

NORTH CAROLINA REGISTER

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January 18, 2011

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NORTH CAROLINA REGISTER
 Publication Schedule for January 2011 – December 2011

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 th day from publication in the Register
25:13	01/03/11	12/08/10	01/18/11	03/04/11	03/21/11	05/01/11	05/2012	09/30/11
25:14	01/18/11	12/22/10	02/02/11	03/21/11	03/21/11	05/01/11	05/2012	10/15/11
25:15	02/01/11	01/10/11	02/16/11	04/04/11	04/20/11	06/01/11	05/2012	10/29/11
25:16	02/15/11	01/25/11	03/02/11	04/18/11	04/20/11	06/01/11	05/2012	11/12/11
25:17	03/01/11	02/08/11	03/16/11	05/02/11	05/20/11	07/01/11	05/2012	11/26/11
25:18	03/15/11	02/22/11	03/30/11	05/16/11	05/20/11	07/01/11	05/2012	12/10/11
25:19	04/01/11	03/11/11	04/16/11	05/31/11	06/20/11	08/01/11	05/2012	12/27/11
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26:11	12/01/11	11/07/11	12/16/11	01/30/12	02/20/12	04/01/12	05/2012	08/27/12
26:12	12/15/11	11/22/11	12/30/11	02/13/12	02/20/12	04/01/12	05/2012	09/10/12

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) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) 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;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) 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 of rules.



EXECUTIVE ORDER NO. 71

**PROCLAMATION OF A STATE OF DISASTER
FOR LINCOLN COUNTY**

WHEREAS, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes, N.C.G.S. § 166A-6, authorizes the issuance of a proclamation defining an area subject to a state of disaster and categorizing the disaster as a Type I, Type II or Type III disaster; and

WHEREAS, on October 26, 2010, Lincoln County, North Carolina was impacted by a tornado; and

WHEREAS, Lincoln County proclaimed a local state of emergency; and

WHEREAS, I have determined that a State of a Disaster, as defined in G.S. §166A-6, exists in the State of North Carolina specifically in Lincoln County; and

WHEREAS, pursuant to N.C.G.S. § 166A-6, the criteria for a Type I disaster are met if: (1) the Secretary of Crime Control and Public Safety has provided a preliminary damage assessment to the Governor and the General Assembly; (2) Lincoln County has declared a local state of emergency pursuant to N.C.G.S. § 166A-8; (3) the preliminary damage assessment has met or exceeded the criteria established for the Small Business Disaster Loan Program pursuant to 13 C.F.R. Part 123, and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

WHEREAS, pursuant to N.C.G.S. § 166A-6.01, if a state of disaster is proclaimed, the Governor may make State funds available for disaster assistance in the form of individual assistance and public assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the disaster area.

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

Section 1. Pursuant to N.C.G.S. § 166A-6, a Type I state of disaster is hereby declared for the Lincoln County.

Section 2. I authorize state disaster assistance in the form of individual assistance grants to eligible entities located within the disaster area that meet the terms and conditions under N.C.G.S. § 166A-6.01(b)(1).

Section 3. I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to ensure proper implementation of this proclamation.

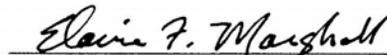
Section 4. This Type I Disaster Declaration shall expire 30 days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this Seventeenth of November in the year of our Lord two thousand and ten, and of the Independence of the United States of America the two hundred and thirty-fifth.




Beverly Eaves Perdue
Governor

ATTEST:


Elaine F. Marshall
Secretary of State *Raymond S. Madsen
Chief Deputy Secretary of State*

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 72

**TEMPORARY SUSPENSION OF MOTOR VEHICLE REGULATIONS
TO ENSURE ADEQUATE FUEL SUPPLIES THROUGHOUT THE STATE**

WHEREAS, the uninterrupted supply of fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum gas to residential and commercial establishments is an essential need of the public during the wintertime, and any interruption in the delivery of those fuels threatens the public welfare; and

WHEREAS, the continued period of cold weather has increased the demand for those heating fuels and threatens the uninterrupted delivery of those fuels to residential and commercial customers, thereby justifying an exemption from 49 CFR Part 395 (Federal Motor Carrier Safety Regulations); and

WHEREAS, 49 CFR § 390.23 allows the governor of a state to suspend the rules and regulations under 49 CFR Part 395 for up to 30 days if the Governor determines that an emergency condition exists; and

WHEREAS, under N.C.G.S. §§ 166A-4 and 166A-6.03(b), the Governor may declare that the health, safety, or economic well-being of persons or property in this State require that the maximum hours of service for drivers prescribed by N.C.G.S. § 20-381 should be waived for persons transporting essential fuels.

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

Section 1.

The Department of Crime Control and Public Safety, in conjunction with the North Carolina Department of Transportation, shall waive the maximum hours of service for drivers prescribed by the Department of Crime Control and Public Safety pursuant to N.C.G.S. § 20-381.

Section 2.

Notwithstanding the waiver set forth above, size and weight restrictions and penalties are not waived.

Section 3.

The waiver of regulations under 49 CFR Part 395 (Federal Motor Carrier Safety Regulations) does not apply to the commercial drivers' licenses and insurance requirements.

Section 4.

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1, 2, and 3 of this Executive Order in a manner which will implement this rule without endangering motorists in North Carolina.

Section 5.

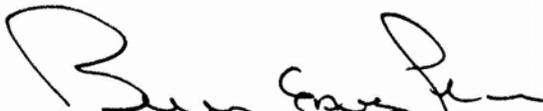
Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish their loads are being used for relief efforts associated with the cold weather.

Section 6.

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

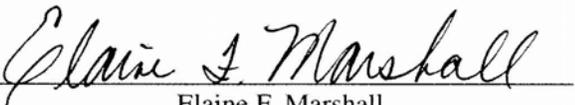
IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this Seventeenth day of December in the year of our Lord two thousand and ten, and of the Independence of the United States of America the two hundred and thirty-fifth.





Beverly Eaves Perdue
Governor

ATTEST:



Elaine F. Marshall
Secretary of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 73

**DESIGNATING THE NORTH CAROLINA HEALTH INFORMATION EXCHANGE AS
THE STATE-DESIGNATED ENTITY UNDER THE HEALTH INFORMATION
TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT OF THE
AMERICAN RECOVERY AND REINVESTMENT ACT**

WHEREAS, under Section 3013 of the American Recovery and Reinvestment Act (hereafter "ARRA") and pursuant to Executive Order No. 19, dated July 16, 2009, the Governor designated the Health and Wellness Trust Fund Commission as the State-Designated Entity to apply for and receive North Carolina's share of grant and loan funds under the ARRA Health Information Technology for Economic and Clinical Health Act (hereafter "HITECH Act"); and

WHEREAS, the North Carolina Health Information Exchange is a non-profit organization formed at the request of the Governor to plan, design, build and operate the health information exchange in North Carolina; and

WHEREAS, it is now appropriate that the State-Designated Entity under the HITECH Act be changed from the Health and Wellness Trust Fund Commission to the North Carolina Health Information Exchange.

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

The North Carolina Health Information Exchange is hereby designated as the Qualified State-Designated Entity to administer health information exchange grants made available in North Carolina by the United States Department of Health and Human Services, Office of National Coordinator for Health Information Technology.

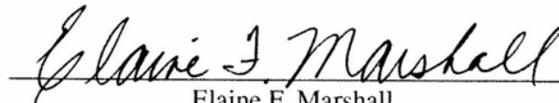
This order is effective as of December 1, 2010 and shall remain in effect until rescinded. All other executive orders or portions of executive orders inconsistent herewith are hereby rescinded. This order specifically rescinds Executive Order No. 19 dated July 16, 2009.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-second day of December in the year of our Lord two thousand and ten, and of the Independence of the United States of America the two hundred and thirty-fifth.




Beverly Eaves Perdue
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 74

TO DECLARE BY PROCLAMATION THE TRUE BOUNDARY LINE BETWEEN THE STATE OF NORTH CAROLINA AND THE STATE OF SOUTH CAROLINA FROM TRANSYLVANIA COUNTY TO POLK COUNTY

WHEREAS, the Joint North Carolina/South Carolina Boundary Commission determined at its meeting on September 27, 2006, to establish the true boundary line between the states along the North Carolina counties of Henderson and Polk, and a portion of the county of Transylvania; and

WHEREAS, both states have undertaken the necessary steps to locate, survey, and resolve ambiguities in the "ridge line" survey and the boundary lines of North Carolina and South Carolina in the 1815 survey and the U.S. Geological Survey topographic maps, using the 1815 survey as a guide for the resurvey; and

WHEREAS, pursuant to N.C.G.S. § 141-5, the completion of the survey of the above-described boundary has been reported to the undersigned Governor Beverly Eaves Perdue and placed before and approved by the Council of State on November 2, 2010; and

WHEREAS, N.C.G.S. § 141-5 further requires that the Governor issue a Proclamation declaring the reported and approved survey line to be the true boundary of the State of North Carolina.

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

Section 1. Pursuant to the provisions of N.C.G.S. § 141-5, the true boundary line between the State of North Carolina and the State of South Carolina along the counties of Henderson and Polk and a portion of the county of Transylvania is hereby declared, by Proclamation, to be the surveyed line represented by the 39 plats of the completed survey captioned as the North Carolina/South Carolina Boundary, and described as follows:

From a point at latitude 35° 11' 46.41502" N. and longitude 082° 12' 57.37020" W., North American Datum 1983-86 (NAD 83-86) marked by a brass screw in a stone inscribed 'S.C. 1815' on one side and 'N.C., Sept 15' on the other; thence westward as

recorded by a set of 39 plats signed by Gary W. Thompson and Sidney C. Miller, co-chairmen of the North Carolina-South Carolina Joint Boundary Commission, dated 12/20/2005 (plats available from North Carolina Geodetic Survey, North Carolina Secretary of State, the Transylvania County Register of Deeds, the Henderson County Register of Deeds and the Polk County Register of Deeds) to a point at latitude 35° 12' 00.31689" N. and longitude 082° 17' 27.89089" W., North American Datum 1983-86 (NAD 83-86), marked by a brass disk stamped with 'POINT 1, 2004, NORTH CAROLINA, SOUTH CAROLINA, STATE BOUNDARY LINE' and set in a concrete monument; thence southwestward (according to the previously referenced plats) to a point at latitude 35° 11' 43.48762" N. and longitude 082° 17' 38.97840" W., North American Datum 1983-86 (NAD 83-86), marked by an aluminum disk on an iron pin, stamped with 2, 2001, NC, SC, STATE LINE on the ridge line dividing the waters of the north fork of the Pacolet River from the north fork of the Saluda River; thence westward along the various courses of said ridge (according to the previously referenced plats) to a point at latitude 35° 05' 07.96924" N. and longitude 082° 47' 01.49862" W., North American Datum 1983-86 (NAD 83-86), where the Cherokee boundary of 1897 intersected the ridge, now marked by a brass disk stamped with 'BLACKBURN, 1996, NORTH CAROLINA, SOUTH CAROLINA, STATE BOUNDARY LINE' and set in a concrete monument.

Section 2. The North Carolina Geodetic Survey of the Department of Environment and Natural Resources and the North Carolina State Property Office of the Department of Administration shall continue to retain and manage sufficient and necessary records of the state boundary marking and re-markings, including but not limited to this Executive Order.

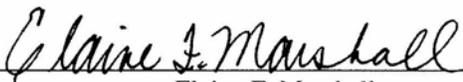
This Executive Order is effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-second day of December in the year of our Lord two thousand and ten, and of the Independence of the United States of America the two hundred and thirty-fifth.




Beverly Eaves Perdue
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 75

PROCLAMATION OF A STATE OF EMERGENCY BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA

WHEREAS, Governor Perdue and I have conferred and I am entering this executive order at her request pursuant to Article III, Section 3(2) of the North Carolina Constitution and N.C.G.S. § 147-11.1(a)(2) due to her absence from the State; and

WHEREAS, pursuant to the authority vested in me as Acting Governor by the Constitution and the laws of the State of North Carolina:

Section 1.

I declare that a state of emergency exists in the State due to impact of the winter storm.

Section 2.

I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 3.

I delegate to Reuben F. Young, Secretary of Crime Control and Public Safety, or his designee, all power and authority granted to me and required of me by Article 1 of Chapter 166A of the General Statutes for the purpose of implementing the State's Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in North Carolina.

Section 4.

Further, Secretary Young, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in G. S. § 143B-476.

Section 5.

I further direct Secretary Young to seek assistance from any and all agencies of the United States Government as may be needed to meet the emergency and seek reimbursement for costs incurred by the State in responding to this emergency.

Section 6.

I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of emergency prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 7.

This order is adopted pursuant to my powers under Article 1 of Chapter 166A of the General Statutes and not under my authority under Article 36A of Chapter 14 of the General Statutes. It does not trigger the limitations on weapons in G.S. § 14-288.7 or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages.

Section 8.

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

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-fifth day of December in the year of our Lord two thousand and ten, and of the Independence of the United States of America the two hundred and thirty-fifth.



Walter H. Dalton
Acting Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 76

TEMPORARY SUSPENSION OF MOTOR VEHICLE REGULATIONS TO ENSURE RESTORATION OF UTILITY SERVICES AND TRANSPORTING ESSENTIALS THROUGHOUT THE STATE

WHEREAS, Governor Perdue and I have conferred and I am entering this executive order at her request pursuant to Article III, Section 3(2) of the North Carolina Constitution and N.C.G.S. § 147-11.1(a)(2) due to her absence from the State; and

WHEREAS, I have determined that a State of Emergency exists due to the winter storm and its likely-effects in North Carolina, thereby justifying an exemption from 49 CFR Part 395 (Federal Motor Carrier Safety Regulations); and

WHEREAS, the uninterrupted supply of electricity, fuel oil, diesel oil, gasoline, kerosene, propane, liquid petroleum gas, food, water, and medical supplies to residential and commercial establishments is essential during the storm and after the storm and any interruption in the delivery of those commodities threatens the public welfare; and

WHEREAS, the prompt restoration of utility services to citizens is essential to their safety and well being; and

WHEREAS, 49 CFR § 390.23 allows the Governor of a state to suspend the rules and regulations under 49 CFR Part 395 for up to 30 days if the Governor determines that an emergency condition exists; and

WHEREAS, under N.C.G.S. §§ 166A-4 and 166A-6.03(b), the Governor may declare that the health, safety, or economic well-being of persons or property in this State require that the maximum hours of service for drivers prescribed by N.C.G.S. § 20-381 should be waived for persons transporting essential fuels, food, water, medical supplies, and restoration of utility services; and

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

Section 1.

The Department of Crime Control and Public Safety in conjunction with the North Carolina Department of Transportation shall waive the maximum hours of service for drivers prescribed by the Department of Crime Control and Public Safety pursuant to N.C.G.S. § 20-381.

Section 2.

The waiver of regulations under 49 CFR Part 395 (Federal Motor Carrier Safety Regulations) does not apply to the commercial drivers' licenses and insurance requirements.

Section 3.

The Department of Crime Control & Public Safety in conjunction with the North Carolina Department of Transportation shall waive certain size and weight restrictions and penalties arising under N.C.G.S. §§ 20-116 and 20-118, and certain registration requirements and penalties arising under N.C.G.S. §§ 20-86.1, 20-382, 105-449.47, 105-449.49 for the vehicles transporting equipment and supplies for the restoration of utility services along North Carolina roadways to our impacted counties.

Section 4.

Notwithstanding the waivers set forth above, size and weight restrictions and penalties have not been waived under the following conditions:

- a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- b. When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- c. When a vehicle/vehicle combination exceeds 12 feet in width and a total overall vehicle combination length 75 feet from bumper to bumper.
- d. Vehicles and vehicles combinations subject to exemptions or permits by authority of this executive order shall not be exempt from the requirement of a yellow banner on the front and rear measuring a total length of 7 feet by 18 inches bearing the legend oversized load in 10 inch black letters 1.5 inches wide and red flags measuring 18 inches square to be displayed on all sides at the widest point of the load. In addition, when operating between sunset and sunrise a certified escort shall be required for load exceeding 8 feet 6 inches in width.

Section 5.

Vehicles referenced under Sections 1 and 3 shall be exempt from the following registration requirements:

- a. The \$50.00 fee listed in N.C.G.S. § 105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. § 105-449.45(a)(1) applies.
- b. The registration requirements under N.C.G.S. § 20-382.1 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.
- c. Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.

Section 6.

The size and weight exemption for vehicles will be allowed on all routes designated by the North Carolina Department of Transportation, except those routes designated as light traffic roads under N.C.G.S. § 20-118. This order shall not be in effect on bridges posted pursuant to N.C.G.S. § 136-72.

Section 7.

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1-6 of this Executive Order in a manner which will implement this rule without endangering motorists in North Carolina.

Section 8.

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish their loads are being used for relief efforts associated with the winter storm and it's after-effects in North Carolina.

Section 9.

This order is adopted pursuant to my powers under Article 1 of Chapter 166A of the General Statutes and not under my authority under Article 36A of Chapter 14 of the General Statutes. It does not trigger the limitations on weapons in G.S. § 14-288.7 or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages.

Section 10.

