probationary or general certification;
- (7) not having pending or outstanding felony charges which, if convicted of, would disqualify the applicant from holding such certification, pursuant to G.S. 17C-13; and
- (8) not engage in any conduct that brings into question the truthfulness or credibility of the officer, reflects poorly on the officer's profession, or conduct that involved "moral turpitude." "Moral Turpitude" is conduct that is contrary to justice, honesty, or morality. This conduct may include conduct as defined in: re Willis, 299 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (1975); in re State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); in re Legg, 325 N.C. 658, 386 S.E. 2d 174(1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); in re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and their progeny.

*Authority G.S. 17C-6; 17C-10.*

### **SECTION .0300 - CERTIFICATION OF CORRECTIONAL OFFICERS, PROBATION/PAROLE OFFICERS, AND INSTRUCTORS**

#### **12 NCAC 09G .0313 CORRECTIONS INSTRUCTOR TRAINING COURSE**

(a) To successfully acquire Corrections Instructor Training the trainee shall:

- (1) satisfactorily complete all of the required course work, specifically including each of the trainee presentations with videotaping, playback, and critique as specified in the "Basic Instructor Training Manual" as published by the

North Carolina Justice Academy. All trainee presentations must have met the criteria and conditions specified in the course orientation of the "Basic Instructor Training Manual;"

*Authority G.S. 17C-6.*

**12 NCAC 09G .0414 INSTRUCTOR TRAINING**

(a) The instructor training course required for general instructor certification shall consist of a minimum of 78 hours of instruction presented during a continuous period of not more than two weeks.  
(b) Each instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice instructor.

(c) Each instructor training course shall include as a minimum the following identified topic ~~areas:~~ areas and minimum instructional hours for each area:

- (2) attain the minimum score on each performance area as specified in the course abstract of the "Basic Instructor Manual" for the final written lesson plan and final 80-minute presentation; and,
  - (3) achieve a score of 75 percent correct answers on the comprehensive written examination.
- (b) Should a trainee fail to meet the minimum criteria on the final lesson plan or the final ~~80-minute~~ 70-minute presentation, he/she shall be authorized one opportunity to correct either of these deficiencies by the end of the original two-week course.

(1)	Orientation and Pretest;	3 hours
(2)	<del>Curriculum Development: ISD Model;</del> <u>Instructional Systems Design (ISD);</u>	6 hours
(3)	<del>Civil Liability for Law Enforcement Trainers;</del> <u>Law Enforcement Instructor Liabilities and Legal Responsibilities;</u>	3 hours
(4)	<del>Interpersonal Communication in Instruction;</del> <u>Instructional Leadership</u>	4 hours
(5)	Lesson Plan Preparation: Professional Resources;	3 hours
(6)	Lesson Plan <del>Preparation:</del> <u>Development:</u> Format and Objectives;	4 hours
(7)	<del>Teaching Adults;</del> <u>Adult Learning;</u>	4 hours
(8)	<del>Principles of Instruction: Demonstration Methods and Practical Exercise;</del> <u>Instructional Style and Platform Skills;</u>	4 hours
(9)	<del>Methods and Strategies of Instruction;</del> <u>Classroom Management;</u>	4 hours
(10)	<u>Active Learning: Demonstration and Practical Exercises;</u>	6 hours
<del>(10)</del> (11)	<del>The Evaluation Process;</del> <u>Process of Learning;</u>	4 hours
<del>(11)</del> (12)	<del>Principles of Instruction: Audio-Visual Aids;</del>	4 hours
<del>(12)</del> (13)	<del>Student 10-Minute</del> <u>8-Minute</u> Talk and Video Critique; and	6 hours
<del>(13)</del> (14)	<del>Student Performance:</del>	
	First 30-Minute Presentation;	5 hours
	Second 30-Minute Presentation; and	5 hours
	Final <del>80-Minute</del> <u>70-Minute</u> <del>Presentation;</del> <u>Presentation and Review;</u>	12 hours
(15)	<u>Course Closing</u>	1 hour

(d) The ~~"Basic Instructor Training Manual"~~ "Instructor Training Manual" as published by the North Carolina Justice Academy is ~~to~~ shall be applied as the basic curriculum for ~~delivery of basic~~ instructor training courses. Copies of this publication may be inspected at the agency:

*Commission intends to amend the rules cited as 15A NCAC 02D .0103-.0105, readopt with substantive changes the rules cited as 15A NCAC 02D .0302, .0305-.0307, .0405, .1301-.1305, .2001, .2203 and readopt without substantive changes the rules cited as 15A NCAC 02D .0101, .0201, .0202, .0301, .0303, .0304, .0401, .0402, .0404, .0407-.0410, .2002-.2005, .2201, .2202, .2204 and .2205. Existing rules proposed for readoption without changes have been underlined.*

Criminal Justice Standards Division  
North Carolina Department of Justice  
1700 Tryon Park Drive Post Office Drawer 149  
Raleigh, North Carolina 27602  
and may be purchased at the cost of printing and postage from the North Carolina Justice Academy at the following address:  
North Carolina Justice Academy  
Post Office Drawer 99  
Salemberg, North Carolina 28385

**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:** January 1, 2018

*Authority G.S. 17C-6.*

**Public Hearing:**

**Date:** August 3, 2017

**Time:** 2:00 p.m.

**Location:** Pine and Fraser Fir Rooms, 4<sup>th</sup> Floor, Mecklenburg County Land Use and Environmental Services Agency Building, 2145 Suttle Avenue, Charlotte, NC 28208

**TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY**

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Environmental Management*

**Reason for Proposed Action:**

*Hearing 1: To receive comments on proposed amendments to Rule 15A NCAC 02D .0405, Ozone, to reflect changes to the national ambient air quality standards (NAAQS) for ozone. These proposed rule changes are necessary to comply with federal requirements. The rule is also proposed for readoption to meet the requirements of G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules.*

*The United States Environmental Protection Agency (USEPA) strengthened its NAAQS for ozone, also known as O<sub>3</sub>, on October 1, 2015 (80 FR 65291). These revisions are the result of USEPA's five-year periodic review of NAAQS as required by the Clean Air Act. USEPA revised the primary and secondary ozone standards from 0.075 ppm, set in 2008, to 0.070 ppm, while retaining the indicators (O<sub>3</sub>), forms (fourth-highest daily maximum, averaged across three consecutive years) and averaging times (eight hours).*

*Hearing 2: To receive comments on the amendment and proposed readoption of air quality rules in several sections in 15A NCAC 02D to meet the requirements of G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules.*

**Section .0100 - Definitions and References**

*The rules in Section .0100 include definitions and references that apply throughout Subchapter 02D unless specified otherwise in a particular rule. 15A NCAC 02D .0101 is proposed for readoption with amendments to update format of units and references and .0103, .0104, and .0105 for amendment to update agency name and addresses, include web addresses where referenced documents may be obtained, and update references to document costs.*

**Section .0200 - Air Pollution Sources**

*The rules in Section .0200 reflect the system used to classify air pollution sources of importance in establishing the air quality program and the agency authority to require registration of such sources. 15A NCAC 02D .0201-.0202 are proposed for readoption.*

**Section .0300 - Air Pollution Emergencies**

*The rules in Section .0300 address prevention of buildup of air contaminants during an air pollution episode in order to prevent a public health emergency. 15A NCAC 02D .0301 and .0303-.0304, are proposed for readoption with amendments to update format of references. 02D .0302 is proposed for readoption with amendments to update who proclaims air quality alerts and warnings and declarations of emergency at various pollutant levels requiring abatement actions to the Secretary's level with concurrence of the Governor, to remove obsolete pollutant levels triggering such proclamations or declarations and update format of units for consistency. 02D .0305, .0306, and .0307 are proposed for readoption with amendments to reference the open burning rule and eliminate redundant language in Paragraph (4).*

**Section .0400 - Ambient Air Quality Standards**

*The rules in Section .0400 contain the ambient air quality standards and associated monitoring methodologies for the state and reflect the National Ambient Air Quality Standards (NAAQS). 15A NCAC 02D .0401., .0409, and .0410 are proposed for readoption with amendments to update format of references and acronyms and .0402, .0404, .0407, and .0408 are proposed for readoption.*

**Section .1300 - Oxygenated Gasoline Standard**

*Section .1300 establishes requirements for use of gasoline with certain oxygen content in carbon monoxide (CO) nonattainment or maintenance areas. 15A NCAC 02D Section .1300 is proposed for repeal because the measures were part of a contingency plan for the CO NAAQS and the limited maintenance plan for CO has now expired.*

**Section .2000 - Transportation Conformity**

*Section .2000 reflects federally set requirements to assure conformity of federal, state, or local funded transportation projects and plans with plans for attainment and maintenance of NAAQS for areas designated nonattainment or maintenance. 15A NCAC 02D .2001-.2005 are proposed for readoption. 02D .2001 is proposed for readoption with amendments to remove obsolete references to affected areas based on current attainment status, update internal paragraph references, include clarifying reference to 40 CFR 93.119 regarding provisions for areas without motor vehicle emissions budgets, and clarify duration of applicability to maintenance areas. 02D .2002 and .2004 are proposed for readoption and .2003 and .2005 for readoption with updates to format of references.*

**Section .2200 - Special Orders**

*Section .2200 lays out procedures to be followed for establishing Special Orders by Consent to achieve compliance with air quality requirements in 15A NCAC 02D or 02Q consistent with the requirements of G.S. 143-215.110. 15A NCAC 02D .2201-.2202 and .2205 are proposed for readoption, .2203 is proposed for readoption with amendments to update the rule for consistency with the statutory language in G.S. 143-15.110(a1)(2) specifying online posting, and .2204 is proposed for readoption with amendments to update format of references.*

**Comments may be submitted to:** Joelle Burleson, 1641 Mail Service Center, Raleigh, NC 27699-1641; phone (919) 707-8720; fax (919) 707-8720; email [daq.publiccomments@ncdenr.gov](mailto:daq.publiccomments@ncdenr.gov) (Please type "08-03-2017 Hearings" in subject line)

**Comment period ends:** August 14, 2017

**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 919-431-3000.

**Fiscal impact (check all that apply).**

- ☒ **State funds affected**
- ☐ **Environmental permitting of DOT affected**
- ☐ **Analysis submitted to Board of Transportation**
- ☐ **Local funds affected**
- ☐ **Substantial economic impact (≥\$1,000,000)**
- ☒ **Approved by OSBM**
- ☐ **No fiscal note required by G.S. 150B-21.4**
- ☐ **No fiscal note required by G.S. 150B-21.3A(d)(2)**

**CHAPTER 02 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS**

**SECTION .0100 - DEFINITIONS AND REFERENCES**

**15A NCAC 02D .0101 DEFINITIONS**

The definition of any word or phrase used in Rules of this Subchapter is the same as given in Article 21, G.S. 143, as amended. The following words and phrases, which are not defined in the article, have the following meaning:

- (1) "Act" means The North Carolina Water and Air Resources of Article 21.
- (2) "Administrator" means, when it appears in any Code of Federal Regulation incorporated by reference in this Subchapter, the Director of the Division of Air Quality unless:
  - (a) a specific rule in this Subchapter specifies otherwise, or
  - (b) the U.S. Environmental Protection Agency in its delegation or approval states that a specific authority of the Administrator of the Environmental Protection Agency is not included in its delegation or approval.
- (3) "Air pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive substance or matter emitted into or otherwise entering the ambient air.
- (4) "Ambient air" means that portion of the atmosphere outside buildings or other enclosed structures, stacks, or ducts; and that surrounds human, animal or plant life, or property.

- (5) "Approved" means approved by the Director of the Division of Air Quality according to these Rules.
- (6) "Capture system" means the equipment (including hoods, ducts, fans, etc.) used to contain, capture, or transport a pollutant to a control device.
- (7) "CFR" means the Code of Federal Regulations.
- (8) "Combustible material" means any substance that, when ignited, will burn in air.
- (9) "Construction" means change in method of operation or any physical change, including on-site fabrication, erection, installation, replacement, demolition, or modification of a source, that results in a change in emissions or affects the compliance status.
- (10) "Control device" means equipment (fume incinerator, adsorber, absorber, scrubber, filter media, cyclone, electrostatic precipitator, or the like) used to destroy or remove air pollutant(s) before discharge to the ambient air.
- (11) "Day" means a 24-hour period beginning at midnight.
- (12) "Director" means the Director of the Division of Air Quality, unless otherwise specified.
- (13) "Division" means Division of Air Quality.
- (14) "Dustfall" means particulate matter that settles out of the air and is expressed in units of grams per square meter per 30-day period.
- (15) "Emission" means the release or discharge, whether directly or indirectly, of any air pollutant into the ambient air from any source.
- (16) "Facility" means all of the pollutant-emitting activities, except transportation facilities, that are located on one or more adjacent properties under common control.
- (17) "FR" means the Federal Register.
- (18) "Fugitive emission" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.
- (19) "Fuel burning equipment" means equipment whose primary purpose is the production of energy or power from the combustion of any fuel. Uses of the equipment includes heating water, generating or circulating steam, heating air as in warm air furnace, or furnishing process heat by transferring energy by fluids or through process vessel walls.
- (20) "Garbage" means any animal and vegetable waste resulting from the handling, preparation, cooking, and serving of food.
- (21) "Incinerator" means a device designed to burn solid, liquid, or gaseous waste material.
- (22) "Opacity" means that property of a substance tending to obscure vision and is measured as percent obscuration.
- (23) "Open burning" means any fire whose products of combustion are emitted directly into the



- outdoor atmosphere without passing through a stack or chimney, approved incinerator, or other similar device.
- (24) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, source, or air pollution control equipment.
- (25) "Particulate matter" means any material except uncombined water that exists in a finely divided form as a liquid or solid at standard conditions.
- (26) "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by methods specified in this Subchapter.
- (27) "Permitted" means any source subject to a permit under this Subchapter or ~~Subchapter~~ 15A NCAC 02Q.
- (28) "Person" as defined in G.S. 143-212 includes any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, or any other legal entity, or its legal representative, agent, or assigns.
- (29) "PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by methods specified in this Subchapter.
- (30) "PM10 emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by methods specified in this Subchapter.
- (31) "PM2.5" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by methods specified in this Subchapter.
- (32) "Refuse" means any garbage, rubbish, or trade waste.
- (33) "Rubbish" means solid or liquid wastes from residences, commercial establishments, or institutions.
- (34) "Rural area" means an area that is devoted to the following uses: agriculture, recreation, wildlife management, state park, or any area of natural cover.
- (35) "Salvage operation" means any business, trade, or industry engaged in whole or in part in salvaging or reclaiming any product or material, including metal, chemicals, motor vehicles, shipping containers, or drums.
- (36) "Smoke" means small gas-borne particles resulting from incomplete combustion, consisting predominantly of carbon, ash, and other burned or unburned residue of combustible materials that form a visible plume.

- (37) "Source" means any stationary article, machine, process equipment, or other contrivance; or any combination; or any tank-truck, trailer, or railroad tank car; from which air pollutants emanate or are emitted, either directly or indirectly.
- (38) "Sulfur oxides" means sulfur dioxide, sulfur trioxide, their acids, and the salts of their acids. The concentration of sulfur dioxide shall be measured by the methods specified in this Subchapter.
- (39) "Transportation facility" means a complex source as defined in G.S. 143-213(22).
- (40) "Total suspended particulate" means any finely divided solid or liquid material, except water in uncombined form, that is or has been airborne as measured by methods specified in this Subchapter.
- (41) "Trade wastes" means all solid, liquid, or gaseous waste materials or rubbish resulting from combustion, salvage operations, building operations, or the operation of any business, trade, or industry including, but not limited to, plastic products, paper, wood, glass, metal, paint, grease, oil and other petroleum products, chemicals, and ashes.
- (42) "ug" or "µg" means micrograms.

*Authority G.S. 143-213; 143-215.3(a)(1).*

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

(a) Copies of applicable Code of Federal Regulations sections referred to in this Subchapter are available for public inspection at Department of ~~Environment and Natural Resources~~ Environmental Quality regional offices. They are:

- (1) Asheville Regional Office, 2090 Highway 70, Swannanoa, North Carolina 28778;
- (2) Winston-Salem Regional Office, ~~585 Waughtown Street, Winston-Salem, North Carolina 27107;~~ 450 West Hanes Mill Road, Suite 300, Winston-Salem, NC 27105;
- (3) Mooresville Regional Office, 610 East Center Avenue, Suite 301, Mooresville, North Carolina 28115;
- (4) Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina ~~27611;~~ 27609;
- (5) Fayetteville Regional Office, Systel Building, 225 Green Street, Suite 714, Fayetteville, North Carolina 28301;
- (6) Washington Regional Office, 943 Washington Square Mall, Washington, North Carolina 27889;
- (7) Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.

(b) Copies of such rules ~~can be made at these regional offices for ten cents (\$0.10) per page or~~ may be obtained free of charge

online at  
<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

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

**15A NCAC 02D .0104 INCORPORATION BY REFERENCE**

(a) Anywhere there is a reference to rules contained in the Code of Federal Regulations (CFR) or to an American Society for Testing and Materials method (ASTM) in this Subchapter, those rules and methods are incorporated by reference.

(b) The Code of Federal Regulations and American Society for Testing and Materials methods incorporated by reference in this Subchapter shall automatically include any later amendments thereto unless a specific rule specifies otherwise.

(c) The Code of Federal Regulations is available in electronic form free of charge at <https://www.gpo.gov/fdsys/search/home.action>. ~~may be purchased from the Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250. The cost of the referenced documents is as follows:~~

- (1) 40 CFR Parts 1 to 51: fifty dollars (\$50.00).
- (2) 40 CFR Part 52: thirty nine dollars (\$39.00).
- (3) 40 CFR Parts 53 to 59: eleven dollars (\$11.00).
- (4) 40 CFR Part 60: thirty six dollars (\$36.00).
- (5) 40 CFR Parts 61 to 71: thirty six dollars (\$36.00).
- (6) 40 CFR Parts 72 to 85: forty one dollars (\$41.00).
- (7) 40 CFR Part 86: forty dollars (\$40.00).
- (8) 40 CFR Parts 87 to 135: five dollars (\$5.00).
- (9) 40 CFR Parts 260 to 299: forty dollars (\$40.00).

~~These prices are October 15, 1996 prices.~~

(d) The American Society for Testing and Materials methods may be purchased from <https://www.astm.org/> ~~the Air Quality Division, PO Box 29580, Raleigh, North Carolina 27626-0580 at a price of twenty cents (\$0.20) per page. Purchase price is dependent on the particular method and format chosen.~~

*Authority G.S. 150B-21.6.*

**15A NCAC 02D .0105 MAILING LIST**

(a) The Division shall develop and maintain a mailing list of persons who have requested notification of rule-making as required by G.S. 150B 21.2(d). Such persons shall receive a copy of the complete notice as filed with the Office of Administrative Hearings.

(b) Any person requesting to be on a mailing list established under Paragraph (a) of this Rule shall submit a written request to the Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina, ~~27699~~. 27699-1641. Payment of fees required under this ~~Section~~ Rule may be by check or money order for thirty dollars (\$30.00) made payable to the Department of ~~Environment and Natural Resources~~. Environmental Quality. Payment shall be submitted with each request and received by June 1 of each year. The fee covers from July 1 to June 30 of the following year. A person requesting to be on the list for notification of rule-making

may opt to receive notification via email free of charge by contacting Division staff.

*Authority G.S. 143-215.3(a)(1); 150B 21.2(d).*

**SECTION .0200 - AIR POLLUTION SOURCES**

**15A NCAC 02D .0201 CLASSIFICATION OF AIR POLLUTION SOURCES**

(a) Purpose. This Regulation establishes a system for classifying air pollution sources. The Commission shall use this classification system to classify air pollution sources which the Commission believes to be of sufficient importance to justify classification or control.

(b) Scope. This Regulation shall apply to all air pollution sources, both combustion and non-combustion. The following system for classifying air pollution sources shall be used:

- (1) "Class I-C" includes all sources of air pollution using fuel burning equipment for the production of heat to generate electricity for public use.
- (2) "Class II-C" includes all sources of air pollution using fuel burning equipment for the production of steam, and for other process uses at commercial and industrial establishments.
- (3) "Class III-C" includes all sources of air pollution using fuel burning equipment for comfort heating at institutional, commercial or industrial establishments, or apartment houses having a central heating system serving more than four apartments.
- (4) "Class IV-C" includes all sources of air pollution burning trash, rubbish, refuse, or similar materials in incinerators, teepee burners, or similar devices.
- (5) "Class V-C" includes all sources of air pollution using fuel burning equipment for comfort heating that are not included in Class III-C.
- (6) "Class VI-C" includes all sources of air pollution using internal combustion engines.
- (7) "Class I-I" includes all sources of air pollution resulting from industrial plants engaged in the manufacture of chemicals or allied products whose processes depend on the chemical reaction of two or more elements or compounds and includes plants producing acids, fertilizer materials, dyestuff, synthetic fibers and industrial gases.
- (8) "Class II-I" includes all sources of air pollution resulting from industrial plants engaged in the production of pulp and paper.
- (9) "Class III-I" includes all sources of air pollution resulting from the mining and processing of minerals, stone, clay and cement products, and includes phosphate ore, mica and feldspar operations, stone quarries and crushers, cement plants, concrete mixing plants, and masonry block plants.
- (10) "Class IV-I" includes all sources of air pollution resulting from industrial operations using

petroleum products, and includes asphalt mix plants, roofing felt plants, and petroleum products storage areas.

- (11) "Class V-I" includes all sources of air pollution resulting from furniture, lumber, or wood product plants.
- (12) "Class VI-I" includes all sources of air pollution resulting from textile manufacturing, textile dyeing or finishing plants.
- (13) "Class VII-I" includes all sources of air pollution resulting from the shelling, drying, storage, ginning and processing of tobacco, corn, soybeans, peanuts, cotton, fruits, vegetables, or other agricultural products.
- (14) "Class VIII-I" includes all sources of air pollution resulting from industries engaged in the processing of metals, and includes smelting, casting foundries, metal working, and other similar operations.
- (15) "Class IX-I" includes all sources of air pollution resulting from slaughtering and processing of meat, poultry, fish, and similar products and from rendering or the recovering of by-products of these operations.
- (16) "Class X-I" includes all sources of air pollution resulting from industries which do not fall within the classifications described in Subparagraphs (b)(7) through (b)(15) of this Regulation.

These sources shall be controlled pursuant to the requirements of regulations and other provisions of law.

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

#### **15A NCAC 02D .0202 REGISTRATION OF AIR POLLUTION SOURCES**

- (a) The Director may require the owner or operator of a source of air pollution to register that source.
- (b) Any person required to register a source of air pollution with the Division shall register the source on forms provided by the Division and shall provide the following information:

- (1) the name of the person, company, or corporation operating the sources;
- (2) the address, location, and county;
- (3) principal officer of the company;
- (4) quantities and kinds of raw materials used;
- (5) process flow sheets;
- (6) operating schedules;
- (7) total weights and kinds of air pollution released;
- (8) types and quantities of fuels used;
- (9) stack heights; and
- (10) other information considered essential in evaluating the potential of the source to cause air pollution.

The forms shall be completed and returned to the Division within 60 days following their receipt.

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

### **SECTION .0300 - AIR POLLUTION EMERGENCIES**

#### **15A NCAC 02D .0301 PURPOSE**

Notwithstanding any other provisions of air pollution control regulations or standards, this Section is designed to prevent the excessive buildup of air contaminants during air pollution episodes thereby preventing the occurrence of an emergency due to the effects of these contaminants on the public health.

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12).*

#### **15A NCAC 02D .0302 EPISODE CRITERIA**

Conditions justifying the proclamation of an air pollution alert, air pollution warning, or air pollution emergency shall be deemed to exist whenever the ~~director~~ Director determines that the accumulation of air contaminants in any place is attaining or has attained levels that could, if such levels are sustained or exceeded, lead to a threat to the health of the public. In making this determination, the ~~director~~ Director shall be guided by the following criteria:

- (1) Air Pollution Forecast. An internal watch by the Division and local air pollution control agencies shall be activated by a National Weather Service advisory that an atmospheric stagnation advisory is in effect, or the equivalent local forecast of stagnant atmospheric conditions.
- (2) Alert. The alert level is that concentration of pollutants at which first stage control actions are to begin. The ~~director~~ Secretary of the Department of Environmental Quality with the concurrence of the Governor shall proclaim an alert when any of the following levels is reached at any monitoring site:
  - (a) sulfur dioxide -- 800 ~~ug/m3~~  $\mu\text{g}/\text{m}^3$  (0.3 ~~p.p.m.;~~ ppm), 24-hour average;
  - (b) particulate -- 375 ~~ug/m3~~  $\mu\text{g}/\text{m}^3$ , 24-hour average;
  - (c) sulfur dioxide and particulate combined product of sulfur dioxide ~~ug/m3~~  $\mu\text{g}/\text{m}^3$ , 24-hour average, and particulate ~~ug/m3~~  $\mu\text{g}/\text{m}^3$ , 24-hour average, equal to 65,000;
  - (d)(b) carbon monoxide -- 17 ~~ug/m3~~  $\mu\text{g}/\text{m}^3$  (15 ~~p.p.m.;~~ ppm), eight-hour average;
  - (e)(c) ozone -- 400 ~~ug/m3~~  $\mu\text{g}/\text{m}^3$  (0.2 ~~p.p.m.;~~ ppm), one-hour average;
  - (f)(d) nitrogen dioxide -- 1130 ~~ug/m3~~  $\mu\text{g}/\text{m}^3$  (0.6 ~~p.p.m.;~~ ppm), one-hour average; 282 ~~ug/m3~~  $\mu\text{g}/\text{m}^3$  (0.15 ~~p.p.m.;~~ ppm), 24-hour average;
  - (g)(e) PM10--350 ~~ug/m3~~  $\mu\text{g}/\text{m}^3$  24-hour average;and ~~average;~~ and meteorological conditions are such that pollutant concentrations can be expected to remain at these levels for 12 or more hours or increase or, for ozone, the situation is likely to recur within the next 24 hours unless control actions are taken.

- (f) in addition to the levels listed for the above pollutants, meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for 12 or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken.
- (3) Warning. The warning level indicates that air quality is continuing to degrade and that additional abatement actions are necessary. The Secretary of the Department of Environmental Quality with the concurrence of the Governor ~~Director~~ shall proclaim a warning when any one of the following levels is reached at any monitoring site:
- (a) sulfur dioxide -- 1600 ~~ug/m<sup>3</sup>~~ ug/m<sup>3</sup> (0.6 p.p.m.), 24-hour average
  - (b) ~~particulate 625 ug/m<sup>3</sup>, 24 hour average;~~
  - (c) ~~sulfur dioxide and particulate combined product of sulfur dioxide ug/m<sup>3</sup>, 24 hour average, and particulate ug/m<sup>3</sup>, 24 hour average, equal to 261,000;~~
  - (d)(b) carbon monoxide -- 34 ~~ug/m<sup>3</sup>~~ ug/m<sup>3</sup> (30 p.p.m.), eight-hour average;
  - (e)(c) ozone -- 800 ~~ug/m<sup>3</sup>~~ ug/m<sup>3</sup> (0.4 p.p.m.), one-hour average;
  - (f)(d) nitrogen dioxide -- 2260 ~~ug/m<sup>3</sup>~~ ug/m<sup>3</sup> (1.2 p.p.m.), one-hour average; 565 ~~ug/m<sup>3</sup>~~ ug/m<sup>3</sup> (0.3 p.p.m.), 24-hour average;
  - (g)(e) PM10 -- 420 ~~ug/m<sup>3</sup>~~ ug/m<sup>3</sup> 24-hour average; ~~and average; and meteorological conditions are such that pollutant concentrations can be expected to remain at these levels for 12 or more hours or increase or, for ozone, the situation is likely to recur within the next 24 hours unless control actions are taken.~~
  - (f) in addition to the levels listed for the above pollutants, meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for 12 or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken.
- (4) Emergency. The emergency level indicates that air quality is continuing to degrade to a level that should never be reached and that the most stringent control actions are necessary. The Secretary of the ~~Department of Environment and Natural Resources~~ Department of Environmental Quality with the concurrence of

the Governor shall declare an emergency when any one of the following levels is reached at any monitoring site:

- (a) sulfur dioxide -- 2100 ~~ug/m<sup>3</sup>~~ ug/m<sup>3</sup> (0.8 p.p.m.), 24-hour average;
  - (b) ~~particulate 875 ug/m<sup>3</sup>, 24 hour average;~~
  - (c) ~~sulfur dioxide and particulate combined product of sulfur dioxide ug/m<sup>3</sup>, 24 hour average, and particulate ug/m<sup>3</sup>, 24 hour average, equal to 393,000;~~
  - (d)(b) carbon monoxide -- 46 ~~mg/m<sup>3</sup>~~ ug/m<sup>3</sup> (40 p.p.m.), eight-hour average;
  - (e)(c) ozone -- 1000 ~~ug/m<sup>3</sup>~~ ug/m<sup>3</sup> (0.5 p.p.m.), one-hour average;
  - (f)(d) nitrogen dioxide -- 3000 ~~ug/m<sup>3</sup>~~ ug/m<sup>3</sup> (1.6 p.p.m.), one-hour average; 750 ~~ug/m<sup>3</sup>~~ ug/m<sup>3</sup> (0.4 p.p.m.), 24-hour average;
  - (g)(e) PM10--500 ~~ug/m<sup>3</sup>~~ ug/m<sup>3</sup> 24-hour average; ~~average; and~~
  - (f) in addition to the levels listed for the above pollutants, meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for 12 or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken. Same clarification applies to Warning and Emergency Levels.
- (5) Termination. Once declared any level reached by application of these criteria shall remain in effect until the criteria for that level are no longer met. At that time the next lower level shall be assumed.

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12).*

#### 15A NCAC 02D .0303 EMISSION REDUCTION PLANS

- (a) Air Pollution Alert. Any person responsible for the operation of a source of air pollution described in ~~Regulation 15A NCAC 02D .0305, .0305 of this Section,~~ shall take all air pollution alert actions required for that source and shall put into effect the preplanned program for an air pollution alert.
- (b) Air Pollution Warning. Any person responsible for the operation of a source of air pollution described in ~~Regulation .0306 of this Section,~~ 15A NCAC 02D .0306, shall take all air pollution warning actions required for that source and shall put into effect the preplanned program for an air pollution warning.
- (c) Air Pollution Emergency. Any person responsible for the operation of a source of air pollution described in ~~Regulation .0307 of this Section,~~ 15A NCAC 02D .0307, shall take all air pollution emergency actions required for that source and shall put into effect the preplanned program for an air pollution emergency.

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12).*

**15A NCAC 02D .0304 PREPLANNED ABATEMENT PROGRAM**

(a) Any person who is responsible for the operation of a source of air pollution that is described in 15A NCAC 02D Regulations .0305, .0306, or .0307, ~~0307 of this Section~~, or that emits 100 tons per year or more of any one pollutant shall prepare a plan to reduce the emissions of air pollutants into the outdoor atmosphere during periods of an air pollution episode. The plan shall be consistent with good industrial practices and safe operating procedures. When the Director requests that the plan be submitted for his review, the owner or operator of the source shall submit the plan within 30 days of the Director's request.

(b) When requested by the Commission in writing, any person responsible for the operation of a source not described in Regulations 15A NCAC 02D .0305, .0306, or .0307, ~~0307 of this Section~~, shall prepare a plan to reduce the emissions of air pollutants into the outdoor atmosphere during periods of air pollution alert, air pollution warning, and air pollution emergency. The plan shall be consistent with good industrial practices and safe operating procedures.

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12).*

**15A NCAC 02D .0305 EMISSION REDUCTION PLAN: ALERT LEVEL**

(a) ~~General-General.~~

- (1) There shall be no open burning ~~by any person of trade waste, vegetation, refuse, or debris in any form; any material otherwise allowed under 15A NCAC 02D .1900.~~
- (2) The use of incinerators for the disposal of any form of solid waste shall be limited to the hours between ~~12 noon~~ 12:00 p.m. and 4:00 p.m.
- (3) Persons operating fuel burning equipment which requires boiler lancing or soot blowing shall perform such operations only between the hours of ~~12 noon~~ 12:00 p.m. and 4:00 p.m.
- (4) Persons operating motor vehicles should eliminate all unnecessary operations.

(b) Source Curtailment. Any person responsible for the operation of a source of air pollution shall take all required control actions for the alert level that are listed below:

- (1) Operators of coal or oil fired electric power generating facilities shall:
  - (A) use fuels having low ash and sulfur content,
  - (B) perform boiler lancing and soot blowing between ~~12 noon~~ 12:00 p.m. and 4:00 p.m., and
  - (C) divert electric power generation to facilities outside of alert area;
- (2) Operators of coal or oil fired process steam generating facilities shall:
  - (A) use fuels having low ash and sulfur content,
  - (B) perform boiler lancing and soot blowing between ~~12 noon~~ 12:00 p.m. and 4:00 p.m., and

- (C) reduce steam load demands consistent with continuing plant operation;
- (3) Operators of manufacturing industries of the following classifications: primary metals industry; petroleum refining and related industries; chemical and allied products industries; paper and allied products industries; glass, clay, and concrete products industries shall:
  - (A) reduce air pollutants from manufacturing operations by curtailing, postponing or deferring production and related operations;
  - (B) defer trade waste disposal operations which emit particles, gases, vapors, or malodorous substances;
  - (C) reduce heat load demands for processing; and
  - (D) perform boiler lancing or soot blowing between ~~12 noon~~ 12:00 p.m. to 4:00 ~~p.m.;~~ p.m.; and
- (4) ~~Municipal and commercial refuse disposal operations shall limit burning of refuse in incinerators to hours between 12 noon to 4:00 p.m.;~~
- (5)(4) Other persons requested by the Commission to prepare a preplanned abatement plan shall take all required control actions for the alert level contained in their plan.

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12).*

**15A NCAC 02D .0306 EMISSION REDUCTION PLAN: WARNING LEVEL**

(a) General

- (1) There shall be no open burning ~~by any person of trade waste, refuse, vegetation, or debris in any form; any material otherwise allowed under 15A NCAC 02D .1900.~~
- (2) The use of incinerators for the disposal of solid waste or liquid waste shall be prohibited.
- (3) Persons operating fuel burning equipment which requires boiler lancing or soot blowing shall perform such operations only between ~~12 noon~~ 12:00 p.m. and 4:00 ~~p.m.;~~ p.m.
- (4) Persons operating motor vehicles should minimize their use through car pools and increased use of public transportation.

(b) Source Curtailment. Any person responsible for the operation of a source of air pollution shall take all required control actions for the warning level that are listed below:

- (1) Operators of coal or oil fired electric power generating facilities shall:
  - (A) use fuels having the lowest ash and sulfur ~~content;~~ content;
  - (B) perform boiler lancing and soot blowing between ~~12 noon~~ 12:00 p.m. to 4:00 ~~p.m.;~~ p.m.; and

- (C) divert electric power generating to facilities outside of warning area;
- (2) Operators of coal or oil fired process steam generating facilities shall:
  - (A) use fuels having the lowest ash and sulfur ~~content, content;~~
  - (B) perform boiler lancing and soot blowing between ~~12 noon~~ 12:00 p.m. to 4:00 ~~p.m., p.m.;~~
  - (C) reduce steam load demands consistent with continuing plant ~~operations,~~ operations; and
  - (D) prepare to use the plan of action to be taken if an emergency develops;
- (3) Operators of manufacturing industries of the following classifications: primary metal industries; petroleum refining and related industries; chemical and allied products industries; paper and allied products industries; glass, clay and concrete products industries shall:
  - (A) reduce air pollutants from manufacturing operations by, if necessary, assuming reasonable economic hardship by postponing production and related operations;
  - (B) defer trade waste disposal operations which emit particles, gases, vapors, or malodorous substances;
  - (C) reduce heat load demands for processing consistent with continuing plant operations; and
  - (D) perform boiler lancing or soot blowing between ~~12 noon~~ 12:00 p.m. to 4:00 ~~p.m., p.m.; and~~
- ~~(4) Municipal and commercial refuse disposal operations shall stop incinerating waste;~~
- ~~(5)(4)~~ Other persons requested by the Commission to prepare a preplanned abatement plan shall take all required control actions for the warning level contained in their plan.

- (B) all manufacturing establishments except those required to have in force an air pollution emergency plan;
- (C) all construction work involving grading or other operations which generate dust;
- (D) all wholesale and retail establishments except pharmacies and stores primarily engaged in the sale of food;
- (E) all commercial and manufacturing establishments, automobile repair services and garages, laundries, barbershops, beauty shops and motion picture theaters; and
- (F) elementary and secondary schools, colleges, universities and professional schools.

- (4) The use of motor vehicles ~~is~~ shall be prohibited except in emergencies with the approval of local or state police.

(b) Source Curtailment. Any person responsible for the operation of a source of air pollution shall take all required control actions for the emergency level that are listed below:

- (1) Operators of coal or oil fired electric power generating facilities shall:
  - (A) use fuels having lowest ash and sulfur content,
  - (B) perform boiler lancing or soot blowing between ~~12 noon~~ 12:00 p.m. to 4:00 ~~p.m., p.m.;~~
  - (C) divert electric power generating to facilities outside of emergency area;
- (2) Operators of coal or oil fired process steam generating facilities shall:
  - (A) reduce heat and steam demands to that absolutely necessary to prevent equipment damage,
  - (B) perform boiler lancing and soot blowing between ~~12 noon~~ 12:00 p.m. and 4:00 ~~p.m., p.m.;~~
  - (C) take the action called for in the abatement plan;
- (3) Operators of manufacturing industries of the following classifications: primary metals industries; petroleum refining and related industries; chemical and allied products industries; paper and allied products industries; glass, clay and concrete products industries shall:
  - (A) eliminate air pollutants from manufacturing operations by ceasing, curtailing, postponing or deferring production and related operations of the extent possible without causing injury to persons or damage to equipment;
  - (B) eliminate air pollution from trade waste disposal processes which emit

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12).*

**15A NCAC 02D .0307 EMISSION REDUCTION PLAN:  
EMERGENCY LEVEL**

(a) General

- (1) There shall be no open burning ~~by any person of trade waste, vegetation, refuse, or debris in any form. any material otherwise allowed under 15A NCAC 02D .1900.~~
- (2) The use of incinerators for the disposal of any form of solid or liquid waste shall be prohibited.
- (3) All places of employment described below shall immediately cease operations:
  - (A) mining and quarrying of nonmetallic minerals;

- particles, gases, vapors, or malodorous substances;
- (C) reduce heat load demands for processing to the minimum;
- (D) perform boiler lancing or soot blowing between ~~12 noon~~ 12:00 p.m. to 4:00 p.m.; and
- (4) ~~Municipal and commercial refuse disposal operations shall stop incinerating waste;~~
- (5)(4) Other persons requested by the Commission to prepare a preplanned abatement plan shall take all required control actions for the emergency level contained in their plan.

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12).*

## **SECTION .0400 - AMBIENT AIR QUALITY STANDARDS**

### **15A NCAC 02D .0401 PURPOSE**

- (a) The purpose of the ambient air quality standards set out in this Section is to establish certain maximum limits on parameters of air quality considered desirable for the preservation and enhancement of the quality of the state's air resources. Furthermore, the objective of the Commission, consistent with the North Carolina Air Pollution Control Law, shall be to prevent significant deterioration in ambient air quality in any substantial portion of the state where existing air quality is better than the standards. An atmosphere in which these standards are not exceeded should provide for the protection of the public health, plant and animal life, and property.
- (b) Ground level concentrations of pollutants will be determined by sampling at fixed locations in areas beyond the premises on which a source is located. The standards are applicable at each such sampling location in the state.
- (c) No facility or source of air pollution shall cause any ambient air quality standard in this Section to be exceeded or contribute to a violation of any ambient air quality standard in this Section except as allowed by ~~Rules 15A NCAC 02D .0531 or .0532 of this Subchapter. .0532.~~

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).*

### **15A NCAC 02D .0402 SULFUR OXIDES**

- (a) The ambient air quality standards for sulfur oxides measured as sulfur dioxide are:
  - (1) 80 micrograms per cubic meter (0.03 ppm) annual arithmetic mean,
  - (2) 365 micrograms per cubic meter (0.14 ppm) maximum 24-hour concentration not to be exceeded more than once per year, and
  - (3) 1300 micrograms per cubic meter (0.5 ppm) maximum three-hour concentration not to be exceeded more than once per year.
- (b) Sampling and analysis shall be in accordance with procedures in Appendix A or A-1 of 40 CFR Part 50 or by a Federal Equivalent Method (FEM) designated in accordance with 40 CFR Part 53.
- (c) Applicability of the standards listed in Subparagraph (a)(1) and (2) of this Rule ~~is~~ shall be in effect until one year after the

effective date of initial designations under Section 107(d) of the Clean Air Act for the sulfur dioxide standard in Paragraph (d) of this Rule.

- (d) The primary one-hour annual ambient air quality standard for oxides of sulfur is 75 parts per billion (ppb, which is 1 part in 1,000,000,000), measured in the ambient air as sulfur dioxide.
- (e) The one-hour primary standard ~~is~~ shall be met at an ambient air quality monitoring site when the three-year average of the annual (99th percentile) of the daily maximum one-hour average concentrations is less than or equal to 75 ppb, as determined in accordance with Appendix T of 40 CFR Part 50.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).*

### **15A NCAC 02D .0404 CARBON MONOXIDE**

- (a) The ambient air quality standards for carbon monoxide are:
  - (1) 9 parts per million (10 milligrams per cubic meter) maximum eight-hour average concentration not to be exceeded more than once per year, and
  - (2) 35 parts per million (40 milligrams per cubic meter) maximum one-hour average concentration not to be exceeded more than once per year.
- (b) Sampling and analysis shall be in accordance with procedures in Appendix C of 40 CFR Part 50 or equivalent methods established under 40 CFR Part 53.
- (c) An eight-hour average shall be considered valid if at least 75 percent of the hourly averages for the eight-hour period are available. In the event that only six or seven hourly averages are available, the eight-hour average shall be computed on the basis of the hours available using six or seven as the divisor.
- (d) When summarizing data for comparison with the standards, averages shall be stated to one decimal place. Comparison of the data with the levels of the standards in parts per million shall be made in terms of integers with fractional parts of 0.5 or greater rounding up.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).*

### **15A NCAC 02D .0405 OZONE**

The ambient air quality standard for ozone measured by a reference method based on Appendix D of 40 CFR Part 50 and designated according to 40 CFR Part 53 is ~~0.075~~ 0.070 parts per million (ppm), daily maximum 8-hour average. The standard is attained at an ambient air quality monitoring site when the average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to ~~0.075~~ 0.070 parts per million (ppm) as determined by ~~Appendix P~~ Appendix U of 40 CFR Part 50, or equivalent methods established under 40 CFR Part 53.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).*

### **15A NCAC 02D .0407 NITROGEN DIOXIDE**

- (a) The primary annual ambient air quality standard for oxides of nitrogen is 53 parts per billion annual average concentration measured in the ambient air as nitrogen dioxide.

(b) The primary one hour ambient air quality standard for oxides of nitrogen is 100 parts per billion one hour annual average concentration measured in the ambient air as nitrogen dioxide.

(c) The secondary ambient air quality standard for nitrogen dioxide is 0.053 parts per million (100 micrograms per cubic meter) annual arithmetic mean concentration.

(d) Sampling and analysis shall be in accordance with:

- (1) procedures in Appendix F of 40 CFR Part 50; or
- (2) by a Federal Equivalent Method (FEM) designated in accordance with 40 CFR Part 53.

(e) The annual primary standard ~~is~~ shall be attained when the annual average concentration in a calendar year is less than or equal to 53 parts per billion, as determined in accordance with Appendix S of 40 CFR Part 50 for the annual standard.

(f) The one hour primary standard ~~is~~ shall be attained when the three-year average of the annual 98th percentile of the daily maximum one-hour average concentration is less than or equal to 100 ppb, as determined in accordance with Appendix S of 40 CFR Part 50 for one hour standard.

(g) The secondary standard ~~is~~ shall be attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 parts per million, rounded to three decimal places (fractional parts equal to or greater than 0.0005 parts per million are rounded up). To demonstrate attainment, an annual mean ~~must~~ shall be based on hourly data that are at least 75 percent complete or on data derived from manual methods that are at least 75 percent complete for the scheduled sampling days in each calendar quarter.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).*

#### **15A NCAC 02D .0408 LEAD**

The ambient air quality standard for lead and its compounds, measured as elemental lead by a reference method based on Appendix G of 40 CFR Part 50 or by an equivalent method established under 40 CFR Part 53, is 0.15 micrograms per cubic meter. The standard ~~is~~ shall be met when the maximum arithmetic three month mean concentration for a three year period, as determined in accordance with Appendix R of 40 CFR Part 50, is less than or equal to 0.15 micrograms per cubic meter.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).*

#### **15A NCAC 02D .0409 PM10 PARTICULATE MATTER**

(a) The ambient air quality standard for PM10 particulate matter is 150 micrograms per cubic meter (~~ug/m3~~), (ug/m<sup>3</sup>), 24-hour average concentration. This standard ~~is~~ shall be attained when 150 (~~ug/m3~~), (ug/m<sup>3</sup>), as determined according to Appendix N of 40 CFR Part 50, is not exceeded more than once per year on average over a three-year period.

(b) For the purpose of determining attainment of the standards in Paragraph (a) of this Rule, particulate matter shall be measured in the ambient air as PM10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) by either:

- (1) a reference method based on Appendix M of 40 CFR Part 50 and designated according to 40 CFR Part 53; or

- (2) an equivalent method designated according to 40 CFR Part 53.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).*

#### **15A NCAC 02D .0410 PM2.5 PARTICULATE MATTER**

(a) The national primary ambient air quality standards for PM2.5 are 12.0 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) annual arithmetic mean concentration and 35  $\mu\text{g}/\text{m}^3$  24-hour average Concentration measured in the ambient air as PM2.5 (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) by either:

- (1) A reference method based on appendix L to 40 ~~C.F.R.~~ CFR Part 50 and designated in accordance with 40 ~~C.F.R.~~ CFR Part 53; or
- (2) An equivalent method designated in accordance with 40 ~~C.F.R.~~ CFR Part 53.

(b) The primary annual PM2.5 standard ~~is~~ shall be met when the annual arithmetic mean concentration, as determined in accordance with ~~appendix~~ Appendix N of 40 ~~C.F.R.~~ CFR Part 50, is less than or equal to 12.0  $\mu\text{g}/\text{m}^3$ .

(c) The primary 24-hour PM2.5 standard ~~is~~ shall be met when the 98<sup>th</sup> percentile 24-hour concentration, as determined in accordance with ~~appendix~~ Appendix N of 40 ~~C.F.R.~~ CFR Part 50, is less than or equal to 35  $\mu\text{g}/\text{m}^3$ .

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).*

### **SECTION .1300 - OXYGENATED GASOLINE STANDARD**

#### **15A NCAC 02D .1301 PURPOSE**

~~This Section sets forth oxygenated gasoline standards in areas where an oxygenated gasoline program is implemented pursuant to State law for all gasoline sold wholesale for use or for all gasoline sold retail, offered for use, dispensed, or otherwise provided for use in any spark ignition engine other than aircraft in the areas defined in Rule .1302 of this Section during the time periods defined in Rule .1302(e) of this Section.~~

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3), (7).*

#### **15A NCAC 02D .1302 APPLICABILITY**

~~(a) This Section shall apply to gasoline identified in Rule .1301 of this Section during the time period described in Paragraph (e) of this Rule in any of the following areas, and in that area only, when the Director notices in accordance with Paragraph (b) of this Rule in the North Carolina Register that oxygenated gasoline is needed in that area to attain and maintain the ambient air quality standard for carbon monoxide:~~

- ~~(1) the Greensboro/Winston Salem/High Point Metropolitan Statistical Area consisting of Davie, Davidson, Forsyth, Guilford, Randolph, Stokes, and Yadkin Counties;~~
- ~~(2) the Charlotte/Gastonia/Rock Hill Metropolitan Statistical Area consisting of Cabarrus, Gaston, Mecklenburg, and Union Counties; and~~



- (3) ~~the Raleigh/Durham Metropolitan Statistical Area consisting of Durham, Franklin, Orange, and Wake Counties.~~

~~(b) If a violation of the ambient air quality standard for carbon monoxide is measured in accordance with 40 CFR 50.8 in one of the areas named in Paragraph (a) of this Rule, the Director shall initiate analyses to determine if additional measures are needed to attain and maintain the ambient air quality standards in that area. If the Director finds that 2.7 percent oxygen by weight oxygenated gasoline is needed, the Director shall notice in the North Carolina Register by the following September 1 that only oxygenated gasoline shall be sold in that area beginning on the following November 1. The notice shall identify the area in which oxygenated gasoline shall be sold. Also by the following July 1, the Director shall notify the Gasoline and Oil Inspection Board and the primary gasoline distributors that only oxygenated gasoline shall be sold in the area beginning on the following November 1.~~

~~(c) This Section applies to gasoline identified in Rule .1301 of this Section and in the counties identified in Paragraph (a) of this Rule for the four month period beginning November 1 and running through the last day of February of the following year.~~

~~(d) Gasoline in storage within the counties identified in Paragraph (a) of this Rule prior to November 1 of the year in which this Section goes into effect at a dispensing facility having total gasoline tank capacity of less than 550 gallons or a total weekly dispensing rate of less than 550 gallons is exempted from Rule .1304 of this Section, but any gasoline supplied to the facility during the period identified in Paragraph (c) of this Rule shall comply with Rule .1304 of this Section.~~

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(7).*

#### **15A NCAC 02D .1303 DEFINITIONS**

~~For the purpose of this Section, "oxygenated gasoline" means any gasoline which contains a substance or substances to raise the oxygen content of the gasoline to conform with Rule .1304 of this Section.~~

*Authority G.S. 143-213; 143-215.3(a)(1); 143-215.108(c)(7).*

#### **15A NCAC 02D .1304 OXYGEN CONTENT STANDARD**

~~Gasoline to which this Section applies in accordance with Rule .1302(a) of this Section shall have an oxygen content of not less than 2.7 percent by weight during the period defined in Rule .1302(c) of this Section.~~

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(7).*

#### **15A NCAC 02D .1305 MEASUREMENT AND ENFORCEMENT**

~~(a) Gasoline samples shall be taken and handled by methods approved by the Gasoline and Oil Inspection Board.~~

~~(b) Gasoline samples shall be analyzed by the American Society for Testing and Materials (ASTM) standard test method, designation D 4815-89 or by other methods approved by the Gasoline and Oil Inspection Board and the United States Environmental Protection Agency.~~

~~(c) Enforcement shall be in accordance with procedures adopted by the Gasoline and Oil Inspection Board in 2 NCAC 42 .0100.~~

*Authority G.S. 119-26; 143-215.3(a)(1); 143-215.107(a)(3),(7); 150B-21.6.*

### **SECTION .2000 - TRANSPORTATION CONFORMITY**

#### **15A NCAC 02D .2001 PURPOSE, SCOPE AND APPLICABILITY**

(a) The purpose of this Section is to assure the conformity of transportation plans, programs, and projects that are developed, funded, or approved by the United States Department of Transportation and by metropolitan planning organizations or other recipients of funds under Title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.), or State or Local only sources of funds, with all plans required of areas designated as nonattainment or maintenance under 40 CFR 81.334 for the pollutants specified therein or listed in Paragraph (b), (c), or (d) (c) of this Rule.

(b) This Section applies to the emissions of volatile organic compounds and nitrogen oxides in the following areas:

- (1) ~~Davidson County,~~
- (2) ~~Durham County,~~
- (3) ~~Forsyth County,~~
- (4) ~~Gaston County,~~
- (5) ~~Guilford County,~~
- (6) ~~Mecklenburg County,~~
- (7) ~~Wake County,~~
- (8) ~~Dutchville Township in Granville County, and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek, and back to the Yadkin River.~~
- (1) townships of Central Cabarrus, Concord, Georgeville, Harrisburg, Kannapolis, Midland, Mount Pleasant, New Gilead, Odell, Poplar Tent, and Rimertown in Cabarrus County;
- (2) townships of Crowders Mountain, Dallas, Gastonia, Riverbend, and South Point in Gaston County;
- (3) townships of Davidson and Coddle Creek in Iredell County;
- (4) townships of Catawba Springs, Lincolnton, and Ironton in Lincoln County;
- (5) all townships in Mecklenburg County;
- (6) townships of Atwell, China Grove, Franklin, Gold Hill, Litaker, Locke, Providence, Salisbury, Steele, and Unity in Rowan County;
- (7) townships of Goose Creek, Marshville, Monroe, Sandy Ridge, and Vance in Union County.

~~(c) This Section applies to the emissions of carbon monoxide in the following areas:~~

- (1) ~~Durham County,~~
- (2) ~~Forsyth County,~~
- (3) ~~Mecklenburg County, and~~
- (4) ~~Wake County.~~

~~(d)(c) This Section applies to the emissions of:~~

- (1) particulate matter in areas identified in 40 CFR 81.334 as nonattainment or that have been redesignated attainment and are current maintenance areas for fine particulate (PM<sub>2.5</sub>), or
- (2) volatile organic compounds or nitrogen oxides in areas identified in 40 CFR 81.334 as nonattainment or that have been redesignated attainment and are current maintenance areas for ozone.

~~(e)(d)~~ This Section applies to FHWA/FTA projects or regionally significant State or local projects. For FHWA/FTA projects or regionally significant State or local projects in the areas identified in Paragraph ~~(b)~~, ~~(e)~~, ~~or (d)(b)~~ of this Rule and for the pollutants identified in Paragraph ~~(b)~~, ~~(e)~~, ~~or (d)(c)~~ of this Rule, this Section applies to:

- (1) the adoption, acceptance, approval, or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by a metropolitan planning organization or the United States Department of Transportation;
- (2) the adoption, acceptance, approval, or support of transportation improvement programs or amendments to transportation improvement programs pursuant to 23 CFR Part 450 or 49 CFR Part 613 by a metropolitan planning organization or the United States Department of Transportation; or
- (3) the approval, funding, or implementation of FHWA/FTA projects.

Conformity determinations are not required under this Section for individual projects that are not FHWA/FTA projects. However, 40 CFR 93.121 shall apply to these projects if they are regionally significant projects.

~~(f)(e)~~ This Section applies to maintenance areas for 20 years from the date the ~~Environment~~ Environmental Protection Agency approves the area's request under Section 107(d) of the Clean Air Act for redesignation to ~~attainment~~ attainment or until the effective date of revocation of the conformity requirements for the NAAQS by EPA.

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

#### **15A NCAC 02D .2002 DEFINITIONS**

For the purposes of this Section, the definitions contained in 40 CFR 93.101 and the following definitions apply:

- (1) "Consultation" means that one party confers with another identified party, provides all information necessary to that party needed for meaningful input, and considers and responds to the views of that party in a timely, substantive written manner prior to any final decision.
- (2) "Regionally significant project" means a transportation project (other than an exempt project under 40 CFR 93.126) that is on a facility that serves regional transportation needs (such as access to and from the area outside of

the region, major activity centers in the region, major planned developments such as new retail malls and sports complexes, or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guide way transit facilities that offer an alternative to regional highway travel.

- (3) "Regionally significant State or local project" means any highway or transit project that is a regionally significant project and that is proposed to receive only funding assistance (receives no federal funding) or approval through the State or any local program.

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

#### **15A NCAC 02D .2003 TRANSPORTATION CONFORMITY DETERMINATION**

(a) Conformity analyses, determinations, and redeterminations for transportation plans, transportation improvement programs, FHWA/FTA projects, and State or local regionally significant projects shall be made according to the requirements of 40 CFR 93.104 and shall comply with the applicable requirements of 40 CFR 93.119, 93.120, 93.124, 93.125, and 93.126. For the purposes of this Rule, regionally significant State or local projects shall be subject to the same requirements under 40 CFR Part 93 as FHWA/FTA projects except that State Environmental Policy Act procedures and requirements shall be substituted for National Environmental Policy Act procedures and requirements. Regionally significant State or local projects subject to this Section for which the State Environmental Policy Act process and a conformity determination have been completed may proceed toward implementation without further conformity determination unless more than three years have elapsed since the most recent major step (State Environmental Policy Act process completion, start of final design, acquisition of a significant portion of the right-of-way, or approval of the plans, specifications, and estimates) occurred. All phases of these projects considered in the conformity determination are also included if these phases were for the purpose of funding final design, right-of-way acquisition, construction, or any combination of these phases.

(b) Before making a conformity determination, the metropolitan planning organizations, local transportation departments, North Carolina Department of Transportation, United States Department of Transportation, the Division of Air Quality, local air pollution control agencies, and United States Environmental Protection Agency shall consult with each other on matters described in 15A NCAC ~~2D02D~~ .2005. Consultation shall begin as early as possible in the development of the emissions analysis used to support a conformity determination. The agency that performs the emissions analysis shall make the analysis available to the Division of Air Quality and at least 21 days shall be allowed for review and comment on the emissions analysis. The 21-day review period shall begin upon receipt of the analysis by the Director of the Division of Air Quality. After review by the Division of Air Quality the approving agency shall seek public

comments in accordance with its public participation policy. The agency making the conformity determination shall address all written comments received prior to close of the public comment period, and these comments and responses thereto shall be included in the final document. If the Division of Air Quality disagrees with the resolution of its comments, the conflict may be escalated to the Governor within 14 days and shall be resolved in accordance with 40 CFR 93.105(d). The 14-day appeal period shall begin upon receipt by the Director of the Division of Air Quality of the metropolitan planning organization's resolution that determines conformity.