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

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-fifth day of December in the year of our Lord two thousand and ten, and of the Independence of the United States of America the two hundred and thirty-fifth.



Walter H. Dalton
Acting Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 77

NOTICE OF TERMINATION OF EXECUTIVE ORDERS NO. 75 AND NO. 76

WHEREAS, Executive Order No. 75 declaring a state of emergency was issued on December 25, 2010, by the Governor of the State of North Carolina as a result of a winter storm; and

WHEREAS, Executive Order No. 76 also issued on December 25, 2010, waived the rules and regulations that limit the hours of service for operators of certain commercial vehicles and lifted weight restrictions on certain vehicles; and

WHEREAS, the emergency that necessitated both Executive Orders has now ended.

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

Executive Orders No. 75 and No. 76, issued December 25, 2010, are hereby terminated, effective at noon on December, 31, 2010.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this thirtieth day of December in the year of our Lord two thousand and ten, and of the Independence of the United States of America the two hundred and thirty-fifth.



Beverly Eaves Perdue
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

NORTH CAROLINA RATE BUREAU

PUBLIC NOTICE

Notice is hereby given pursuant to North Carolina General Statute 58-36-120 that on or about January 4, 2011 the North Carolina Rate Bureau filed for an increase in rates and for territorial definition changes as to Dwelling Fire and Extended Coverage insurance policies under its jurisdiction. Public notice of the Filing was given in two newspapers with statewide distribution, and information was posted on the web sites of the North Carolina Rate Bureau and the North Carolina Department of Insurance. The Commissioner of Insurance may or may not schedule and conduct a hearing with respect to the Filing. The Filing only relates to Dwelling Fire and Extended Coverage insurance and does not relate to Homeowners or Mobile Home insurance rates.

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

Pursuant to NCGS 130A-343(g), the North Carolina Department of Environment and Natural Resources (DENR) shall publish a Notice in the NC Register that a manufacturer has submitted a request for approval of a wastewater system, component, or device for on-site subsurface use. The following applications have been submitted to DENR:

Application by: Dick Bachelder
ADS, Inc/PSA, Inc.
4640 Trueman Blvd
Hilliard, OH 43206

For: Revised Innovative Approval for "Biodiffuser" gravelless subsurface wastewater system

DENR Contact: Ted Lyon
1-919-715-3274
Fax: 919-715-3227
ted.lyon@ncdenr.gov

These applications may be reviewed by contacting the applicant or at 2728 Capital Blvd., Raleigh, NC, On-Site Water Protection Section, Division of Environmental Health. Draft proposed innovative approvals and proposed final action on the application by DENR can be viewed on the On-Site Water Protection Section web site: http://www.deh.enr.state.nc.us/osww_new/new1/index.htm.

Written public comments may be submitted to DENR within 30 days of the date of the Notice publication in the North Carolina Register. All written comments should be submitted to Mr. Ted Lyon, Chief, On-site Water Protection Section, 1642 Mail Service Center, Raleigh, NC 27699-1642, or ted.lyon@ncdenr.gov, or fax 919.715.3227. Written comments received by DENR in accordance with this Notice will be taken into consideration before a final agency decision is made on the innovative subsurface wastewater system application.

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

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Service Center, Raleigh, NC 27699-2201; phone (919) 890-7060; fax (919) 662-6199; email Dedra.Alston@dhhs.nc.gov

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Child Care Commission intends to amend the rules cited as 10A NCAC 09 .0102, .0302, .1702, .2101, .2819, .2820 and .2822.

Comment period ends: March 21, 2011

Proposed Effective Date: August 1, 2011

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.

Public Hearing:

Date: February 10, 2011

Time: 1:00 p.m.

Location: Division of Child Development, 319 Chapanoke Road, Suite 120, Room 300, Raleigh, NC 27603

Reason for Proposed Action:

10A NCAC 09 .0102, .2819, .2820, .2822 - The NC Child Care Commission is proposing rule changes in the areas of Early Educator Certification (EEC) in accordance to G.S. 110-91(8a). During the 2010 Legislative Session, the NC General Assembly passed S 1119, which allows teachers and family child care home providers to obtain and maintain their Early Educator Certification through the Institute for Child Development Professionals. This certification is based solely on higher education attainment, and is an option for teaching staff to achieve additional educational qualifications. Amendments for the EEC are in Rules .0102, .2819, .2820 and .2822.

10A NCAC 09 .0302, .1702 – Amendments to Rules .0302 and .1702 provide a mechanism for an applicant to be licensed. The current rules do not allow any leeway for denials and these amendments would loosen the restrictive language that's currently in the rules.

10A NCAC 09 .2101 – Rule .2101 is being amended to correct a reference in the rule that no longer exists for religious-sponsored centers.

Procedure by which a person can object to the agency on a proposed rule: Anyone wishing to comment on these proposed rules or would like to request copies of the rules, should contact Dedra Alston, Rule-making Coordinator, NC Division of Child Development, 2201 Mail Service Center, Raleigh, NC 27699-2201, at (919) 890-7060 or Dedra.Alston@dhhs.nc.gov. Written comments will be accepted through March 21, 2011. Oral comments may be made during the public hearing. The Commission Chair may impose time limits for oral remarks.

Comments may be submitted to: Dedra Alston, Rule-making Coordinator, NC Division of Child Development, 2201 Mail

Fiscal Impact:

- State
- Local
- Substantial Economic Impact (≥\$3,000,000)
- None

CHAPTER 09 - CHILD CARE RULES

SECTION .0100 - DEFINITIONS

10A NCAC 09 .0102 DEFINITIONS

The terms and phrases used in this Chapter are defined as follows except when the content of the rule requires a different meaning. The definitions prescribed in G.S. 110-86 also apply to these Rules.

- (1) "Agency" as used in Section .2200 of this Chapter, means Division of Child Development, Department of Health and Human Services located at 319 Chapanoke Road, Suite 120, Raleigh, North Carolina 27603.
- (2) "Appellant" means the person or persons who request a contested case hearing.
- (3) "Basic School-Age Care" training (BSAC training) means the training on the elements of quality afterschool care for school-age children, developed by the North Carolina State University Department of 4-H Youth

- Development and subsequently revised by the North Carolina School-age Quality Improvement Project. Other training shall be approved if the Division determines that the content of the training offered is substantially equivalent to the BSAC training.
- (4) "Child Care Program" means a single center or home, or a group of centers or homes or both, which are operated by one owner or supervised by a common entity.
 - (5) "Child care provider" as defined by G.S. 110-90.2 (a) (2) a. and used in Section .2700 of this Chapter, includes the following employees who have contact with the children in a child care program: facility directors, administrative staff, teachers, teachers' aides, cooks, maintenance personnel, and drivers.
 - (6) "Child Development Associate Credential" means the national early childhood credential administered by the Council for Early Childhood Professional Recognition.
 - (7) "Developmentally appropriate" means suitable to the chronological age range and developmental characteristics of a specific group of children.
 - (8) "Division" means the Division of Child Development within the Department of Health and Human Services.
 - (9) "Drop-in care" means a child care arrangement where children attend on an intermittent, unscheduled basis.
 - (10) "Early Childhood Environment Rating Scale - Revised Edition" (Harms, Clifford, and Cryer, 2005, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are two and a half years old through five years old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in May 2010 is nineteen dollars and ninety-five cents (\$19.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
 - (11) "Family Child Care Environment Rating Scale – Revised Edition" (Harms, Cryer and Clifford, 2007, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by children in family child care homes to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in May 2010 is nineteen dollars and ninety-five cents (\$19.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
 - (12) "First aid kit" is a collection of first aid supplies (such as bandages, tweezers, disposable nonporous gloves, micro shield or face mask, liquid soap, cold pack) for treatment of minor injuries or stabilization of major injuries.
 - (13) "Group" means the children assigned to a specific caregiver or caregivers, to meet the staff/child ratios set forth in G.S. 110-91(7) and this Chapter, using space which is identifiable for each group.
 - (14) "Health care professional" means:
 - (a) a physician licensed in North Carolina;
 - (b) a nurse practitioner approved to practice in North Carolina;
 - (c) a licensed physician assistant.
 - (15) "Household member" means a person who resides in a family home as evidenced by factors including, maintaining clothing and personal effects at the household address, receiving mail at the household address, using identification with the household address, or eating and sleeping at the household address on a regular basis.
 - (16) "If weather conditions permit" means:
 - (a) temperatures that fall within the guidelines developed by the Iowa Department of Public Health and specified on the Child Care Weather Watch chart. These guidelines shall be used when determining appropriate weather conditions for taking children outside for outdoor learning activities and playtime. This chart may be downloaded free of charge from <http://www.idph.state.ia.us/hcci/common/pdf/weatherwatch.pdf>, and is incorporated by reference and includes subsequent editions and amendments;
 - (b) healthy air quality as forecast by the Department of Environment and Natural Resources' Air Quality Forecasts and Information web page. The Air Quality Color Guide can be found on the Division's web site at <http://xapps.enr.state.nc.us/aq/Forecas>

- tCenter or call 1-888-RU4NCAIR (1-888-784-6224); and
- (c) no active precipitation. Caregivers may choose to go outdoors when there is active precipitation if children have appropriate clothing such as rain boots and rain coats, or if they are under a covered area.
- (17) "Infant/Toddler Environment Rating Scale - Revised Edition" (Harms, Cryer, and Clifford, 2003, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are younger than thirty months old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in May 2010 is nineteen dollars and ninety-five cents (\$19.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
- (18) "ITS-SIDS Training" means the Infant/Toddler Safe Sleep and SIDS Risk Reduction Training developed by the NC Healthy Start Foundation for the Division of Child Development for caregivers of children ages 12 months and younger.
- (19) "Licensee" means the person or entity that is granted permission by the State of North Carolina to operate a child care facility. The owner of a facility is the licensee.
- (20) "North Carolina Early Educator Certification (certification)" is an acknowledgement of an individual's verified level of educational achievement based on a standardized scale. The North Carolina Institute for Child Development Professionals certifies individuals and assigns a certification level on two scales: the Early Care and Education Professional Scale (ECE Scale) or the School Age Professional Scale (SA Scale). Each scale reflects the amount of education earned in the content area pertinent to the ages of children served. The ECE Scale is designed for individuals working with or on behalf of children ages birth to five. The SA Scale is designed for individuals working with or on behalf of children ages 5 to 12 who are served in school age care settings.
- (20)(21) "North Carolina Early Childhood Credential" means the state early childhood credential that is based on completion of coursework and standards found in the North Carolina Early Childhood Instructor Manual (published by the NC Community College System Office). These standards are incorporated by reference and include subsequent amendments. A copy of the North Carolina Early Childhood Credential requirements is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection or copying at no charge during regular business hours.
- ~~(21)~~(22) "Owner" means any person with a five percent or greater equity interest in a child care facility, however, stockholders of corporations who own child care facilities are not subject to mandatory criminal history checks pursuant to G.S. 110-90.2 and G.S. 110-91(8) unless they are involved in day-to-day operations of the child care facility.
- ~~(22)~~(23) "Parent" means a child's parent, legal guardian, or full-time custodian.
- ~~(23)~~(24) "Part-time care" means a child care arrangement where children attend on a regular schedule but less than a full-time basis.
- ~~(24)~~(25) "Passageway" means a hall or corridor.
- ~~(25)~~(26) "Person" means any individual, trust, estate, partnership, corporation, joint stock company, consortium, or any other group, entity, organization, or association.
- ~~(26)~~(27) "Preschooler" or "preschool-age child" means any child who does not fit the definition of school-age child in this Rule.
- ~~(27)~~(28) "School-Age Care Environment Rating Scale" (Harms, Jacobs, and White, 1996, published by Teachers College Press) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of the children in the group are older than five years, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale in May 2010 is nineteen dollars and ninety-five cents (\$19.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and is available for public inspection during regular business hours.
- ~~(28)~~(29) "School-age child" means any child who is attending or who has attended, a public or private grade school or kindergarten and meets age requirements as specified in G.S. 115C-364.
- ~~(29)~~(30) "Seasonal Program" means a recreational program as set forth in G.S. 110-86(2)(b).
- ~~(30)~~(31) "Section" means Division of Child Development.

- ~~(31)~~(32) "Substitute" means any person who temporarily assumes the duties of a staff person for a time period not to exceed two consecutive months.
- ~~(32)~~(33) "Temporary care" means any child care arrangement which provides either drop-in care or care on a seasonal or other part-time basis and is required to be regulated pursuant to G.S. 110-86.
- ~~(33)~~(34) "Track-Out Program" means any child care provided to school-age children when they are out of school on a year-round school calendar.
- ~~(34)~~(35) "Volunteer" means a person who works in a child care facility and is not monetarily compensated by the facility.

Authority G.S. 110-85; 110-88; 143B-168.3.

SECTION .0300 - PROCEDURES FOR OBTAINING A LICENSE

10A NCAC 09 .0302 APPLICATION FOR A LICENSE FOR A CHILD CARE CENTER

(a) The individual who will be legally responsible for the operation of the center, which includes assuring compliance with the licensing law and standards, shall apply for a license using the form provided by the Division. If the operator will be a group, organization, or other entity, an officer of the entity who is legally empowered to bind the operator shall complete and sign the application.

(b) The applicant shall arrange for inspections of the center by the local health, building and fire inspectors. The applicant shall provide an approved inspection report signed by the appropriate inspector to the Division representative. A provisional classification may be accepted in accordance with Rule .0401(1) of this Chapter. When a center does not conform with a building, fire, or sanitation standard, the appropriate inspector may submit a written explanation of how equivalent, alternative protection is provided. The Division shall accept the inspector's documentation in lieu of compliance with the standard. Nothing in this Rule is to preclude or interfere with issuance of a provisional license pursuant to Section .0400 of this Chapter.

(c) The applicant, or the person responsible for the day-to-day operation of the center, shall be able to describe the plans for the daily program, including room arrangement, staffing patterns, equipment, and supplies, in sufficient detail to show that the center shall comply with applicable requirements for activities, equipment, and staff/child ratios for the capacity of the center and type of license requested. The applicant shall make the following written information available to the Division for review to verify compliance with provisions of this Chapter and G.S. 110:

- (1) daily schedules;
- (2) activity plans;
- (3) emergency care plan;
- (4) discipline policy;
- (5) incident reports;
- (6) incident logs; and

- (7) a copy of the certified criminal history check for the applicant, or the applicant's designee as defined in Rule .2701(g) of this Chapter, from the Clerk of Superior Court's office in the county or counties where the individual has resided during the previous 12 months.

(d) The applicant shall demonstrate to the Division representative that measures will be implemented to have the following information in the center's files and readily available to the representative for review:

- (1) Staff records which include an application for employment and date of birth; documentation of previous education, training, and experience; medical and health records; documentation of participation in training and staff development activities; and required criminal records check documentation;
- (2) Children's records which include an application for enrollment; medical and immunization records; and permission to seek emergency medical care;
- (3) Daily attendance records;
- (4) Daily records of arrival and departure times at the center for each child;
- (5) Records of monthly fire drills giving the date each drill is held, the time of day, the length of time taken to evacuate the building, and the signature of the person who conducted the drill;
- (6) Records of monthly playground inspections documented on a checklist provided by the Division; and
- (7) Records of medication administered.

(e) The Division representative shall measure all rooms to be used for child care and shall assure that an accurate sketch of the center's floor plan is part of the application packet. The Division representative shall enter the dimensions of each room to be used for child care, including ceiling height, and shall show the location of the bathrooms, doors, and required exits on the floor plan.

(f) The Division representative shall make one or more inspections of the center and premises to assess compliance with all applicable requirements as follows:

- (1) If all applicable requirements of G.S. 110 and this Section are met, the Division shall issue the license.
- (2) If all applicable requirements of G.S. 110 and this Section are not met, the representative may recommend issuance of a provisional license in accordance with Section .0400 of this Chapter or the representative may recommend denial of the application. Final disposition of the recommendation to deny is the decision of the Secretary.
- (3) The license shall be displayed in an area that parents are able to view daily.

(g) When a person applies for a child care center license, the Secretary ~~may shall~~ deny the application for the license under the following circumstances:

- (1) if any child care facility license previously held by that person has been denied, revoked or summarily suspended by the Division;
- (2) if the Division has initiated denial, revocation or summary suspension proceedings against any child care facility license previously held by that person and the person voluntarily relinquished the license;
- (3) during the pendency of an appeal of a denial, revocation or summary suspension of any child care facility license previously held by that person;
- (4) if the Division determines that the applicant has a relationship with an operator or former operator who previously held a license under an administrative action described in Subparagraph (1), (2), or (3) of this Paragraph. As used in this Rule, an applicant has a relationship with a former operator if the former operator would be involved with the applicant's child care facility in one or more of the following ways:
 - (A) would participate in the administration or operation of the facility;
 - (B) has a financial interest in the operation of the facility;
 - (C) provides care to children at the facility;
 - (D) resides in the facility; or
 - (E) would be on the facility's board of directors, be a partner of the corporation, or otherwise have responsibility for the administration of the business;
- (5) based on the person's previous non-compliance as an operator with the requirements of G.S. 110 and this Chapter; or
- (6) if abuse or neglect has been substantiated against the person.

(h) In determining whether denial of the application for a license is warranted pursuant to Paragraph (g) of this Rule, the Division shall consider, among other things, any documentation provided by the applicant:

- (1) which describes the steps the applicant will take to prevent reoccurrence of noncompliance issues which led to any prior administrative action taken against a license previously held by the applicant;
- (2) training certificates or transcripts from an accredited college or university related to providing quality child care for any coursework, and which were taken subsequent to any prior administrative action taken against a license previously held by the applicant;
- (3) proof of employment in a licensed child care facility and references from the administrator or licensee of the child care facility regarding work performance;

- (4) documentation of collaboration or mentorship with a licensed child care provider to obtain additional knowledge and experience related to operation of a child care facility; or
- (5) documentation explaining relationships with persons meeting the criteria listed in Subparagraph (g)(4) of this Rule.

Authority G.S. 110-85; 110-88(2); 110-88(5); 110-91; 110-92; 110-93; 110-99; 143B-168.3.

SECTION .1700 - FAMILY CHILD CARE HOME REQUIREMENTS

10A NCAC 09 .1702 APPLICATION FOR A LICENSE FOR A FAMILY CHILD CARE HOME

(a) Any person who plans to operate a family child care home shall apply for a license using a form provided by the Division. The applicant shall submit the completed application, which complies with the following, to the Division:

- (1) Only one licensed family child care home shall operate at the location address of any home.
- (2) The applicant shall list each location address where a licensed family child care home will operate.

(b) When a family child care home will operate at more than one location address by cooperative arrangement among two or more families, the following procedures apply:

- (1) One parent whose home is used as a location address shall be designated the coordinating parent and shall co-sign the application with the applicant.
- (2) The coordinating parent shall know the current location address at all times and shall provide the information to the Division upon request.

(c) The applicant shall assure that the structure in which the family child care home is located complies with the following requirements:

- (1) The structure complies with the North Carolina Building Code for family child care homes or has written approval for use as a family child care home by the local building inspector.
- (2) The structure meets North Carolina Residential Building Code or is a manufactured home bearing a third party inspection label certifying compliance with the Federal Manufactured Home Construction and Safety Standards or certifying compliance with construction standards adopted and enforced by the State of North Carolina. Homes shall be installed in accordance with North Carolina Manufactured/Mobile Home Regulations adopted by the NC Department of Insurance. Exception: Single wide manufactured homes will be limited to a maximum of three preschool-age children (not more than two may be two years of age or less) and two school-age children.

- (3) All children are kept on the ground level with an exit at grade.
 - (4) All homes are equipped with an electrically operated (with a battery backup) smoke detector, or one electrically operated and one battery operated smoke detector located next to each other.
 - (5) All homes are provided with at least one five pound 2-A: 10-B: C type extinguisher readily accessible for every 2,500 square feet of floor area.
 - (6) Fuel burning space heaters, fireplaces and floor furnaces which are listed and approved by the Department of Insurance for that installation and are provided with a protective screen attached securely to substantial supports are allowed. However, unvented fuel burning heaters and portable electric space heaters of all types are prohibited.
 - (7) All indoor areas used by children are heated in cool weather and ventilated in warm weather.
 - (8) Hot pipes or radiators which are accessible to the children are covered or insulated.
 - (9) Accommodations for breastfeeding mothers are provided that include seating and an electrical outlet, in a place other than a bathroom, that is shielded from view by staff and the public, which may be used by mothers while they are breastfeeding or expressing milk.
- (d) The applicant shall also submit supporting documentation with the application for a license to the Division. The supporting documentation shall include:
- (1) a copy of the certified criminal history check from the Clerk of Superior Court's office in the county or counties where the applicant and any household member(s) over age 15, have resided during the previous 12 months;
 - (2) a copy of documentation of completion of a first aid and cardiopulmonary resuscitation (CPR) course;
 - (3) proof of negative results of the applicant's tuberculosis test completed within the past 12 months;
 - (4) a completed health questionnaire;
 - (5) a copy of current pet vaccinations for any pet in the home;
 - (6) a negative well water bacteriological analysis if the home has a private well;
 - (7) copies of any inspections required by local ordinances; and
 - (8) any other documentation required by the Division according to these Rules to support the issuance of a license.
- (e) Upon receipt of a complete application and supporting documentation, a Division representative shall make an announced visit to each home unless the applicant meets the criteria in Paragraph (g) of this Rule to determine compliance with the requirements, to offer technical assistance when needed, and to provide information about local resources. The issuance of a license applies as follows:
- (1) If all applicable requirements of G.S. 110 and this Section are met, a license shall be issued;
 - (2) If the applicable requirements are not met but the applicant has the potential to comply, the Division representative shall establish with the applicant a time period for the home to achieve full compliance. If the Division representative determines that all applicable requirements are met within the established time period, a license shall be issued; or
 - (3) If all applicable requirements are not met or cannot be met within the established time, the Division shall deny the application. Final disposition of the recommendation to deny is the decision of the Division.
- (f) The Division shall allow the applicant to temporarily operate prior to the Division representative's visit described in Paragraph (e) of this Rule when the applicant is currently licensed as a family child care home operator, needs to relocate, and notifies the Division of the relocation; and the Division representative is unable to visit before the relocation occurs. A person shall not operate until he or she has received from the Division either temporary permission to operate or a license.
- (g) When a person applies for a family child care home license, the Secretary ~~may~~ shall deny the application for the license under the following circumstances:
- (1) if any child care facility license previously held by that person has been denied, revoked or summarily suspended by the Division;
 - (2) if the Division has initiated denial, revocation or summary suspension proceedings against any child care facility license previously held by that person and the person voluntarily relinquished the license;
 - (3) during the pendency of an appeal of a denial, revocation or summary suspension of any child care facility license previously held by that person;
 - (4) if the Division determines that the applicant has a relationship with an operator or former operator who previously held a license under an administrative action described in Subparagraph (g)(1), (2), or (3) of this Rule. As used in this Rule, an applicant has a relationship with a former operator if the former operator would be involved with the applicant's child care facility in one or more of the following ways:
 - (A) would participate in the administration or operation of the facility;
 - (B) has a financial interest in the operation of the facility;
 - (C) provides care to the children at the facility;
 - (D) resides in the facility; or

- (E) would be on the facility's board of directors, be a partner of the corporation, or otherwise have responsibility for the administration of the business;
- (5) based on the person's previous non-compliance as an operator with the requirements of G.S. 110 and this Chapter; or
- (6) if abuse or neglect has been substantiated against the person, or if abuse or neglect was substantiated against a household member.

(h) In determining whether denial of the application for a license is warranted pursuant to Paragraph (g) of this Rule, the Division shall consider, among other things, any documentation provided by the applicant:

- (1) which describes the steps the applicant will take to prevent reoccurrence of noncompliance issues which led to any prior administrative action taken against a license previously held by the applicant;
- (2) training certificates or transcripts from an accredited college or university related to providing quality child care for any coursework, and which were taken subsequent to any prior administrative action taken against a license previously held by the applicant;
- (3) proof of employment in a licensed child care facility and references from the administrator or licensee of the child care facility regarding work performance;
- (4) documentation of collaboration or mentorship with a licensed child care provider to obtain additional knowledge and experience related to operation of a child care facility; or
- (5) documentation explaining relationships with persons meeting the criteria listed in Subparagraph (g)(4) of this Rule.

~~(h)(i)~~ The license shall not be bought, sold, or transferred from one individual to another.

~~(h)(j)~~ The license is valid only for the location address/addresses listed on it.

~~(h)(k)~~ The license must be returned to the Division in the event of termination, revocation, suspension, or summary suspension.

~~(h)(l)~~ The license shall be displayed in a prominent place that parents are able to view daily and shall be shown to each child's parent when the child is enrolled.

~~(h)(m)~~ A licensee shall notify the Division whenever a change occurs which affects the information shown on the license.

Authority G.S. 110-85; 110-88(5); 110-91; 110-93; 110-99; 143B-168.3.

SECTION .2100 - RELIGIOUS-SPONSORED CHILD CARE CENTER REQUIREMENTS

10A NCAC 09 .2101 CENTERS OPERATING UNDER G.S. 110-106

(a) At least 30 days prior to the first day of operation of a new religious-sponsored child care center, the prospective operator

shall send a "Letter of Intent to Operate" to the Division. That letter shall include the name, address, and telephone number of the operator and the center, if known; the proposed number and age range of children to be served; and the center's scheduled opening date. A representative of the Division shall contact the prospective operator no later than seven calendar days after the Letter of Intent is received to advise the operator of the applicable requirements and procedures.

(b) Religious-sponsored child care centers shall comply with all child care center requirements in this ~~Subchapter~~ Chapter except for the rules regarding age-appropriate activities in Rules .0505 - .0511(a) and .2508; and staff qualifications and training requirements in Paragraphs (d) through (f) of Rule .0703, Rules .0704, .0707 - .0711, and Paragraphs (a) through (d) of Rule .0714. For staff working with school-aged children only, ~~Paragraphs (a) - (i), (l), and (o) of 10A NCAC 09 .2510 shall not apply regarding staff requirements.~~ Compliance shall be documented at least annually using the same forms and in the same manner as for all other centers.

(c) The Division shall notify the operator in writing as to whether the center complies or does not comply with the requirements.

Authority G.S. 110-85; 110-106; 143B-168.3.

SECTION .2800 - VOLUNTARY RATED LICENSES

10A NCAC 09 .2819 EDUCATION STANDARDS FOR A TWO COMPONENT RATED LICENSE FOR CHILD CARE CENTERS

(a) This Rule applies to evaluating the education standards for a two component rated license for child care centers.

(b) To achieve two points for education standards, staff in the center shall meet the following requirements:

- (1) The on-site administrator shall have:
 - (A) A Level I North Carolina Early Childhood Administration Credential or its equivalent; and
 - (B) Two years of full-time verifiable early childhood work experience; or one year experience in child care administration.
- (2) For centers with a licensed capacity of 200 or more, there shall be a second administrator on-site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.
- (3) 75% of lead teachers shall have:
 - (A) The North Carolina Early Childhood Credential or its ~~equivalent;~~ equivalent or at least a Level I Early Educator Certification on the Early Care and Education Professional Scale (ECE scale); and
 - (B) Completed or are enrolled in three semester hours in early childhood education or child development (not

- including North Carolina Early Childhood Credential coursework).
- (4) 50% of the teachers counted in staff/child ratios shall:
- (A) Have one year full time verifiable early childhood work experience, or
- (B) Be enrolled in three semester hours in early childhood education or child development.
- (5) For centers providing school-age care, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience requirements in Subparagraphs (a)(1) through (a)(4) of this Rule:
- (A) The administrator shall have at least 150 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 300 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or shall complete the BSAC ~~Training~~; Training or its equivalent;
- (B) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have completed or be enrolled in three additional semester hours of school-age care related coursework; or have at least 200 hours of verifiable experience working with school-aged children in a licensed child care program; or at least 300 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting;
- (C) For centers providing school-age care with 200 or more school-aged children enrolled, there shall be two program coordinators on site, one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall have completed all the applicable staff requirements in Rule .2510(b) of this Chapter; and
- (D) All group leaders shall have completed the BSAC ~~training~~; training or its equivalent.
- (c) To achieve three points for education standards, staff in the center shall meet the following requirements:
- (1) The on-site administrator shall have:
- (A) A Level I North Carolina Early Childhood Administration Credential or its equivalent; and
- (B) Six semester hours in early childhood education or child development (not including North Carolina Early Childhood Administration Credential coursework); and
- (C) Two years of full-time verifiable early childhood work experience; or one year experience in child care administration.
- (2) For centers with a licensed capacity of 200 or more, there shall be a second administrator on-site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.
- (3) All lead teachers shall have the North Carolina Early Childhood Credential or its ~~equivalent~~; equivalent or at least a Level 1 certification on the ECE scale and; and 75% of the lead teachers shall have:
- (A) ~~75 percent of the lead teachers shall have completed~~ Completed three semester hours in early childhood education and be enrolled in three semester hours in early childhood education or child development (not including North Carolina Early Childhood Credential coursework); or one year full time verifiable early childhood work experience; or
- (B) ~~One year full time verifiable early childhood work experience.~~ 50 percent of the lead teachers shall have at least a Level 2 certification on the ECE scale.
- (4) 50% of the teachers counted in staff/child ratios shall have:
- (A) Completed the North Carolina Early Childhood Credential or its ~~equivalent~~; equivalent or at least a Level 1 certification on the ECE scale; or
- (B) Completed three semester hours in early childhood education or child development; or
- (C) Two years full time verifiable early childhood work experience.
- (5) For centers providing school-age care, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience requirements in Subparagraphs (b)(1) through (b)(4) of this Rule:
- (A) The administrator shall have at least 300 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 450 hours of verifiable experience working with school-aged

children in an unlicensed school-age care or camp setting, or shall complete the BSAC ~~Training;~~ Training or its equivalent;

(B) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have completed three additional semester hours of school-age care related coursework; or shall have at least 300 hours of verifiable experience working with school-aged children in a licensed child care program; or at least 450 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp ~~setting;~~ setting or have at least a Level 1 certification on the SA scale;

(C) For centers providing school-age care with 200 or more school-aged children enrolled, there shall be two program coordinators on site; one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall have completed the applicable staff requirements of Rule .2510(b) of this Chapter; and

(D) All group leaders shall have completed the BSAC ~~training;~~ training or its equivalent, and 25% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall each have at least 100 hours of verifiable experience working with school-aged children in a licensed child care program, or shall have at least 150 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting; or shall have completed or be enrolled in at least two semester hours of school-age care related coursework.

(d) To achieve four points for education standards, staff in the center shall meet the following requirements:

- (1) The on-site administrator shall have:
 - (A) A Level I North Carolina Early Childhood Administration Credential or its equivalent; and
 - (B) 18 semester hours in early childhood education or child development (not including North Carolina Early Childhood Administration Credential coursework), and one year experience in child care administration; or

(C) Six semester hours in early childhood education or child development (not including North Carolina Early Childhood Administration Credential coursework), and 10 years experience in child care administration.

(2) For centers with a licensed capacity of 200 or more, there shall be a second administrator on-site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.

(3) All lead teachers shall have the North Carolina Early Childhood Credential or its equivalent, or Level 1 certification on the ECE scale and; ~~and 75% shall have:~~

~~(A) Completed six semester hours in early childhood education or child development (not including the North Carolina Early Childhood Administration Credential coursework), and be enrolled in three semester hours in early childhood education, or~~

~~(B) Completed three semester hours of early childhood education and shall have three years full-time verifiable early childhood work experience, or~~

~~(C) Five years full-time verifiable early childhood work experience.~~

(A) 75 percent shall have completed six semester hours in early childhood education or child development (not including the North Carolina Early Childhood Administration Credential coursework), and be enrolled in three semester hours in early childhood education, or completed three semester hours of early childhood education and shall have three years full-time verifiable early childhood work experience, or five years full-time verifiable early childhood work experience; or

(B) 50 percent of lead teachers shall have at least a Level 3 certification on the ECE scale.

(4) 50% of the teachers counted in staff/child ratios shall have the North Carolina Early Childhood Credential or its ~~equivalent;~~ equivalent or have at least a Level 1 certification on the ECE scale.

(5) For centers providing school-age care, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience requirements in Subparagraphs (c)(1) through (c)(4) of this Rule:

(A) The administrator shall have at least 450 hours of verifiable experience working with school-aged children in

- licensed child care program, or at least 600 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or shall complete the ~~BSAC Training;~~ BSAC Training or its equivalent;
- (B) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have completed three additional semester hours of school-age care related coursework and shall have at least 200 hours of verifiable experience working with school-aged children in a licensed child care ~~program;~~ program, or at least 300 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting; or have at least a Level 1 certification on the SA scale and shall have at least 200 hours of verifiable experience working with school-aged children in a licensed child care program; or at least 300 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting; or shall have at least 450 hours of verifiable experience working with school-aged children in a licensed child care program; or at least 600 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting;
- (C) For centers providing school-age care with 200 or more school-aged children enrolled, there shall be two program coordinators on site, one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall have completed the applicable staff requirements in Rule .2510(b) of this Chapter;
- (D) All group leaders shall have completed the ~~BSAC training;~~ BSAC training or its equivalent, and 25% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall each have at least 100 hours of verifiable experience working with school-aged children in a licensed child care program, or shall have at least 150 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or have completed at least two semester hours of school-age care related coursework; and
- (E) Assistant group leaders shall be at least 16 years of age.
- (e) To achieve five points for education standards, staff in the center shall meet the following requirements:
- (1) The on-site administrator shall have:
 - (A) A Level II North Carolina Early Childhood Administration Credential or its equivalent; and
 - (B) Two years of full-time verifiable early childhood work experience.
 - (2) For centers with a licensed capacity of 200 or more, there shall be a second administrator on-site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.
 - (3) All lead teachers shall have the North Carolina Early Childhood Credential or its equivalent, or have at least a Level 1 certification on the ECE scale and 75% of the lead teachers shall:
 - ~~(A) Have completed nine semester hours in early childhood education or child development (not including the North Carolina Early Childhood Credential coursework);~~
 - ~~(B) Be enrolled in three additional semester hours in early childhood education; and~~
 - ~~(C) Have one year of full time verifiable early childhood work experience.~~
 - (A) Have completed nine semester hours in early childhood education or child development (not including the North Carolina Early Childhood Credential coursework), and be enrolled in three additional semester hours in early childhood education, and have one year of full-time verifiable early childhood work experience; or
 - (B) Have at least a Level 4 certification on the ECE scale and have one year of full-time verifiable early childhood work experience.
 - (4) 50% of the teachers counted in staff/child ratios shall have:
 - ~~(A) The North Carolina Early Childhood Credential or its equivalent; and~~
 - ~~(B) Three semester hours in early childhood education or child development (not including North Carolina Early Childhood Credential coursework);~~
 - (A) The North Carolina Early Childhood Credential or its equivalent or have a

least a Level 1 certification on the ECE scale; and three semester hours in early childhood education or child development (not including North Carolina Early Childhood Credential coursework); or

(B) At least a Level 2 certification on the ECE scale.