(c) The agency that performs the conformity analysis shall notify the Division of Air Quality of:

- (1) any changes in planning or analysis assumptions [including land use and vehicle miles traveled (VMT) forecasts], and
- (2) any revisions to transportation plans or transportation improvement plans that add, delete, or change projects that require a new emissions analysis (including design scope and dates that change the transportation network existing in a horizon year).

Comments made by the Division of Air Quality and responses thereto made by the agency shall become part of the final planning document.

(d) Transportation plans shall satisfy the requirements of 40 CFR 93.106. Transportation plans and transportation improvement programs shall satisfy the fiscal constraints specified in 40 CFR 93.108. Transportation plans, programs, and FHWA/FTA projects shall satisfy the applicable requirements of 40 CFR 93.109 through ~~93.118~~ 93.119.

(e) Written commitments to implement control measures that are not included in the transportation plan and transportation improvement program (TIP) shall be obtained before a conformity determination and these commitments shall be fulfilled. Written commitments to implement mitigation measures shall be obtained before a positive conformity determination, and project sponsors shall comply with these commitments.

(f) A recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Act shall not adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the requirements of 40 CFR Part 93 are fully complied with.

(g) The degree of specificity required in a transportation plan and the specific travel network assumed for air quality modeling shall not preclude the consideration of alternatives in the National Environmental Policy Act of 1969 process, in accordance with 40 CFR 93.107.

(h) When assisting or approving any action with air quality-related consequence, the Federal Highway Administration and the Federal Transit Administration of the Department of Transportation shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the national ambient air quality standards as provided under 40 CFR 93.103. This priority shall be consistent with statutory requirements for allocation of funds among states or other jurisdictions.

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

## **15A NCAC 02D .2004 DETERMINING TRANSPORTATION-RELATED EMISSIONS**

(a) The procedures in 40 CFR 93.122 shall be used to determine regional transportation-related emissions.

(b) The procedures in 40 CFR 93.123 shall be used to determine localized carbon monoxide concentrations (hot-spot analysis).

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

## **15A NCAC 02D .2005 MEMORANDUM OF AGREEMENT**

(a) The Division of Air Quality shall develop and maintain a memorandum of agreement with the North Carolina Department of Transportation, the metropolitan planning organizations of the areas identified in 15A NCAC 02D Rule .2001(b), (c), or (d) of this Section, and the United States Department of Transportation to describe the participation and responsibilities of each of these agencies in implementing the requirements of this Section and 40 CFR Part 93. For those areas identified in ~~Rule 15A NCAC 02D .2001(b), (c), or (d) of this Section~~ for which there is no metropolitan planning organization, the North Carolina Department of Transportation shall represent those areas for the purposes of the memorandum of agreement. The memorandum of agreement shall include:

- (1) consultation procedures described under 40 CFR 93.105;
- (2) the projected time allotted for each agency to review and comment on or to respond to comments on transportation improvement programs, transportation plans, and transportation projects; and
- (3) consultation procedures for the development of State Implementation Plans that relate to transportation.

The contents of the Memorandum of Agreement shall comply with the criteria and procedures in the federal Clean Air Act Section 176(c) [42 U.S.C. 7401-7671q] and 40 CFR Part 51, Subpart T, 40 CFR Part 93, Subpart A, and ~~Rules 15A NCAC 02D .2001 through .2004 of this Section~~ .2004.

(b) No recipient of federal funds (as defined at 40 CFR 93.101) designated under Title 23 U.S.C. or the Federal Transit Act shall adopt or approve or take any action to develop or implement a regionally significant highway or transit project unless such recipient has signed the Memorandum of Agreement established under this Rule. This Memorandum of Agreement shall bind the recipient to adhere to the conformity criteria and procedures of this Section.

(c) No agency shall adopt or approve or take any action to implement or develop any transportation plan, transportation improvement program, or federally funded or approved FHWA/FTA highway or transit project unless the agency has signed the Memorandum of Agreement established under this Rule. This Memorandum of Agreement shall bind the recipient to adhere to the conformity criteria and procedures of this Section.

(d) Each federal agency that participates in determinations of conformity to state and federal implementation plans shall sign the Memorandum of Agreement established under this Rule. This

Memorandum of Agreement shall bind the recipient to adhere to the conformity criteria and procedures of this Section.

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

## SECTION .2200 – SPECIAL ORDERS

### 15A NCAC 02D .2201 PURPOSE

The purpose of this Section is to implement the provisions of G.S. 143-215.110 pertaining to the issuance of air quality Special Orders by the Environmental Management Commission.

*Authority G.S. 143-215.3(a)(1); 143-215.110.*

### 15A NCAC 02D .2202 DEFINITIONS

For the purposes of this Section, the following definitions apply:

- (1) "Special Order" means a directive of the Commission to any person whom it finds responsible for causing or contributing to any pollution of the air of the State. The term includes all orders or instruments issued by the Commission pursuant to G.S. 143-215.110.
- (2) "Consent Order" means a Special Order into which the Commission enters with the consent of the person who is subject to the order.
- (3) "Special Order by Consent" means "Consent Order."

*Authority G.S. 143-212; 143-213; 143-215.3(a)(1); 143-215.110.*

### 15A NCAC 02D .2203 PUBLIC NOTICE

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

(b) Notice of proposed Consent Order:

- (1) The Director shall give notice pursuant to G.S. 143-215.110(a1).
- (2) The Director shall give notice of a proposed Consent Order at least 30 days prior to any final action regarding the Consent Order.
- (3) The notice shall be posted on the North Carolina Division of Air Quality web site at <http://deq.nc.gov/about/divisions/air-quality/air-quality-enforcement/special-orders-by-consent> and provided to those persons specified in G.S. 143-215.110(a1)(1) for air quality special orders.
- ~~(2)~~(4) The notice shall include at least the following:
  - (A) name, address, and telephone number of the Division;
  - (B) name and address of the person to whom the proposed order is directed;
  - (C) a brief summary of the conditions of the proposed order including the period of time in which action shall be taken to achieve compliance and the

major permit conditions or emission standards that the source will be allowed to exceed during the pendency of the order;

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

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

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

- (1) The Director shall consider all requests for a public hearing, and if he determines significant public interest for a public hearing exists, then he shall hold a public hearing.
- (2) The Director shall give notice of the public hearing at least 30 days before the hearing.
- (3) The notice shall be ~~advertised in a local newspaper~~ posted on the North Carolina Division of Air Quality web site at <http://deq.nc.gov/about/divisions/air-quality/air-quality-enforcement/special-orders-by-consent> and provided to those persons specified in G.S. 143-215.110(a1)(2) for air quality special orders.
- (4) The notice shall include the information specified in Subparagraph ~~(b)(2)~~(b)(4) of this Rule. It shall also state the time and location for the hearing along with procedures for providing comment.
- (5) The Chairman of the Commission or the Director shall appoint one or more hearing officers to preside over the public hearing and to receive written and oral comments. The hearing officer shall provide the Commission a written report of the hearing, which shall include:
  - (A) a copy of the public ~~notice published in the newspaper;~~ notice;
  - (B) a copy of all the written comments and supporting documentation received;
  - (C) a summary of all the oral comments received;
  - (D) recommendations of the hearing officer to the Commission; and
  - (E) a proposed Consent Order for the Commission's consideration.

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

(e) The Director may satisfy the requirements in Paragraphs (b) and (c) of this Rule by issuing a notice that complies with both Paragraphs.

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

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

#### **15A NCAC 02D .2204 FINAL ACTION ON CONSENT ORDERS**

(a) The Director shall take final action for the Commission on Consent Orders for which a public hearing has not been held as provided in ~~Rule .2203 of this Section.~~ 15A NCAC 02D .2203. The final action on the proposed order shall be taken no later than 60 days following publication of the notice.

(b) The Commission shall take final action on Consent Orders for which a public hearing has been held as provided in ~~Rule .2203 of this Section.~~ 15A NCAC 02D .2203. The final action on the proposed order shall be taken no later than 90 days following the hearing.

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

#### **15A NCAC 02D .2205 NOTIFICATION OF RIGHT TO CONTEST SPECIAL ORDERS ISSUED WITHOUT CONSENT**

For any Special Orders other than Consent Orders, the Commission shall notify the person subject to the order of the procedure set out in G.S. 150B-23 to contest the Special Order.

*Authority G.S. 143-215.2(b); 143-215.3(a)(1); 143-215.110(b).*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .2201, .2202, .2204, and. 2205.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://deq.nc.gov/permits-regulations/rules-regulations/proposed-rules>

**Proposed Effective Date:** December 1, 2017

**Public Hearing:**

**Date:** July 12, 2017

**Time:** 1:30 p.m.

**Location:** Holiday Inn, 203 SW Greenville Blvd., Greenville, NC 27834

**Reason for Proposed Action:** *Section 07H .2200 defines specific development requirements for the construction of Freestanding Moorings. The Coastal Resources Commission is proposing to amend its administrative rules to expand this General Permit to include bird nesting poles as well as make this General Permit consistent with General Permit 07H .1200.*

**Comments may be submitted to:** *Braxton Davis, 400 Commerce Avenue, Morehead City, NC 28557; phone (252) 808-2808*

**Comment period ends:** August 14, 2017

#### **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 919-431-3000.

#### **Fiscal impact (check all that apply).**

- ☒ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Substantial economic impact (≥\$1,000,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required by G.S. 150B-21.4

### **CHAPTER 07 - COASTAL MANAGEMENT**

#### **SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN**

##### **SECTION .2200 - GENERAL PERMIT FOR CONSTRUCTION OF FREESTANDING MOORINGS AND BIRD NESTING POLES IN ESTUARINE WATERS AND PUBLIC TRUST AREAS AND OCEAN HAZARD AREAS**

#### **15A NCAC 07H .2201 PURPOSE**

A general permit pursuant to this Section shall allow the construction of freestanding moorings and bird nesting poles in the estuarine waters and public trust areas AECs according to the procedures provided in 15A NCAC 07J .1100 and according to the rules in this Section. This permit shall not apply to waters adjacent to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation,

lower wave energy, and lower erosion rates than the adjacent Ocean Erodeable Area.

*Authority G.S. 113A-107; 113A-118.1.*

**15A NCAC 07H .2202 APPROVAL PROCEDURES**

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and request approval for development.

(b) The applicant shall provide:

- (1) information on site location, dimensions of the project area, and his/her name and address;
- (2) a dated plat(s) showing existing and proposed development; and
- (3) ~~confirmation evidence~~ that:
  - (A) a written statement has been obtained and signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
  - (B) the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response shall be interpreted as no objection. DCM staff shall review all comments. If DCM determines that:
    - (i) the comments are relevant to the potential impacts of the proposed project; and
    - (ii) ~~the permitting issues raised by the comments are worthy of more detailed review; the~~ Division of Coastal Management shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If the Division of Coastal Management determines that the project exceeds the guidelines established by the General Permit process, DCM shall notify the applicant that he must submit an application for a major development permit. permit shall be required.

(c) Approval of individual projects shall be acknowledged in writing by the Division of Coastal Management and the applicant shall be provided a copy of this Section. Construction authorized by this permit shall be completed within 120 days of permit issuance or the general authorization expires and a new permit shall be required to begin or continue construction.

*Authority G.S. 113A-107; 113A-118.1.*

**15A NCAC 07H .2204 GENERAL CONDITIONS**

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

(b) A "bird nesting pole" is any pole or piling erected, with a platform on top, specifically with the purpose of attracting birds for nesting.

~~(b)(c)~~ Freestanding moorings and bird nesting poles authorized by this permit shall be for the exclusive use of the riparian landowner(s) in whose name the permit is issued, and shall not provide either leased or rented moorings or any other commercial services.

~~(c)(d)~~ There shall be no unreasonable interference with navigation or use of the waters by the public by the existence of freestanding moorings authorized by this permit.

~~(d)(e)~~ This general permit may not be applicable to proposed construction when the Department determines that the proposal might significantly affect the quality of the human environment or unnecessarily endanger adjoining properties. In those cases, individual permit applications and review of the proposed project shall be required according to 15A NCAC 07J.

~~(e)(f)~~ Development carried out under this permit must be consistent with all local requirements, AEC Guidelines in 7H .0100 et. seq. and local land use plans current at the time of authorization.

~~(f)(g)~~ Individuals shall allow authorized representatives of the Department of ~~Environment, Health, and Natural Resources~~ Environmental Quality to make periodic inspections at any time deemed necessary in order to be sure that the activity being performed under the authority of this general permit is in accordance with the terms and conditions prescribed herein.

~~(g)~~ Freestanding mooring(s) shall not be transferable or assignable. Upon transfer of riparian property ownership, the mooring(s) must be removed by the original permittee unless a new permit is issued to the new riparian owner.

*Authority G.S. 113A-107; 113A-118.1.*

**15A NCAC 07H .2205 SPECIFIC CONDITIONS**

(a) Freestanding moorings and bird nesting poles may be located up to a maximum of 400 feet from the mean high water line, or the normal water line, whichever is applicable.

(b) Freestanding moorings and bird nesting poles along federally maintained channels must meet US Army Corps of Engineers guidelines.

(c) Freestanding moorings in no case shall extend more than ~~4/3~~ 1/4 the width of a natural water body or man-made canal or basin.

(d) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing including the vessel to be moored. Moorings and the attached vessel shall not interfere with the access to any riparian property, and shall have a minimum setback of 15 feet from the adjacent property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided in the rule may be waived by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of freestanding moorings. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge.

(e) The total number of ~~docking/mooring~~ docking or mooring facilities to be authorized via a CAMA General permit, a Certificate of Exemption or any combination of the two may permit shall not exceed ~~four~~ two per property.

(f) Bird nesting poles shall be limited to one per property. Any proposal to change the location of a previously permitted bird nesting pole shall require additional authorization from the Division of Coastal Management.

~~(f)(g)~~ Freestanding moorings and bird nesting poles shall not significantly interfere with shellfish franchises or leases. Applicants for authorization to construct freestanding moorings and bird nesting poles shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed installation would extend.

(h) Freestanding moorings shall not be constructed in a designated Primary Nursery Area with less than two feet of water at normal low water level or normal water level under the General Permit set forth in this Section without prior approval from the Division of Marine Fisheries or the Wildlife Resources Commission.

(i) Freestanding moorings located over shellfish beds or submerged aquatic vegetation (as defined by the Marine Fisheries Commission) may be constructed without prior consultation from the Division of Marine Fisheries or the Wildlife Resources Commission if the following two conditions are met:

- (1) Water depth at the freestanding mooring location is equal to or greater than two feet of water at normal low water level or normal water level; and
- (2) The freestanding mooring is located to minimize the area of submerged aquatic vegetation or shellfish beds impacted under the structure as determined by the Division of Coastal Management.

~~(g)(j)~~ Freestanding moorings and bird nesting poles shall not be established in submerged cable/pipeline utility crossing areas or in a manner which interferes with the operation of an access through any bridge.

~~(h)(k)~~ Freestanding moorings and bird nesting poles shall be marked or colored in compliance with U.S. Coast Guard and N.C. Wildlife Resource Commission requirements and the required

marking maintained for the life of the mooring(s). At minimum, permanent reflectors shall be attached to the structure in order to make it more visible during hours of darkness or inclement weather.

~~(i)(l)~~ Freestanding moorings must bear owner's name, vessel State registration numbers or U.S. Customs Documentation numbers. Required identification must be legible for the life of the mooring(s).

~~(j)(m)~~ The type of material used to anchor a proposed mooring buoy(s) must be non-polluting and of sufficient weight and design to safely anchor the buoy and vessel.

~~(k)~~ If use of any freestanding mooring authorized by this General permit is discontinued for a period of 12 months or more, it must be removed by the permittee.

~~(l)(n)~~ Mooring buoys authorized by this General permit must be a minimum 12" in diameter or otherwise be designed to be easily recognized and not present a hazard to navigation.

~~(m)~~ Existing freestanding moorings (i.e. buoys/pilings) may be maintained in place for two years. However, if the mooring(s) deteriorate or are damaged such that replacement is necessary during the two year period, the mooring(s) then must comply with those guidelines of the Division in place at that time. In any event, existing moorings must comply with these Rules within two years.

(o) The platform located at the apex of the bird nesting pole shall not exceed 3'x 3' and shall not have sides.

~~(n)(p)~~ This permit does not relieve the permit holder of the responsibility to ensure that all other State and Federal permit requirements are met prior to implementation of the project.

*Authority G.S. 113A-107; 113A-118.1.*

## TITLE 20 – DEPARTMENT OF STATE TREASURER

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Local Government Commission intends to adopt the rules cited as 20 NCAC 03 .0409 and .0410.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://www.nctreasurer.com/inside-the-department/OpenGovernment/proposed-rules/Pages/default.aspx>

**Proposed Effective Date:** *October 1, 2017*

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

**Reason for Proposed Action:** *Proposed rules are in accordance with statutory mandate at 159-28(f)(3) and 115C-441(f)(3) for the Local Government Commission to adopt rules that set forth when preaudit and disbursement certifications are not required for electronic transactions by local governments, public authorities or local school administrative units.*

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

**Comment period ends:** *August 14, 2017*

**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 919-431-3000.

**Fiscal impact (check all that apply).**

- ☐ **State funds affected**
- ☐ **Environmental permitting of DOT affected**
- ☒ **Analysis submitted to Board of Transportation**
- ☒ **Local funds affected**
- ☐ **Substantial economic impact (≥\$1,000,000)**
- ☒ **Approved by OSBM**
- ☐ **No fiscal note required by G.S. 150B-21.4**

**CHAPTER 03 - LOCAL GOVERNMENT COMMISSION**

**SECTION .0400 – ACCOUNTING AND INTERNAL CONTROLS**

**20 NCAC 03 .0409 EXEMPTION FROM PREAUDIT CERTIFICATE REQUIREMENT FOR ELECTRONIC TRANSACTIONS**

(a) To qualify for an exemption from the preaudit certificate requirement in G.S. 159-28(a) or G.S. 115C-441(a) for electronic transactions, a local government, public authority, or local school administrative unit, herein referred to as "the unit," shall do the following:

- (1) The unit's governing board shall adopt a resolution authorizing the unit to engage in electronic transactions as defined by G.S. 159-28 or G.S. 115C-441;
- (2) The unit shall have an "encumbrance system". As used in this rule, an "encumbrance system" means a system of written policies and procedures for tracking obligations. The system may be manual, maintained as part of the unit's accounting system, or a combination of the two;
- (3) The unit's governing board, or finance officer if authorized by the unit's governing board, shall adopt a written policy outlining procedures for preauditing obligations that will be incurred by

electronic transactions. The written policy and any procedures shall provide internal controls that shall ensure the following:

- (A) there is a budget, project, or grant ordinance appropriation authorizing the expenditure;
- (B) that sufficient budgeted monies remain within the appropriation to cover the amount that is expected to be paid out during the current fiscal year if accounted for in the budget ordinance, or to cover the entire amount if accounted for in a project or grant ordinance; and
- (C) that the amount of the transaction is recorded in the unit's encumbrance system;
- (4) The unit shall provide training to all personnel about the written policy and the procedures that shall be followed before undertaking an electronic transaction; and
- (5) The unit shall provide its governing board, each quarter, a budget to actual statement that includes the following:
  - (A) budgeted accounts;
  - (B) actual payments made;
  - (C) amounts encumbered, including electronic obligations; and
  - (D) the amount of the budget that is unobligated for all major funds.

(b) Local government, public authority, or local school administrative units that comply with Subparagraphs (a)(1) through (5) of this Rule shall not be required to affix the preaudit language required in G.S. 159-28(a1) or G.S. 115C-441(a1) to electronic transactions transacted as follows:

- (1) credit cards;
- (2) procurement cards; or
- (3) fuel cards.

*Authority G.S. 115C-441(f)(3); 159-28(f)(3).*

**20 NCAC 03 .0410 EXEMPTION FROM DISBURSEMENT CERTIFICATE REQUIREMENT FOR ELECTRONIC TRANSACTIONS**

(a) To qualify for an exemption from the disbursement certificate requirement in G.S. 159-28(d1) and G.S. 115C-441(d1) for electronic transactions, a local government, public authority, or local school administrative unit, herein referred to as "the unit," shall do the following:

- (1) The unit's governing board shall adopt a resolution authorizing the unit to engage in electronic transactions as defined by G.S. 159-28 or G.S. 115C-441; and
- (2) The unit's governing board, or finance officer if authorized by the governing board, shall adopt a written policy outlining procedures for disbursing public funds by electronic transaction. The written policy and any



procedures shall provide internal controls that shall ensure the following:

- (A) that the amount claimed is payable;
- (B) that there is a budget, project, or grant ordinance appropriation authorizing the expenditure;
- (C) that monies remain within the appropriation to cover the amount that is due during the current fiscal year if accounted for in the budget ordinance, or to cover the entire amount if accounted for in a project or grant ordinance; and
- (D) that the unit has sufficient cash to cover the payment.

(b) Local government, public authority, or local school administrative units that comply with Subparagraphs (a)(1) and (2) of this Rule shall not be required to affix the disbursement certificate required in G.S. 159-28(d1) or G.S. 115C-441(d1) to any electronic transactions.

*Authority G.S. 115C-441(f)(3); 159-28(f)(3).*

## TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

### CHAPTER 01 – ACUPUNCTURE LICENSING BOARD

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Acupuncture Licensing Board intends to readopt with substantive changes the rules cited as 21 NCAC 01 .0104, .0201, .0301 and .0402.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://www.ncalb.com/>

**Proposed Effective Date:** *October 1, 2017*

**Public Hearing:**

**Date:** *July 11, 2017*

**Time:** *9:00 a.m.*

**Location:** *1101 Hayes Street, Suite 100, Raleigh, NC 27604*

**Reason for Proposed Action:** *Readoption of existing rules pursuant to G.S. 150B-21.3A(d)(2), with changes to ensure continuing education requirements reflect an in depth knowledge of the fundamentals of acupuncture practice and are updated to include additional methods by which practitioners can learn about and contribute to the practice of acupuncture, as well as to reflect current standards of patient care, patient privacy and patient records.*

**Comments may be submitted to:** *Pat Pritchard, P.O. Box 10686, Raleigh, NC 27605*

**Comment period ends:** *August 14, 2017*

**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 919-431-3000.

**Fiscal impact (check all that apply).**

- ☐ **State funds affected**
- ☐ **Environmental permitting of DOT affected**
- ☐ **Analysis submitted to Board of Transportation**
- ☐ **Local funds affected**
- ☐ **Substantial economic impact (≥\$1,000,000)**
- ☐ **Approved by OSBM**
- ☐ **No fiscal note required by G.S. 150B-21.4**
- ☒ **No fiscal note required by G.S. 150B-21.3A(d)(2)**

### SECTION .0100 - LICENSURE

#### 21 NCAC 01 .0104 DEFINITIONS

The following definitions shall apply throughout this Chapter:

- (1) The title of "Licensed Acupuncturist" or "Acupuncturist" is the title conveyed by North Carolina Acupuncture Licensing Board pursuant to Article 30 of Chapter 90 of the North Carolina General Statutes. A Licensed Acupuncturist or Acupuncturist cannot use a licensure title from another state to refer to him or herself as a doctor. Licensed Acupuncturists or Acupuncturists may only refer to him or herself as a doctor in the state of North Carolina, if he or she has earned an educational degree of "doctor" or "doctorate."
- (4)(2) "Acupuncture adjunctive therapies" include ~~but are not limited to~~ auricular, nose, face, hand, foot, and scalp acupuncture therapy; and the adjunctive therapies listed in G.S. 90-451(3). It also includes stimulation to acupuncture points and channels by any of the following: ~~needles,~~ cupping, thermal methods, magnets, and gwa-sha scraping techniques.
- (2)(3) "Acupuncture diagnostic techniques" include ~~but are not limited to~~ the use of observation, listening, smelling, inquiring, palpation, pulse diagnosis, tongue diagnosis, hara diagnosis, physiognomy, five element correspondence, ryodoraku, akabani, and electro-acupuncture.
- (3)(4) "Acupuncture needles" mean solid filiform needles and include ~~but are not limited to~~

- intra-dermal, plum blossom, press tacks, and prismatic needles.
- (4)(5) "Dietary guidelines" include ~~but are not limited to~~ nutritional counseling and the recommendation of food and supplemental substances.
- (5)(6) "Electrical stimulation" includes ~~but is not limited to~~ the treatment or diagnosis of energetic imbalances using TENS, Piezo electrical stimulation, acupoint therapy, auricular therapy devices, and percutaneous and transcutaneous electrical nerve stimulation. stimulation and Class IIIa, 5 milliwatt laser devices. All laser devices shall be administered in accordance with FDA guidelines, including 21 CFR 1040.10 and 1040.11.
- (6)(7) "Herbal medicine" includes ~~but is not limited to~~ tinctures, patent remedies, decoction, powders, diluted herbal remedies, freeze dried herbs, salves, poultices, medicated oils, and liniments.
- (7)(8) "Massage and manual techniques" include ~~but are not limited to~~ acupressure, shiatsu, Tui-Na, qi healing, and medical qi gong.
- (8)(9) "Therapeutic exercise" includes ~~but is not limited to~~ qi gong, Taoist self-cultivation exercises, dao yin, tai qi chuan, ba gua, and meditative exercises.
- (9)(10) "Thermal methods" include ~~but are not limited to~~ ~~moxibustion, moxibustion and~~ hot and cold packs. ~~packs and laser acupuncture.~~ All acupuncture devices shall be administered in accordance with Federal Drug Administration guidelines.

Authority G.S. 90-451(3); 90-454.

## SECTION .0200 - RENEWAL OF LICENSURE

### 21 NCAC 01 .0201 RENEWAL OF LICENSURE

The procedure and requirements for renewal of license are as follows:

- (1) Biennial Renewal. A licensee ~~must~~ shall renew his or her license by the second July 1 following initial licensure and thereafter renew his or her license ~~prior to expiration every two years, by July 1 every two years thereafter.~~
- (2) Continuing Education. An applicant for license renewal shall verify on a renewal form prepared by the Board pursuant to G.S. 90-455(b)(1) that the licensee has completed the required continuing education units, the number of units completed, and a list of those programs completed. ~~The licensee must retain such receipts, vouchers or certificates as may be necessary to document completion of the continuing education units required. An applicant~~ A licensee must shall retain records to establish that the ~~applicant~~ licensee has fulfilled the educational requirements set by the Board.

Board, pursuant to Rule .0301(m) of this Chapter.

- (3) Fees. The licensee ~~must~~ shall pay the renewal fee prescribed in Rule .0103 of this Chapter.
- (4) Suspended license. The holder of a suspended license ~~must~~ shall meet the ~~prescribed~~ pursuant to G.S. 90-455(b) and this Rule for the duration of the suspension or the license shall expire, expire pursuant to G.S. 90-457.1(e).
- (5) Expired license. ~~He or she must not practice acupuncture with an expired license. The practice of acupuncture with an expired license is unlawful and prohibited.~~ Failure to receive notification that ~~the~~ a license has expired ~~during this period~~ does not relieve the holder of an expired license of the responsibility of meeting the continuing education requirements that would have been required if the license had continued to be in effect. These continuing education units will not apply to the renewal requirements for the subsequent renewal period. ~~To~~ In order to renew an expired license pursuant to G.S. 90-455(e), the applicant ~~must~~ shall file the ~~approved application, renewal form prepared by the Board,~~ submit proof of completion of continuing education, and pay the ~~renewal~~ late license renewal (additional) fee resulting from the expired license as well as the ~~required~~ renewal of biennial licensing fee. Expired licenses not renewed within two years after the license expired or not reactivated within eight years after the license is placed on inactive status, pursuant to G.S. 90-455(c), are deemed lapsed, pursuant to G.S. 90-455(f).

Authority G.S. 90-455.