(5) For centers providing school-age care, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience requirements in Subparagraphs (d)(1) through (d)(4) of this Rule:

(A) The administrator shall have at least 600 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or shall complete the BSAC ~~training~~; training or its equivalent;

(B) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have completed three additional semester hours of school-age care related coursework and shall be enrolled in three additional semester hours of school-age care related coursework; or shall have at least 600 hours of verifiable experience working with school-age children in a licensed child care program; or at least 750 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp ~~setting~~; setting or shall have at least a Level 2 certification on the SA scale;

(C) For centers providing school-age care with 200 or more school-aged children, there shall be two program coordinators on site, one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall have completed the applicable staff requirements in Rule .2510(b) of this Chapter;

(D) All group leaders shall complete the BSAC ~~training~~; training or its equivalent, and 50% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall each have at least

300 hours of verifiable experience working with school-aged children in a licensed child care program or at least 450 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or shall have completed at least two semester hours of school-age care related coursework; and

(E) Assistant group leaders shall be at least 16 years of age and shall complete the BSAC ~~training~~; training or its equivalent, or shall have at least 250 hours of verifiable experience working with school-aged children in a licensed child care program or at least 400 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.

(f) To achieve six points for education standards, staff in the center shall meet the following requirements:

(1) The on-site administrator shall:

(A) Have a Level II North Carolina Early Childhood Administration Credential or its equivalent; and

(B) Have completed 18 semester hours in early childhood education or child development (not including the North Carolina Early Childhood Administration Credential coursework or hours earned during the completion of the A.A.S degree); and

(C) Have three years of full-time verifiable work experience in an early childhood center teaching young children, or three years of administrative experience, or three years of a combination of both.

(2) For centers with a licensed capacity of 200 or more, there shall be a second administrator on-site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.

(3) All lead teachers shall have the North Carolina Early Childhood ~~Credential~~; Credential, or its equivalent, or shall have at least a Level 1 certification on the ECE scale and 50% of the lead teachers shall:

(A) Have at least an A.A.S degree in early childhood education or child development or an A.A.S degree in any major with 12 semester hours in early childhood education or child development and shall have one year

- of full-time verifiable early childhood work experience, or
 - (B) Have completed 60 semester hours towards a BA/BS degree program with at least 12 semester hours in early childhood education and one year full-time verifiable early childhood work ~~experience.~~
experience; or
 - (C) ~~Have at least a Level 6 certification on the ECE scale and one year full-time viable early childhood work experience.~~
 - (4) 50% of the teachers counted in staff/child ratios shall have:
 - (A) ~~The North Carolina Early Childhood Credential or its equivalent; and~~
 - (B) ~~Three semester hours in early childhood education or child development (not including North Carolina Early Childhood Credential coursework); and~~
 - (C) ~~One year of full time verifiable early childhood work experience.~~
 - (A) The North Carolina Early Childhood Credential or its equivalent; or at least a Level 1 certification on the ECE scale; and three semester hours in early childhood education or child development (not including North Carolina Early Childhood Credential coursework); and one year of full-time verifiable early childhood work experience; or
 - (B) At least a Level 2 certification on the ECE scale and one year of full-time early childhood work experience.
 - (5) For centers providing school-age care, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience requirements in Subparagraphs (e)(1) through (e)(4) of this Rule:
 - (A) The administrator shall have at least 750 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 1150 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or shall complete the BSAC ~~training;~~ training or its equivalent;
 - (B) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have at least 750 hours of verifiable experience
 - (g) To achieve seven points for education standards, staff in the center shall meet the following requirements:
 - (1) The on-site administrator shall have:
 - (A) A Level III North Carolina Early Childhood Administration Credential or its equivalent; and
- working with school-aged children in a licensed child care program; or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting and shall have completed at least six additional semester hours of school-age care related coursework; or shall have a BA/BS degree with at least three additional semester hours of school-age care related ~~coursework;~~
coursework or have at least a Level 3 certification on the SA scale;
- (C) For centers providing school-age care with 200 or more school-aged children, there shall be two program coordinators on site, one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall have completed the applicable staff requirements in Rule .2510(b) of this Chapter;
 - (D) All group leaders shall have completed the BSAC ~~training;~~ training or its equivalent, and 50% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall each have at least 600 hours of verifiable experience working with school-aged children in a licensed child care program or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or shall have completed at least two semester hours of school-age care related coursework and have completed or be enrolled in at least two additional semester hours of school-age related coursework; and Assistant group leaders shall be at least 17 years of age and shall complete the BSAC training or its equivalent, or shall have at least 250 hours of verifiable experience working with school-aged children in a licensed child care program or at least 400 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.
 - (E)

- (B) Four years of full-time verifiable work experience in an early childhood center teaching young children, or four years of administrative experience, or four years of a combination of both.
- (2) For centers with a licensed capacity of 200 or more, there shall be a second administrator on-site for a minimum of 20 hours per week who shall have the Level I North Carolina Early Childhood Administration Credential or its equivalent.
- (3) All lead teachers shall have the North Carolina Early Childhood Credential or its equivalent, or at least a Level 1 certification on the ECE scale and 75% of the lead teachers shall have:
- (A) ~~At least an A.A.S. degree in early childhood education or child development or an A.A.S. degree in any major with 12 semester hours in early childhood education or child development; and~~
- (B) ~~Two years of full-time verifiable early childhood work experience.~~
- (A) At least an A.A.S. degree in early childhood education or child development or an A.A.S. degree in any major with 12 semester hours in early childhood education or child development; and two years of full-time verifiable early childhood work experience; or
- (B) At least a Level 6 certification on the ECE scale and two years of full-time verifiable early childhood work experience.
- (4) 50% of the teachers counted in staff/child ratios shall have:
- (A) ~~The North Carolina Early Childhood Credential or its equivalent; and~~
- (B) ~~Six semester hours in early childhood education or child development (not including North Carolina Early Childhood Credential coursework); and~~
- (C) ~~Two years of full-time verifiable early childhood work experience.~~
- (A) The North Carolina Early Childhood Credential or its equivalent or have at least a Level 1 certification on the ECE scale, and six semester hours in early childhood education or child development (not including North Carolina Early Childhood Credential coursework), and two years of full-time verifiable early childhood work experience; or
- (B) At least a Level 3 certification on the ECE scale and two years of full-time
- verifiable early childhood work experience.
- (5) For centers providing school-age care, the following requirements shall also apply. Completion of these requirements may count toward meeting education and experience requirements in Subparagraphs (f)(1) through (f)(4) of this Rule:
- (A) The administrator shall have at least 900 hours of verifiable experience performing administrative duties in a licensed child care program serving school-aged children, or at least 1350 hours of verifiable experience performing administrative duties in an unlicensed school-age care or camp setting, or shall complete the ~~BSAC Training; Training or its equivalent;~~
- (B) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have at least 900 hours of verifiable experience working with school-aged children in a licensed child care program or at least 1350 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting and shall have completed at least six additional semester hours of school-age care related coursework; or at least 600 hours of verifiable experience working with school-aged children in a licensed child care program or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting and shall have completed at least nine additional semester hours of school-age related coursework; or at least 300 hours of verifiable experience working with school-aged children in a licensed school-age care program or 450 ~~semester~~ hours of working with school-aged children in an unlicensed school-age care or camp setting and a BA/BS degree or higher with at least six additional semester hours of school-age related coursework; or at least 300 hours of verifiable experience working with school-aged children in a licensed school-age care program or 450 hours of working with school-aged children in an unlicensed school-age care or camp

setting and at least the Level 4 certification on the SA scale.

- (C) For centers providing school-age care with 200 or more school-aged children, there shall be two program coordinators on site, one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall have completed the applicable staff requirements in Rule .2510(b) of this Chapter;
- (D) All group leaders shall have completed the BSAC ~~training,~~ training or its equivalent, and 75% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall each have at least 600 hours of verifiable experience working with school-aged children in a licensed child care program; or at least 900 hours of verifiable experience working with school-aged children in an unlicensed ~~school-age~~ school-age care or camp setting; or shall have completed at least two semester hours of school-age care related coursework and have completed; or be enrolled in at least two additional semester hours of school-age related coursework; and
- (E) Assistant group leaders shall be at least 18 years of age and shall complete the BSAC ~~training,~~ training or its equivalent.

(h) For centers with a licensed capacity of 3 to 12 children located in a residence, when an individual has responsibility both for administering the child care program and for planning and implementing the daily activities of a group of children, the educational requirements for lead teacher in this Rule shall apply. All other teachers shall follow the educational requirements for teachers in this Rule.

(i) As used in this Rule, the definition of the term "experience working with school-aged children" in Rule ~~.2510(i)~~ .2510(h) of this Chapter shall apply.

Authority G.S. 110-85; 110-88(7); 110-90(4); 110-91(8a); 143B-168.3.

10A NCAC 09 .2820 EDUCATION STANDARDS FOR A TWO COMPONENT RATED LICENSE FOR CENTERS THAT PROVIDE CARE ONLY TO SCHOOL-AGED CHILDREN

(a) This Rule applies to evaluating the education standards for a two component rated license for centers that provide care only to school-aged children.

(b) For child care programs that serve school-aged children only, the following staff education requirements apply instead of those in Rule .2819 of this Section.

(c) To achieve two points for education standards, staff in the school-age care program shall meet the following requirements:

- (1) The administrator shall have a Level I North Carolina Early Childhood Administration Credential or its equivalent or shall have enrolled in coursework as required in G.S. 110-91(8) and have at least 1600 hours of verifiable experience performing administrative duties in a licensed school-aged program;
- (2) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have:
 - (A) Completed or be enrolled in three additional semester hours of school-age care related coursework, or
 - (B) At least 200 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 300 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.
- (3) All group leaders shall have completed the BSAC ~~training,~~ training or its equivalent.

(d) To achieve three points for education standards, staff in the school-age care program shall meet the following requirements:

- (1) The administrator shall have:
 - (A) A Level I North Carolina Early Childhood Administration Credential or its equivalent; and
 - (B) At least 300 additional hours of verifiable experience performing administrative duties in a licensed child care program, or at least 450 additional hours of verifiable experience performing administrative duties in an unlicensed school-age care or camp setting.
- (2) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have:
 - (A) Completed three additional semester hours of school-age care related coursework, or
 - (B) At least 300 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 450 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp ~~setting,~~ setting, or have at least a Level 1 certification on the SA scale.
- (3) All group leaders shall have completed the BSAC ~~training,~~ training or its equivalent, and

25% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall have at least 100 hours of verifiable experience working with school-aged children in a licensed child care program, or shall have at least 150 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or shall have completed or be enrolled in at least two semester hours of school-age care related coursework.

(e) To achieve four points for education standards, staff in the school-age care program shall meet the following requirements:

- (1) The administrator shall have:
 - (A) A Level I North Carolina Early Childhood Administration Credential or its equivalent; and
 - (B) At least 450 additional hours of verifiable experience performing administrative duties in a licensed child care program, or at least 600 additional hours of verifiable experience performing administrative duties in an unlicensed school-age care or camp setting.
- (2) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have:
 - (A) Completed three additional semester hours of school-age care related coursework and shall have at least 200 hours of verifiable experience working with school-aged children in a licensed child care program, or have at least a Level 1 certification on the SA scale and shall have at least 200 hours of verifiable experience working with school-aged children in a licensed child care program; or at least 300 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or
 - (B) At least 450 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 600 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.
- (3) All group leaders shall have completed the BSAC ~~training, training or its equivalent,~~ and 25% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall have at least 100 hours of verifiable experience working with school-aged children in a licensed child care program, or have at least 150 hours of verifiable

experience working with school-aged children in an unlicensed school-age care or camp setting, or have completed at least two semester hours of school-age care related coursework.

(4) Assistant group leaders shall be at least 16 years of age.

(f) To achieve five points for education standards, standards for a star rating, staff in the school-age care program shall meet the following requirements:

- (1) The administrator shall have:
 - (A) A Level II North Carolina Early Childhood Administration Credential or its equivalent; and
 - (B) At least 600 additional hours of verifiable experience performing administrative duties in a licensed child care program serving school-aged children, or at least 750 additional hours of verifiable experience performing administrative duties in an unlicensed school-age care or camp setting.
- (2) The individual designated as the program coordinator shall have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have:
 - (A) Completed three additional semester hours of school-age care related coursework and shall be enrolled in three additional semester hours of school-age care related coursework, or
 - (B) At least 600 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 750 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp ~~setting,~~ setting, or shall have at least a Level 2 certification on the SA scale;
- (3) All group leaders shall complete the BSAC ~~training, training or its equivalent,~~ and 50% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall each have at least 300 hours of verifiable experience working with school-aged children in a licensed child care program or at least 450 hours of verifiable experience working with school-aged children in an unlicensed ~~school age school-age~~ care or camp setting, or shall have completed at least two semester hours of school-age care related coursework.
- (4) Assistant group leaders shall be at least 16 years of age and shall complete the BSAC training or its equivalent, or shall each have at least 250 hours of verifiable experience working with school-aged children in a

licensed child care program or at least 400 hours of verifiable experience working with school-aged children in an unlicensed school age school-age care or camp setting.

(g) To achieve six points for education standards, staff in the school-age care program shall meet the following requirements:

- (1) The administrator shall have:
 - (A) A Level II North Carolina Early Childhood Administration Credential or its equivalent; and
 - (B) At least 750 additional hours of verifiable experience performing administrative duties in a licensed child care program serving school-aged children, or at least 1150 additional hours of verifiable experience performing administrative duties in an unlicensed school-age care or camp setting.
- (2) The individual designated as the program coordinator shall have:
 - (A) Completed all the applicable requirements in Rule .2510(b) of this Chapter;
 - (B) At least 750 hours of verifiable experience working with school-aged children in a licensed child care program or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting; and
 - (C) Completed at least six additional semester hours of school-age care related coursework or shall have a BA/BS degree with at least three additional semester hours of school-age care related coursework, or have a least a Level 3 certification on the SA scale;
- (3) All group leaders shall have completed the BSAC ~~training~~, training or its equivalent, and 50% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall each have at least 600 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 900 hours of verifiable experience working with school-aged children in an unlicensed ~~school-age~~ school-age care or camp setting, or shall have completed at least two semester hours of school-age care related coursework and have completed or be enrolled in at least two additional semester hours of school-age related coursework.
- (4) Assistant group leaders shall be at least 17 years of age and shall complete the BSAC training or its equivalent, or shall each have at least 250 hours of verifiable experience working with school-aged children in a

licensed child care program or at least 400 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting.

(h) To achieve seven points for education standards, staff in the school-age care program shall meet the following requirements:

- (1) The administrator shall have:
 - (A) A Level III North Carolina Early Childhood Administration Credential or its equivalent; and
 - (B) At least 900 additional hours of verifiable experience performing administrative duties in a licensed child care program serving school-aged children, or at least 1350 additional hours of verifiable experience performing administrative duties in an unlicensed school-age care or camp setting.
- (2) The individual designated as the program coordinator shall:
 - (A) Have completed all the applicable requirements in Rule .2510(b) of this Chapter and shall have at least 900 hours of verifiable experience working with school-aged children in a licensed child care program or at least 1350 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, and have completed at least six additional semester hours of school-age care related coursework; or
 - (B) Have least 600 hours of verifiable experience working with school-aged children in a licensed child care program or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, and have completed at least nine additional semester hours of school-age care related coursework; or
 - (C) Have at least 300 hours of verifiable experience working with school-aged children in a licensed school-age care program or 450 semester hours of working with school-aged children in an unlicensed school-age care or camp setting and a BA/BS degree or higher with at least six additional semester hours of school-age related coursework. coursework, or at least 300 hours of verifiable experience working with school-aged children in a licensed school-age care program or 450 hours of working with school-aged children in an unlicensed

school-age care or camp setting and at least the Level 4 certification on the SA scale.

- (3) All group leaders shall have completed the BSAC ~~training~~, training or its equivalent, and 75% of the individuals designated as group leaders as allowed in Rule .2510 of this Chapter shall each have at least 600 hours of verifiable experience working with school-aged children in a licensed child care program, or at least 900 hours of verifiable experience working with school-aged children in an unlicensed school-age care or camp setting, or shall have completed at least two semester hours of school-age care related coursework and have completed or be enrolled in at least two additional semester hours of school-age related coursework.
- (4) Assistant group leaders shall be at least 18 years of age and shall complete the BSAC ~~training~~, training or its equivalent.

(i) For programs with a licensed capacity of 200 or more school-aged children, there shall be two program coordinators on site, one of whom shall not have concurrent group leader responsibilities. The additional program coordinator shall have completed the applicable staff requirements in Rule .2510(b) of this Chapter.

(j) As used in this Rule, the definition of the term "experience working with school-aged children" in Rule ~~.2510(i)~~, .2510(h) of this Chapter shall apply.

Authority G.S. 110-85; 110-88(7); 110-90(4); 110-91(8a); 143B-168.3.

10A NCAC 09 .2822 EDUCATION STANDARDS FOR A TWO COMPONENT RATED LICENSE FOR FAMILY CHILD CARE HOMES

(a) This Rule applies to evaluating the education standards for a two component rated license for family child care homes.

(b) To achieve two points for education standards, the operator shall have completed:

- (1) The North Carolina Family Child Care Credential or its ~~equivalent~~; equivalent, or at least a Level 1 Early Educator Certification on the Early Care and Education Professional Scale (ECE scale); or
- (2) Four semester credit hours in early childhood education or child development (not including the North Carolina Family Child Care Credential coursework); or
- (3) Five years verifiable early childhood work experience and eight additional clock hours of annual in-service training.

(c) To achieve three points for education standards, the operator shall have completed the North Carolina Family Child Care Credential or its ~~equivalent~~; equivalent or at least a Level 1 certification on the ECE scale.

(d) To achieve four points for education standards, the operator shall have completed:

- (1) ~~The North Carolina Family Child Care Credential or its equivalent; and~~
- (2) ~~Six semester credit hours in early childhood education or child development (not including the North Carolina Family Child Care Credential coursework).~~

- (1) The North Carolina Family Child Care Credential or its equivalent, or at least a Level 1 certification on the ECE scale, and six semester credit hours in early childhood education or child development (not including the North Carolina Family Child Care Credential coursework); or
- (2) At least a Level 2 certification on the ECE scale.

(e) To achieve five points for education standards, the operator shall have completed:

- (1) ~~The North Carolina Family Child Care Credential or its equivalent;~~
- (2) ~~12 semester credit hours in early childhood education or child development (not including the North Carolina Family Child Care Credential coursework); and~~
- (3) ~~Two of 12 semester hours in early childhood education are in child care administration or one year verifiable early childhood work experience.~~

- (1) The North Carolina Family Child Care Credential or its equivalent, or at least a Level 1 certification on the ECE scale, and 12 semester credit hours in early childhood education or child development (not including the North Carolina Family Child Care Credential coursework), and two of 12 semester hours in early childhood education are in child care administration or one year verifiable early childhood work experience; or
- (2) At least a Level 4 certification on the ECE scale and one year verifiable early childhood work experience.

(f) To achieve six points for education standards, the operator shall have completed:

- (1) ~~The North Carolina Family Child Care Credential or its equivalent;~~
- (2) ~~18 semester credit hours in early childhood education or child development (not including the North Carolina Family Child Care Credential coursework); and~~
- (3) ~~Five of the 18 semester hours in early childhood education are in child care administration or two years verifiable early childhood work experience.~~

- (1) The North Carolina Family Child Care Credential or its equivalent, or at least a Level 1 certification on the ECE scale; and 18 semester credit hours in early childhood education or child development (not including the North Carolina Family Child Care Credential coursework), and five of the 18

semester hours in early childhood education are in child care administration or two years verifiable early childhood work equivalent; or

(2) At least a Level 6 certification on the ECE scale and one year work experience.

(g) To achieve seven points for education standards, the operator shall have completed:

(1) At least an A.A.S. degree in any major with at least 12 semester credit hours in early childhood education/child development coursework and two years of full-time verifiable early childhood work experience; or

(2) At least an A.A.S. in early childhood education/child development and 18 months of full-time verifiable early childhood work ~~experience.~~ experience; or

(3) At least a Level 6 certification on the ECE scale and two years experience.

Authority G.S. 110-85; 110-88(7); 110-90(4); 110-91(8a); 143B-168.3.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Private Protective Services Board intends to amend the rule cited as 12 NCAC 07D .1303.

Proposed Effective Date: May 1, 2011

Public Hearing:

Date: February 3, 2011

Time: 2:00 p.m.

Location: 1631 Midtown Place, Suite 104, Raleigh, NC 27609

Reason for Proposed Action: These proposed changes are to clarify how much CEU credit trainers and instructors will receive and to grant standing approval to certain education institution for CEU courses.

Procedure by which a person can object to the agency on a proposed rule: Objections to the proposed rule changes shall be submitted before the end of the comment period in writing to Anthony Bonapart, Deputy Director, Private Protective Services Board, 1631 Midtown Place, Suite 104, Raleigh, NC 27609.

Comments may be submitted to: Anthony Bonapart, PPSB Deputy Director, 1631 Midtown Place, Suite 104, Raleigh, NC 27609

Comment period ends: March 21, 2011

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:

State

Local

Substantial Economic Impact (≥\$3,000,000)

None

CHAPTER 07 - PRIVATE PROTECTIVE SERVICES

SUBCHAPTER 07D - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .1300 - CONTINUING EDUCATION

12 NCAC 07D .1303 ACCREDITATION STANDARDS

(a) CE courses may obtain the sanction of the Private Protective Services Board by submitting the following information to the Board for consideration:

- (1) the nature and purpose of the course;
- (2) the course objectives or goals;
- (3) the outline of the course, including the number of training hours for each segment; and
- (4) the identity of the instructor.

(b) To determine if a course will receive sanctioning from the Private Protective Services Board, the Board shall complete the following review:

- (1) The matter will be referred to the Training and Education Committee for the appointment of a sub-committee that shall review the course under consideration. The sub-committee shall consist of at least two industry members of the Training and Education Committee. Other members of the sub-committee may be appointed at the discretion of the Training and Education Committee Chairman.
- (2) The sub-committee shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objectives.
- (3) When the sub-committee completes its review, it shall report to the Training and Education Committee. The Training and Education Committee shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objective. The Training and Education Committee shall then report the findings with

a recommendation of acceptance or denial to the Private Protective Services Board.

(c) Upon receipt of the Training and Education Committee report, the Private Protective Services Board will determine by majority vote if the course will be sanctioned for continuing education credits. In making its determination, the Board shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objective.

(d) Each approved course shall remain a validly approved course for four years from the date of approval by the Board, unless the identity of the course instructor changes.

(e) Trainers and instructors may receive CEU credit of five hours for every actual teaching hour of preparation time with an eight hour cap of CEU credit every two years.

(f) Certain education institutions, such as colleges, universities, trade schools, and other degree granting institutions will be granted standing approval when institutions are licensed by the Department of Public Instruction or by other state approving agencies when the course is appropriate to the licensee and will apply to all courses related to law, criminal justice, security profession, finance, ethics, forensics, crime prevention, and investigation. Other courses may be approved on a case by case basis. Approval is one hour per contact hour not to exceed eight contact hours.

(g) Online courses may be approved by the Board based on compliance with the standards set forth in Paragraph (a). No more than six hours of CEU credit will be given during a renewal period for online courses.

Authority G.S. 74C-2; 74C-4; 74C-5; 74C-22.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 10 - BOARD OF CHIROPRACTIC EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Board of Chiropractic Examiners intends to adopt the rules cited as 21 NCAC 10 .0105, .0211-.0212 and amend the rule cited as 21 NCAC 10 .0205.

Proposed Effective Date: July 1, 2011

Public Hearing:

Date: February 10, 2011

Time: 10:00 a.m.

Location: NCBCE Office, 174 Church Street North, Concord, NC 28025

Reason for Proposed Action:

21 NCAC 10 .0105 – The rule is being enacted to satisfy the requirements of G.S. 93B-2, which requires the Board to maintain an escrow account.

21 NCAC 10 .0205 – The primary reason for the amendments is to add a provision granting hardship waivers of continuing education requirements for active-duty military personnel, as

mandated by G.S. 93B-15. Also, the amendments make technical or minor changes to the existing rule, such as eliminating a reference to a statute that has been repealed.

21 NCAC 10 .0211 – The reason for the proposed rule is to define the contractual provisions in financing and management services agreements between licensed chiropractors and non-licensed vendors that are prohibited under G.S. 90-157.3, which limits the ownership of a chiropractic practice to a licensed chiropractor.

21 NCAC 10 .0212 – The reason for the proposed rule is to invoke the equivalency provision of G.S. 90-143(b) to clarify that when evaluating an application for chiropractic licensure, the Board of Chiropractic Examiners shall count transfer credits from an approved medical college that have been accepted by the applicant's chiropractic college.

Procedure by which a person can object to the agency on a proposed rule: *Objections to the proposed rules may be mailed to the Secretary of the NC Board of Chiropractic Examiners, P.O. Box 312, Concord, NC 28026.*

Comments may be submitted to: *Carol Hall, Executive Secretary, NC Board of Chiropractic Examiners, P.O. Box 312, Concord, NC 28026*

Comment period ends: *March 21, 2011*

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:

- State
- Local
- Substantial Economic Impact (≥\$3,000,000)
- None

SECTION .0100 - ORGANIZATION OF BOARD

21 NCAC 10 .0105 ESCROW ACCOUNT

(a) The Board shall maintain an escrow account at a federally insured bank for the temporary deposit of any fees received by the Board during a period in which the Board's authority to expend funds is suspended by operation of law.

(b) At such time as the authority of the Board to expend funds is restored, the fees deposited in the escrow account shall be transferred to the Board's general account.

Authority G.S. 90-142; 93B-2.

SECTION .0200 - PRACTICE OF CHIROPRACTIC

21 NCAC 10 .0205 RENEWAL OF LICENSE

(a) General. The renewal, cancellation and restoration of a license are governed by G.S. 90-155, G.S. 90-155, which statute is herewith incorporated by reference in accordance with G.S. 150B-14(e).

(b) Renewal Application Form. Annual application for renewal of license shall be made on a form prescribed and furnished by the Board. Any changes in a licentiate's name, address, professional specialty or ~~employment~~ employment, and history of criminal convictions shall be noted on the Renewal Application Form.

(c) Continuing Education. The licentiate shall state on the Renewal Application Form the name, date, sponsor and duration of all Board-approved educational sessions attended ~~by him~~ during the preceding year.

- (1) As used in G.S. 90-155, one "day" of continuing education shall be defined as 12 hours.
- (2) ~~Evidence of Attendance~~ shall be ~~in the form of~~ corroborated by written certification from the sponsoring body.
- (3) Any licentiate seeking a hardship waiver of the continuing education requirement shall make application on a separate form provided by the secretary upon request.

(d) Renewal Fee. A renewal fee in the maximum amount allowed by statute shall be paid by each licentiate applying for renewal.

(e) Restoration of Cancelled License: Evidence of Proficiency. In order to provide evidence of proper proficiency, any former licentiate whose license has been cancelled due to non-compliance with G.S. 90-155 must be re-examined and must pay the application fee prescribed in 21 NCAC 10 Rule .0202(d) to cover the cost of re-examination. Payment of the application fee does not constitute payment of the statutory reinstatement fee.

(f) Military hardship. A Licentiate who is serving in the armed forces of the United States and to whom G.S. 93B-15(a) grants an extension of time to pay a renewal fee shall also be granted an identical extension of time to complete the continuing education required for license renewal.

Authority G.S. 90-142; 90-155; 93B-15.

21 NCAC 10 .0211 AGREEMENTS TO PROVIDE FINANCING OR MANAGEMENT SERVICES

(a) Purpose and extent of rule. G.S. 90-157.3 limits the "ownership" of a chiropractic practice to licensed chiropractors. However, in addition to the treatment of patients, operating a chiropractic practice involves the procurement of financing, office space, equipment, supplies and personnel, as well as the creation and implementation of advertising and marketing

strategies, billing procedures and other management functions. It is common in many chiropractic offices for one or more of these operating components to be outsourced. The purpose of this Rule is to define the extent to which a chiropractor licensed and practicing in North Carolina may enter into a financing or management services agreement with a vendor who is not a North Carolina-licensed chiropractor while remaining in compliance with the ownership limitations imposed by G.S. 90-157.3. This Rule does not apply to contracts exclusively between or among North Carolina-licensed chiropractors.

(b) Contracts to be in writing. A financing or management service agreement shall be in writing and signed by the chiropractor and the vendor. It shall recite all material terms of the agreement, including the duration of the contract, the services to be provided, the compensation to be paid to the vendor and any formula used to calculate compensation. It shall stipulate that the Board be allowed to review the contract for compliance with this Rule. No chiropractor shall enter into an oral arrangement with a vendor for the purpose of avoiding the requirements of this Rule.

(c) Prohibited provisions. The following contractual provisions, singly or in combination, are deemed by the Board to violate G.S. 90-157.3:

- (1) The sharing of gross or net profits generated by the chiropractic practice;
- (2) Any formula under which compensation to the vendor fluctuates based on an increase or decrease in the gross or net revenues of the practice, except that compensation for collection of delinquent patient accounts by the vendor may be based on a percentage of sums actually recovered;
- (3) Ownership or exclusive control of patient records by the vendor or any party other than the chiropractor;
- (4) Direct or indirect control by the vendor over the hiring and firing of any personnel who provide clinical services to patients;
- (5) Direct or indirect requirements imposed by the vendor that affect the chiropractor's exercise of professional judgment in creating treatment plans and delivering clinical services to patients;
- (6) Direct or indirect control by the vendor over the transfer of ownership interests in the practice;
- (7) Any attempt to transfer legal liability from the chiropractor to the vendor for the content of advertising or the implementation of any marketing program undertaken to promote the practice.

Authority G.S. 90-142; 90-157.3.

21 NCAC 10 .0212 MEDICAL COLLEGE TRANSFER CREDITS

(a) Purpose of Rule. An increasing number of students who initially enrolled in medical colleges are transferring to chiropractic colleges. The standard curricula for the first two

years of medical and chiropractic colleges are similar. The Board of Chiropractic Examiners believes that it is in the public interest to allow applicants for chiropractic licensure in this State to receive credit for hours earned while attending medical college, as such a policy promotes the efficient use of classroom resources, reduces wasteful duplication and lowers the cost of obtaining a chiropractic degree.

(b) Declaration of Equivalency. To the extent the curricula of the institutions overlap, the Board deems a medical college approved by the Liaison Commission on Medical Education or the Committee for the Accreditation of Canadian Medical Schools or an osteopathic college approved by the American Osteopathic Association to be the equivalent of a chiropractic college accredited by the Council on Chiropractic Education.

(c) Counting Transfer Credits. For purposes of North Carolina licensure, the Board shall count any and all hours earned by an applicant at an approved medical college that have been accepted as transfer credits by the applicant's chiropractic college.

Authority G.S. 90-142; 90-143.

CHAPTER 26 - BOARD OF LANDSCAPE ARCHITECTS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Landscape Architects intends to adopt the rule cited as 21 NCAC 26 .0803.

Proposed Effective Date: May 1, 2011

Public Hearing:

Date: February 3, 2011

Time: 2:00 p.m.

Location: Bailey & Dixon, LLP, 2500 Two Hannover Square, Raleigh, NC 27601

Reason for Proposed Action: The proposed rules are submitted in response to Session Law 2009-458, House Bill 1411, adopted by the North Carolina General Assembly in 2009, whereby occupational licensing boards were directed to adopt rules to postpone or waive conditions of licensure for certain individuals serving in the armed forces.

Procedure by which a person can object to the agency on a proposed rule: Objections to the proposed rule changes shall

be submitted before the end of the comment period in writing to Charles F. McDarris, Legal Counsel, Bailey & Dixon, LLP, P.O. Box 1351, Raleigh, NC 27602.

Comments may be submitted to: Charles F. McDarris, P.O. Box 1351, Raleigh, NC 27602

Comment period ends: March 21, 2011

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:

- State
Local
Substantial Economic Impact (≥\$3,000,000)
None

SECTION .0800 - JUDICIAL REVIEW

21 NCAC 26 .0803 RENEWAL EXTENSION FOR MEMBERS OF THE ARMED FORCES

Members of the armed forces whose license is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the license renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

Authority G.S. 89A-3.1(2); 89A-5.