## SECTION .0300 – CONTINUING EDUCATION

### 21 NCAC 01 .0301 STANDARDS FOR CONTINUING EDUCATION

- (a) Applicants for license renewal shall complete 40 Continuing Education Units (CEU) every two years. One CEU is defined as one contact hour or 50 minutes.
- (b) All CEUs shall be completed during the two calendar years ~~immediately~~ preceding the:
  - (1) License renewal ~~date, deadline;~~ or
  - (2) Date on which the license renewal is approved by the Board.
- (c) The following requirements shall apply to the total number of CEUs submitted by a licensee for license renewal:
  - (1) A minimum of 25 CEUs ~~must~~ shall be obtained from formally organized courses ~~which that~~ have content relating to the scope of practice of acupuncture as defined by G.S. 90-451(3). ~~Each course shall be sponsored or approved by one or more of the following organizations or their successor organizations:~~

- ~~(A) National Acupuncture and Oriental Medicine Alliance (NAOMA);~~
  - ~~(B) Association of Acupuncture and Oriental Medicine (AAOM);~~
  - ~~(C) Council of Colleges of Acupuncture and Oriental Medicine (CCAOM);~~
  - ~~(D) Acupuncture Schools Accredited By or in Candidacy Status with the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM);~~
  - ~~(E) National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM);~~
  - ~~(F) National Academy of Acupuncture and Oriental Medicine (NAAOM);~~
  - ~~(G) Society for Acupuncture Research;~~
  - ~~(H) National Acupuncture Detoxification Association;~~
  - ~~(I) American Academy of Medical Acupuncture (AAMA);~~
  - ~~(J) The acupuncture licensing board of another State;~~
  - ~~(K) North Carolina Association of Acupuncture and Oriental Medicine (NCAAOM);~~
  - ~~(L) American Heart Association; or~~
  - ~~(M) American Red Cross.~~
  - (A) Fifteen of these 25 hours shall contain course content relating to the practice of acupuncture as defined by G.S. 90-451(1), not including adjunctive therapies as defined in the second sentence of G.S. 90-451(3) and Rule .0104(2) of this Chapter.
  - (B) The remaining 10 hours of instruction in formally organized courses may be obtained from course content including adjunctive therapies.
- (2) A maximum of 15 CEUs may be obtained from teaching acupuncture diagnosis and treatment. All CEUs for teaching shall be approved by the Board prior to the date of the class and awarded for actual classroom hours taught pursuant to this Rule. For approval the licensee shall submit the following information:
- (A) Title of the course;
  - (B) Summary of course content or class syllabus;
  - (C) Location of the class;
  - (D) Dates of the class;
  - (E) Number of classroom hours taught; and
  - (F) Copy of course evaluation to be provided students.
- (2) The remaining 15 CEUs may be comprised of any combination of the following:
- (A) two CEUs are required every license renewal period to maintain CPR certification;
  - (B) up to 15 CEUs of formally organized courses that relate to either acupuncture or the adjunctive therapies;
  - (C) up to 10 CEUs for acupuncture or Chinese medicine research;
  - (D) up to 10 CEUs for teaching of Chinese medicine in a formally organized course as defined in Paragraph (d) of this Rule or
  - (E) up to 10 CEUs for published work in peer-reviewed journals.
- (d) A course submitted to the Board for credit as CEUs shall be formally organized. A formally organized course shall consist of the following:
- (1) A record of attendance maintained on file by the sponsor of the course. The sponsor shall maintain a record of attendance for four years. This record shall be made available to the Board upon request; request, based upon the power granted to the Board pursuant to G.S. 90-454(2);
  - (2) For a course taught by an instructor who is required by the State to hold a credential to practice in the field which is the subject of the course, the credential of that instructor shall be in good standing and any instructor shall be competent to teach his or her designated course by virtue of his or her education, training, and experience;
  - (2) The instructor shall hold credentials to practice in the field that is the subject of the course or the instructor shall be competent to teach the designated course by virtue of his or her education, training, and experience, as determined by the Board pursuant to G.S. 90-457.1(b);
  - (3) The course shall have stated course objectives and a course syllabus or a description of the content of the course with a class outline;
  - (4) The course shall be evaluated by each participant; participant on an evaluation form provided by the instructor; and
  - (5) Upon completion of each course course, the provider shall issue a certificate of completion to each participant to include:
    - (A) Title The title of the course;
    - (B) Name The name of the participant;
    - (C) Name The name of all instructors;
    - (D) Name The name of the provider;
    - (E) Date The date and location of the course; and
    - (F) Number The number of CEU's CEUs completed.

(e) Licensees shall maintain CPR certification, by taking a CPR certification course every renewal period. Two CEUs are granted for maintaining CPR certification.

(f) A maximum of 10 CEUs may be obtained in each renewal period by licensees who are involved in acupuncture or Chinese medicine research studies in accredited hospitals or educational institutions. A research project may only be submitted once for the purpose of obtaining CEU credit. In order to obtain Research approved CEUs the following must be submitted to the Board for review and approval:

- (1) The institutional Review Board (IRB) approval;
- (2) A summary of the study; and
- (3) The names and credentials of primary researchers involved.

(g) A maximum of 10 CEUs may be obtained in each renewal period by teaching up to 30 hours of acupuncture education in an American College of Acupuncture and Oriental Medicine (ACAOM) accredited educational institution. Three hours of teaching are necessary for each CEU awarded.

(h) A maximum of 10 CEUs may be obtained in each renewal period by teaching up to 30 hours of a CEU course approved by the NCALB. All CEUs for teaching shall be approved in advance by the Board prior to the date of the class and awarded for actual classroom hours taught. Three hours of teaching are necessary for each CEU awarded. For approval the licensee shall submit the following information:

- (1) The title of the course;
- (2) A summary of course content or class syllabus;
- (3) The location of the course;
- (4) The dates of the course;
- (5) The total number of classroom hours taught;
- (6) A copy of course evaluation to be provided students; and
- (7) The course fees and refund policy.

(i) A maximum of 10 CEUs may be obtained by authoring an article in a peer-reviewed journal of acupuncture or Chinese medicine. Examples of journals that would be considered by the Board include:

- (1) The Journal of Traditional Chinese Medicine;
- (2) The American Journal of Chinese Medicine; and
- (3) The World Journal of Traditional Chinese Medicine.

(j) A maximum of 10 CEUs may be obtained in online courses including any online CPR class. All online courses shall be approved by one of the following organizations or their successor organization:

- (1) Acupuncture schools in candidacy status or accredited by American College of Acupuncture and Oriental Medicine (ACAOM);
- (2) National Certification Commission for Acupuncture and Oriental Medicine;
- (3) The Society for Acupuncture Research;
- (4) National Acupuncture Detoxification Association;
- (5) American Academy of Medical Acupuncture (AAMA); or
- (6) North Carolina Acupuncture Licensing Board.

~~(e)(k)~~ CEUs from any given course may be used to satisfy the requirements of only one ~~biennium~~ renewal period.

~~(f)(l)~~ At the time of license renewal, each licensee shall sign a statement ~~under penalty of perjury indicating the licensee has complied~~ swearing compliance with the continuing education ~~requirements~~ requirements pursuant to G.S. 90-457.1(d).

~~(g)(m)~~ Each licensee shall retain for four years records of all continuing education programs attended, indicating:

- (1) The title of the course or program;
- (2) ~~sponsoring organization or individual;~~ The name of the participant;
- (3) ~~accrediting organization;~~ and The name of all instructors;
- (4) ~~course hours in attendance.~~ The name of the provider;
- (5) The date and location of the course; and
- (6) The number of CEUs completed.

~~(h)(n)~~ The Pursuant to G.S. 90-457.1(b), the Board may audit the records of any licensee, licensee to ensure compliance with the continuing education requirements of this Rule. No licensee shall be subject to audit more than once every two years. Those licensees selected for audit shall be required to document their compliance with the continuing education requirements of this article.

~~(i)~~ Failure to comply with the continuing education requirements shall prohibit license renewal and result in the license reverting to an expired status at the end of the renewal period.

~~(j)(o)~~ It shall constitute unprofessional conduct for a licensee to misrepresent completion of required CEUs. In the event of misrepresentation, disciplinary proceedings ~~may~~ shall be initiated by the Board.

~~(k)~~ A maximum of 20 CEUs may be obtained for correspondence or on-line courses.

~~(l)~~ All applications for pre approval must be submitted 60 days prior to the date of the course.

~~(m)(p)~~ A licensee may apply to the Board for an extension of time to complete continuing education requirements as set out in G.S. 90-457.1. All applications for extensions of time must be submitted at least 30 days prior to the renewal deadline.

*Authority G.S. 90-451; 90-454; 90-455(b)(3); 90-457.1.*

## **SECTION .0400 - PRACTICE PARAMETERS AND PROCEDURES**

### **21 NCAC 01 .0402 ACUPUNCTURE PROCEDURES**

The following procedures shall be followed within the practice of acupuncture:

- (1) Practice Setting:
  - (a) Treatments shall be given in surroundings that provide privacy and confidentiality. Community acupuncture practices that perform acupuncture treatment in a group setting shall obtain and retain a signed consent waiving the right to a private treatment setting from every patient prior to his or her first treatment.

- (b) Every acupuncture office shall be maintained in a clean and sanitary condition at all times, and shall have a ~~readily~~ an accessible bathroom facility.
  - (c) OSHA Standards for Blood Borne Pathogens shall be met.
  - (d) All acupuncture practice and recordkeeping shall be compliant with all State and federal laws and regulations pertaining to the confidentiality of medical records including security and privacy regulations enacted under HIPAA, 45 C.F.R Part 160 and subparts A and E of Part 164, as amended or replaced.
- (2) New Patient Intake:
- (a) Prior to treatment, a written or oral medical history shall be obtained from the patient. Oral statements shall be ~~reflected~~ written in the practitioner's notes. Information shall include current and past illnesses, treatments, hospitalizations, current medications, and allergies to medications. A social history shall include use of tobacco, alcohol, caffeine, and recreational drugs.
  - (b) The names of current health practitioners shall be listed.
  - (c) The ~~current~~ presenting complaints shall be outlined along with remedies and treatments tried and in progress.
  - (d) The licensee shall inquire about the possibility of patient pregnancy or and the presence of biomedical devices, such as artificial joints or cardiac pacemaker shall be ascertained. pacemaker.
- (3) Fees. Information concerning fees shall be made available prior to treatment.
- (4) Guarantees. No ~~guarantee~~ express or implied guarantee about the success of treatment shall be given. Reasonable indication of the length of treatment and usual outcome shall be given.
- (5) Diagnosis:
- (a) Diagnosis Licensees shall diagnose each patient be made utilizing employing methods connected with used by the traditions represented in Oriental Asian medicine as listed in
- reflected in Rule :0104 .0104(2) of this Chapter. Examples of diagnostic measures include the Eight Principles, Five Elements, Pulse diagnosis, and Tongue diagnosis. Chapter and within the context of American College of Acupuncture and Oriental Medicine (ACAOM) educational programs.
- (b) The All acupuncture diagnostic techniques utilized procedures shall be recorded at each visit.
- (6) Treatment. The specifics of ~~the~~ all treatment shall be recorded at each visit. Treatments shall be aligned and consistent with Asian and biomedical knowledge obtained in acupuncture training programs.
- (7) Medical Records. Dated notes of each patient visit and communication shall be ~~kept~~ kept seven years. These records may only be made available to other parties with the patient's written authorization. Authorization for release of medical records shall be obtained prior to sharing of any patient information. Medical records shall be released to patient upon receipt of the authorization. G.S. 90-411 sets forth the amounts healthcare providers can charge for copies of patient medical records. In charging patients for their records, licensees shall follow G.S. 90-411 as written, or as subsequently amended.
- (8) Failure to Progress:
- (a) If a patient fails to respond to treatments, discussion about other forms of treatment or referral to another health care professional shall be made.
  - (b) In the case of ~~persistent~~, persistent or unexplained pain, or the unexplained worsening of any condition in the face of ongoing treatment, while receiving treatment, referral or consultation shall be made. In choosing a referral source, priority shall be given to previously seen practitioners.
  - (c) Requests by the patient for information about other forms of treatment or referral shall always be honored.

*Authority G.S. 90-411; 90-454.*

**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 270<sup>th</sup> day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270<sup>th</sup> 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:** Environmental Management Commission

**Rule Citation:** 15A NCAC 13A .0101, .0102, .0106-.0113, .0118 and .0119

**Effective Date:** May 30, 2017

**Date Approved by the Rules Review Commission:** May 18, 2017

**Reason for Action:**

**15A NCAC 13A .0101** - The North Carolina Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0101 is necessary due to a change in the applicable federal regulations.

On November 28, 2016, the United State Environmental Protection Agency (EPA) promulgated a final rule concerning the hazardous waste generator requirements, 81 Federal Register 85732 (November 28, 2016) (“Hazardous Waste Generator Improvements Rules”), which becomes effective on the federal level on May 30, 2017. In addition to creating new provisions, this regulation also rearranges some of the existing Resource Conservation and Recovery Act (RCRA) requirements – in some cases vacating requirements that had existed in one section of the rule while creating comparable requirements in a different section of the rule. On May 30, 2017, some parts of the federal regulation, will be automatically incorporated by reference in North Carolina, and will remove provisions integral to the North Carolina Hazardous Waste Management Program or refer to provisions that do not yet exist. The new comparable replacement requirements and subsequent provisions that refer to these new comparable replacement requirements described in the provisions of the Hazardous Waste Generator Improvements Rule must undergo state rulemaking and would not be adopted until March 1, 2018 – if following permanent rulemaking procedures. This would result in parts of the Hazardous Waste Management Rules not being in effect in North Carolina for a period of approximately nine months.

EPA approved North Carolina’s Hazardous Waste Program authorizing North Carolina to operate the Program in lieu of the federal program under RCRA, 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent

federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

The temporary action will amend the provisions of 15A NCAC 13A .0101 by replacing references to requirements to technical changes in 40 CFR 260.3 and 260.11(d)(1), and update the section heading in 40 CFR 260.11 which would otherwise automatically become effective with the federal rule on May 30, 2017. The replacement of the reference will allow the North Carolina hazardous waste regulatory program’s current rules to remain intact until permanent rulemaking is completed for the federal regulation so all parts of the new regulation are effective at one time on March 1, 2018.

**15A NCAC 13A .0102** - The North Carolina Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0102 is necessary due to a change in the applicable federal regulations.

On November 28, 2016, the United State Environmental Protection Agency (EPA) promulgated a final rule concerning the hazardous waste generator requirements, 81 Federal Register 85732 (November 28, 2016) (“Hazardous Waste Generator Improvements Rules”), which becomes effective on the federal level on May 30, 2017. In addition to creating new provisions, this regulation also rearranges some of the existing Resource Conservation and Recovery Act (RCRA) requirements – in some cases vacating requirements that had existed in one section of the rule while creating comparable requirements in a different section of the rule. On May 30, 2017, some parts of the federal regulation, will be automatically incorporated by reference in North Carolina, and will remove provisions integral to the North Carolina Hazardous Waste Management Program or refer to provisions that do not yet exist. The new comparable replacement requirements and subsequent provisions that refer to these new comparable replacement requirements described in the provisions of the Hazardous Waste Generator Improvements Rule must undergo state rulemaking and would not be adopted until March 1, 2018 – if following permanent rulemaking procedures. This would result in parts of the Hazardous Waste Management Rules not being in effect in North Carolina for a period of approximately nine months.

EPA approved North Carolina’s Hazardous Waste Program authorizing North Carolina to operate the Program in lieu of the federal program under RCRA, 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less

*stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.*

*The temporary action will amend the provisions of 15A NCAC 13A .0102 by replacing references to new definitions for “Central accumulation area”, “Large quantity generator”, “Non-acute hazardous waste”, “Small quantity generator”, and “Very small quantity generator” in 40 CFR 260.10 which would otherwise automatically become effective with the federal rule on May 30, 2017. The replacement of the reference will allow the North Carolina hazardous waste regulatory program’s current rules to remain intact until permanent rulemaking is completed for the federal regulation so all parts of the new regulation are effective at one time on March 1, 2018.*

**15A NCAC 13A .0106** - *The North Carolina Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0106 is necessary due to a change in the applicable federal regulations.*

*On November 28, 2016, the United State Environmental Protection Agency (EPA) promulgated a final rule concerning the hazardous waste generator requirements, 81 Federal Register 85732 (November 28, 2016) (“Hazardous Waste Generator Improvements Rules”), which becomes effective on the federal level on May 30, 2017. In addition to creating new provisions, this regulation also rearranges some of the existing Resource Conservation and Recovery Act (RCRA) requirements – in some cases vacating requirements that had existed in one section of the rule while creating comparable requirements in a different section of the rule. On May 30, 2017, some parts of the federal regulation, will be automatically incorporated by reference in North Carolina, and will remove provisions integral to the North Carolina Hazardous Waste Management Program or refer to provisions that do not yet exist. The new comparable replacement requirements and subsequent provisions that refer to these new comparable replacement requirements described in the provisions of the Hazardous Waste Generator Improvements Rule must undergo state rulemaking and would not be adopted until March 1, 2018 – if following permanent rulemaking procedures. This would result in parts of the Hazardous Waste Management Rules not being in effect in North Carolina for a period of approximately nine months.*

*EPA approved North Carolina’s Hazardous Waste Program authorizing North Carolina to operate the Program in lieu of the federal program under RCRA, 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.*

*The temporary action will amend the provisions of 15A NCAC 13A .0106 by replacing references to requirements which would otherwise automatically become effective with the federal rule on May 30, 2017 including: changing terminology used within this rule from conditionally exempt small quantity generator (CESQG) to very small generator (VSQG) in 40 CFR 261.1(a)(1) and (c)(6), and 261.33(e) and (f); removing the existing CESQG regulations in 40 CFR 261.5, making technical changes in 40 CFR 261.4(a)(7); instructing recycling facilities to submit a biennial report according to 40 CFR 261.6(c)(2)(iv); and adding personnel training requirements for facilities generating hazardous secondary materials in 40 CFR 261.420(g). The replacement of the reference will allow the North Carolina hazardous waste regulatory program’s current rules to remain intact until permanent rulemaking is completed for the federal regulation so all parts of the new regulation are effective at one time on March 1, 2018.*

**15A NCAC 13A .0107** - *The North Carolina Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0107 is necessary due to a change in the applicable federal regulations.*

*On November 28, 2016, the United State Environmental Protection Agency (EPA) promulgated a final rule concerning the hazardous waste generator requirements, 81 Federal Register 85732 (November 28, 2016) (“Hazardous Waste Generator Improvements Rules”), which becomes effective on the federal level on May 30, 2017. In addition to creating new provisions, this regulation also rearranges some of the existing Resource Conservation and Recovery Act (RCRA) requirements – in some cases vacating requirements that had existed in one section of the rule while creating comparable requirements in a different section of the rule. On May 30, 2017, some parts of the federal regulation, will be automatically incorporated by reference in North Carolina, and will remove provisions integral to the North Carolina Hazardous Waste Management Program or refer to provisions that do not yet exist. The new comparable replacement requirements and subsequent provisions that refer to these new comparable replacement requirements described in the provisions of the Hazardous Waste Generator Improvements Rule must undergo state rulemaking and would not be adopted until March 1, 2018 – if following permanent rulemaking procedures. This would result in parts of the Hazardous Waste Management Rules not being in effect in North Carolina for a period of approximately nine months.*

*EPA approved North Carolina’s Hazardous Waste Program authorizing North Carolina to operate the Program in lieu of the federal program under RCRA, 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and*

within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

The temporary action will amend the provisions of 15A NCAC 13A .0107 by replacing references to requirements which would otherwise automatically become effective with the federal rule on May 30, 2017 including: refining the scope of the rules in 40 CFR 262.10; adding additional waste determination requirements in 40 CFR 262.11; removing existing notification requirements in 40 CFR 262.12; updating rule section headings in 40 CFR 262 Subpart B, C, D and the section heading for 40 CFR 262.44; adding additional marking requirements for pre-transportation in 40 CFR 262.32; removing the existing small quantity generator and large quantity generator hazardous waste requirements in 40 CFR 262.34; adding additional reporting requirements in 40 CFR 262.40(c), 262.41, 262.43, and 262.44; and updating the Academic Lab provisions in 40 CFR 262.200 - 262.216. The replacement of the reference will allow the North Carolina hazardous waste regulatory program's current rules to remain intact until permanent rulemaking is completed for the federal regulation so all parts of the new regulation are effective at one time on March 1, 2018.

**15A NCAC 13A .0108** - The North Carolina Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0108 is necessary due to a change in the applicable federal regulations.

On November 28, 2016, the United State Environmental Protection Agency (EPA) promulgated a final rule concerning the hazardous waste generator requirements, 81 Federal Register 85732 (November 28, 2016) ("Hazardous Waste Generator Improvements Rules"), which becomes effective on the federal level on May 30, 2017. In addition to creating new provisions, this regulation also rearranges some of the existing Resource Conservation and Recovery Act (RCRA) requirements – in some cases vacating requirements that had existed in one section of the rule while creating comparable requirements in a different section of the rule. On May 30, 2017, some parts of the federal regulation, will be automatically incorporated by reference in North Carolina, and will remove provisions integral to the North Carolina Hazardous Waste Management Program or refer to provisions that do not yet exist. The new comparable replacement requirements and subsequent provisions that refer to these new comparable replacement requirements described in the provisions of the Hazardous Waste Generator Improvements Rule must undergo state rulemaking and would not be adopted until March 1, 2018 – if following permanent rulemaking procedures. This would result in parts of the Hazardous Waste Management Rules not being in effect in North Carolina for a period of approximately nine months.

EPA approved North Carolina's Hazardous Waste Program authorizing North Carolina to operate the Program in lieu of the federal program under RCRA, 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less

stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

The temporary action will amend the provisions of 15A NCAC 13A .0108 by replacing references to additional requirements for hazardous waste transfer facilities in 40 CFR 263.12 which would otherwise automatically become effective with the federal rule on May 30, 2017. The replacement of the reference will allow the North Carolina hazardous waste regulatory program's current rules to remain intact until permanent rulemaking is completed for the federal regulation so all parts of the new regulation are effective at one time on March 1, 2018.

**15A NCAC 13A .0109** - The North Carolina Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0109 is necessary due to a change in the applicable federal regulations.

On November 28, 2016, the United State Environmental Protection Agency (EPA) promulgated a final rule concerning the hazardous waste generator requirements, 81 Federal Register 85732 (November 28, 2016) ("Hazardous Waste Generator Improvements Rules"), which becomes effective on the federal level on May 30, 2017. In addition to creating new provisions, this regulation also rearranges some of the existing Resource Conservation and Recovery Act (RCRA) requirements – in some cases vacating requirements that had existed in one section of the rule while creating comparable requirements in a different section of the rule. On May 30, 2017, some parts of the federal regulation, will be automatically incorporated by reference in North Carolina, and will remove provisions integral to the North Carolina Hazardous Waste Management Program or refer to provisions that do not yet exist. The new comparable replacement requirements and subsequent provisions that refer to these new comparable replacement requirements described in the provisions of the Hazardous Waste Generator Improvements Rule must undergo state rulemaking and would not be adopted until March 1, 2018 – if following permanent rulemaking procedures. This would result in parts of the Hazardous Waste Management Rules not being in effect in North Carolina for a period of approximately nine months.

EPA approved North Carolina's Hazardous Waste Program authorizing North Carolina to operate the Program in lieu of the federal program under RCRA, 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.



*The temporary action will amend the provisions of 15A NCAC 13A .0109 by replacing references to requirements which would otherwise automatically become effective with the federal rule on May 30, 2017 including: updating hazardous waste generator rule references (referring to rules that are not yet adopted) in Permitted Facility provisions in 40 CFR 264.1(g)(1) and (g)(3), 264.71(c), 264.1030(b)(2), 264.1050(b)(3); removing references to “Performance Track Member” in 40 CFR 264.15(b)(4), 264.174, 264.195(e), 264.1101(c)(4); removing biennial report instructions in 40 CFR 264.75; and providing technical changes in 40 CFR 264.170 and 264.191(a). The replacement of the reference will allow the North Carolina hazardous waste regulatory program’s current rules to remain intact until permanent rulemaking is completed for the federal regulation so all parts of the new regulation are effective at one time on March 1, 2018.*

**15A NCAC 13A .0110** - *The North Carolina Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0110 is necessary due to a change in the applicable federal regulations.*

*On November 28, 2016, the United State Environmental Protection Agency (EPA) promulgated a final rule concerning the hazardous waste generator requirements, 81 Federal Register 85732 (November 28, 2016) (“Hazardous Waste Generator Improvements Rules”), which becomes effective on the federal level on May 30, 2017. In addition to creating new provisions, this regulation also rearranges some of the existing Resource Conservation and Recovery Act (RCRA) requirements – in some cases vacating requirements that had existed in one section of the rule while creating comparable requirements in a different section of the rule. On May 30, 2017, some parts of the federal regulation, will be automatically incorporated by reference in North Carolina, and will remove provisions integral to the North Carolina Hazardous Waste Management Program or refer to provisions that do not yet exist. The new comparable replacement requirements and subsequent provisions that refer to these new comparable replacement requirements described in the provisions of the Hazardous Waste Generator Improvements Rule must undergo state rulemaking and would not be adopted until March 1, 2018 – if following permanent rulemaking procedures. This would result in parts of the Hazardous Waste Management Rules not being in effect in North Carolina for a period of approximately nine months.*

*EPA approved North Carolina’s Hazardous Waste Program authorizing North Carolina to operate the Program in lieu of the federal program under RCRA, 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.*

*The temporary action will amend the provisions of 15A NCAC 13A .0110 by replacing references to requirements which would otherwise automatically become effective with the federal rule on May 30, 2017 including: updating hazardous waste generator rule references (referring to rules that are not yet adopted) in Interim Status Permitted Facility provisions in 40 CFR 265.1(c)(5) and (c)(7), 265.71(c), 265.1030(b)(2) and (b)(3), 265.1050; removing references to “Performance Track Member” in 40 CFR 265.15(b)(4), 265.174, 265.195, 265.1101(c)(4); removing biennial report instructions in 40 CFR 265.75; and removing small quantity generator tank requirements in 40 CFR 265.201. The replacement of the reference will allow the North Carolina hazardous waste regulatory program’s current rules to remain intact until permanent rulemaking is completed for the federal regulation so all parts of the new regulation are effective at one time on March 1, 2018*

**15A NCAC 13A .0111** - *The North Carolina Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0111 is necessary due to a change in the applicable federal regulations.*

*On November 28, 2016, the United State Environmental Protection Agency (EPA) promulgated a final rule concerning the hazardous waste generator requirements, 81 Federal Register 85732 (November 28, 2016) (“Hazardous Waste Generator Improvements Rules”), which becomes effective on the federal level on May 30, 2017. In addition to creating new provisions, this regulation also rearranges some of the existing Resource Conservation and Recovery Act (RCRA) requirements – in some cases vacating requirements that had existed in one section of the rule while creating comparable requirements in a different section of the rule. On May 30, 2017, some parts of the federal regulation, will be automatically incorporated by reference in North Carolina, and will remove provisions integral to the North Carolina Hazardous Waste Management Program or refer to provisions that do not yet exist. The new comparable replacement requirements and subsequent provisions that refer to these new comparable replacement requirements described in the provisions of the Hazardous Waste Generator Improvements Rule must undergo state rulemaking and would not be adopted until March 1, 2018 – if following permanent rulemaking procedures. This would result in parts of the Hazardous Waste Management Rules not being in effect in North Carolina for a period of approximately nine months.*

*EPA approved North Carolina’s Hazardous Waste Program authorizing North Carolina to operate the Program in lieu of the federal program under RCRA, 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.*

The temporary action will amend the provisions of 15A NCAC 13A .0111 by replacing references to requirements that update hazardous waste generator rule references (referring to rules that are not yet adopted) in Management Standards for Specific HW provisions in 40 CFR 266.80(a) and 266.255(a) which would otherwise automatically become effective with the federal rule on May 30, 2017. The replacement of the reference will allow the North Carolina hazardous waste regulatory program's current rules to remain intact until permanent rulemaking is completed for the federal regulation so all parts of the new regulation are effective at one time on March 1, 2018.

**15A NCAC 13A .0112** - The North Carolina Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0112 is necessary due to a change in the applicable federal regulations.

On November 28, 2016, the United State Environmental Protection Agency (EPA) promulgated a final rule concerning the hazardous waste generator requirements, 81 Federal Register 85732 (November 28, 2016) ("Hazardous Waste Generator Improvements Rules"), which becomes effective on the federal level on May 30, 2017. In addition to creating new provisions, this regulation also rearranges some of the existing Resource Conservation and Recovery Act (RCRA) requirements – in some cases vacating requirements that had existed in one section of the rule while creating comparable requirements in a different section of the rule. On May 30, 2017, some parts of the federal regulation, will be automatically incorporated by reference in North Carolina, and will remove provisions integral to the North Carolina Hazardous Waste Management Program or refer to provisions that do not yet exist. The new comparable replacement requirements and subsequent provisions that refer to these new comparable replacement requirements described in the provisions of the Hazardous Waste Generator Improvements Rule must undergo state rulemaking and would not be adopted until March 1, 2018 – if following permanent rulemaking procedures. This would result in parts of the Hazardous Waste Management Rules not being in effect in North Carolina for a period of approximately nine months.

EPA approved North Carolina's Hazardous Waste Program authorizing North Carolina to operate the Program in lieu of the federal program under RCRA, 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

The temporary action will amend the provisions of 15A NCAC 13A .0112 by replacing references to requirements that update hazardous waste generator rule references (referring to rules that are not yet adopted) in Land Disposal provisions in 40 CFR

268.1(e)(1), 268.7(a)(5) and 268.50(a) which would otherwise automatically become effective with the federal rule on May 30, 2017. The replacement of the reference will allow the North Carolina hazardous waste regulatory program's current rules to remain intact until permanent rulemaking is completed for the federal regulation so all parts of the new regulation are effective at one time on March 1, 2018.

**15A NCAC 13A .0113** - The North Carolina Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0113 is necessary due to a change in the applicable federal regulations.

On November 28, 2016, the United State Environmental Protection Agency (EPA) promulgated a final rule concerning the hazardous waste generator requirements, 81 Federal Register 85732 (November 28, 2016) ("Hazardous Waste Generator Improvements Rules"), which becomes effective on the federal level on May 30, 2017. In addition to creating new provisions, this regulation also rearranges some of the existing Resource Conservation and Recovery Act (RCRA) requirements – in some cases vacating requirements that had existed in one section of the rule while creating comparable requirements in a different section of the rule. On May 30, 2017, some parts of the federal regulation, will be automatically incorporated by reference in North Carolina, and will remove provisions integral to the North Carolina Hazardous Waste Management Program or refer to provisions that do not yet exist. The new comparable replacement requirements and subsequent provisions that refer to these new comparable replacement requirements described in the provisions of the Hazardous Waste Generator Improvements Rule must undergo state rulemaking and would not be adopted until March 1, 2018 – if following permanent rulemaking procedures. This would result in parts of the Hazardous Waste Management Rules not being in effect in North Carolina for a period of approximately nine months.

EPA approved North Carolina's Hazardous Waste Program authorizing North Carolina to operate the Program in lieu of the federal program under RCRA, 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

The temporary action will amend the provisions of 15A NCAC 13A .0113 by replacing references to requirements which would otherwise automatically become effective with the federal rule on May 30, 2017 including: updating hazardous waste generator rule references (referring to rules that are not yet adopted) in Permit Program provisions 40 CFR 270.1(a)(3), (c)(2)(i) and (c)(2)(iii); and removing references to "Performance Track Member" in 40 CFR 270.42(l). The replacement of the reference will allow the North Carolina hazardous waste regulatory

program's current rules to remain intact until permanent rulemaking is completed for the federal regulation so all parts of the new regulation are effective at one time on March 1, 2018.

**15A NCAC 13A .0118** - The North Carolina Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0118 is necessary due to a change in the applicable federal regulations.

On November 28, 2016, the United State Environmental Protection Agency (EPA) promulgated a final rule concerning the hazardous waste generator requirements, 81 Federal Register 85732 (November 28, 2016) ("Hazardous Waste Generator Improvements Rules"), which becomes effective on the federal level on May 30, 2017. In addition to creating new provisions, this regulation also rearranges some of the existing Resource Conservation and Recovery Act (RCRA) requirements – in some cases vacating requirements that had existed in one section of the rule while creating comparable requirements in a different section of the rule. On May 30, 2017, some parts of the federal regulation, will be automatically incorporated by reference in North Carolina, and will remove provisions integral to the North Carolina Hazardous Waste Management Program or refer to provisions that do not yet exist. The new comparable replacement requirements and subsequent provisions that refer to these new comparable replacement requirements described in the provisions of the Hazardous Waste Generator Improvements Rule must undergo state rulemaking and would not be adopted until March 1, 2018 – if following permanent rulemaking procedures. This would result in parts of the Hazardous Waste Management Rules not being in effect in North Carolina for a period of approximately nine months.

EPA approved North Carolina's Hazardous Waste Program authorizing North Carolina to operate the Program in lieu of the federal program under RCRA, 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

The temporary action will amend the provisions of 15A NCAC 13A .0118 by replacing references to requirements that update hazardous waste generator rule references (referring to rules that are not yet adopted) in Used Oil Management provision 40 CFR 279.10(b)(3) which would otherwise automatically become effective with the federal rule on May 30, 2017. The replacement of the reference will allow the North Carolina hazardous waste regulatory program's current rules to remain intact until permanent rulemaking is completed for the federal regulation so all parts of the new regulation are effective at one time on March 1, 2018.

**15A NCAC 13A .0119** - The North Carolina Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0119 is necessary due to a change in the applicable federal regulations.

On November 28, 2016, the United State Environmental Protection Agency (EPA) promulgated a final rule concerning the hazardous waste generator requirements, 81 Federal Register 85732 (November 28, 2016) ("Hazardous Waste Generator Improvements Rules"), which becomes effective on the federal level on May 30, 2017. In addition to creating new provisions, this regulation also rearranges some of the existing Resource Conservation and Recovery Act (RCRA) requirements – in some cases vacating requirements that had existed in one section of the rule while creating comparable requirements in a different section of the rule. On May 30, 2017, some parts of the federal regulation, will be automatically incorporated by reference in North Carolina, and will remove provisions integral to the North Carolina Hazardous Waste Management Program or refer to provisions that do not yet exist. The new comparable replacement requirements and subsequent provisions that refer to these new comparable replacement requirements described in the provisions of the Hazardous Waste Generator Improvements Rule must undergo state rulemaking and would not be adopted until March 1, 2018 – if following permanent rulemaking procedures. This would result in parts of the Hazardous Waste Management Rules not being in effect in North Carolina for a period of approximately nine months.

EPA approved North Carolina's Hazardous Waste Program authorizing North Carolina to operate the Program in lieu of the federal program under RCRA, 42 U.S.C. §§6901 to 6992k. However, EPA retains oversight authority to ensure consistency with RCRA, including the ability to withdraw program approval of authorization. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the federal program. When new, more stringent federal requirements are promulgated, North Carolina is obligated to enact equivalent authorities within one year, and within two years if legislative action is necessary. RCRA § 3006, 42 U.S.C. § 6926; 40 C.F.R. Part 271.

The temporary action will amend the provisions of 15A NCAC 13A .0119 by replacing references to requirements which would otherwise automatically become effective with the federal rule on May 30, 2017 including updating hazardous waste generator rule references (referring to rules that are not yet adopted) in Universal Waste provisions in 40 CFR 273.8(a)(2) and 273.81(b). The replacement of the reference will allow the North Carolina hazardous waste regulatory program's current rules to remain intact until permanent rulemaking is completed for the federal regulation so all parts of the new regulation are effective at one time on March 1, 2018.

## **CHAPTER 13 - SOLID WASTE MANAGEMENT**

### **SUBCHAPTER 13A - HAZARDOUS WASTE MANAGEMENT**

**SECTION .0100 - HAZARDOUS WASTE**

**15A NCAC 13A .0101 GENERAL**

(a) The Hazardous Waste Section of the Division of Waste Management shall administer the hazardous waste management program for the State of North Carolina.

(b) In applying the federal requirements incorporated by reference throughout this Subchapter, the following substitutions or exceptions shall apply:

When used in any of the federal regulations incorporated by reference throughout this Subchapter, except where the context requires references to remain without substitution (including with regard to forms, publications and regulations concerning international shipments, variances from land disposal restrictions and other program areas over which the federal government retains sole authority): "United States" shall mean the State of North Carolina; "Environmental Protection Agency," "EPA" and "Agency" shall mean the Department of Environmental Quality; and "Administrator," "Regional Administrator," "Assistant Administrator" and "Director" shall mean the Secretary of the Department of Environmental Quality. The North Carolina Solid Waste Management Act and other applicable North Carolina General Statutes set forth in G.S. 130A shall be substituted for references to "the Solid Waste Disposal Act," "the Resource Conservation and Recovery Act" and "RCRA" where required by context.

(c) In the event that there are inconsistencies or duplications in the requirements of those Federal rules incorporated by reference throughout this Subchapter and the State rules set out in this Subchapter, the provisions incorporated by reference shall prevail except where the State rules are more stringent.

(d) 40 CFR 260.1 through 260.3 (Subpart A), "General," are incorporated by reference including subsequent amendments and ~~editions~~. editions, except that 40 CFR 260.3 (51 FR 40636, Nov. 7, 1986) is incorporated by reference.

(e) 40 CFR 260.11, "References," is incorporated by reference including subsequent amendments and ~~editions~~. editions, except that the section heading for 40 CFR 260.11 and 40 CFR 260.11(d)(1) (77 FR 29834, May 18, 2012) are incorporated by reference.

(f) Copies of all materials in this Subchapter may be inspected or obtained as follows:

- (1) Persons interested in receiving rule-making notices concerning the North Carolina Hazardous Waste Management Rules shall submit a written request to the Hazardous Waste Section, 1646 Mail Service Center, Raleigh, N.C. 27699-1646. Upon receipt of each request, individuals shall be placed on a mailing list to receive notices.
- (2) Material incorporated by reference in the Federal Register may be obtained from the U. S. Government Bookstore's website at <https://bookstore.gpo.gov/products/sku/769-004-00000-9?ctid=> for a cost of nine hundred twenty nine dollars (\$929.00) and at

<http://www.epa.gov/laws-regulations/regulations>, free of charge.

(3) The North Carolina Hazardous Waste Management Rules may be obtained from the Hazardous Waste Section at the cost to the Section.

(4) All material is available for inspection at the Department of Environmental Quality, Hazardous Waste Section, 217 West Jones Street, Raleigh, NC and at <http://deq.nc.gov/about/divisions/waste-management/waste-management-rules/hazardous-waste-rules>.

*History Note: Authority G.S. 130A-294(c); 150B-21.6; Eff. September 1, 1979; Amended Eff. June 1, 1989; June 1, 1988; August 1, 1987; May 1, 1987; Transferred and Recodified from 10 NCAC 10F .0001 Eff. April 4, 1990; Amended Eff. October 1, 1993; April 1, 1993; October 1, 1992; December 1, 1991; Recodified from 15A NCAC 13A .0001 Eff. December 20, 1996; Amended Eff. July 1, 2016; August 1, 2004; August 1, 2000; August 1, 1998; August 1, 1997; Temporary Amendment Eff. May 30, 2017.*

**15A NCAC 13A .0102 DEFINITIONS**

(a) The definitions contained in G.S. 130A-290 apply to this Subchapter.

(b) 40 CFR 260.10 (Subpart B), "Definitions," (81 FR 85713, Nov. 28, 2016) is incorporated by reference, ~~including subsequent amendments and editions~~ except that the definitions for "Disposal," "Landfill," "Management or hazardous waste management," "Person," "Sludge," "Storage," and "Treatment" are defined by G.S. 130A-290 and are not incorporated by reference and the definition in 260.10 for "Contained" is not incorporated by reference.

(c) The following definition shall be substituted for "Contained": "Contained" means held in a unit (including a land-based unit as defined in this subpart) that meets the following criteria:

- (1) the unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials or hazardous constituents originating from the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. "Unpermitted releases" means releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, windblown dust, fugitive air emissions, and catastrophic unit failures;
- (2) the unit is properly labeled or otherwise has a system (such as a log) to immediately identify

- the hazardous secondary materials in the unit; and
- (3) the unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.
  - (4) hazardous secondary materials in units that meet the applicable requirements of 40 CFR parts 264 or 265 are presumptively contained.
- (d) The following additional definitions shall apply throughout this Subchapter:
- (1) "Section" means the Hazardous Waste Section, in the Division of Waste Management, Department of Environmental Quality.
  - (2) The "Department" means the Department of Environmental Quality (DEQ).
  - (3) "Division" means the Division of Waste Management (DWM).
  - (4) "Long Term Storage" means the containment of hazardous waste for an indefinite period of time in a facility designed to be closed with the hazardous waste in place.
  - (5) "Off-site Recycling Facility" means any facility that receives shipments of hazardous waste from off-site to be recycled or processed for recycling through any process conducted at the facility, but does not include any facility owned or operated by a generator of hazardous waste solely to recycle their own waste.

*History Note: Authority G.S. 130A-294(c); 150B-21.6; Eff. September 1, 1979; Amended Eff. June 1, 1989; June 1, 1988; February 1, 1987; October 1, 1986; Transferred and Recodified from 10 NCAC 10F .0002 Eff. April 4, 1990; Amended Eff. April 1, 1993; October 1, 1990; August 1, 1990; Recodified from 15A NCAC 13A .0002 Eff. December 20, 1996; Amended Eff. August 1, 2000; Temporary Amendment Eff. January 1, 2009; Amended Eff. July 1, 2010; Temporary Amendment Eff. December 1, 2015; Amended Eff. July 1, 2016; Temporary Amendment Eff. May 30, 2017.*

**15A NCAC 13A .0106 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - PART 261**

- (a) 40 CFR 261.1 through 261.9 (Subpart A), "General" are incorporated by reference including subsequent amendments and ~~editions~~, editions, except that 40 CFR 261.1(a)(1) (80 FR 1773, Jan. 13, 2015), 261.1(c)(6) (50 FR 663, Jan. 4, 1985), 261.4(a)(7) (81 FR 85713, Nov. 28, 2016), 261.5 (75 FR 13001-13002, Mar. 18, 2010), and 261.6(c)(2)(iv) (81 FR 85713, Nov. 28, 2016) are incorporated by reference.
- (b) 40 CFR 261.10 through 261.11 (Subpart B), "Criteria for Identifying the Characteristics of Hazardous Waste and for

- Listing Hazardous Waste" are incorporated by reference including subsequent amendments and editions.
- (c) 40 CFR 261.20 through 261.24 (Subpart C), "Characteristics of Hazardous Waste" are incorporated by reference including subsequent amendments and editions.
  - (d) 40 CFR 261.30 through 261.37 (Subpart D), "Lists of Hazardous Wastes" are incorporated by reference including subsequent amendments and ~~editions~~, editions, except that 40 CFR 261.33(e) and (f) (71 FR 40259, July 14, 2006) are incorporated by reference.
  - (e) 40 CFR 261.38 through 261.41 (Subpart E), "Exclusions/Exemptions" are incorporated by reference including subsequent amendments and editions.
  - (f) 40 CFR 261.140 through 261.151 (Subpart H), "Financial Requirements for Management of Excluded Hazardous Secondary Materials" are incorporated by reference including subsequent amendments and editions.
  - (g) 40 CFR 261.170 through 261.179 (Subpart I), "Use and Management of Containers" are incorporated by reference including subsequent amendments and editions.
  - (h) 40 CFR 261.190 through 261.200 (Subpart J), "Tank Systems" are incorporated by reference including subsequent amendments and editions.
  - (i) 40 CFR 261.400 through 261.420 (Subpart M), "Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials" are incorporated by reference including subsequent amendments and ~~editions~~, editions, except that 40 CFR 261.420(g) (80 FR 1782, Jan. 13, 2015) is incorporated by reference.
  - (j) 40 CFR 261.1030 through 261.1049 (Subpart AA), "Air Emission Standards for Process Vents" are incorporated by reference including subsequent amendments and editions.
  - (k) 40 CFR 261.1050 through 261.1079 (Subpart BB), "Air Emission Standards for Equipment Leaks" are incorporated by reference including subsequent amendments and editions.
  - (l) 40 CFR 261.1080 through 261.1090 (Subpart CC), "Air Emission Standards for Tanks and Containers" are incorporated by reference including subsequent amendments and editions.
  - (m) The Appendices to 40 CFR Part 261 are incorporated by reference including subsequent amendments and editions.

*History Note: Authority G.S. 130A-294(c); 150B-21.6; Eff. November 19, 1980; Amended Eff. June 1, 1988; February 1, 1988; December 1, 1987; August 1, 1987; Transferred and Recodified from 10 NCAC 10F .0029 Eff. April 4, 1990; Recodified from 15A NCAC 13A .0007 Eff. August 30, 1990; Amended Eff. January 1, 1996; April 1, 1993; February 1, 1992; December 1, 1990; Recodified from 15A NCAC 13A .0006 Eff. December 20, 1996; Amended Eff. April 1, 2007; August 1, 2000; Temporary Amendment Eff. January 1, 2009; Amended Eff. July 1, 2010; Temporary Amendment Eff. December 1, 2015; Amended Eff. July 1, 2016; Temporary Amendment Eff. May 30, 2017.*

**15A NCAC 13A .0107 STDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE - PART 262**

- (a) 40 CFR 262.10 (81 FR 85715, Nov. 28, 2016), 262.11 (75 FR 13004, Mar. 18, 2010), and ~~through 262.12 (81 FR 85715, Nov. 28, 2016)~~(Subpart A), "General" are incorporated by ~~reference including subsequent amendments and editions~~reference.
- (b) 40 CFR 262.20 through 262.27 (Subpart B), "The Manifest" are incorporated by reference including subsequent amendments and ~~editions~~editions, except that the section heading for 40 CFR 262 Subpart B (79 FR 7558, Feb. 7, 2014) is incorporated by reference.
- (c) 40 CFR 262.30 through 262.34 (Subpart C), "Pre-Transport Requirements" are incorporated by reference including subsequent amendments and ~~editions~~editions, except that the section heading for 40 CFR 262 Subpart C (45 FR 33142, May 19, 1980), 40 CFR 262.32 (70 FR 10817, Mar. 4, 2005), and 262.34 (75 FR 13004, Mar. 18, 2010) are incorporated by reference.
- (d) 40 CFR 262.40 through 262.44 (Subpart D), "Recordkeeping and Reporting" are incorporated by reference including subsequent amendments and ~~editions~~editions, except that the section heading for 40 CFR 262 Subpart D and 40 CFR 262.40(c) (48 FR 3981, Jan. 28, 1983), 262.41 (75 FR 13005, Mar. 18, 2010), and 262.43, the section heading for 262.44 and 262.44 (52 FR 35899, Sept. 23, 1987) are incorporated by reference. In addition, a generator shall keep records of inspections and results of inspections required by Section 262.34 for at least three years from the date of the inspection.
- (e) 40 CFR 262.50 through 262.58 (Subpart E), "Exports of Hazardous Waste" are incorporated by reference including subsequent amendments and editions.
- (f) 40 CFR 262.60 (Subpart F), "Imports of Hazardous Waste" is incorporated by reference including subsequent amendments and editions.
- (g) 40 CFR 262.70 (Subpart G), "Farmers" is incorporated by reference including subsequent amendments and editions.
- (h) 40 CFR 262.80 through 262.89 (Subpart H), "Transfrontier Shipments of Hazardous Waste for Recovery within the OECD" are incorporated by reference including subsequent amendments and editions, except that 40 CFR 262.89(e) is not incorporated by reference.
- (i) 40 CFR 262.200 (75 FR 79308, Dec. 20, 2010), 262.201 through 262.205 (73 FR 72954, Dec. 1, 2008), 262.206 (75 FR 79308, Dec. 20, 2010), 262.207 through 262.211 (73 FR 72954, Dec. 1, 2008), 262.212 (75 FR 79308, Dec. 20, 2010), 262.213 (73 FR 72954, Dec. 1, 2008), 262.214 (75 FR 79308, Dec. 20, 2010), and 262.215 and ~~through 262.216 (73 FR 72954, Dec. 1, 2008)~~ (Subpart K), "Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities" is are incorporated by ~~reference including subsequent amendments and editions~~reference.
- (j) The appendix to 40 CFR Part 262 is incorporated by reference including subsequent amendments and editions.

*History Note:* Authority G.S. 130A-294(c); 150B-21.6; Eff. November 19, 1980; Amended Eff. December 1, 1988; June 1, 1988; August 1, 1987; May 1, 1987;

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*Amended Eff. August 1, 1990;*  
*Recodified from 15A NCAC 13A .0008 Eff. August 30, 1990;*  
*Amended Eff. April 1, 1993; October 1, 1990;*  
*Recodified from 15A NCAC 13A .0007 Eff. December 20, 1996;*  
*Amended Eff. July 1, 2016; April 1, 2010; November 1, 2007;*  
*January 1, 2007; April 1, 2001; August 1, 1998;*  
*Temporary Amendment Eff. May 30, 2017.*

**15A NCAC 13A .0108 STDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE - PART 263**

- (a) 40 CFR 263.10 through 263.12 (Subpart A), "General" are incorporated by reference including subsequent amendments and ~~editions~~editions, except that 40 CFR 263.12 (75 FR 13005, Mar. 18, 2010) is incorporated by reference.
- (b) 40 CFR 263.20 through 263.25 (Subpart B), "Compliance With the Manifest System and Recordkeeping" are incorporated by reference including subsequent amendments and editions.
- (c) Upon discovering a significant manifest discrepancy, the transporter shall attempt to reconcile the discrepancy with the waste generator (e.g. with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the transporter on the 16th day shall submit to the Department a letter describing the discrepancy and attempts to reconcile it with a copy of the manifest or shipping paper at issue.
- (d) "Manifest discrepancies" means differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a transporter actually transports. Significant discrepancies in quantity shall be as follows: for bulk waste, variations greater than 10 percent in weight; and, for batch waste, any variation in piece count (e.g. a discrepancy of one drum in a truckload). Significant discrepancies in type are obvious differences that may be discovered by inspection or waste analysis (e.g. waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper).
- (e) 40 CFR 263.30 through 263.31 (Subpart C), "Hazardous Waste Discharges" are incorporated by reference including subsequent amendments and editions.

*History Note:* Authority G.S. 130A-294(c); 150B-21.6; Eff. November 19, 1980; Amended Eff. June 1, 1988; August 1, 1987; May 1, 1987; October 1, 1986; Transferred and Recodified from 10 NCAC 10F .0031 Eff. April 4, 1990; Recodified from 15A NCAC 13A .0009 Eff. August 30, 1990; Amended Eff. April 1, 1993; October 1, 1990; Recodified from 15A NCAC 13A .0008 Eff. December 20, 1996; Amended Eff. July 1, 2016; August 1, 2000; Temporary Amendment Eff. May 30, 2017.

**15A NCAC 13A .0109 STANDARDS FOR OWNERS/OPERATORS OF HWTSD FACILITIES - PART 264**

- (a) Any person who treats, stores or disposes of hazardous waste shall comply with the requirements set forth in this Section. The

treatment, storage or disposal of hazardous waste is prohibited except as provided in this Section.

(b) 40 CFR 264.1 through 264.4 (Subpart A), "~~General~~", "General" are incorporated by reference including subsequent amendments and ~~editions~~, editions, except that 40 CFR 264.1(g)(1) and 264.1(g)(3) (71 FR 40272, July 14, 2006) are incorporated by reference.

(c) 40 CFR 264.10 through 264.19 (Subpart B), "~~General Facility Standards~~", "Standards" are incorporated by reference including subsequent amendments and ~~editions~~, editions, except that 40 CFR 264.15(b)(4) (71 FR 16903, Apr. 4, 2006) is incorporated by reference.

(d) 40 CFR 264.30 through 264.37 (Subpart C), "Preparedness and ~~Prevention~~", "Prevention" are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 264.50 through 264.56 (Subpart D), "Contingency Plan and Emergency ~~Procedures~~", "Procedures" are incorporated by reference including subsequent amendments and editions.

(f) 40 CFR 264.70 through 264.77 (Subpart E), "Manifest System, Recordkeeping, and ~~Reporting~~", "Reporting" are incorporated by reference including subsequent amendments and ~~editions~~, editions, except that 40 CFR 264.71(c) (81 FR 85727, Nov. 28, 2016) and 264.75 (51 FR 28556, Aug. 8, 1986) are incorporated by reference.

(g) 40 CFR 264.90 through 264.101 (Subpart F), "Releases From Solid Waste Management ~~Units~~", "Units" are incorporated by reference including subsequent amendments and editions. For the purpose of this incorporation by reference, "January 26, 1983" shall be substituted for "July 26, 1982" contained in 40 CFR 264.90(a)(2).

(h) 40 CFR 264.110 through 264.120 (Subpart G), "Closure and ~~Post-Closure~~", "Post-Closure" are incorporated by reference including subsequent amendments and editions.

(i) 40 CFR 264.140 through 264.151 (Subpart H), "Financial ~~Requirements~~", "Requirements" are incorporated by reference including subsequent amendments and editions, except that 40 CFR 264.143(a)(3), (a)(4), (a)(5), (a)(6), 40 CFR 264.145(a)(3), (a)(4), (a)(5), and 40 CFR 264.151(a)(1), Section 15 are not incorporated by reference.

- (1) The following shall be substituted for the provisions of 40 CFR 264.143(a)(3) ~~which were that are~~ not incorporated by reference:  
The owner or operator shall deposit the full amount of the closure cost estimate at the time the fund is established. Within one year of February 1, 1987, an owner or operator using a closure trust fund established prior to February 1, 1987, shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or shall obtain other financial assurance as specified in this Section.

- (2) The following shall be substituted for the provisions of 40 CFR 264.143(a)(6) ~~which were that are~~ not incorporated by reference:  
After the trust fund is established, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual

valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

- (3) The following shall be substituted for the provisions of 40 CFR 264.145(a)(3) ~~which were that are~~ not incorporated by reference:

- (A) Except as otherwise provided in Part (i)(3)(B) of this Rule, the owner or operator shall deposit the full amount of the post-closure cost estimate at the time the fund is established.

- (B) If the Department finds that the owner or operator of an inactive hazardous waste disposal unit ~~cannot~~ is unable to provide financial assurance for post-closure through any other option (e.g. surety bond, letter of credit, or corporate guarantee), a plan for annual payments to the trust fund over the term of the RCRA post-closure permit may be established by the Department as a permit condition.

- (4) The following additional requirement shall apply:  
The trustee shall notify the Department of payment to the trust fund, by certified mail within 10 days following said payment to the trust fund. The notice shall contain the name of the Grantor, the date of payment, the amount of payment, and the current value of the trust fund.

(j) 40 CFR 264.170 through 264.179 (Subpart I), "Use and Management of ~~Containers~~", "Containers" are incorporated by reference including subsequent amendments and ~~editions~~, editions, except that 40 CFR 264.170 (46 FR 2866, Jan. 12, 1981) and 264.174 (71 FR 16905, Apr. 4, 2006) are incorporated by reference.

(k) 40 CFR 264.190 through 264.200 (Subpart J), "Tank ~~Systems~~", "Systems" are incorporated by reference including subsequent amendments and ~~editions~~, editions, except that 40 CFR 264.191(a) and 264.195(e) (71 FR 16906, Apr. 4, 2006) are incorporated by reference.

- (l) The following are requirements for Surface Impoundments:
  - (1) 40 CFR 264.220 through 264.232 (Subpart K), "Surface ~~Impoundments~~" "Impoundments" are incorporated by reference including subsequent amendments and editions.
  - (2) The following are additional standards for surface impoundments:
    - (A) ~~The~~ the liner system shall consist of at least two liners;
    - (B) ~~Artificial~~ artificial liners shall be equal to or greater than 30 mils in thickness;

- (C) ~~Clayey-clayey~~ liners shall be equal to or greater than five feet in thickness and have a maximum permeability of  $1.0 \times 10^{-7}$  cm/sec;
- (D) ~~Clayey-clayey~~ liner soils shall have the same characteristics as described in Subparts (r)(4)(B)(ii), (iii), (iv), (vi) and (vii) of this Rule;
- (E) ~~A~~ leachate collection system shall be constructed between the upper liner and the bottom liner;
- (F) ~~A~~ leachate detection system shall be constructed below the bottom liner; and
- (G) ~~Surface-surface~~ impoundments shall be constructed in such a manner to prevent landsliding, slippage or slumping.

(m) 40 CFR 264.250 through 264.259 (Subpart L), "~~Waste Piles~~", "~~Piles~~" are incorporated by reference including subsequent amendments and editions.

(n) 40 CFR 264.270 through 264.283 (Subpart M), "~~Land Treatment~~", "~~Treatment~~" are incorporated by reference including subsequent amendments and editions.

(o) 40 CFR 264.300 through 264.317 (Subpart N), "~~Landfills~~", "~~Landfills~~" are incorporated by reference including subsequent amendments and editions.

(p) A long-term storage facility shall meet groundwater protection, closure and post-closure, and financial requirements for disposal facilities as specified in Paragraphs (g), (h), and (i) of this Rule.

(q) 40 CFR 264.340 through 264.351 (Subpart O), "~~Incinerators~~", "~~Incinerators~~" are incorporated by reference including subsequent amendments and editions.

(r) The following are additional location standards for facilities:

- (1) In addition to the location standards set forth in 15A NCAC 13A .0109(c), the Department, in determining whether to issue a permit for a hazardous waste management facility, shall consider the risks posed by the proximity of the facility to water table levels, flood plains, water supplies, public water supply watersheds, mines, natural resources such as wetlands, endangered species habitats, parks, forests, wilderness areas, and historical sites, and population centers and shall consider whether ~~provision-provisions~~ ~~has-have~~ been made for buffer zones as required by this Rule. The Department shall also consider ground water travel time, soil pH, soil cation exchange capacity, soil composition and permeability, slope, climate, local land use, transportation factors such as proximity to waste generators, route, route safety, and method of transportation, aesthetic factors such as the visibility, appearance, and noise level of the facility; potential impact on air quality, existence of seismic activity and cavernous bedrock. The basis for issuing or denying the

permit are found in 40 CFR 264 as adopted by reference in this Rule.

- (2) The following minimum separation distances shall be required of all hazardous waste management facilities except that existing facilities shall be required to meet these minimum separation distances to the maximum extent feasible:

- (A) All hazardous waste management facilities shall be located at least 0.25 miles from institutions including but not limited to schools, health care facilities and prisons, unless the owner or operator ~~can demonstrate~~ demonstrates that no risks shall be posed by the proximity of the facility.

- (B) All hazardous waste treatment and storage facilities shall comply with the following separation distances: all hazardous waste shall be treated and stored a minimum of 50 feet from the property line of the facility; except that all hazardous waste with ignitable, incompatible or reactive characteristics shall be treated and stored a minimum of 200 feet from the property line of the facility if the area adjacent to the facility is zoned for any use other than industrial or is not zoned.