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: *Division of Medical Assistance*

Rule Citation: 10A NCAC 22P .0101, .0201, .0301-.0303, .0401-.0408, .0501-.0504, .0601-.0603

Effective Date: *December 28, 2010*

Date Approved by the Rules Review Commission: *December 16, 2010*

Reason for Action: *The North Carolina Department of Health and Human Services is designated as the "single state agency" for the administration of the North Carolina Medicaid program in accordance with 42 U.S.C. 1396a(a)(5). NCDHHS is obligated under federal law to establish safeguards to assure that Medicaid-reimbursable care and services will be provided in the best interests of the recipients and to establish "standards and methods that the State will use to assure that medical or remedial care and services provided to recipients of medical assistance are of high quality." 42 U.S.C. 1396a(a)(19) and (22). 42 C.F.R. 431.51(c)(2) allows the State to set "reasonable standards relating to the qualifications of providers." Section 10.58(d) of Session Law 2009-451 authorizes DHHS to adopt temporary rules further defining the qualifications of providers of mental health and substance abuse services. The federal Centers for Medicare and Medicaid Services approved amendments to the NC State Plan for Medical Assistance on June 25, 2010 and October 12, 2010, which require that only agencies certified as Critical Access Behavioral Health Agencies deliver certain Medicaid-reimbursable mental health services (Intensive In-Home, Day Treatment, Community Support Team, Peer Support, and MH/SA Targeted Care Management) effective January 1, 2011.*

CHAPTER 22 – MEDICAL ASSISTANCE ELIGIBILITY

SUBCHAPTER 22P – CRITICAL ACCESS BEHAVIORAL HEALTH AGENCY

SECTION .0100 – GENERAL INFORMATION

10A NCAC 22P .0101 PURPOSE AND SCOPE

(a) The purpose of ~~these rules~~ the rules in this Subchapter is to set forth the certification requirements for a Critical Access Behavioral Health Agency (CABHA), ~~in accordance with the North Carolina State Plan for Medical Assistance~~, and to specify

the procedures for CABHA providers to appeal decisions of the Department to deny, suspend or terminate CABHA certification.

(b) The CABHA requirements of this Subchapter do not apply to services provided under the Community Alternatives Program for Persons with Mental Retardation/ Development Disabilities (CAP-MR/DD) ~~Waiver or to providers of other services for individuals with intellectual/developmental disability diagnoses.~~

History Note: Authority G.S. 108A-54; 42 U.S.C. 1396a; 42 C.F.R. 431.51; S.L. 2009-451, Section 10.58(d); Temporary Adoption Eff. December 28, 2010.

SECTION .0200 – DEFINITIONS

10A NCAC 22P .0201 DEFINITIONS

The following definitions ~~shall~~ apply throughout this Subchapter:

- (1) "ABAM" means ~~the certification of a physician by~~ the American Board of Addiction Medicine (from 2009-continuing to the present).
- (2) "Applicant" means the individual or entity seeking Critical Access Behavioral Health Agency (CABHA) certification.
- (3) "ASAM" means ~~the certification of a physician by~~ the American Society of Addiction Medicine (from 1986-2008).
- (4) "Attestation Letter" means the document submitted by a provider attesting to the fact that the provider meets the qualifications to be certified as a Critical Access Behavioral Healthcare Agency (CABHA).
- (5) "CABHA" means a Critical Access Behavioral Health Agency that has been certified by the Department as meeting all requirements of this Subchapter.
- (6) "CMS" means the federal Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services.
- (7) "Consumer" means an individual referred for, or receiving, behavioral health, mental health or substance abuse (MH/SA) services.
- (8) "Continuum of care" means the coordinated delivery, management and organization of age and diagnosis specific services related to treatment, care, rehabilitation and health promotion in a manner that allows the consumer to access different levels of care depending upon treatment needs and medical necessity.

- (9) "Core Services" mean Medication Management, Outpatient Therapy and Comprehensive Clinical Assessment, as described in ~~the North Carolina State Plan for Medical Assistance and duly promulgated medical coverage policy policies.~~
- (10) "Decertification" means a decision of the Department to revoke a provider's CABHA certification in accordance with Section .0602 of this Subchapter.
- (11) "Default" means the CABHA has failed to reimburse the Department for an overpayment, penalty or fine within 30 days of demand or is delinquent on a payment plan. A provider is in delinquent status when the payment is 14 days past due.
- (12) "Evidence-based practices" means prevention or treatment practices that are based in theory and have undergone scientific evaluation, in contrast to practices based on tradition, convention, belief, or anecdotal evidence.
- (13) "Good standing" means the provider meets all the conditions set forth in Section .0402 of this Subchapter.
- (14) "Desk Review" means the initial review performed by the Department after submission of the attestation letter and supporting documentation.
- (15) "DHHS" or "Department" means the North Carolina Department of Health and Human Services.
- (16) "FTE" means Full Time Equivalent as follows:
 - (a) One hundred percent FTE is 40 hours per week.
 - (b) Fifty percent FTE is 20 hours per week.
 - (c) Twenty percent FTE is 8 hours per week.
- (17) "Interview" means the review conference conducted in accordance with .0502 of this Subchapter.
- (18) "LME" means a Local Management Entity as that term is defined in G.S. 122C-3(20b).
- (19) "Performance Bond" means a third party's agreement to guarantee the fulfillment of the monetary obligations of the
- (20) "Suspension" means a time period, not to exceed twelve (12) months, determined by the Department, during which the CABHA may not bill Medicaid for services that require CABHA certification.
- (21) "Vacant" or "Vacancy" means that no individual is employed or contracted to fill a designated position or that the minimum FTE percentage rate required for the position is not met.
- (22) "Verification Review" means the review performed by staff from DHHS ~~and/or the~~

LME to confirm an applicant's compliance with the provisions of this Subchapter.

History Note: Authority G.S. 108A-54; 42 U.S.C. 1396a; 42 C.F.R. 431.51; S.L. 2009-451, Section 10.58(d); Temporary Adoption Eff. December 28, 2010.

SECTION .0300 – MEDICAL SERVICE REQUIREMENTS

10A NCAC 22P .0301 SERVICE DELIVERY

- (a) Each CABHA shall provide the following core services:
 - (1) Comprehensive Clinical Assessment as ~~authorized in the N.C. State Plan for Medical Assistance and~~ covered under Medicaid Clinical Coverage Policy Nos. 8A and 8C;
 - (2) Outpatient Therapy as ~~authorized in the N.C. State Plan for Medical Assistance and~~ covered under Medicaid Clinical Coverage Policy No. 8C; and
 - (3) Medication Management as ~~authorized in the N.C. State Plan for Medical Assistance and~~ covered under Medicaid Clinical Coverage Policy No. 8C.
- (b) Each CABHA shall provide at least two additional MH/SA services, as authorized in the N.C. State Plan for Medical Assistance, from the following list for which the agency has received site and service specific endorsement, if required by medical coverage policy, from the LME ~~in the same catchment area~~ where it provides the services listed in ~~.0301(a)~~ Paragraph (a) of this Rule:
 - (1) Intensive In-Home (IIH);
 - (2) Community Support Team (CST);
 - (3) Day Treatment (DT);
 - (4) MH/SA Targeted Case Management (TCM);
 - (5) Substance Abuse Intensive Outpatient Program (SAIOP);
 - (6) Substance Abuse Comprehensive Outpatient Treatment (SACOT);
 - (7) Child and Adolescent Residential Treatment Level II—Family and Program Type, Level III, or Level IV (provision of multiple residential service levels counts as one service);
 - (8) Child and Adolescent Day Treatment (DT);
 - (9) Psychosocial Rehabilitation (PSR);
 - (10) Assertive Community Treatment Team (ACTT);
 - (11) Multi-Systemic Therapy (MST);
 - (12) Partial Hospitalization (PH);
 - (13) Substance Abuse Medically Monitored Community Residential Treatment;
 - (14) Substance Abuse Non-Medical Community Residential Treatment;
 - (15) Outpatient Opioid Treatment (OOT); and
 - (16) Any other service ~~when approved by CMS and~~ required to be delivered by a CABHA when approved by CMS, as set forth in the N.C. State Plan for Medical Assistance.

(c) All Community Intervention Services (CIS), Residential Services and Core Services must be provided by staff ~~directly employed by~~ or under contract ~~by~~ with the CABHA.

(d) The two additional services specified in ~~0301(b)~~ Paragraph (b) of this Rule must be age and diagnosis specific and each must be provided within a 35 mile radius of where the Core Services are provided.

(e) The required services must be used to provide an age and diagnosis specific continuum of care.

(f) Only certified CABHAs can bill the Department and receive Medicaid reimbursement for Intensive In-Home (IIH), Community Support Team (CST), Day Treatment (DT), and MH/SA Targeted Case Management (TCM) services provided on or after January 1, 2011. Existing providers enrolled in the NC Medicaid program to deliver IIH, DT, CST or TCM that do not achieve certification as a CABHA by December 31, 2010 shall not be eligible for Medicaid reimbursement ~~have their applicable Medicaid Administrative Participation Agreement(s) for IIH, DT, CST and/or TCM terminated effective on~~ after December 31, 2010.

(g) To ensure coordination of care, a CABHA shall:

- (1) Participate in team meetings, share clinical and service record information as allowed by law, collaborate, communicate ~~regularly~~, and coordinate supports and services with primary care physicians, public health departments, Federally Qualified Health Clinics, Community Care of North Carolina/Carolina ACCESS (CCNC/CA), LMEs, other CABHAs, and other programs that contract with the Department to provide primary care case management for recipients of publicly-funded health and related services, in order to ensure that consumers being served are treated in a holistic manner that addresses both their behavioral and physical health care needs;
- (2) Maintain a Memorandum of Agreement or a contract with any Independent Practitioner the CABHA engages to deliver services to consumers;
- (3) Timely provide ~~complete~~ copies of consumer medical records when transferring or referring the care for a consumer to another provider for any reason. "Timely" means within five business days of notification that the consumer is transferring to another provider. Failure to provide ~~complete~~ copies of consumer medical records in accordance with this Rule ~~may~~ shall result in suspension or termination of CABHA certification;
- (4) Begin the transition to adult services for a child consumer at least six months before the child's 21st birthday for Medicaid ~~or at least six (6) months before the child's 18th birthday for State and Federal block grant funded services, or at least six (6) months before the child's 19th birthday for NC Health Choice;~~ and

(5) Comply with all LME consumer transfer requirements.

(h) A CABHA must maintain and make available records that demonstrate a pattern of ~~timely~~ consumer transfers and referrals to medically necessary services, whether those services are offered by the CABHA or not, based on:

- (1) The choice of service provider by the consumer or consumer's family;
- (2) A Comprehensive Clinical Assessment recommendation for services;
- (3) The recommendation for services resulting from a ~~PCP~~ person-centered plan or other treatment plan review;
- (4) The denial of eligibility for service(s) by the Medicaid utilization review contractor;
- (5) Any other source of determinations of medically necessary service(s).

History Note: Authority G.S. 108A-54; 42 U.S.C. 1396a; 42 C.F.R. 431.51; S.L. 2009-451, Section 10.58(d); Temporary Adoption Eff. December 28, 2010.

10A NCAC 22P .0302 ACCESS TO CARE

(a) Critical Access Behavioral Health Agency (CABHA) certification shall be for the one service site identified by the applicant in the attestation letter. After attaining certification, a CABHA may provide MH/SA services in any part of the state provided that each service required to be ~~is~~ endorsed by the applicable LME, ~~if required is endorsed.~~

(b) CABHAs shall ~~participate in monitoring and reporting of standardized indicators of~~ be monitored for performance concerning timely and effective consumer access to care, including, ~~but not limited to,~~ screening, triage, and referral, appointment scheduling, initiation, engagement and retention in treatment, and service transition, including review of consumer wait times for initial agency contact, ~~screening,~~ comprehensive clinical assessment or diagnostic evaluation, psychiatric evaluation, medication management, and initial delivery of treatment services.

(c) CABHAs shall provide ~~prompt~~ service(s) for persons in need of emergent, urgent, and routine MH/SA services through the delivery of face-to-face emergency care, assessment, treatment or referral services by a Qualified Professional as defined in 10A NCAC 27G .0104(18) ~~or~~ (19). These services shall be delivered in accordance with CMS-approved Healthcare Effectiveness Data and Information Set (HEDIS) within standard timeframes for emergent, urgent and routine consumers as set forth in MH/SA provider contracts with LMEs ~~and that are consistent with generally accepted standards and guidelines recommended by national accrediting organizations, federal and state agencies, and other entities that promote standards of care for behavioral health agencies such as CMS.~~

- (1) ~~An emergent consumer presents with an immediate risk of incapacitation in one or more areas of safety or physical, cognitive, or behavioral functioning related to a MH/SA diagnosis~~
- (2) ~~An urgent consumer presents with a moderate risk of incapacitation in one or more areas of~~

safety or physical, cognitive, or behavioral functioning related to a MH/SA diagnosis.

(3) ~~A routine consumer presents with mild risk of incapacitation in one or more areas of safety or physical, cognitive, or behavioral functioning related to a MH/SA diagnosis.~~

(d) CABHAs shall ~~provide appointment times to the Local Management Entity Access Unit sufficient to ensure prompt access and~~ availability of emergent, urgent and routine care and appointments for all consumers.

(e) CABHAs shall perform "first responder" crisis response, ~~as indicated in the applicable Person-Centered Plan,~~ 24 hours a day, 7 days a week, 365 days a year to all consumers accessing CABHA services.

(f) CABHAs who accept the referral and responsibility for care of consumers being discharged from a state-operated facility shall ensure the delivery of community-based service(s) to the consumer within seven days of such discharge.

(g) Nothing in ~~these Rules~~ this Subchapter shall be construed to deny the right of consumers to choose from among certified CABHAs for one or more services. Consumers may voluntarily transfer at any time to a different certified CABHA provider for any reason and for any individual service. Consumers may receive services from more than one CABHA certified agency.

History Note: Authority G.S. 108A-54; 42 U.S.C. 1396a; 42 C.F.R. 431.51; S.L. 2009-451, Section 10.58(d); Temporary Adoption Eff. December 28, 2010.

10A NCAC 22P .0303 COORDINATION OF BENEFITS

(a) Critical Access Behavioral Agencies (CABHAs) shall utilize Federal, State and local funding only if and when other sources of first and third party payment have been exhausted.

(b) CABHAs shall verify all insurance and other third party benefit plan details during its first contact with a consumer, ~~so that consumers are directed to appropriate providers and to comply with North Carolina law.~~

(c) CABHAs shall bill private insurance plans, Medicare, and NC Health Choice, when available and applicable, before billing the NC Medicaid program. Medicaid is the payor of last resort.

History Note: Authority G.S. 108A-54; 42 U.S.C. 1396a; 42 C.F.R. 431.51; S.L. 2009-451, Section 10.58(d); Temporary Adoption Eff. December 28, 2010.

SECTION .0400 – CERTIFICATION AND STAFFING REQUIREMENTS

10A NCAC 22P .0401 CERTIFICATION REQUIREMENTS

(a) All statutory and rule ~~and Department policy~~ requirements for Medicaid-reimbursable MH/SA service provision and monitoring apply to Critical Access Behavioral Health Agencies (CABHAs), including medical coverage policies, and requirements for endorsement, licensure, accreditation, incident reporting, standardized outcomes and perception of care reporting, quality of care reporting, Medicaid billing, client rights and confidentiality, and client data service records.

~~policies and requirements, and the terms and conditions of the Medicaid Provider Administrative Participation Agreement~~

(b) A CABHA applicant must have an accreditation that is valid for a minimum period of three years ~~in accordance with N.C.G.S. §122C 81(b)~~ from the Council on Accreditation [COA], the Commission on Accreditation and Rehabilitation Facilities [CARF], the Council on Quality and Leadership [CQL], or The Joint Commission, formerly known as the Joint Commission on Accreditation of Healthcare Organizations [TJC]. Copies of surveys, reviews, audits ~~and/or~~ plans of correction performed by accrediting agencies ~~and/or~~ any non-State regulatory agencies shall be provided to the LME upon receipt by the CABHA.

(c) A CABHA applicant must employ a Medical Director, Clinical Director, Quality Management Director and Training Director who meet ~~CABHA~~ the requirements of this Subchapter at least 30 days prior to the agency being scheduled for the CABHA interview.

(1) The Clinical Director, Quality Management Director and Training Director must be employees of the agency.

(2) The Medical Director may be an independent contractor, as defined by federal and state law, of the agency.

(d) A CABHA applicant must be in good standing with the following:

(1) All Divisions of the Department as set forth in ~~Section Rule~~ .0402 of this Subchapter;

(2) The North Carolina Secretary of State's Office;

(3) The Internal Revenue Service;

(4) The U.S. Department of Labor, and

(5) The North Carolina Departments of Labor and Revenue.

(e) To obtain CABHA certification, an applicant must successfully complete the desk review, interview, and verification review performed by Department ~~and/or~~ LME staff.

(f) Within 12 months of certification or, if already certified, within 12 months of the adoption of this Subchapter, all certified CABHAs must obtain and submit evidence to ~~DMA Provider Enrollment~~ the Division of Medical Assistance of a performance bond or executed letter of credit in an amount equal to ten percent of the provider's annual Medicaid payments for all MH/SA ~~provider numbers associated services delivered by~~ with the CABHA, as determined from Medicaid claims data, or fifty thousand dollars (\$50,000.00), whichever is greater. The performance bond must be obtained from a surety company that has been issued a Certificate of Authority by the United States Department of Treasury. The bond or letter of credit must name the provider as "principal," the Division of Medical Assistance as "beneficiary" and the surety company as "surety." Upon default by a CABHA, the Department will seek payment of any balance due from the performance bond or executed letter of credit. Execution on the bond or letter of credit does not void the payment plan to the extent a balance remains. A surety's payment to the Department under a performance bond or the payment by a financial institution to the Department from an executed letter of credit constitutes a basis for termination of CABHA certification.