- (C) All hazardous waste landfills, long-term storage facilities, land treatment ~~facilities~~ facilities, and surface ~~impoundments~~ impoundments shall comply with the following separation distances:

- (i) All hazardous waste shall be located a minimum of 200 feet from the property line of the facility;

- (ii) Each hazardous waste landfill, long-term ~~storage~~ storage, or surface impoundment facility shall be constructed so that the bottom of the facility is 10 feet or more above the historical high ground water level. The historical high ground water level shall be determined by measuring the seasonal high ground water levels and predicting the long-term maximum high ground water level from published data on similar North Carolina topographic positions, elevations, geology, and climate; and



- (iii) All hazardous waste shall be located a minimum of 1,000 feet from the zone of influence of any existing off-site ground water well used for drinking water, and outside the zone of influence of any existing or planned on-site drinking water well.
- (D) Hazardous waste storage and treatment facilities for liquid waste that is classified as TC toxic, toxic, or acutely toxic and is stored or treated in tanks or containers shall not be located:
  - (i) in the recharge area of an aquifer ~~which—that~~ is designated as an existing sole drinking water source as defined in the Safe Drinking Water Act, Section .1424(e) [42 U.S.C. 300h-3(e)] unless an adequate secondary containment system, as described in 40 CFR 264 as adopted by reference in this Rule, is constructed, and after consideration of applicable factors in Subparagraph (r)(3) of this Rule, the owner or operator ~~can demonstrate~~ demonstrates no risk to public health;
  - (ii) within 200 feet of surface water impoundments or surface water stream with continuous flow as defined by the United States Geological Survey;
  - (iii) in an area that will allow direct surface or subsurface discharge to WS-I, WS-II or SA waters or a Class III Reservoir as defined in 15A NCAC 02B .0200 and 15A NCAC 18C .0102;
  - (iv) in an area that will allow direct surface or subsurface discharge to the watershed for a Class I or II Reservoir as defined in 15A NCAC 18C .0102;
  - (v) within 200 feet horizontally of a 100-year floodplain elevation;
  - (vi) within 200 feet of a seismically active area as defined in Paragraph (c) of this Rule; and
  - (vii) within 200 feet of a mine, cave, or cavernous bedrock.
- (3) The Department shall require any hazardous waste management facility to comply with greater separation distances or other protective measures when necessary to avoid risks posed by the proximity of the facility to water table levels, flood plains, water supplies, public water supply watersheds, mines, natural resources such as wetlands, endangered species habitats, parks, forests, wilderness areas, and historical sites, and population centers or to provide a buffer zone as required by this Rule. The Department shall also require protective measures when necessary to avoid unreasonable risks posed by the soil pH, soil cation exchange capacity, soil composition and permeability, climate, transportation factors such as proximity to waste generators, route, route safety, and method of transportation, aesthetic factors such as the visibility, appearance, and noise level of the facility, potential impact on air quality, and the existence of seismic activity and cavernous bedrock. In determining whether to require greater separation distances or other protective measures, the Department shall consider the following factors:
  - (A) ~~All—all~~ proposed hazardous waste activities and procedures to be associated with the transfer, storage, ~~treatment—treatment~~, or disposal of hazardous waste at the facility;
  - (B) ~~The—the~~ type of hazardous waste to be treated, stored, or disposed of at the facility;
  - (C) ~~The—the~~ volume of waste to be treated, stored, or disposed of at the facility;
  - (D) ~~Land—land~~ use issues including the number of permanent residents in proximity to the facility and their distance from the facility;
  - (E) ~~The—the~~ adequacy of facility design and plans for containment and control of sudden and non-sudden accidental events in combination with adequate off-site evacuation of potentially adversely impacted populations;
  - (F) ~~Other—other~~ land use issues including the number of institutional and commercial structures such as airports and schools in proximity to the facility, their distance from the facility, and the particular nature of the activities that take place in those structures;
  - (G) ~~The—the~~ lateral distance and slope from the facility to surface water supplies or

- to watersheds draining directly into surface water supplies;
- (H) ~~The~~the vertical distance, and type of soils and geologic conditions separating the facility from the water table;
- (I) ~~The~~the direction and rate of flow of ground water from the sites and the extent and reliability of on-site and nearby data concerning seasonal and long-term groundwater level fluctuations;
- (J) ~~Potential~~potential air emissions including rate, direction of movement, dispersion and exposure, whether from planned or accidental, uncontrolled releases; and
- (K) ~~Any~~any other relevant factors.
- (4) The following are additional location standards for landfills, long-term storage ~~facilities~~facilities, and hazardous waste surface impoundments:
- (A) A hazardous waste landfill, long-term storage, or a surface impoundment facility shall not be located:
- (i) ~~In~~in the recharge area of an aquifer which is an existing sole drinking water source;
- (ii) ~~Within~~within 200 feet of a surface water stream with continuous flow as defined by the United States Geological Survey;
- (iii) ~~In~~in an area that will allow direct surface or subsurface discharge to WS-I, WS-II or SA waters or a Class III Reservoir as defined in 15A NCAC 02B .0200 and 15A NCAC 18C .0102;
- (iv) ~~In~~in an area that will allow direct surface or subsurface discharge to a watershed for a Class I or II Reservoir as defined in 15A NCAC 18C .0102;
- (v) ~~Within~~within 200 feet horizontally of a 100-year flood hazard elevation;
- (vi) ~~Within~~within 200 feet of a seismically active area as defined in Paragraph (c) of this Rule; and
- (vii) ~~Within~~within 200 feet of a mine, ~~eave~~cave, or cavernous bedrock.
- (B) A hazardous waste landfill or long-term storage facility shall be located in geologic formations with the following soil characteristics:
- (i) ~~The~~the depth of the unconsolidated soil materials shall be equal to or greater than 20 feet;
- (ii) ~~The~~the percentage of fine-grained soil material shall be equal to or greater than 30 percent passing through a number 200 sieve;
- (iii) ~~Soil~~soil liquid limit shall be equal to or greater than 30;
- (iv) ~~Soil~~soil plasticity index shall be equal to or greater than 15;
- (v) ~~Soil~~soil compacted hydraulic conductivity shall be a maximum of  $1.0 \times 10^{-7}$  cm/sec;
- (vi) ~~Soil~~soil Cation Exchange Capacity shall be equal to or greater than 5 milliequivalents per 100 grams;
- (vii) ~~Soil~~soil Potential Volume Change Index shall be equal to or less than 4; and
- (viii) ~~Soils~~soils shall be underlain by a geologic formation having a rock quality designation equal to or greater than 75 percent.
- (C) A hazardous waste landfill or long-term storage facility shall be located in areas of low to moderate relief to the extent necessary to prevent landsliding or slippage and slumping. The site may be graded to comply with this standard.
- (5) All new hazardous waste impoundments that close with hazardous waste residues left in place shall comply with the standards for hazardous waste landfills in Subparagraph (r)(4) of this Rule unless the applicant ~~can demonstrate~~demonstrates that equivalent protection of public health and environment is afforded by some other standard.
- (6) The owners and operators of all new hazardous waste management facilities shall construct and maintain a minimum of two observation wells, one upgradient and one downgradient of the proposed facility; and shall establish background groundwater concentrations and monitor annually for all hazardous wastes that the owner or operator proposes to store, treat, or dispose at the facility.
- (7) The owners and operators of all new hazardous waste facilities shall demonstrate that the community has had an opportunity to

participate in the siting process by complying with the following:

- (A) The owners and operators shall hold at least one public meeting in the county in which the facility is to be located to inform the community of all hazardous waste management activities including but not limited to: the hazardous properties of the waste to be managed; the type of management proposed for the wastes; the mass and volume of the wastes; and the source of the wastes; and to allow the community to identify specific health, safety and environmental concerns or problems expressed by the community related to the hazardous waste activities associated with the facility. The owners and operators shall provide a public notice of this meeting at least 30 days prior to the meeting. Public notice shall be documented in the facility permit application. The owners and operators shall submit as part of the permit application a complete written transcript of the meeting, all written material submitted that represents community concerns, and all other relevant written material distributed or used at the meeting. The written transcript and other written material submitted or used at the meeting shall be submitted to the local public library closest to and in the county of the proposed site with a request that the information be made available to the public.
- (B) For the purposes of this Rule, public notice shall include: notification of the boards of county commissioners of the county where the proposed site is to be located and all contiguous counties in North Carolina; a legal advertisement placed in a newspaper or newspapers serving those counties; and provision of a news release to at least one newspaper, one radio station, and one TV station serving these counties. Public notice shall include the time, place, and purpose of the meetings required by this Rule.
- (C) No less than 30 days after the first public meeting transcript is available at the local public library, the owners and operators shall hold at least one additional public meeting in order to attempt to resolve community concerns. The owners and operators

shall provide public notice of this meeting at least 30 days prior to the meeting. Public notice shall be documented in the facility permit application. The owners and operators shall submit as part of the permit application a complete written transcript of the meeting, all written material submitted that represents community concerns, and all other relevant written material distributed or used at the meeting.

- (D) The application, written transcripts of all public meetings and any additional material submitted or used at the meetings, and any additions or corrections to the application, including any responses to notices of deficiencies shall be submitted to the local library closest to and in the county of the proposed site, with a request that the information be made available to the public until the permit decision is made.
- (E) The Department shall consider unresolved community concerns in the permit review process and impose final permit conditions based on sound scientific, health, safety, and environmental principles as authorized by applicable laws or rules.

(s) 40 CFR 264.550 through 264.555 (Subpart S), "~~Special Provisions for Cleanup~~", "Cleanup" are incorporated by reference including subsequent amendments and editions.

(t) 40 CFR 264.570 through 264.575 (Subpart W), "~~Drip Pads~~", "Pads" are incorporated by reference including subsequent amendments and editions.

(u) 40 CFR 264.600 through 264.603 (Subpart X), "~~Miscellaneous Units~~", "Units" are incorporated by reference including subsequent amendments and editions.

(v) 40 CFR 264.1030 through 264.1049 (Subpart AA), "~~Air Emission Standards for Process Vents~~", "Vents" are incorporated by reference including subsequent amendments and editions, except that 40 CFR 264.1030(b)(2) (71 FR 40274, July 14, 2006) is incorporated by reference.

(w) 40 CFR 264.1050 through 264.1079 (Subpart BB), "~~Air Emission Standards for Equipment Leaks~~", "Leaks" are incorporated by reference including subsequent amendments and editions, except that 40 CFR 264.1050(b)(3) (71 FR 40274, July 14, 2006) is incorporated by reference.

(x) 40 CFR 264.1080 through 264.1091 (Subpart CC), "~~Air Emission Standards for Tanks, Surface Impoundments, and Containers~~", "Containers" are incorporated by reference including subsequent amendments and editions.

(y) 40 CFR 264.1100 through 264.1102 (Subpart DD), "~~Containment Buildings~~", "Buildings" are incorporated by reference including subsequent amendments and editions, except that 40 CFR 264.1101(c)(4) (71 FR 40274, July 14, 2006) is incorporated by reference.

(z) 40 CFR 264.1200 through 264.1202 (Subpart EE), "Hazardous Waste Munitions and Explosives ~~Storage~~", Storage" are incorporated by reference including subsequent amendments and editions.

(aa) Appendices to 40 CFR Part 264 are incorporated by reference including subsequent amendments and editions.

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*Eff. November 19, 1980;*  
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*Amended Eff. August 1, 1990;*  
*Recodified from 15A NCAC 13A .0010 Eff. August 30, 1990;*  
*Amended Eff. July 1, 1995; October 1, 1993; April 1, 1993;*  
*October 1, 1992;*  
*Recodified from 15A NCAC 13A .0009 Eff. December 20, 1996;*  
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Temporary Amendment Eff. May 30, 2017.

**15A NCAC 13A .0110 INTERIM STATUS STDS FOR OWNERS-OP OF HWTSD FACILITIES - PART 265**

(a) 40 CFR 265.1 through 265.4 (Subpart A), "~~General~~", "General" are incorporated by reference including subsequent amendments and ~~editions~~, editions, except that 40 CFR 265.1(c)(5) and 265.1(c)(7) (71 FR 40274, July 14, 2006) are incorporated by reference.

(b) 40 CFR 265.10 through 265.19 (Subpart B), "~~General Facility Standards~~", Standards" are incorporated by reference including subsequent amendments and ~~editions~~, editions, except that 40 CFR 265.15(b)(4) (71 FR 16908, Apr. 4, 2006) is incorporated by reference.

(c) 40 CFR 265.30 through 265.37 (Subpart C), "~~Preparedness and Prevention~~", Prevention" are incorporated by reference including subsequent amendments and editions, except that 265.35 is not incorporated by reference.

The following shall be substituted for the provisions of 265.35.  
 Required aisle space: The owner or operator must maintain aisle space of at least two feet to allow the unobstructed movement of personnel, fire prevention equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency.

(d) 40 CFR 265.50 through 265.56 (Subpart D), "~~Contingency Plan and Emergency Procedures~~", Procedures" are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 265.70 through 265.77 (Subpart E), "Manifest System, Recordkeeping, and ~~Reporting~~", Reporting" are incorporated by reference including subsequent amendments and ~~editions~~, editions, except that 40 CFR 265.71(c) (81 FR 85727, Nov. 28, 2016) and 265.75 (51 FR 28556, Aug. 8, 1986) are incorporated by reference.

(f) 40 CFR 265.90 through 265.94 (Subpart F), "~~Ground-Water Monitoring~~", Monitoring" are incorporated by reference including subsequent amendments and editions.

(g) 40 CFR 265.110 through 265.121 (Subpart G), "~~Closure and Post-Closure~~", Post-Closure" are incorporated by reference including subsequent amendments and editions.

(h) 40 CFR 265.140 through 265.151 (Subpart H), "~~Financial Requirements~~", Requirements" are incorporated by reference including subsequent amendments and editions, except that 40 CFR 265.143(a)(3), (a)(4), (a)(5), (a)(6), and 40 CFR 265.145(a)(3), (a)(4), (a)(5), are not incorporated by reference.

(1) The following shall be substituted for the provisions of 40 CFR 265.143(a)(3) ~~which were that are~~ not incorporated by reference: The owner or operator shall deposit the full amount of the closure cost estimate at the time the fund is established. By November 19, 1981, an owner or operator using a closure trust fund established prior to November 19, 1980 shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or shall obtain other financial assurance as specified in this Section.

(2) The following shall be substituted for the provisions of 40 CFR 265.143(a)(6) ~~which were that are~~ not incorporated by reference: After the trust fund is established, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this Section to cover the difference; and

(3) The following shall be substituted for the provisions of 40 CFR 265.145(a)(3) ~~which were that are~~ not incorporated by reference:

(A) Except as otherwise provided in Part (h)(3)(B) of this Rule, the owner or operator shall deposit the full amount of the post-closure cost estimate at the time the fund is established.

(B) If the Department finds that the owner or operator of an inactive hazardous waste disposal unit ~~cannot~~ is unable to provide financial assurance for post-closure through any other option (e.g. surety bond, letter of credit, or corporate guarantee), a plan for annual payments to the trust fund during the interim status period shall be established by the Department by use of an Administrative Order.

(i) 40 CFR 265.170 through 265.178 (Subpart I), "~~Use and Management of Containers~~", Containers" are incorporated by reference including subsequent amendments and ~~editions~~, editions, except that 40 CFR 265.174 (71 FR 40275, July 14, 2006) is incorporated by reference. Additionally, the owner or

operator shall keep records and results of required inspections for at least three years from the date of the inspection.

(j) 40 CFR 265.190 through 265.202 (Subpart J), "~~Tank Systems~~", "~~Systems~~" are incorporated by reference including subsequent amendments and ~~editions~~, editions, except that 40 CFR 265.195(d) (71 FR 16910, Apr. 4, 2006) and 265.201 (71 FR 40275, July 14, 2006) are incorporated by reference.

(k) 40 CFR 265.220 through 265.231 (Subpart K), "~~Surface Impoundments~~", "~~Impoundments~~" are incorporated by reference including subsequent amendments and editions.

(l) 40 CFR 265.250 through 265.260 (Subpart L), "~~Waste Piles~~", "~~Piles~~" are incorporated by reference including subsequent amendments and editions.

(m) 40 CFR 265.270 through 265.282 (Subpart M), "~~Land Treatment~~", "~~Treatment~~" are incorporated by reference including subsequent amendments and editions.

(n) 40 CFR 265.300 through 265.316 (Subpart N), "~~Landfills~~", "~~Landfills~~" are incorporated by reference including subsequent amendments and editions.

(o) 40 CFR 265.340 through 265.352 (Subpart O), "~~Incinerators~~", "~~Incinerators~~" are incorporated by reference including subsequent amendments and editions.

(p) 40 CFR 265.370 through 265.383 (Subpart P), "~~Thermal Treatment~~", "~~Treatment~~" are incorporated by reference including subsequent amendments and editions.

(q) 40 CFR 265.400 through 265.406 (Subpart Q), "Chemical, Physical, and Biological ~~Treatment~~", "Treatment" are incorporated by reference including subsequent amendments and editions.

(r) 40 CFR 265.440 through 265.445 (Subpart W), "~~Drip Pads~~", "Pads" are incorporated by reference including subsequent amendments and editions.

(s) 40 CFR 265.1030 through 265.1049 (Subpart AA), "Air Emission Standards for Process ~~Vents~~", "Vents" are incorporated by reference including subsequent amendments and ~~editions~~, editions, except that 40 CFR 265.1030(b)(2) and 265.1030(b)(3) (62 FR 64661, Dec. 8, 1997) are incorporated by reference.

(t) 40 CFR 265.1050 through 265.1079 (Subpart BB), "Air Emission Standards for Equipment ~~Leaks~~", "Leaks" are incorporated by reference including subsequent amendments and ~~editions~~, editions, except that 40 CFR 265.1050 (69 FR 22661, Apr. 26, 2004) is incorporated by reference.

(u) 40 CFR 265.1080 through 265.1091 (Subpart CC), "Air Emission Standards for Tanks, Surface Impoundments, and ~~Containers~~", "Containers" are incorporated by reference including subsequent amendments and editions.

(v) 40 CFR 265.1100 through 265.1102 (Subpart DD), "Containment ~~Buildings~~", "Buildings" are incorporated by reference including subsequent amendments and ~~editions~~, editions, except that 40 CFR 265.1101(c)(4) (71 FR 40276, July 14, 2006) is incorporated by reference.

(w) 40 CFR 265.1200 through 265.1202 (Subpart EE), "Hazardous Waste Munitions and Explosives ~~Storage~~", "Storage" are incorporated by reference including subsequent amendments and editions.

(x) Appendices to 40 CFR Part 265 are incorporated by reference including subsequent amendments and editions.

*History Note:* Authority G.S. 130A-294(c); 150B-21.6; Eff. November 19, 1980;

*Amended Eff. June 1, 1989; December 1, 1988; June 1, 1988; February 1, 1988;*

*Transferred and Recodified from 10 NCAC 10F .0033 Eff. April 4, 1990;*

*Recodified from 15A NCAC 13A .0011 Eff. August 30, 1990;*

*Amended Eff. July 1, 1995; April 1, 1993; October 1, 1992; February 1, 1992;*

*Recodified from 15A NCAC 13A .0010 Eff. December 20, 1996;*

*Amended Eff. November 1, 2005; August 1, 2000; April 1, 1999;*

*Temporary Amendment Eff. May 30, 2017.*

#### **15A NCAC 13A .0111 STDS FOR THE MGMT OF SPECIFIC HW/TYPES HWM FACILITIES - PART 266**

(a) 40 CFR 266.20 through 266.23 (Subpart C), "Recyclable Materials Used in a Manner Constituting ~~Disposal~~", "Disposal" are incorporated by reference including subsequent amendments and editions.

(b) 40 CFR 266.70 (Subpart F), "Recyclable Materials Utilized for Precious Metal ~~Recovery~~", "Recovery" is incorporated by reference including subsequent amendments and editions. Off-site recycling facilities that receive materials described in 40 CFR 266.70(a) ~~must shall~~ manage the materials in accordance with and comply with 40 CFR 262.34(a) as incorporated by reference in 15A NCAC 13A .0107(c), excluding 40 CFR 262.34(a)(3). Each container and tank holding recyclable materials at off-site precious metal recycling facilities ~~must shall~~ be labeled or marked with the words, "Recyclable Material".

(c) 40 CFR 266.80 (Subpart G), "Spent Lead-Acid Batteries Being ~~Reclaimed~~", "Reclaimed" is incorporated by reference including subsequent amendments and ~~editions~~, editions, except that 40 CFR 266.80(a) (81 FR 85727, Nov. 28, 2016) is incorporated by reference.

(d) 40 CFR 266.100 through 266.112 (Subpart H), "Hazardous Waste Burned in Boilers and Industrial ~~Furnaces~~", "Furnaces" are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 266.200 through 266.206 (Subpart M), "Military ~~Munitions~~", "Munitions" are incorporated by reference including subsequent amendments and editions.

(f) 40 CFR 266.210 through 266.360 (Subpart N), "Conditional Exemption for Low-Level Mixed Waste Storage, Treatment, Transportation and ~~Disposal~~", "Disposal" are incorporated by reference including subsequent amendments and ~~editions~~, editions, except that 40 CFR 266.255(a) (66 FR 27262, May 16, 2001) is incorporated by reference.

(g) Appendices to 40 CFR Part 266 are incorporated by reference including subsequent amendments and editions.

*History Note:* Authority G.S. 130A-294(c); 150B-21.6; Eff. July 1, 1985;

*Amended Eff. June 1, 1990; June 1, 1988; February 1, 1988; December 1, 1987;*

*Transferred and Recodified from 10 NCAC 10F .0039 Eff. April 4, 1990;*

*Recodified from 15A NCAC 13A .0012 Eff. August 30, 1990;*

*Amended Eff. January 1, 1995; April 1, 1993; August 1, 1991; October 1, 1990;*

*Recodified from 15A NCAC 13A .0011 Eff. December 20, 1996;*

*Amended Eff. April 1, 2006; April 1, 2003; April 1, 1999; August 1, 1998;*  
*Temporary Amendment Eff. May 30, 2017.*

**15A NCAC 13A .0112 LAND DISPOSAL RESTRICTIONS - PART 268**

- (a) 40 CFR 268.1 through 268.14 (Subpart A), "~~General~~", "General" are incorporated by reference including subsequent amendments and ~~editions~~, editions, except that 40 CFR 268.1(e)(1) (70 FR 45520, Aug. 5, 2005) and 268.7(a)(5) (71 FR 40278, July 14, 2006) are incorporated by reference.
- (b) 40 CFR 268.20 through 268.39 (Subpart C), "Prohibitions on Land ~~Disposal~~", "Disposal" are incorporated by reference including subsequent amendments and editions, except that 40 CFR 268.21 through 268.29 are not incorporated by reference.
- (c) 40 CFR 268.40 through 268.49 (Subpart D), "Treatment ~~Standards~~", "Standards" are incorporated by reference including subsequent amendments and editions.
- (d) 40 CFR 268.50 (Subpart E), "Prohibitions on ~~Storage~~", "Storage" is incorporated by reference including subsequent amendments and ~~editions~~, editions, except that 40 CFR 268.50(a) (71 FR 40279, July 14, 2006) is incorporated by reference.
- (e) Appendices to 40 CFR Part 268 are incorporated by reference including subsequent amendments and editions.

*History Note: Authority G.S. 130A-294(c); 150B-21.6;*  
*Eff. August 1, 1987;*  
*Amended Eff. June 1, 1990; June 1, 1989; June 1, 1988; February 1, 1988;*  
*Transferred and Recodified from 10 NCAC 10F .0042 Eff. April 4, 1990;*  
*Recodified from 15A NCAC 13A .0013 Eff. August 30, 1990;*  
*Amended Eff. April 1, 1995; January 1, 1995; April 1, 1993;*  
*February 1, 1991;*  
*Recodified from 15A NCAC 13A .0012 Eff. December 20, 1996;*  
*Amended Eff. November 1, 2005; August 1, 2000; August 1, 1998;*  
*Temporary Amendment Eff. May 30, 2017.*

**15A NCAC 13A .0113 THE HAZARDOUS WASTE PERMIT PROGRAM - PART 270**

- (a) 40 CFR 270.1 through 270.6 (Subpart A), "~~General Information~~", "Information" are incorporated by reference including subsequent amendments and ~~editions~~, editions, except that 40 CFR 270.1(a)(3), 270.1(c)(2)(i) and 270.1(c)(2)(iii) (71 FR 40279, July 14, 2006) are incorporated by reference. For the purpose of this incorporation by reference, "January 26, 1983" shall be substituted for "July 26, 1982" contained in 40 CFR 270.1(c).
- (b) 40 CFR 270.10 through 270.29 (Subpart B), "Permit ~~Application~~", "Application" are incorporated by reference including subsequent amendments and editions.
- (c) The following are additional Part B information requirements for all hazardous waste facilities:
- (1) ~~Description~~ description and documentation of the public meetings as required in 15A NCAC 13A .0109(r)(7);
  - (2) A description of the hydrological and geological properties of the site including flood plains, depth to water table, ground water travel

time, seasonal and long-term groundwater level fluctuations, proximity to public water supply watersheds, consolidated rock, soil pH, soil cation exchange capacity, soil characteristics and composition and permeability, existence of cavernous bedrock and seismic activity, slope, mines, climate, location and withdrawal rates of surface water users within the immediate drainage basin and well water users within a one mile radius of the facility; water quality information of both surface and groundwater within 1000 feet of the facility, and a description of the local air quality;

- (3) A description of the facility's proximity to and potential impact on wetlands, endangered species habitats, parks, forests, wilderness areas, historical sites, mines, and air quality;
- (4) A description of local land use including residential, industrial, commercial, recreational, ~~agricultural~~ agricultural, and the proximity to schools and airports;
- (5) A description of the proximity of the facility to waste generators and population centers; a description of the method of waste transportation; the comments of the local community and state transportation authority on the proposed route, and route safety. Comments shall include proposed alternative routes and restrictions necessary to protect the public health;
- (6) A description of facility aesthetic factors including visibility, appearance, and noise level; and
- (7) A description of any other objective factors that the Department determines are reasonably related and relevant to the proper siting and operation of the facility.

(d) In addition to the specific Part B information requirements for hazardous waste disposal facilities, owners and operators of hazardous waste landfills or longterm storage facilities shall provide the following information:

- (1) ~~Design~~ design drawings and specifications of the leachate collection and removal system;
- (2) ~~Design~~ design drawings and specifications of the artificial impervious liner;
- (3) ~~Design~~ design drawings and specifications of the clay or clay-like liner below the artificial liner, and a description of the permeability of the clay or clay-like liner; and
- (4) ~~A~~ a description of how hazardous wastes will be treated prior to placement in the facility.

(e) In addition to the specific Part B information requirements for surface impoundments, owners and operators of surface impoundments shall provide the following information:

- (1) ~~Design~~ design drawings and specifications of the leachate collection and removal system;
- (2) ~~Design~~ design drawings and specifications of all artificial impervious liners;

- (3) ~~Design-design~~ drawings and specifications of all clay or clay-like liners and a description of the clay or clay-like liner; and
  - (4) ~~Design-design~~ drawings and specifications that show that the facility has been constructed in a manner that will prevent landsliding, slippage, or slumping.
- (f) 40 CFR 270.30 through 270.33 (Subpart C), "~~Permit Conditions~~", "Conditions" are incorporated by reference including subsequent amendments and editions.
- (g) 40 CFR 270.40 through 270.43 (Subpart D), "~~Changes to Permit~~", "Permit" are incorporated by reference including subsequent amendments and ~~editions~~, editions, except that 40 CFR 270.42(l) and the entries under O.1 in the table of appendix I to 40 CFR 270.42 (80 FR 58012, Sept. 25, 2015) are incorporated by reference.
- (h) 40 CFR 270.50 through 270.51 (Subpart E), "Expiration and Continuation of ~~Permits~~", "Permits" are incorporated by reference including subsequent amendments and editions.
- (i) 40 CFR 270.60 through 270.68 (Subpart F), "Special Forms of ~~Permits~~", "Permits" are incorporated by reference including subsequent amendments and editions, except that 40 CFR 270.67 and 270.68 are not incorporated by reference.
- (j) 40 CFR 270.70 through 270.73 (Subpart G), "~~Interim Status~~", "Status" are incorporated by reference including subsequent amendments and editions. For the purpose of this incorporation by reference, "January 1, 1986" shall be substituted for "November 8, 1985" contained in 40 CFR 270.73(c).
- (k) 40 CFR 270.235, (Subpart I), "Integration with Maximum Achievable Control Technology (MACT) ~~Standards~~", "Standards" is incorporated by reference including subsequent amendments and editions.
- (l) The following are additional permitting requirements for hazardous waste facilities.
- (1) An applicant applying for a permit for a hazardous waste facility shall submit a disclosure statement to the Department as a part of the application for a permit or any time thereafter specified by the Department. The disclosure statement shall be supported by an affidavit attesting to the truth and completeness of the facts asserted in the statement and shall include:
    - (A) ~~A~~ a brief description of the form of the business (e.g. partnership, sole proprietorship, corporation, association, or other);
    - (B) ~~The-the~~ name and address of any hazardous waste facility constructed or operated after October 21, 1976 by the applicant or any parent or subsidiary corporation if the applicant is a corporation; and
    - (C) ~~A~~ a list identifying any legal action taken against any facility identified in Part (l)(1)(B) of this Rule involving:
      - (i) any administrative ruling or order issued by any state, ~~federal~~ federal, or local authority relating to revocation of any environmental or waste management permit or license, or to a violation of any state or federal statute or local ordinance relating to waste management or environmental protection;
  - (2) In addition to the information set forth in Subparagraph (l)(1) of this Rule, the Department shall require from any applicant such additional information as it deems necessary to satisfy the requirements of G.S. 130A-295. Such information may include:
    - (A) ~~The-the~~ names, addresses, and titles of all officers, directors, or partners of the applicant and of any parent or subsidiary corporation if the applicant is a corporation;
    - (B) ~~The-the~~ name and address of any company in the field of hazardous waste management in which the applicant business or any of its officers, directors, or partners, hold an equity interest and the name of the officer, director, or partner holding such interest; and
    - (C) ~~A~~ a copy of any administrative ruling or order and of any judicial determination of liability or conviction described in Part (l)(1)(C) of this Rule, and a description of any pending administrative or judicial proceeding in that item.
  - (3) If the Department finds that any part or parts of the disclosure statement is not necessary to satisfy the requirements of G.S. 130A-295, such information shall not be required.

(m) An applicant for a new, or modification to an ~~existing~~, existing commercial facility ~~permit~~, permit shall provide a description and justification of the need for the facility.

(n) Requirements for Off-site Recycling Facilities.

- (1) The permit requirements of 15A NCAC 13A .0109 apply to owners and operators of off-site recycling facilities unless excluded in Subparagraph (2) of Paragraph ~~(n)~~-(n) of this Rule.
- (2) Requirements of 15A NCAC 13A .0113(n)(4), (5), (6), (7) and (8) do not apply to owners and operators of off-site recycling facilities that recycle only precious metals as described in 40 CFR 266.70(a), as incorporated by reference in 15A NCAC 13A .0111(b).
- (3) Off-site facilities that recycle precious metals shall follow the regulations as described in 15A NCAC 13A .0111(b).
- (4) Notwithstanding any other statement of applicability, the following provisions of 40 CFR Part 264, as incorporated by reference, shall apply to owners and operators of off-site recycling facilities except those excluded in 15A NCAC 13A .0113(n)(2):
  - (A) Subpart B - General Facility Standards;
  - (B) Subpart C - Preparedness and Prevention;
  - (C) Subpart D - Contingency Plan and Emergency Procedures;
  - (D) Subpart E - Manifest System, Recordkeeping and Reporting;
  - (E) Subpart G - Closure and Post-closure;
  - (F) Subpart H - Financial Requirements;
  - (G) Subpart I - Use and Management of Containers;
  - (H) Subpart J - Tank Systems;
  - (I) 264.101 - Corrective Action for Solid Waste Management Units;
  - (J) Subpart X - Miscellaneous Units; and
  - (K) Subpart DD - Containment Buildings.
- (5) The requirements listed in Subparagraph (n)(4) of this Rule apply to the entire off-site recycling facility, including all recycling units, staging and process areas, and permanent and temporary storage areas for wastes.
- (6) The following provisions of 15A NCAC 13A .0109 shall apply to owners and operators of off-site recycling facilities:
  - (A) ~~The~~ the substitute financial requirements of Rule .0109(i)(1), (2) and (4); and
  - (B) ~~The~~ the additional standards of Rule .0109(r)(1), (2), (3), (6) and (7).
- (7) The owner or operator of an off-site recycling facility shall keep a written operating record at his facility.
- (8) The following information ~~must~~-shall be recorded, as it becomes available, and

maintained in the operating record until closure of the facility:

- (A) ~~A~~-a description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or recycling at the facility;
- (B) ~~The~~ the location of all hazardous waste within the facility and the quantity at each location. This information ~~must~~ shall include cross-references to specific manifest document numbers if the waste was accompanied by a manifest; and
- (C) ~~Documentation~~-documentation of the fate of all hazardous wastes received from off-site or generated on-site. This shall include records of the sale, reuse, off-site transfer, or disposal of all waste materials.

(o) Permit Fees for Commercial Hazardous Waste Facilities.

- (1) An applicant for a permit modification for a commercial hazardous waste facility shall pay an application fee for the Class of permit modification defined in 40 CFR 270.42 as follows:
  - (A) Class 1 permit modification \$100;
  - (B) Class 2 permit modification \$1,000; or
  - (C) Class 3 permit modification \$5,000.

Note: Class 1 permit modifications which do not require prior approval of the Division Director are excluded from the fee requirement.

- (2) The application fee for a new permit, permit renewal, or permit modification ~~must~~-shall accompany the application, and is non-refundable. The application shall be considered incomplete until the fee is paid. Checks shall be made payable to: Division of Waste Management.

*History Note: Authority G.S. 130A-294(c); 130A-294.1; 130A-295(a)(1),(2), (c); 150B-21.6;*

*Eff. November 19, 1980;*

*Amended Eff. November 1, 1989; June 1, 1988; February 1, 1988; December 1, 1987;*

*Transferred and Recodified from 10 NCAC 10F .0034 April 4, 1990;*

*Amended Eff. August 1, 1990;*

*Recodified from 15A NCAC 13A .0014 Eff. August 30, 1990;*

*Amended Eff. April 1, 1993; August 1, 1991; October 1, 1990;*

*Recodified from 15A NCAC 13A .0013 Eff. December 20, 1996;*

*Amended Eff. August 1, 2008; April 1, 2006; August 1, 2004;*

*April 1, 2001; August 1, 2000;*

*Temporary Amendment Eff. May 30, 2017.*

#### **15A NCAC 13A .0118 STANDARDS FOR THE MANAGEMENT OF USED OIL**

(a) 40 CFR 279.1 (Subpart A), "~~Definitions~~", "Definitions" is incorporated by reference including subsequent amendments and



editions, except that the Definition for "Used Oil" is defined by G.S. 130A-290(b) and is not incorporated by reference.

(b) 40 CFR 279.10 through 279.12 (Subpart B), "~~Applicability~~", "Applicability" are incorporated by reference including subsequent amendments and ~~editions~~. editions, except that 40 CFR 279.10(b)(3) (71 FR 40280, July 14, 2006) is incorporated by reference.

(c) 40 CFR 279.20 through 279.24 (Subpart C), "Standards for Used Oil ~~Generators~~", "Generators" are incorporated by reference including subsequent amendments and editions.

(d) 40 CFR 279.30 through 279.32 (Subpart D), "Standards for Used Oil Collection Centers and Aggregation ~~Points~~", "Points" are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 279.40 through 279.47 (Subpart E), "Standards for Used Oil Transporter and Transfer ~~Facilities~~", "Facilities" are incorporated by reference including subsequent amendments and editions.

(f) 40 CFR 279.50 through 279.59 (Subpart F), "Standards for Used Oil Processors and ~~Re-Refiners~~", "Re-Refiners" are incorporated by reference including subsequent amendments and editions.

(g) 40 CFR 279.60 through 279.67 (Subpart G), "Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy ~~Recovery~~", "Recovery" are incorporated by reference including subsequent amendments and editions.

(h) 40 CFR 279.70 through 279.75 (Subpart H), "Standards for Used Oil Fuel ~~Marketers~~", "Marketers" are incorporated by reference including subsequent amendments and editions.

(i) 40 CFR 279.80 through 279.81 (Subpart I), "Standards for Use as a Dust Suppressant and Disposal of Used Oil" are incorporated by reference including subsequent amendments and editions. ~~{Note: 40 CFR 279.82, 40 CFR 279.82 which that addresses used oil as a dust suppressant, is specifically not incorporated by reference. See also G.S. 130A-309.15 for prohibited acts regarding used oil}-oil.~~

(j) Additional State Requirements:

(1) By July 1 of each year the following persons shall notify the Department by submitting an annual report listing the type and quantity of used oil transported, collected, and recycled during the preceding calendar year, on Department forms:

- (A) ~~Persons~~-persons transporting more than 500 gallons of used oil per week over public highways;
- (B) ~~Collection~~-collection facilities that annually receive more than 6,000 gallons of used oil excluding the volume of used oil collected from individuals that change their own personal motor oil;
- (C) ~~Facilities~~-facilities that annually recycle more than 10,000 gallons of used oil; and
- (D) ~~Public~~-public used oil collection centers.

(2) The following persons ~~are not~~-shall not be required to comply with ~~15A NCAC 13A .0118(j)(1)~~-15A NCAC 13A .0118(j)(1):

- (A) ~~An~~-an electric utility that generates used oil ~~which that~~ is reclaimed, recycled, or re-refined on-site for use in its operations; and
- (B) ~~An~~-an on-site burner that burns its own on-specification used oil provided that the facility is in compliance with any Air Quality permit requirements established by the Department.
- (3) ~~An annual fee of twenty five dollars (\$25.00) shall be paid by all persons identified in 15A NCAC 13A .0118(j)(1)(A) through .0118(j)(1)(C) by July 1 of each year.~~

*History Note: Authority G.S. 130A-294(b),(c); 150B-21.6; Eff. October 1, 1993; Recodified from 15A NCAC 13A .0018 Eff. December 20, 1996; Amended Eff. August 1, 2000; Temporary Amendment Eff. May 30, 2017.*

#### **15A NCAC 13A .0119 STANDARDS FOR UNIVERSAL WASTE MANAGEMENT - PART 273**

(a) 40 CFR 273.1 through 273.9 (Subpart A), "General" are incorporated by reference including subsequent amendments and ~~editions~~. editions, except that 40 CFR 273.8 (a)(2) (64 FR 36488, July 6, 1999) is incorporated by reference.

(b) 40 CFR 273.10 through 273.20 (Subpart B), "Standards for Small Quantity Handlers of Universal Waste" are incorporated by reference including subsequent amendments and editions.

(c) 40 CFR 273.30 through 273.40 (Subpart C), "Standards for Large Quantity Handlers of Universal Waste" are incorporated by reference including subsequent amendments and editions.

(d) 40 CFR 273.50 through 273.56 (Subpart D), "Standards for Universal Waste Transporters" are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 273.60 through 273.62 (Subpart E), "Standards for Destination Facilities" are incorporated by reference including subsequent amendments and editions.

(f) 40 CFR 273.70 (Subpart F), "Import Requirements" is incorporated by reference including subsequent amendments and editions.

(g) 40 CFR 273.80 through 273.81 (Subpart G), "Petitions to include Other Wastes Under 40 CFR Part 273" are incorporated by reference including subsequent amendments and editions, except that 40 CFR 273.81(b) (64 FR 36490, July 6, 1999) is incorporated by reference, and 40 CFR 273.80(a) and (b), are not incorporated by reference.

(1) The following shall be substituted for the provisions of 40 CFR 273.80(a) ~~which were~~ that are not incorporated by reference:

Any person seeking to add a hazardous waste or a category of hazardous waste to this Part may petition for a regulatory amendment under this ~~Subpart~~ Subpart, and ~~15A NCAC 24B .0001-15A NCAC 02I .0501~~ and 40 CFR 260.23.

- (2) The following shall be substituted for the provisions of 40 CFR 273.80(b) ~~which were~~ that are not incorporated by reference:

To be successful, the petitioner must demonstrate to the satisfaction of the Administrator that regulation under the universal waste regulations of 40 CFR Part 273 is:

- (A) appropriate for the waste or category of ~~waste;—waste,~~ will improve management practices for the waste or category of ~~waste;—waste,~~ and will improve implementation of the hazardous waste program;
- (B) the petition must include the information required by ~~15A NCAC 24B-.0001~~ 15A NCAC 02I.0501; and

- (C) the petition shall also address as many of the factors listed in 40 CFR 273.81 as are appropriate for the waste or waste category addressed in the petition.

*History Note: Authority G.S. 130A-294(c); 150B-21.6; Eff. January 1, 1996; Recodified from 15A NCAC 13A .0019 Eff. December 20, 1996; Amended Eff. April 1, 2001; August 1, 1998; Temporary Amendment Eff. May 30, 2017.*

*This Section contains information for the meeting of the Rules Review Commission May 18, 2017 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 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS**

**Appointed by Senate**

Jeff Hyde (1<sup>st</sup> Vice Chair)  
Robert A. Bryan, Jr.  
Margaret Currin  
Jay Hemphill  
Jeffrey A. Poley

**Appointed by House**

Garth Dunklin (Chair)  
Stephanie Simpson (2<sup>nd</sup> Vice Chair)  
Paul Powell  
Jeanette Doran

**COMMISSION COUNSEL**

Abigail Hammond	(919)431-3076
Amber Cronk May	(919)431-3074
Amanda Reeder	(919)431-3079
Jason Thomas	(919)431-3081

**RULES REVIEW COMMISSION MEETING DATES**

June 15, 2017	July 20, 2017
August 17, 2017	September 21, 2017

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**RULES REVIEW COMMISSION MEETING**

**MINUTES**

***May 18, 2017***

The Rules Review Commission met on Thursday, May 18, 2017, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Bobby Bryan, Margaret Currin, Jeanette Doran, Garth Dunklin, Jay Hemphill, Jeff Hyde, Jeff Poley, Paul Powell, and Stephanie Simpson.

Staff members present were Commission Counsels Amanda Reeder, Abigail Hammond, Amber Cronk May, and Jason Thomas; and Julie Brincefield, Alex Burgos, and Dana Vojtko.

The meeting was called to order at 10:01 a.m. with Chairman Dunklin presiding.

Chairman Dunklin introduced the new Deputy Director of the Office of Administrative Hearings, Linda Worth.

Chairman Dunklin introduced new OAH extern, Rich Gittings.

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

**APPROVAL OF MINUTES**

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the April 20, 2017 meeting. There were none and the minutes were approved as distributed.

**FOLLOW UP MATTERS**

**Commission for Mental Health, Developmental Disabilities and Substance Abuse Services**

10A NCAC 27H .0202, .0203, .0204, .0205, .0206, and .0207 - The agency is addressing the objections from the March meeting. No action was required by the Commission.

**Department of Insurance**

11 NCAC 05A .0501, .0505, .0508, and .0511 - The agency is addressing the objections from the January meeting. No action was required by the Commission.

**Manufactured Housing Board**

11 NCAC 08 .0904 – The agency is addressing the objection from the November meeting. No action was required by the Commission.

**Locksmith Licensing Board**

21 NCAC 29 .0102, .0201, .0204, .0205, .0206, .0401, .0404, .0502, .0503, .0504, .0702, .0703, .0802, .0803, .0804, .0805, and .0806 - The rewritten rules were unanimously approved.

21 NCAC 29 .0402 and .0601 - The agency is addressing the objections from the April meeting. No action was required by the Commission.

**Board of Massage and Bodywork Therapy**

21 NCAC 30 .0903 and .0906 – Pursuant to G.S. 150B-21.12(d), the rules were returned to the agency. No action was required by the Commission.

**LOG OF FILINGS (PERMANENT RULES)**

**Historical Commission**

All rules were unanimously approved.

**Wildlife Resources Commission**

All rules were unanimously approved.

**Commission for Public Health**

The Commission objected to the rules in accordance with G.S. 150B-21.10.

The Commission objected to the rules for failure to comply with the Administrative Procedure Act. Specifically, these rules were not noticed in the North Carolina Register for a period of at least 60 days, as required by G.S. 150B-21.2(g).

Bob Martin, with the agency, addressed the Commission.

**Department of Revenue**

All rules were unanimously approved.

**Board of Dental Examiners**

All rules were unanimously approved.

Prior to the review of the rules from the Board of Dental Examiners, Commissioner Simpson recused herself and did not participate in any discussion or vote concerning the rules because of a possible conflict with her husband's law firm.

**Board for Licensing of Geologists**

All rules were unanimously approved.

**Board of Nursing**

All rules were unanimously approved.

**Veterinary Medical Board**

21 NCAC 66 .0311 was unanimously approved.

**LOG OF RULES (TEMPORARY RULES)**

**Environmental Management Commission**

All rules were unanimously approved.

**EXISTING RULES REVIEW**

**Department of Natural and Cultural Resources**

07 NCAC 01- The Commission unanimously approved the report as submitted by the agency.

07 NCAC 02G,H,I - The Commission unanimously approved the report as submitted by the agency.

**Public Library Certification Commission**

07 NCAC 02J - The Commission unanimously approved the report as submitted by the agency.

**Department of Natural and Cultural Resources**

07 NCAC 03 – The Commission unanimously approved the report as submitted by the agency.

**USS North Carolina Battleship Commission**

07 NCAC 05 – The Commission unanimously approved the report as submitted by the agency.

**Tryon Palace Commission**

07 NCAC 06 – The Commission unanimously approved the report as submitted by the agency.

**Historic Bath Commission**

07 NCAC 07 - The Commission unanimously approved the report as submitted by the agency.

**Historic Murfreesboro Commission**

07 NCAC 08 - The Commission unanimously approved the report as submitted by the agency.

**Edenton Historical Commission**

07 NCAC 09 - The Commission unanimously approved the report as submitted by the agency.

**Department of Natural and Cultural Resources**

07 NCAC 10 – The Commission unanimously approved the report as submitted by the agency.

**Medical Care Commission**

10A NCAC 13B – The Commission unanimously approved the report as submitted by the agency, with the following exceptions for rules that received public comment that were deemed to have merit as defined by G.S. 150B-21.3A(c)(2): 10A NCAC 13B .3303, .4103, .4801, and .4805. The RRC designated those rules as “necessary with substantive public interest.”

Prior to the review of the report from the Medical Care Commission, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the report because he represents the agency.

**Well Contractors Certification Commission**

15A NCAC 27 – The Commission unanimously approved the report as submitted by the agency.

**Interpreter and Transliterator Licensing Board**

21 NCAC 25 – The Commission unanimously approved the report as submitted by the agency.

**Board of Elections**

08 NCAC 01, 02, 03, 04, 06B, 08, 09, and 10B - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules no later than August 31, 2018 pursuant to G.S. 150B-21.3A(d)(2).

Prior to the review of the proposed readoption date from the Board of Elections, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the proposed readoption because she has a matter before the State Board of Elections.

Prior to the review of the proposed readoption date from the Board of Elections, Commissioner Hemphill recused himself and did not participate in any discussion or vote concerning the proposed readoption because he has a potential conflict of interest.

**Board of Registration for Foresters**

21 NCAC 20 - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules no later than August 31, 2018 pursuant to G.S. 150B-21.3A(d)(2).

**Psychology Board**

Pursuant to 26 NCAC 05. 0205, the agency requested a waiver of 26 NCAC 05 .0211 for the report for 21 NCAC 54.

The waiver request was approved, with Commissioners Doran, Hyde, and Poley voting against. The Commission rescheduled the date of review for the report, and amended 26 NCAC 05 .0211. The Commission will review the agency's report at its September 2017 meeting.

**COMMISSION BUSINESS**

The Commission amended Rule 26 NCAC 05 .0211 to reflect changes in the periodic review schedule.

The Chair gave an update of Senate Bill 257, Section 20.1 OAH/Lawsuit Funds, and Senate Bill 16.

The Chair gave an update on the recent appeal in the matter of the *Ambulatory Surgical Center Association v. Industrial Commission*.

The meeting adjourned at 10:51 a.m.

The next regularly scheduled meeting of the Commission is Thursday, June 15<sup>th</sup> at 10:00 a.m.

There is a digital recording of the entire meeting available from the Office of Administrative Hearings /Rules Division.

Respectfully Submitted,

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Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:

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Garth Dunklin, Chair

**May 18, 2017**

Rules Review Commission  
Meeting  
Please Print Legibly

Name	Agency
Jennie Wthausen	NC DJS - EMC
Ashley Snyder	DWCR
Shawn Middlebrooks	DWCR
Craig Bromby	NC DEQ
Jenny Patterson	NC DEQ
Nadine Pfeiffer	NC DHSR
Clarence Furrion	NC DJFSB
Borden Culbreth	NCLLB
Mary Lucassy	NCBLE
Rich G. Hings	DAH
Joanne Ratkofsky	NC DHHS
Drew Morgan	DNHF
Whitney Waldenberg	Dental Board
John R. Moon, Jr.	NC Interpreter & Transliterator L.B.
Angela Ellis	NC Board of Nursing
Angie Chisholm	NC BON
Bob MARTIN	NC DPI
Ann Christian	AMTA - NC
Julie Woosley	NC DEQ
Betsy Hanwood	NC Wildlife Resources Commission
Cindy Callahan	NCDHHS







**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:  
6714 Mail Service Center  
Raleigh, NC 27699-6714

Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

May 18, 2017

Katelyn Love, Rulemaking Coordinator  
North Carolina Board of Elections  
Post Office Box 27255  
Raleigh, North Carolina 27611-7255

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **08 NCAC 01, 02, 03, 04, 06B, 08, 09, 10B**

Dear Ms. Love:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the May 18, 2017 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than August 31, 2018.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond  
Commission Counsel

Administration  
919/431-3000  
fax: 919/431-3100

Rules Division  
919/431-3000  
fax: 919/431-3104

Judges and  
Assistants  
919/431-3000  
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Clerk's Office  
919/431-3000  
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Rules Review  
Commission  
919/431-3000  
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Civil Rights  
Division  
919/431-3036  
fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION  
PERIODIC RULE REVIEW  
December 15, 2016  
APO Review: January 03, 2017**

**Elections, Board of  
Total: 36**

**RRC Determination: Necessary with substantive public interest**

<b>Rule</b>	<b>Determination</b>
<u>08 NCAC 01 .0104</u>	Necessary with substantive public interest
<u>08 NCAC 02 .0110</u>	Necessary with substantive public interest
<u>08 NCAC 02 .0111</u>	Necessary with substantive public interest
<u>08 NCAC 02 .0112</u>	Necessary with substantive public interest
<u>08 NCAC 02 .0113</u>	Necessary with substantive public interest
<u>08 NCAC 03 .0101</u>	Necessary with substantive public interest
<u>08 NCAC 03 .0102</u>	Necessary with substantive public interest
<u>08 NCAC 03 .0103</u>	Necessary with substantive public interest
<u>08 NCAC 03 .0104</u>	Necessary with substantive public interest
<u>08 NCAC 03 .0105</u>	Necessary with substantive public interest
<u>08 NCAC 03 .0106</u>	Necessary with substantive public interest
<u>08 NCAC 03 .0201</u>	Necessary with substantive public interest
<u>08 NCAC 03 .0202</u>	Necessary with substantive public interest
<u>08 NCAC 03 .0301</u>	Necessary with substantive public interest
<u>08 NCAC 03 .0302</u>	Necessary with substantive public interest
<u>08 NCAC 04 .0301</u>	Necessary with substantive public interest
<u>08 NCAC 04 .0302</u>	Necessary with substantive public interest
<u>08 NCAC 04 .0304</u>	Necessary with substantive public interest
<u>08 NCAC 04 .0305</u>	Necessary with substantive public interest
<u>08 NCAC 04 .0306</u>	Necessary with substantive public interest
<u>08 NCAC 04 .0307</u>	Necessary with substantive public interest
<u>08 NCAC 06B .0103</u>	Necessary with substantive public interest
<u>08 NCAC 06B .0104</u>	Necessary with substantive public interest
<u>08 NCAC 06B .0105</u>	Necessary with substantive public interest
<u>08 NCAC 08 .0104</u>	Necessary with substantive public interest
<u>08 NCAC 09 .0106</u>	Necessary with substantive public interest
<u>08 NCAC 09 .0107</u>	Necessary with substantive public interest
<u>08 NCAC 09 .0108</u>	Necessary with substantive public interest
<u>08 NCAC 09 .0109</u>	Necessary with substantive public interest
<u>08 NCAC 10B .0101</u>	Necessary with substantive public interest
<u>08 NCAC 10B .0103</u>	Necessary with substantive public interest
<u>08 NCAC 10B .0104</u>	Necessary with substantive public interest
<u>08 NCAC 10B .0105</u>	Necessary with substantive public interest
<u>08 NCAC 10B .0106</u>	Necessary with substantive public interest
<u>08 NCAC 10B .0107</u>	Necessary with substantive public interest
<u>08 NCAC 10B .0108</u>	Necessary with substantive public interest



**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:  
6714 Mail Service Center  
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Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

May 18, 2017

Jennifer Grantham, Rulemaking Coordinator  
Board of Registration for Foresters  
Post Office Box 27393  
Raleigh, North Carolina 27611

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **21 NCAC 20**

Dear Ms. Grantham:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the May 18, 2017 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than August 31, 2018.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Abigail M. Hammond".

Abigail M. Hammond  
Commission Counsel

Administration  
919/431-3000  
fax: 919/431-3100

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Civil Rights  
Division  
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fax: 919/431-3103

An Equal Employment Opportunity Employer

**Board of Registration for Foresters**

PERIODIC RULE REVIEW

November 20, 2014

Report Effective: December 16, 2014

**RRC Determination: Necessary with Substantive Public Interest**

**Total: 2**

**Rule**

21 NCAC 20 .0103

21 NCAC 20 .0104

**RRC Determination: Necessary without Substantive Public Interest**

**Total: 20**

**Rule**

21 NCAC 20 .0101

21 NCAC 20 .0102

21 NCAC 20 .0105

21 NCAC 20 .0106

21 NCAC 20 .0107

21 NCAC 20 .0108

21 NCAC 20 .0111

21 NCAC 20 .0113

21 NCAC 20 .0114

21 NCAC 20 .0115

21 NCAC 20 .0116

21 NCAC 20 .0117

21 NCAC 20 .0118

21 NCAC 20 .0120

21 NCAC 20 .0121

21 NCAC 20 .0122

21 NCAC 20 .0123

21 NCAC 20 .0124

21 NCAC 20 .0125

21 NCAC 20 .0126

**RRC Determination: Unnecessary**

**Total: 3**

**Rule**

21 NCAC 20 .0109

21 NCAC 20 .0110

21 NCAC 20 .0112

**LIST OF APPROVED PERMANENT RULES  
May 18, 2017 Meeting**

**HISTORICAL COMMISSION**

<u>Definitions</u>	07 NCAC 04R .0702
<u>Archaeological Investigations on State Lands</u>	07 NCAC 04R .0703
<u>Emergency Archaeological Investigation</u>	07 NCAC 04R .0704
<u>Application for Archaeological Permits</u>	07 NCAC 04R .0705
<u>Qualifications for Permits</u>	07 NCAC 04R .0706
<u>Issuance of Permits</u>	07 NCAC 04R .0707
<u>Time Limits of Permits</u>	07 NCAC 04R .0708
<u>Terms and Conditions of Permits</u>	07 NCAC 04R .0709
<u>Permit Denial: Suspension and Revocation</u>	07 NCAC 04R .0710
<u>Appeals Relating to Permits</u>	07 NCAC 04R .0711
<u>Reporting Requirements for Specific Permits</u>	07 NCAC 04R .0712
<u>Reporting Requirements for General Permits</u>	07 NCAC 04R .0713
<u>Report Review for Specific Permits</u>	07 NCAC 04R .0714
<u>Report Review for General Permits</u>	07 NCAC 04R .0715
<u>Custody of Resources Under the Terms of a Specific Permit</u>	07 NCAC 04R .0716
<u>Custody/Archaeological Resources Under/Terms: General Permit</u>	07 NCAC 04R .0717
<u>Confidentiality</u>	07 NCAC 04R .0718

**WILDLIFE RESOURCES COMMISSION**

<u>Clay County</u>	15A NCAC 10F .0308
<u>Pender County</u>	15A NCAC 10F .0321
<u>Perquimans County</u>	15A NCAC 10F .0355

**REVENUE, DEPARTMENT OF**

<u>Warrant for Tax Collection</u>	17 NCAC 01C .0308
<u>Method of Payment</u>	17 NCAC 01C .0502
<u>EFT Definitions</u>	17 NCAC 01C .0503
<u>When Payment by EFT is Required</u>	17 NCAC 01C .0504
<u>EFT Identification and Notification Procedures</u>	17 NCAC 01C .0505
<u>Enrollment for ACH Credit and ACH Debit</u>	17 NCAC 01C .0507
<u>Methods of Electronic Funds Transfer</u>	17 NCAC 01C .0508
<u>EFT Payment Procedures</u>	17 NCAC 01C .0509
<u>EFT Payment Procedures - ACH Method</u>	17 NCAC 01C .0510
<u>EFT Payment Procedures - ACH Credit Method</u>	17 NCAC 01C .0511
<u>Approval Required for Substitute Forms</u>	17 NCAC 01C .0601

**DENTAL EXAMINERS, BOARD OF**

<u>General Anesthesia and Sedation Definitions</u>	21 NCAC 16Q .0101
<u>General Anesthesia Credentials and Permit</u>	21 NCAC 16Q .0201
<u>General Anesthesia Equipment and Clinical Requirements</u>	21 NCAC 16Q .0202