(g) CABHA certification is valid for a maximum period of three years from the effective certification date. Each CABHA shall be ~~required to be~~ re-certified every three years. The recertification process ~~will~~ includes a review by the Department of CABHA specific performance data and monitoring results collected over the previous three years and a review of internal quality improvement activities to address patterns of outcomes, complaints, incidents, and clinical issues. CABHA recertification may include a desk review, on-site review, or both.

History Note: Authority G.S. 108A-54; 42 U.S.C. 1396a; 42 C.F.R. 431.51; S.L. 2009-451, Section 10.58(d); Temporary Adoption Eff. December 28, 2010.

10A NCAC 22P .0402 GOOD STANDING

(a) A provider is in good standing with the Division of Medical Assistance when all of the following conditions are met, regardless of any appeal filed by the provider or any stay of such action entered by the Office of Administrative Hearings:

- (1) The provider or any entities which share the same Employee Identification Number (EIN) as the provider do not owe any outstanding (more than thirty days past due) accounts receivable to the Department, including ~~but not limited to~~ Medicaid overpayments, recoupments, program reimbursements, cost settlements, cost assessments, penalties and interest. A provider that entered into an approved payment plan in accordance with Subchapter 22F is considered to be in good standing if the provider has not defaulted on the payment plan;
- (2) The provider or any entities which share the same Employee Identification Number (EIN) as the provider have not been terminated, suspended, had its Medicaid payments withheld, or been placed on probation in the previous 12 month period;
- (3) The provider or any entities which share the same Employee Identification Number (EIN) as the provider is not ~~currently~~ undergoing prepayment claims review;
- (4) The owners of the provider agency were not previously the owners, operators, or managing employee(s) of a provider agency which had its participation in the N.C. Medicaid program involuntarily terminated for any reason or owes an outstanding accounts receivable to the Department, irrespective of whether the provider agency is currently enrolled in the N.C. Medicaid program;
- (5) The provider and its owners, operators and managing employee(s) are not listed on the U.S. ~~HHS~~ Health and Human Services Office of Inspector General Exclusion list;
- (6) The provider, any entities which share the same Employee Identification Number (EIN) as the provider, or its corporate parent, have no

unresolved tax or payroll liabilities owed to the U.S. or North Carolina Departments of Revenue and Labor;

- (7) The provider or any entities which share the same Employee Identification Number (EIN) as the provider have not abandoned or destroyed patient medical records or staff records in violation of federal or state law, rule or regulation;
- (8) The owners of the provider agency were not previously the owners, operators, or managing employee(s) of a provider agency which abandoned or destroyed patient medical records or staff records in violation of federal or state law, rule or regulation; and
- (9) If incorporated or otherwise applicable, the provider has a current Certificate of Existence issued by the N.C. Secretary of State's Office.

(b) A provider is in good standing with DMH/DD/SAS when all of the following conditions are met, regardless of any appeal filed by the provider or any stay of such action entered by the Office of Administrative Hearings:

- (1) Any approved Plan(s) of Correction (POC) pending with the DMH/DD/SAS Accountability Team has been implemented by the provider and the action has been closed by DMH/DD/SAS. A POC is implemented when the POC is being followed and all out of compliance findings have been minimized or eliminated as determined by a maximum of two DMH/DD/SAS follow-up reviews. The POC action is closed when the provider receives the official notification from the DMH/DD/SAS Accountability Team stating the action is closed; and
- (2) The provider has not had its endorsement to provide an enhanced service involuntarily withdrawn by any Local Management Entity, and upheld by the DMH/DD/SAS Appeals Panel, in the previous twelve month period.

(c) A provider is in good standing with the Division of Health Service Regulation if it meets the requirements for enrollment and/or licensure set forth in G.S. 122C-23 (e1), regardless of any appeal filed by the provider or any stay of such action entered by the Office of Administrative Hearings.

History Note: Authority G.S. 108A-54; 42 U.S.C. 1396a; 42 C.F.R. 431.51; S.L. 2009-451, Section 10.58(d); Temporary Adoption Eff. December 28, 2010.

10A NCAC 22P .0403 MEDICAL DIRECTOR REQUIREMENTS

(a) The Medical Director shall be enrolled as a provider and in good standing with ~~NC Medicaid~~ the Division of Medical Assistance and either:

- (1) An American Board of Psychiatry and Neurology-certified or American Board of Psychiatry and Neurology-eligible psychiatrist (MD or DO) licensed in North Carolina; or

- (2) A physician licensed in North Carolina who has ASAM or ABAM certification if the CABHA delivers substance abuse services only. If the CABHA delivers services other than substance abuse services, the physician must meet the exception criteria outlined in Subparagraph (a)(3) of this Rule; or
- (3) Upon approval by the Director of DMA or his designee in an exception process as set out in Rule .0407 of this Subchapter, a physician (MD or DO) licensed in NC who is board certified or eligible by the American Board of Family Physicians in General Family Practice or the American Board of Internal Medicine in Internal Medicine or the American Board of Pediatrics in Pediatrics.
- (b) The Medical Director shall have two or more years of training and experience diagnosing, treating and evaluating the effectiveness of treatment of the age and diagnosis specific population to be served by the Critical Access Behavioral Health Agency (CABHA), which shall include face to face treatment and interventions as demonstrated by a caseload of consumers with primary mental health or substance abuse disorder diagnoses, and the purpose of the treatment by the physician is related to the mental health or substance abuse diagnosis. Experience attesting to the medical necessity of MH/SA services does not constitute direct service.
- (c) The Medical Director shall be employed by, or an independent contractor with, the CABHA, as follows:
- (1) A CABHA that serves 750 or more consumers must have a 100 percent FTE Medical Director, such position to be filled by no more than two physicians. A 100 percent FTE Medical Director may provide up to 24 hours of direct billable services per week for the CABHA and may not serve as a Medical Director for another CABHA.
 - (2) A CABHA that serves between 376 to 749 consumers must have at least a 50 percent FTE Medical Director, such position to be filled by no more than one physician. A 50 percent FTE Medical Director may provide up to 12 hours of direct billable services per week for the CABHA.
 - (3) A CABHA that serves 375 or fewer consumers must have at least a 20 percent FTE Medical Director, such position to be filled by no more than one physician. A 20 percent FTE Medical Director may not provide direct billable services for the CABHA, unless additional hours of direct billable services are stipulated under a separate contract with the CABHA.
 - (4) A physician may serve as a 50 percent or less FTE Medical Director for no more than two separate CABHAs.
 - (5) The number of consumers served is based on the most recent quarter for which reasonably complete Medicaid and Integrated Payment and Reporting System (IPRS) claims data is available. For initial CABHA certification, the number is based on the 30 day period preceding the Verification Review.
- (d) A CABHA may have a contract with a group practice or locum tenens agency for the services of an individual Medical Director, provided the contract and the named individual meet all other requirements of this rule.
- (e) A CABHA that serves 750 or more consumers at any site other than the CABHA certification site must designate a Lead Physician for that site. The Lead Physician must meet the same qualifications as the Medical Director, provide management and oversight of the outlying service site, and be directly supervised by the CABHA Medical Director.
- (f) The CABHA shall notify the DMH/DD/SAS Director and the applicable LME(s) in writing if a Medical Director position becomes vacant within ten business days of such vacancy. Failure to notify DMH/DD/SAS within ten business days of the Medical Director vacancy shall result in termination of CABHA certification.
- (g) Vacancy of the CABHA's Medical Director position for:
- (1) ~~Vacancy of the CABHA's Medical Director position for 90 consecutive calendar days or more shall result in suspension of CABHA certification and a CABHA certification review shall be conducted by the Department.~~
 - (2) ~~Vacancy of the CABHA's Medical Director position for 180 consecutive calendar days or more shall result in termination of CABHA certification regardless of attempts made to fill the position.~~
 - (3) ~~Failure to notify DMH/DD/SAS within ten business days of the Medical Director vacancy shall result in termination of CABHA certification.~~
- (h) The CABHA shall develop a job description and policies and procedures for the Medical Director position which require the Medical Director to:
- (1) Provide direct medical, clinical, and quality management oversight of the entire CABHA agency including direct responsibility for the agency's compliance and practice improvement efforts consistent with all standards imposed by any accrediting body from which the CABHA achieved national accreditation pursuant to G.S. 122C-81 and all federal and state laws, rules and regulations pertaining to medical, nursing and clinical behavioral health care.
 - (2) Be in compliance with DMA Clinical Coverage Policy 1H regarding telemedicine.
 - (3) Develop and implement internal policies and procedures for consumer admission, reevaluation, transfer and discharge, and the delivery of high-quality, medically necessary services and treatments that are clinically appropriate, current, ~~follow~~ accepted guidelines and community practice standards, are not experimental in nature, and are in

- compliance with North Carolina Medical Board and Psychology Board ~~guidelines requirements.~~
- (4) Identify and implement models of care for the age and diagnosis specific populations served that are person and family centered, evidence-based, ~~demonstrate fidelity to a best practice model~~—and provide a continuum of care approach for consumers.
 - (5) Require staff to complete quality, comprehensive psychiatric evaluations and clinical assessments, including age and diagnosis specific level of care determinations. ~~in a timely manner.~~
 - (6) Supervise, monitor and direct agency clinical staff, including ~~but not limited to~~ physicians, nurse practitioners, and physician's assistants who may be serving the CABHA in other locations, through a regular physical presence in the agency, or through the use of videoconferencing, including participation in peer review and quality of care audits.
 - (7) Participate in staffing, consultation, and clinical case review of complex or high risk consumers ~~and other cases as appropriate~~—and coordinate clinical team meetings with the Clinical Director and other ~~appropriate~~ CABHA staff.
 - (8) Review all consumer, staff, and stakeholder health and safety concerns, including individual consumer and aggregate agency incidents, seclusions, restraints, elopements, medication errors, consumer and staff injuries, and assume primary review, remediation, monitoring, and related reporting responsibilities to ~~appropriate~~—local, state, and national regulatory and accreditation agencies in cases involving the following:
 - (A) Medication diversion;
 - (B) Any allegation or suspicion of physical or sexual assault, abuse, or neglect;
 - (C) Any ~~serious~~—injury or ~~significant~~ potential for injury of a consumer, or staff member;
 - (D) Any death of a consumer who received services from the CABHA within the previous 120 calendar days;
 - (E) Any sudden, unexpected, or suspicious death of a consumer's minor child or dependent adult; or
 - ~~(F) Any adverse event where reporting is recommended due to the importance of public accountability.~~
 - (9) Develop ~~appropriate~~—communication and referral practices and collaborative relationships with the LME Medical Director(s), consumers' primary care physicians, community psychiatrists, and other providers regarding issues related to consumers/families and the local system of care.
 - (10) Provide supervision and oversight of CABHA medication evaluation and administration, including review of laboratory medical tests, dosing regimes and effectiveness, adverse drug reactions and side effects, patient, family, and staff medication education, and appropriate utilization of the NC Controlled Substance Reporting System (CSRS) as established by the North Carolina Controlled Substances Reporting Act, Article 5E of Chapter 90 of the North Carolina General Statutes.
 - (11) Serve as an active member of the agency's leadership team and participate in ~~a significant role on~~—the Quality Management Committee and on subcommittees as designated by the agency.
 - (12) Participate in the identification, review, and response to individual consumer and aggregate services data, including monitoring of trend data related to agency patterns and effectiveness in consumer care. ~~Analyses shall include evaluation of~~
 - (13) Evaluate consumer services access, engagement and retention, service quality, appropriateness, and effectiveness. ~~Evaluation shall include~~ including crisis services and inpatient hospital utilization, service costs, efficiency, accountability, and standardized consumer outcomes and perception of care.
 - (i) The primary responsibility of the Medical Director ~~shall be~~ is to comply with established principles of medical ethics and well-established peer review clinical principles and to follow the laws ~~and rules, disciplinary guidelines and position statements~~ of the North Carolina Medical Board. CABHA owners, officers and managing employees shall not direct a Medical Director to violate the foregoing or take any action contrary to the medical opinion of the Medical Director with respect to a particular consumer.
 - ~~(j) Failure to implement the requirements of .0403, as determined by Department or LME monitoring visits, may result in CABHA decertification.~~

History Note: Authority G.S. 108A-54; 42 U.S.C. 1396a; 42 C.F.R. 431.51; S.L. 2009-451, Section 10.58(d); Temporary Adoption Eff. December 28, 2010.

10A NCAC 22P .0404 CLINICAL DIRECTOR

- (a) The Clinical Director shall:
 - (1) Be an American Board of Psychiatry and Neurology-certified or American Board of Psychiatry and Neurology-eligible psychiatrist (MD or DO) licensed in North Carolina, a physician (MD or DO) licensed in NC who has ASAM/ABAM certification if the CABHA delivers substance abuse services only, or be a

licensed professional in one of the following licensed discipline categories:

- (A) a NC Licensed Clinical Social Worker; ~~or~~
 - (B) a NC Licensed Psychologist; ~~or~~
 - (C) a NC Licensed Psychological Associate; ~~or~~
 - (D) a NC Licensed Professional Counselor; ~~or~~
 - (E) a NC Licensed Marriage and Family Therapist; ~~or~~
 - (F) a NC Licensed Nurse Practitioner; ~~or~~
 - (G) a NC Licensed Clinical Addiction Specialist; or
 - (H) a NC Certified Clinical Supervisor.
- (2) Have two or more years of full time, direct service experience to include face to face treatment and interventions as demonstrated by having provided services for a caseload of consumers with a primary mental health disorder diagnosis or substance abuse disorder diagnosis, depending upon the continuum of care offered by the CABHA. Experience attesting to the medical necessity of MH/SA services does not meet this requirement. The treatment and interventions provided by the Clinical Director shall relate to the mental health or substance abuse diagnosis of the consumers served.
- (3) Be directly employed by the CABHA and the position shall be shared by no more than two individuals, who shall each work at least 20 hours per week for the CABHA.
- (4) ~~A Clinical Director may Not~~ may Not serve as a 50 percent FTE Clinical Director for ~~no~~ more than one CABHA.

(b) Individuals with provisional licenses may not serve as the Clinical Director.

(c) A CABHA that is required to employ a 100 percent FTE Medical Director and who fills this position with a psychiatrist or ASAM or ABAM certified physician may have one individual fill both the Medical Director and Clinical Director positions. An individual who serves as both Medical Director and Clinical Director shall not provide services directly to consumers, or bill Medicaid for such services, for the CABHA. A Medical Director approved pursuant to .0403(a)(3) of this Section may not serve as the Clinical Director.

(d) The CABHA shall notify the DMH/DD/SAS Director and the applicable LME(s) in writing if a Clinical Director position becomes vacant within ten (10) business days of such vacancy. Failure to notify DMH/DD/SAS within 10 business days of the Clinical Director vacancy shall result in termination of CABHA certification.

(e) Vacancy of the CABHA's Clinical Director position for:

- (1) ~~Vacancy of the CABHA's Clinical Director position for 60~~ consecutive calendar days or more shall result in suspension of CABHA certification and may result in a monitoring visit.

(2) ~~Vacancy of the CABHA's Clinical Director position for 90~~ consecutive calendar days or more shall result in termination of CABHA certification regardless of attempts made to fill the position.

~~(3) Failure to notify DMH/DD/SAS within ten (10) business days of the Clinical Director vacancy shall result in termination of CABHA certification.~~

(f) If the Medical Director and Clinical Director positions are filled by one individual and the position becomes vacant, the CABHA must fill the Clinical Director vacancy within 45 days or contract on a temporary basis for a Clinical Director, such contract to be in effect no longer than 180 days. An individual who serves as Clinical Director on a temporary basis must meet all qualifications set forth in this Rule.

(g) A 100 percent FTE Clinical Director may not provide direct, billable services to consumers. If the Clinical Director position is filled by two 50 percent FTE staff, these individuals may provide direct, billable services separate and apart from the 20 hours per week each operates as the Clinical Director.

(h) The CABHA shall develop a job description and policies and procedures for the Clinical Director position which require the Clinical Director to:

- (1) Supervise all non-medical clinical staff;
- (2) Design and support implementation of treatment and best practice protocols in collaboration with the Medical Director;
- (3) Collaborate with the Quality Management Director and Training Director to develop plans and protocols for new clinical and program staff training and supervision;
- (4) Develop collaborative relationships with the LME Medical Director, consumers' primary care physicians, community psychiatrists, and other providers regarding issues related to consumers/families and the local system of care; and
- (5) Monitor and track data regarding delivery and quality of treatment services, including data on core services, emergency admissions, psychiatric hospitalization, and operational, service and personal outcomes and recovery goals.

~~(i) Failure to implement the requirements of .0404, as determined by Department or LME monitoring visits, may result in CABHA decertification.~~

History Note: Authority G.S. 108A-54; 42 U.S.C. 1396a; 42 C.F.R. 431.51; S.L. 2009-451, Section 10.58(d); Temporary Adoption Eff. December 28, 2010.

10A NCAC 22P .0405 QUALITY MANAGEMENT DIRECTOR

(a) The Critical Access Behavioral Health Agency (CABHA) is ~~required to~~ shall have a 50 percent FTE Quality Management Director.