<u>Itinerant (Mobile) General Anesthesia Permit, Equipment a...</u>	21	NCAC 16Q .0206
<u>Annual Review of General Anesthesia and Itinerant (Mobile...</u>	21	NCAC 16Q .0207
<u>Credentials and Permits for Moderate Parenteral and Enter...</u>	21	NCAC 16Q .0301
<u>Moderate Parenteral and Enteral Conscious Sedation Clinic...</u>	21	NCAC 16Q .0302
<u>Off Site Use of Moderate Parenteral and Enteral Conscious...</u>	21	NCAC 16Q .0304
<u>Annual Renewal of Moderate Parenteral and Enteral Conscio...</u>	21	NCAC 16Q .0305
<u>Credentials and Permits for Moderate Pediatric Conscious ...</u>	21	NCAC 16Q .0404
<u>Moderate Pediatric Conscious Sedation Clinical Requiremen...</u>	21	NCAC 16Q .0405
<u>Off Site Use of Moderate Pediatric Conscious Sedation Per...</u>	21	NCAC 16Q .0406
<u>Annual Renewal of Moderate Pediatric Conscious Sedation P...</u>	21	NCAC 16Q .0407

**GEOLOGISTS, BOARD FOR LICENSING OF**

<u>Authority: Name and Location of Board</u>	21	NCAC 21 .0101
<u>Organization of the Board</u>	21	NCAC 21 .0103
<u>Duties of Officers</u>	21	NCAC 21 .0104
<u>Requirements for Licensing</u>	21	NCAC 21 .0301
<u>Application Procedure</u>	21	NCAC 21 .0302
<u>Inactive Status</u>	21	NCAC 21 .0303
<u>Continuing Education</u>	21	NCAC 21 .0403
<u>Requirements</u>	21	NCAC 21 .0404
<u>Determination of Credit</u>	21	NCAC 21 .0405
<u>Recordkeeping</u>	21	NCAC 21 .0406
<u>Exemptions</u>	21	NCAC 21 .0407
<u>Filing of Charges and Disciplinary Actions</u>	21	NCAC 21 .0501
<u>Reprimand</u>	21	NCAC 21 .0502
<u>Right to Hearing</u>	21	NCAC 21 .0505
<u>Request for Hearing</u>	21	NCAC 21 .0506
<u>Types of Intervention</u>	21	NCAC 21 .0511
<u>Disqualification of Board Members</u>	21	NCAC 21 .0513
<u>Investigation</u>	21	NCAC 21 .0514
<u>Disciplinary Procedure</u>	21	NCAC 21 .0515
<u>Petition for Rulemaking Hearings</u>	21	NCAC 21 .0803
<u>Disposition of Petitions</u>	21	NCAC 21 .0804
<u>Disposition of Requests</u>	21	NCAC 21 .0903
<u>Rules of Professional Conduct</u>	21	NCAC 21 .1101
<u>Rules of Conduct of Advertising</u>	21	NCAC 21 .1102

**LOCKSMITH LICENSING BOARD**

<u>Meetings</u>	21	NCAC 29 .0102
<u>Examination Fee</u>	21	NCAC 29 .0201
<u>Requirements of Examinees</u>	21	NCAC 29 .0204
<u>Failure to Attend Scheduled Examination Session</u>	21	NCAC 29 .0205
<u>Special Administration</u>	21	NCAC 29 .0206
<u>Application Form</u>	21	NCAC 29 .0401
<u>Fees</u>	21	NCAC 29 .0404
<u>Fair Business Practices</u>	21	NCAC 29 .0502

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**RULES REVIEW COMMISSION**

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<u>Protection of the Public Interest</u>	21	NCAC 29	.0503
<u>Technical Integrity</u>	21	NCAC 29	.0504
<u>Due Date</u>	21	NCAC 29	.0702
<u>Reinstatement of Expired License</u>	21	NCAC 29	.0703
<u>Requirements</u>	21	NCAC 29	.0802
<u>Determination of Credit</u>	21	NCAC 29	.0803
<u>Record Keeping</u>	21	NCAC 29	.0804
<u>Exceptions</u>	21	NCAC 29	.0805
<u>Non Compliance</u>	21	NCAC 29	.0806

**NURSING, BOARD OF**

<u>Definitions</u>	21	NCAC 36	.0120
<u>Revocation, Suspension or Denial of License</u>	21	NCAC 36	.0217

**VETERINARY MEDICAL BOARD**

<u>Limited Veterinary License</u>	21	NCAC 66	.0311
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**LIST OF APPROVED TEMPORARY RULES**  
**May 18, 2017 Meeting**

**ENVIRONMENTAL MANAGEMENT COMMISSION**

<u>General</u>	15A	NCAC 13A	.0101
<u>Definitions</u>	15A	NCAC 13A	.0102
<u>Identification and Listing of Hazardous Wastes - Part 261</u>	15A	NCAC 13A	.0106
<u>STDS Applicable to Generators of Hazardous Waste - Part 262</u>	15A	NCAC 13A	.0107
<u>STDS Applicable for Transporters of Hazardous Waste - Part 263</u>	15A	NCAC 13A	.0108
<u>Standards For Owners/Operators of HWTSD Facilities - Part 264</u>	15A	NCAC 13A	.0109
<u>Interim Status Stds for Owners-Op of HWSTD Facilities - Part 265</u>	15A	NCAC 13A	.0110
<u>Stds for the Mgmt of Specific HW/Types HWM Facilities - Part 266</u>	15A	NCAC 13A	.0111
<u>Land Disposal Restrictions - Part 268</u>	15A	NCAC 13A	.0112
<u>The Hazardous Waste Permit Program - Part 270</u>	15A	NCAC 13A	.0113
<u>Standards for the Management of Used Oil</u>	15A	NCAC 13A	.0118
<u>Standards For Universal Waste Management - Part 273</u>	15A	NCAC 13A	.0119

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**RRC Determination**  
**Periodic Rule Review**  
**May 18, 2017**

**Necessary with substantive public interest**

<b>Natural and Cultural Resources,</b>	10A NCAC 13B .3001	10A NCAC 13B .3503
<b>Department of</b>	10A NCAC 13B .3101	10A NCAC 13B .3701
<u>07 NCAC 02H .0303</u>	10A NCAC 13B .3102	10A NCAC 13B .3702
	10A NCAC 13B .3110	10A NCAC 13B .3704
<b>Medical Care Commission</b>	10A NCAC 13B .3204	10A NCAC 13B .3705
<u>10A NCAC 13B .1902</u>	10A NCAC 13B .3205	10A NCAC 13B .3706
<u>10A NCAC 13B .1915</u>	10A NCAC 13B .3302	10A NCAC 13B .3707
<u>10A NCAC 13B .1918</u>	10A NCAC 13B .3303	10A NCAC 13B .3801
<u>10A NCAC 13B .1925</u>	10A NCAC 13B .3502	10A NCAC 13B .3903

10A NCAC 13B .4103  
10A NCAC 13B .4104  
10A NCAC 13B .4106  
10A NCAC 13B .4305  
10A NCAC 13B .4603  
10A NCAC 13B .4801  
10A NCAC 13B .4805  
10A NCAC 13B .5102  
10A NCAC 13B .5105  
10A NCAC 13B .5406  
10A NCAC 13B .5408  
10A NCAC 13B .5411  
10A NCAC 13B .5412  
10A NCAC 13B .5413  
10A NCAC 13B .6001  
10A NCAC 13B .6002  
10A NCAC 13B .6101  
10A NCAC 13B .6102  
10A NCAC 13B .6103  
10A NCAC 13B .6104  
10A NCAC 13B .6201

10A NCAC 13B .6202  
10A NCAC 13B .6203  
10A NCAC 13B .6204  
10A NCAC 13B .6205  
10A NCAC 13B .6206  
10A NCAC 13B .6207  
10A NCAC 13B .6208  
10A NCAC 13B .6209  
10A NCAC 13B .6210  
10A NCAC 13B .6211  
10A NCAC 13B .6212  
10A NCAC 13B .6213  
10A NCAC 13B .6214  
10A NCAC 13B .6215  
10A NCAC 13B .6216  
10A NCAC 13B .6217  
10A NCAC 13B .6218  
10A NCAC 13B .6219  
10A NCAC 13B .6220  
10A NCAC 13B .6221  
10A NCAC 13B .6222

10A NCAC 13B .6223  
10A NCAC 13B .6224  
10A NCAC 13B .6225  
10A NCAC 13B .6226  
10A NCAC 13B .6227

**Well Contractors Certification Commission**

15A NCAC 27 .0110  
15A NCAC 27 .0301  
15A NCAC 27 .0410  
15A NCAC 27 .0420  
15A NCAC 27 .0440

**Interpreter and Transliterator Licensing Board**

21 NCAC 25 .0205  
21 NCAC 25 .0501

**RRC Determination**  
**Periodic Rule Review**  
**May 18, 2017**  
**Necessary without substantive public interest**

**Natural and Cultural Resources, Department of**

07 NCAC 01A .0301  
07 NCAC 01A .0403  
07 NCAC 01A .0404  
07 NCAC 01A .0406  
07 NCAC 01B .0101  
07 NCAC 01B .0102  
07 NCAC 01B .0104  
07 NCAC 01B .0105  
07 NCAC 01B .0110  
07 NCAC 01D .0101  
07 NCAC 01D .0103  
07 NCAC 02G .0101  
07 NCAC 02G .0102  
07 NCAC 02H .0101  
07 NCAC 02H .0102  
07 NCAC 02H .0103  
07 NCAC 02H .0104  
07 NCAC 02H .0105  
07 NCAC 02H .0106  
07 NCAC 02H .0201  
07 NCAC 02H .0202  
07 NCAC 02H .0203  
07 NCAC 02H .0301  
07 NCAC 02H .0302  
07 NCAC 02H .0304  
07 NCAC 02H .0305  
07 NCAC 02H .0306  
07 NCAC 02H .0307  
07 NCAC 02I .0101

07 NCAC 02I .0201  
07 NCAC 02I .0202  
07 NCAC 02I .0301  
07 NCAC 02I .0302  
07 NCAC 02I .0303  
07 NCAC 02I .0304  
07 NCAC 02I .0305  
07 NCAC 02I .0306  
07 NCAC 02I .0307  
07 NCAC 02I .0308

**Public Librarian Certification Commission**

07 NCAC 02J .0101  
07 NCAC 02J .0102  
07 NCAC 02J .0103

**Natural and Cultural Resources, Department of**

07 NCAC 03B .0102  
07 NCAC 03B .0103  
07 NCAC 03B .0104  
07 NCAC 03B .0105  
07 NCAC 03B .0106  
07 NCAC 03B .0107  
07 NCAC 03B .0202  
07 NCAC 03B .0204  
07 NCAC 03B .0301  
07 NCAC 03B .0302  
07 NCAC 03B .0401  
07 NCAC 03B .0501

07 NCAC 03B .0502  
07 NCAC 03B .0504  
07 NCAC 03B .0505  
07 NCAC 03B .0506  
07 NCAC 03B .0507  
07 NCAC 03B .0508  
07 NCAC 03B .0601  
07 NCAC 03B .0602  
07 NCAC 03B .0603  
07 NCAC 03B .0604  
07 NCAC 03B .0605

**USS North Carolina Battleship Commission**

07 NCAC 05 .0103  
07 NCAC 05 .0205  
07 NCAC 05 .0207  
07 NCAC 05 .0208  
07 NCAC 05 .0209

**Medical Care Commission**

10A NCAC 13B .1901  
10A NCAC 13B .1903  
10A NCAC 13B .1904  
10A NCAC 13B .1905  
10A NCAC 13B .1906  
10A NCAC 13B .1907  
10A NCAC 13B .1908  
10A NCAC 13B .1909  
10A NCAC 13B .1910  
10A NCAC 13B .1911



10A NCAC 13B .1912  
10A NCAC 13B .1916  
10A NCAC 13B .1917  
10A NCAC 13B .1919  
10A NCAC 13B .1920  
10A NCAC 13B .1921  
10A NCAC 13B .1922  
10A NCAC 13B .1923  
10A NCAC 13B .1924  
10A NCAC 13B .1926  
10A NCAC 13B .1927  
10A NCAC 13B .1929  
10A NCAC 13B .1930  
10A NCAC 13B .1931  
10A NCAC 13B .1932  
10A NCAC 13B .2020  
10A NCAC 13B .2033  
10A NCAC 13B .3103  
10A NCAC 13B .3104  
10A NCAC 13B .3105  
10A NCAC 13B .3106  
10A NCAC 13B .3107  
10A NCAC 13B .3108  
10A NCAC 13B .3109  
10A NCAC 13B .3111  
10A NCAC 13B .3201  
10A NCAC 13B .3202  
10A NCAC 13B .3203  
10A NCAC 13B .3301  
10A NCAC 13B .3401  
10A NCAC 13B .3402  
10A NCAC 13B .3405  
10A NCAC 13B .3501  
10A NCAC 13B .3601  
10A NCAC 13B .3602  
10A NCAC 13B .3603  
10A NCAC 13B .3604  
10A NCAC 13B .3605  
10A NCAC 13B .3606  
10A NCAC 13B .3607  
10A NCAC 13B .3608  
10A NCAC 13B .3609  
10A NCAC 13B .3703  
10A NCAC 13B .3708  
10A NCAC 13B .3802  
10A NCAC 13B .3803  
10A NCAC 13B .3804  
10A NCAC 13B .3901  
10A NCAC 13B .3902  
10A NCAC 13B .3904  
10A NCAC 13B .3905  
10A NCAC 13B .3906  
10A NCAC 13B .3907  
10A NCAC 13B .4001  
10A NCAC 13B .4002  
10A NCAC 13B .4003  
10A NCAC 13B .4004  
10A NCAC 13B .4005  
10A NCAC 13B .4101

10A NCAC 13B .4102  
10A NCAC 13B .4105  
10A NCAC 13B .4107  
10A NCAC 13B .4108  
10A NCAC 13B .4109  
10A NCAC 13B .4110  
10A NCAC 13B .4201  
10A NCAC 13B .4202  
10A NCAC 13B .4203  
10A NCAC 13B .4204  
10A NCAC 13B .4301  
10A NCAC 13B .4302  
10A NCAC 13B .4303  
10A NCAC 13B .4304  
10A NCAC 13B .4306  
10A NCAC 13B .4307  
10A NCAC 13B .4308  
10A NCAC 13B .4401  
10A NCAC 13B .4402  
10A NCAC 13B .4403  
10A NCAC 13B .4501  
10A NCAC 13B .4502  
10A NCAC 13B .4503  
10A NCAC 13B .4504  
10A NCAC 13B .4505  
10A NCAC 13B .4506  
10A NCAC 13B .4507  
10A NCAC 13B .4509  
10A NCAC 13B .4510  
10A NCAC 13B .4511  
10A NCAC 13B .4512  
10A NCAC 13B .4513  
10A NCAC 13B .4514  
10A NCAC 13B .4515  
10A NCAC 13B .4516  
10A NCAC 13B .4601  
10A NCAC 13B .4602  
10A NCAC 13B .4604  
10A NCAC 13B .4605  
10A NCAC 13B .4701  
10A NCAC 13B .4702  
10A NCAC 13B .4703  
10A NCAC 13B .4704  
10A NCAC 13B .4705  
10A NCAC 13B .4802  
10A NCAC 13B .4803  
10A NCAC 13B .4804  
10A NCAC 13B .4806  
10A NCAC 13B .4901  
10A NCAC 13B .4902  
10A NCAC 13B .4903  
10A NCAC 13B .4904  
10A NCAC 13B .4905  
10A NCAC 13B .4906  
10A NCAC 13B .4907  
10A NCAC 13B .5001  
10A NCAC 13B .5002  
10A NCAC 13B .5003  
10A NCAC 13B .5004

10A NCAC 13B .5005  
10A NCAC 13B .5101  
10A NCAC 13B .5103  
10A NCAC 13B .5104  
10A NCAC 13B .5201  
10A NCAC 13B .5202  
10A NCAC 13B .5203  
10A NCAC 13B .5204  
10A NCAC 13B .5205  
10A NCAC 13B .5206  
10A NCAC 13B .5207  
10A NCAC 13B .5301  
10A NCAC 13B .5401  
10A NCAC 13B .5402  
10A NCAC 13B .5403  
10A NCAC 13B .5404  
10A NCAC 13B .5405  
10A NCAC 13B .5407  
10A NCAC 13B .5409  
10A NCAC 13B .5410  
10A NCAC 13B .5414  
10A NCAC 13B .5501  
10A NCAC 13B .5502  
10A NCAC 13B .5503  
10A NCAC 13B .5504  
10A NCAC 13B .5505  
10A NCAC 13B .5506

**Well Contractors Certification  
Commission**

15A NCAC 27 .0101  
15A NCAC 27 .0201  
15A NCAC 27 .0401  
15A NCAC 27 .0430  
15A NCAC 27 .0510  
15A NCAC 27 .0520  
15A NCAC 27 .0601  
15A NCAC 27 .0702  
15A NCAC 27 .0801  
15A NCAC 27 .0810  
15A NCAC 27 .0820  
15A NCAC 27 .0830  
15A NCAC 27 .0901  
15A NCAC 27 .0910  
15A NCAC 27 .0920  
15A NCAC 27 .0930

**Interpreter and Transliterator  
Licensing Board**

21 NCAC 25 .0101  
21 NCAC 25 .0102  
21 NCAC 25 .0103  
21 NCAC 25 .0201  
21 NCAC 25 .0202  
21 NCAC 25 .0203  
21 NCAC 25 .0204  
21 NCAC 25 .0206  
21 NCAC 25 .0207  
21 NCAC 25 .0208

21 NCAC 25 .0209  
21 NCAC 25 .0210  
21 NCAC 25 .0211  
21 NCAC 25 .0301  
21 NCAC 25 .0302  
21 NCAC 25 .0401  
21 NCAC 25 .0402  
21 NCAC 25 .0403

21 NCAC 25 .0404  
21 NCAC 25 .0405  
21 NCAC 25 .0406  
21 NCAC 25 .0502  
21 NCAC 25 .0503  
21 NCAC 25 .0504  
21 NCAC 25 .0505  
21 NCAC 25 .0506

21 NCAC 25 .0601  
21 NCAC 25 .0602  
21 NCAC 25 .0603  
21 NCAC 25 .0701  
21 NCAC 25 .0702  
21 NCAC 25 .0703

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**RRC Determination  
Periodic Rule Review  
May 18, 2017  
Unnecessary**

**Natural and Cultural Resources,  
Department of**

07 NCAC 01A .0401  
07 NCAC 01A .0402  
07 NCAC 01B .0103  
07 NCAC 01B .0106  
07 NCAC 01B .0107  
07 NCAC 01B .0108  
07 NCAC 01C .0101  
07 NCAC 01D .0102

**USS North Carolina Battleship  
Commission**

07 NCAC 05 .0101  
07 NCAC 05 .0102  
07 NCAC 05 .0201  
07 NCAC 05 .0202  
07 NCAC 05 .0206

**Tryon Place Commission**

07 NCAC 06 .0101  
07 NCAC 06 .0102

**Historic Bath Commission**

07 NCAC 07 .0101  
07 NCAC 07 .0102

07 NCAC 07 .0201  
07 NCAC 07 .0202  
07 NCAC 07 .0203  
07 NCAC 07 .0204

**Historic Murfreesboro  
Commission**

07 NCAC 08 .0101  
07 NCAC 08 .0102

**Edenton Historical Commission**

07 NCAC 09 .0101  
07 NCAC 09 .0102  
07 NCAC 09 .0103

**Natural and Cultural Resources,  
Department of**

07 NCAC 10 .0101  
07 NCAC 10 .0102  
07 NCAC 10 .0103  
07 NCAC 10 .0104  
07 NCAC 10 .0105  
07 NCAC 10 .0106  
07 NCAC 10 .0107  
07 NCAC 10 .0108  
07 NCAC 10 .0109

07 NCAC 10 .0110

**Medical Care Commission**

10A NCAC 13B .1928  
10A NCAC 13B .2001  
10A NCAC 13B .2002  
10A NCAC 13B .2003  
10A NCAC 13B .2004  
10A NCAC 13B .2005  
10A NCAC 13B .2006  
10A NCAC 13B .2007  
10A NCAC 13B .2008  
10A NCAC 13B .2021  
10A NCAC 13B .2022  
10A NCAC 13B .2023  
10A NCAC 13B .2024  
10A NCAC 13B .2025  
10A NCAC 13B .2026  
10A NCAC 13B .2027  
10A NCAC 13B .2028  
10A NCAC 13B .2029  
10A NCAC 13B .2030  
10A NCAC 13B .2031  
10A NCAC 13B .2032

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**CONTESTED CASE DECISIONS**

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*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.*

**OFFICE OF ADMINISTRATIVE HEARINGS**

**Chief Administrative Law Judge**  
*JULIAN MANN, III*

**Senior Administrative Law Judge**  
*FRED G. MORRISON JR.*

**ADMINISTRATIVE LAW JUDGES**

Melissa Owens Lassiter  
Don Overby  
J. Randall May  
David Sutton

A. B. Elkins II  
Selina Brooks  
J. Randolph Ward  
Stacey Bawtinheimer

This Section contains a listing of recently issued Administrative Law Judge decisions for contested cases that are non-confidential. Published decisions are available for viewing on the OAH website at <http://www.ncoah.com/hearings/decisions/>. If you are having problems accessing the text of the decisions online or for other questions regarding contested cases or case decisions, please contact the Clerk's office by email: [oah.clerks@oah.nc.gov](mailto:oah.clerks@oah.nc.gov) or phone 919-431-3000.

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
<b><u>PUBLISHED</u></b>							
16	ABC	09933	4/5/2017	NC Alcoholic Beverage Control Commission	v.	Holmes Oil Company Inc T/A Cruizers 50	Ward
16	DHR	11785	4/18/2017	Billy James Boughman	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Brooks
17	DHR	01534	4/20/2017	Hatem M Issa	v.	Department of Health and Human Services, Division of Public Health WIC	Overby
16	DOJ	06128	4/18/2017	Leroy Kenneth Williams	v.	NC Private Protective Services Board	Elkins
16	DOJ	08400	4/24/2017	Charles Joseph Horton	v.	NC Alarm Systems Licensing Board	Elkins

**CONTESTED CASE DECISIONS**

16	DOJ	09493	4/25/2017	James Oscar Williams	v.	NC Sheriffs' Education and Training Standards Commission	Elkins	
16	DOJ	09799	4/27/2017	Jeffrey Scott Moore	v.	NC Private Protective Services Board	May	
16	DOJ	10874	4/28/2017	Kevin Windell Byrum	v.	NC Private Protective Services Board	Lassiter	
17	DOJ	00047	4/7/2017; 4/12/2017	Stephen Ricci II	v.	NC Private Protective Services Board	Ward	
17	DOJ	00048	4/7/2017; 4/12/2017	Kelly Lamar Gibson	v.	NC Private Protective Services Board	Ward	
17	DOJ	00049	4/7/2017; 4/12/2017	Armisha Nichelle McLean	v.	NC Private Protective Services Board	Ward	
17	DOJ	01536	4/12/2017	Juan Cesilio Aponte	v.	NC Private Protective Services Board	Elkins	
16	OSP	05004	12/19/2016; 4/25/2017	Wen Chiann Yeh aka Wen Yeh Glenn L	v.	Department of Public Instructions Ms. Atkinson June St.Clair/State Superintendent of Public Instruction and Ms Vanessa W Jeter Director	Ward	partial/full
16	OSP	10258	4/17/2017	Kerri Ann Jessup	v.	NC Department of Transportation	Sutton	
16	OSP	10619	4/28/2017	McCaffrey Tamara Ann	v.	Appalachian State University	Sutton	
16	OSP	10707	4/27/2017	Frizzell	v.	Haywood County Government	Sutton	
17	OSP	00432; 00805; 00905	4/10/2017	Edwin Smith Preston III	v.	North Carolina Department of Labor	Brooks	
<b><u>UNPUBLISHED</u></b>								
17	ABC	00988	4/11/2017	NC Alcoholic Beverage Control Commission	v.	Jeannine Santiago T/A Baileys Tavern	May	
17	ABC	01045	4/28/2017	Authentik Inc	v.	ABC Board	Mann	
15	CSE	07986	4/19/2017	Antonio L Sanders	v.	NC Department of Health and Human Services,	Elkins	

## CONTESTED CASE DECISIONS

15	CSE	08244	4/19/2017	Kenneth B Jeffreys	v.	Division of Social Services, Child Support Services NC Department of Health and Human Services, Division of Social Services, Child Support Services NC Department of Health and Human Services, Division of Social Services, Child Support	Elkins	
15	CSE	08705	11/21/2016; 4/13/2017	Kelvin Jamison	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services NC Department of Health and Human Services, Division of Social Services, Child Support	Overby	partial/full
16	CSE	10361	4/12/2017; 4/13/2017	Sheanna L Ramsey	v.	Enforcement NC Department of Health and Human Services, Division of Social Services, Child Support	Overby	
16	CSE	10837	4/17/2017	Nathanael I Farnham	v.	Enforcement NC Department of Health and Human Services, Division of Social Services, Child Support	Brooks	
16	CSE	11558	4/6/2017	William T Henderson	v.	Enforcement NC Department of Health and Human Services, Division of Social Services, Child Support	Sutton	
16	CSE	11567	4/5/2017	Stanley V Grace	v.	Enforcement NC Department of Health and Human Services, Division of Social Services, Child Support	Overby	
17	CSE	00050	4/18/2017	David L McNair	v.	Enforcement NC Department of Health and Human Services, Division of Social Services, Child Support	Bawtinhimer	
17	CSE	00912	4/17/2017	David Meggett	v.	Enforcement NC Department of Health and	Bawtinhimer	
17	CSE	01030	4/6/2017	Mayo Caldwell	v.	NC Department of Health and	Sutton	

**CONTESTED CASE DECISIONS**

17	CSE	01252	4/3/2017	Paul T Sprouse	v.	Human Services, Division of Social Services, Child Support Enforcement NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
17	CSE	01566	4/11/2017	Charles Norwood Jr	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Overby
15	DCS	05960	4/19/2017	Michael J. Dunn	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services NC Department of Health and Human Services, Division of Social Services, Child Support Services	Elkins
15	DCS	06380	4/28/2017	Marquieta Taylor	v.	NC Department of Health and Human Services, Division of Child Development and Early Education NC Department of Health and Human Services, Environmental Health Section NC Department of Health and Human Services, Div of Health Service Regulations	Elkins
16	DHR	07809	4/3/2017	Amy Fannon	v.	NC Department of Health and Human Services, Division of Child Development and Early Education NC Department of Health and Human Services, Environmental Health Section NC Department of Health and Human Services, Div of Health Service Regulations	May
17	DHR	00367	4/4/2017	Cathy Cheek	v.	NC Department of Health and Human Services, Division of Child Development and Early Education NC Department of Health and Human Services, Environmental Health Section NC Department of Health and Human Services, Div of Health Service Regulations	Lassiter
17	DHR	00726	4/28/2017	Scott Lang McDonalds JSL & More	v.	NC Department of Health and Human Services, Division of Child Development and Early Education NC Department of Health and Human Services, Environmental Health Section NC Department of Health and Human Services, Div of Health Service Regulations	Mann
17	DHR	01507	4/28/2017	Margaretta Louise Hines Brenda L Hopkins The Elizabeth Missionary Baptist Church	v.	NC Department of Health and Human Services, Division of Child Development and Early Education NC Department of Health and Human Services, Environmental Health Section NC Department of Health and Human Services, Div of Health Service Regulations	Brooks
17	DHR	01911	4/21/2017		v.	NC Department of Health and Human Services, Division of Child Development and Early Education NC Department of Health and Human Services, Environmental Health Section NC Department of Health and Human Services, Div of Health Service Regulations	Ward

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**CONTESTED CASE DECISIONS**

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				Learning Center		Adult Care Food Program	
17	DOJ	01214	4/21/2017	Dalton Timothy Burr	v.	NC Sheriffs' Education and Training Standards Commission	Sutton
17	DOT	01506	4/6/2017	Steven Everhart	v.	NC Department of Transportation	Brooks
16	INS	12285	4/10/2017	Nichol Y Thrash	v.	North Carolina State Health Plan	Bawtinheimer
17	INS	01131	4/25/2017	Andrea Leigh Kelly	v.	North Carolina State Health Plan	Lassiter
17	INS	01504	4/27/2017	Eda K Martinez	v.	State Health Employee	Overby
17	INS	01510	4/19/2017	Charlie Oliver Wall	v.	North Carolina State Health Plan	Brooks
17	INS	01671	4/28/2017	Tracy Bussell	v.	North Carolina State Health Plan	Brooks
17	MIS	01319	4/7/2017	HGGLBT International Express Trust by and thru Trustee Board	v.	State of North Carolina, Durham County, Archie Smith Jr III, Clerk of Court, Jeff D. Rogers, Bar #14291, State Agent/Officer of the Court Case #15 SP 702	Overby
17	OSP	00479	4/12/2017	Gregory Javon Powell	v.	NC Department of Public Safety Division of Prisons	Ward