(b) The Quality Management Director must have ~~formal~~ training or education in performance improvement techniques as demonstrated by either:

- (1) A Bachelors Degree from an institution of higher learning accredited by an accrediting body recognized by the U.S. Department of Education in a field of health, behavioral health, rehabilitation, human services, human development, education, social sciences, criminal justice, administration, management, organizational development, information management, business, or a related field or discipline and three years of experience gathering and analyzing data for quality management, quality assurance ~~and/or~~ quality improvement for a human services provider agency, ~~such experience to indicate a demonstrated competency in performance improvement techniques, or an equivalent combination of training and experience;~~
- (2) A Masters Degree from an ~~accredited~~ institution of higher learning accredited by an accrediting body recognized by the U.S. Department of Education, in a field of health, behavioral health, rehabilitation, human services, human development, education, social sciences, criminal justice, administration, management, organizational development, information management, business, or a related field or discipline and one year of experience gathering and analyzing data for quality management, quality assurance ~~and/or~~ quality improvement for a human services provider agency, ~~such experience to indicate a demonstrated competency in performance improvement techniques, or an equivalent combination of training and experience.~~

(c) The CABHA shall develop a job description and policies and procedures for the Quality Management Director which requires the Quality Management Director to:

- (1) Design, implement, supervise and monitor quality assurance and quality improvement for the CABHA;
- (2) Develop, implement, and ~~regularly~~ at least quarterly evaluate and revise the agency's annual quality improvement/quality assurance plan;
- (3) Develop agency-wide quality assurance and quality improvement processes with continuous staff, consumer, family, stakeholder, and management involvement including ~~but not limited to~~ client satisfaction survey(s);
- (4) Supervise and staff the quality management committee and subcommittees to establish and review agency data and performance indicators;

(5) Develop and monitor actions to address individual and aggregate trends, including incidents, adverse events, complaints, grievances, and quality of care measures including consumer access, referral, transition, engagement, retention, and individual and aggregate outcomes; and

(6) Supervise and direct staff to comply with all consumer data and records documentation requirements, staff qualifications, evidence-based practices training, implementation, supervision, evaluation and fidelity monitoring, accreditation standards, reaccreditation requirements and reporting, auditing, and regulatory review requirements of federal, state, and local agencies.

~~(d) Failure to implement the requirements of .0405, as determined by Department or LME monitoring visits, may result in CABHA decertification.~~

~~(e)~~(d) The Quality Management Director and the Training Director positions ~~can~~ may be filled by the same person or by no more than two individuals.

~~(f)~~(e) The CABHA shall notify the applicable LME(s) in writing if a Quality Management Director position becomes vacant within ten business days of such vacancy.

~~(g)~~(f) An individual who serves as both the Quality Management Director and Training Director for a CABHA agency may not provide direct, billable services to consumers. This individual must spend 50 percent of ~~their~~ his or her time in Quality Management activities and 50 percent of ~~their~~ his or her time in Training Director activities. If the Quality Management Director and Training Director positions are filled by two 50 percent FTE staff, these individuals may provide direct, billable services separate and apart from the 20 hours per week each operates as the Quality Management Director and as the Training Director.

~~(h)~~(g) An individual who serves as both Quality Management and Training Director for a CABHA agency must meet education and minimum experience requirements for both positions.

History Note: Authority G.S. 108A-54; 42 U.S.C. 1396a; 42 C.F.R. 431.51; S.L. 2009-451, Section 10.58(d); Temporary Adoption Eff. December 28, 2010.

10A NCAC 22P .0406 TRAINING DIRECTOR

(a) The Critical Access Behavioral Health Agency (CABHA) ~~is required to~~ shall have a 50 percent FTE Training Director.

(b) The Training Director must have either:

- (1) A Bachelors Degree from an ~~accredited~~ institution of higher learning accredited by an accrediting body recognized by the U.S. Department of Education in a field of health, behavioral health, rehabilitation, human services, human development, education, social sciences, criminal justice, administration, management, organizational development, information management, business, or a related field or discipline and

three years of experience in planning, coordinating, delivering, ~~and/or~~ evaluating training or education related to consumer health, behavioral health, education, wellness, recovery, human development, disabilities, social services, public safety, employment, vocational education, vocational rehabilitation, housing, transportation, recreation, human rights, or justice or in training clinical staff, or an equivalent combination of training and experience; or

- (2) A Masters Degree from an ~~accredited~~ institution of higher learning accredited by an accrediting body recognized by the U.S. Department of Education in a field of health, behavioral health, rehabilitation, human services, human development, education, social sciences, criminal justice, administration, management, organizational development, information management, business, or a related field or discipline and one year of experience in planning, coordinating, delivering, ~~and/or~~ evaluating training or education related to consumer health, behavioral health, education, wellness, recovery, human development, disabilities, social services, public safety, employment, vocational education, vocational rehabilitation, housing, transportation, recreation, human rights, or justice or in training clinical staff, or an equivalent combination of training and experience.

(c) The CABHA shall develop a job description and policies and procedures for the Training Director which require the Training Director to develop and implement an annual strategic training plan that:

- (1) Reflects the agency's vision, mission and guiding principles;
- (2) Includes goals, objectives, methods, budget and expected outcomes for the agency;
- (3) Indicates that evidence-based training methods will be utilized;
- (4) Identifies instructional training system design and development principles;
- (5) Indicates the use of technology to increase access to and the effectiveness of training;
- (6) Identifies implementation strategies to support and sustain the use of clinical skills in supporting the continuum of care within the agency;
- (7) Implements training required by DMH/DD/SAS and DMA Clinical Coverage Policies; and
- (8) Ensures there is sufficient access to training and education opportunities, especially in rural areas and for culturally diverse populations.

(d) The CABHA shall notify the applicable LME(s) in writing if a Training Director position becomes vacant within ten business days of such vacancy.

(e) The Training Director shall:

- (1) Maintain and produce to the Department upon request training records which demonstrate that staff has the competencies to deliver integrated behavioral health care, emphasizing evidence-based practices, ~~best practice~~ and quality improvement approaches, and that supervisors have competencies to mentor and supervise staff in these practices;
- (2) Plan, organize and direct all training activities;
- (3) Identify organizational, departmental and service training needs within the agency;
- (4) Conduct orientation sessions and arrange on-the-job training for new employees;
- (5) Establish individualized training plans to strengthen an employee's existing skills or teach new ones;
- (6) Develop and offer supervisory training for staff in supervisory positions; and
- (7) ~~Apply effective training principles and periodically~~ Evaluate training effectiveness at least quarterly.

~~(f) Failure to implement the requirements of .0406, as determined by Department or LME monitoring visits, may result in CABHA decertification.~~

~~(g) The Quality Management Director and the Training Director positions can be filled by the same person or by no more than two individuals.~~

~~(h) An individual who serves as both the Quality Management Director and Training Director for a CABHA agency may not provide direct, billable services to consumers. If the Quality Management Director and Training Director position is filled by two 50percent FTE staff, these individuals may provide direct, billable services separate and apart from the 20 hours per week each operates as the Quality Management Director and as the Training Director.~~

~~(i) An individual who serves as both Quality Management and Training Director for a CABHA agency must meet education and minimum experience requirements for both positions.~~

History Note: Authority G.S. 108A-54; 42 U.S.C. 1396a; 42 C.F.R. 431.51; S.L. 2009-451, Section 10.58(d); Temporary Adoption Eff. December 28, 2010.

10A NCAC 22P .0407 EXCEPTION PROCESS

(a) A request for an exception to the Medical Director position shall be in writing and shall contain:

- (1) The name, address and telephone number of the person making the request;
- (2) The name, address and telephone number of the applicant for which the exception is requested;
- (3) A statement of the facts including:
 - (A) The reason(s) for the request;
 - (B) The reason(s) why the Medical Director position cannot be filled by a psychiatrist or physician who meets the requirements of Rule .0403(a)(1) or (a)(2) of this Subchapter.

- (C) The name and curriculum vita of the physician (MD or DO) licensed in NC who is board certified or eligible by the American Board of Family Physicians in General Family Practice or the American Board of Internal Medicine in Internal Medicine or the American Board of Pediatrics in Pediatrics; and
- (D) The reason(s) why the physician (MD or DO) licensed in NC who is board certified or eligible by the American Board of Family Physicians in General Family Practice or the American Board of Internal Medicine in Internal Medicine or the American Board of Pediatrics in Pediatrics is eligible and qualified to fill the Medical Director position.

(b) The request for an exception shall be included in the attestation packet or sent to the DMA Director at 2501 Mail Service Center, Raleigh, NC 27699-2501.

(c) The DMA Director, or his designee(s), may interview the proposed Medical Director and waive the Medical Director professional requirements and approve an exception based upon, ~~but not limited to,~~ the following:

- (1) The factual situation giving rise to the exception request;
- (2) The determination that the exception will not affect the health, safety, or welfare of consumers;
- (3) The qualifications and experience of the individual seeking to fill the Medical Director position; and
- (4) Consumer access to care.

(d) The Director, or his designee, shall issue the exception decision in writing and state the reasons why the request for exception was granted or denied. The exception shall be contingent on the physician annually completing six hours of continuing medical education in the CABHA's continuum of care as described in Rule .0301(e) of this Subchapter.

(e) The decision to deny the exception request may be appealed according to Rule .0603 of this Subchapter.

History Note: Authority G.S. 108A-54; 42 U.S.C. 1396a; 42 C.F.R. 431.51; S.L. 2009-451, Section 10.58(d); Temporary Adoption Eff. December 28, 2010.

10A NCAC 22P .0408 MEDICAL SCHOOL/ TEACHING HOSPITAL EXCEPTION

The Secretary may make exceptions to ~~these rules~~ the rules in this Subchapter for a teaching hospital that operates a graduate medical education (GME) program, as those terms are defined in 42 CFR 415.152, where quality of care would not be adversely impacted.

History Note: Authority G.S. 108A-54; 42 U.S.C. 1396a; 42 C.F.R. 431.51; S.L. 2009-451, Section 10.58(d); Temporary Adoption Eff. December 28, 2010.

SECTION .0500 – CERTIFICATION PROCEDURES

10A NCAC 22P .0501 LETTER OF ATTESTATION AND DESK REVIEW

(a) An applicant which seeks Critical Access Behavioral Health Agency (CABHA) certification must submit an ~~complete~~ attestation letter and all necessary supporting documentation to the DMH/DD/SAS Director.

(b) Necessary supporting documentation to meet CABHA requirements includes:

- (1) Evidence of national accreditation in accordance with G.S. 122C-81;
- (2) Evidence of provision of the three Core Services and two additional services as set forth in .0301 of this Subchapter that together create an age and diagnosis specific continuum of care;
- (3) Identification of all of the applicant's Medicaid billing numbers;
- (4) List of all CABHA site location addresses and evidence that the Core Services are provided at the CABHA site location and the two required additional services are provided within a 35 mile radius of that location;
- (5) Copies of all necessary licenses and endorsements;
- (6) Copies of licenses, diplomas and curricula vitae for the Medical Director, Clinical Director, Quality Management Director and Training Director;
- (7) Written explanation indicating how the management structure and clinical structure of the applicant support the age and diagnosis specific continuum;
- (8) Copy of quality management plan submitted to, or current quality management plan and any quality improvement plan or plan of correction required by, any accrediting body from which the CABHA achieved national accreditation pursuant to G.S. 122C-81;
- (9) Copies of written and signed job descriptions that meet the staffing requirements set forth in Section .0400 of this Subchapter; and
- (10) A Certificate of Existence or Certificate of Authorization from the N.C. Secretary of State's Office in accordance with G.S. 55A-1-28 (for domestic and foreign corporations) or G.S. 57C-1-28 (for domestic and foreign limited liability companies).

(c) Following receipt of the attestation letter and supporting documentation, the Department shall conduct a desk review to ensure that the applicant meets basic requirements for CABHA certification.

(d) The Desk Review includes the determination of the applicant's "good standing" status in the Department.

(e) Upon completion of the desk review, DMH/DD/SAS shall notify the applicant that either:

- (1) The applicant passed the desk review and the Department will schedule an interview; or

- (2) The applicant's attestation letter and supporting documentation do not meet CABHA certification requirements and the applicant did not pass the desk review.
- (f) An applicant who does not pass the desk review may either:
 - (1) Resubmit the attestation letter and supporting documentation at such time as it meets CABHA certification requirements; or
 - (2) Appeal the determination in accordance with Rule .0603 of this Subchapter.
- (g) An applicant shall have three opportunities to submit an attestation letter and supporting documentation for review by the Department. Failure to pass the Desk Review after the third submission shall result in the applicant's inability to re-apply for a period of six months from the date of the letter notifying the applicant of failure to pass the desk review.

History Note: Authority G.S. 108A-54; 42 U.S.C. 1396a; 42 C.F.R. 431.51; S.L. 2009-451, Section 10.58(d); Temporary Adoption Eff. December 28, 2010.

10A NCAC 22P .0502 INTERVIEW

- (a) After the applicant meets the requirements of the desk review, an interview will be conducted. The purpose of the interview is to evaluate the qualifications and experience of the Medical Director, Clinical Director, Quality Management Director and Training Director to provide and support high quality behavioral health services to the age and diagnosis specific population selected, and determine whether the agency has developed and implemented ~~acceptable~~ medical, clinical, quality management, and training structures, processes, and systems to promote the design, delivery, evaluation and improvement of high-quality services to consumers.
- (b) DMH/DD/SAS ~~will~~ shall convene Critical Access Behavioral Health Agency (CABHA) interview panels. ~~The interview panels may be composed of staff from the DMH/DD/SAS DMA an LME Medical Director and licensed staff from LMEs.~~
- (c) The applicant's Medical Director, Clinical Director, Quality Management Director, and Training Director ~~will~~ shall be interviewed as a group, and CABHA applicant owners, Board members ~~and/or~~ managing employees ~~may~~ shall also be required to participate.
- (d) The interview shall be completed using standardized interview questions and the interviewers may ask follow-up questions ~~at their discretion.~~
- (e) The interview shall be recorded and ~~can be~~ made available for transcription at the provider's request and expense. ~~Recordings are subject to the North Carolina Public Records Act and required record retention period(s).~~
- (f) After completion of the interview, DMH/DD/SAS shall refer the applicant for a verification review.
- (g) DMH/DD/SAS may ~~at its discretion, but is not required to,~~ schedule a second interview if necessary to verify or confirm that the requirements of this Subchapter have been met by the applicant.

History Note: Authority G.S. 108A-54; 42 U.S.C. 1396a; 42 C.F.R. 431.51; S.L. 2009-451, Section 10.58(d);

Temporary Adoption Eff. December 28, 2010.

10A NCAC 22P .0503 VERIFICATION REVIEW

- (a) A Verification Review ~~will~~ shall be conducted by Department or LME staff after completion of the interview in order to verify or confirm information presented by the applicant in the attestation letter, supporting documentation and interview that is material to the determination of whether the applicant can perform or meet the requirements of this Subchapter.
- (b) There is only one opportunity for a Verification Review after completion of the Interview. Applicants ~~will~~ shall not be granted multiple Verification Reviews.
- (c) After completion of the verification review, DMH/DD/SAS shall notify the applicant that either:
 - (1) The applicant passed the verification review, and the Department will issue a notice of CABHA certification; or
 - (2) The Department was unable to verify the information submitted in the attestation letter and supporting documentation and certification is denied. This action results in the applicant's inability to re-apply for a period of six (6) months from the date of the letter notifying the applicant of failure to pass the Verification Review. The applicant may appeal this decision in accordance with Rule .0603 of this Subchapter.

History Note: Authority G.S. 108A-54; 42 U.S.C. 1396a; 42 C.F.R. 431.51; S.L. 2009-451, Section 10.58(d); Temporary Adoption Eff. December 28, 2010.

10A NCAC 22P .0504 EXISTING CRITICAL ACCESS BEHAVIORAL HEALTH AGENCIES

Providers who achieved CABHA certification ~~in accordance with Department implementation updates and policy~~ prior to the adoption of this Subchapter ~~shall~~ have 180 calendar days from the day this Subchapter takes effect to come into compliance with Sections .0300 and .0400 of this Subchapter, with the exception of the performance bond requirement set forth in Rule .0401(f) of this Subchapter, which must be met within 365 days of the date this Subchapter takes effect. Failure to do so, as determined by Department or LME monitoring visits, shall result in decertification.

History Note: Authority G.S. 108A-54; 42 U.S.C. 1396a; 42 C.F.R. 431.51; S.L. 2009-451, Section 10.58(d); Temporary Adoption Eff. December 28, 2010.

SECTION .0600 – MONITORING, DECERTIFICATION AND APPEAL PROCEDURES

10A NCAC 22P .0601 MONITORING

- (a) The Department and its contractors ~~and/or~~ the LME(s) shall ~~periodically~~ conduct announced and unannounced site visits, audits, post-payment reviews, investigations, monitoring and compliance reviews of the Critical Access Behavioral Health Agency (CABHA) in order to evaluate compliance with all

applicable federal and state laws, rules, regulations, ~~and medical coverage policies and provider agreements.~~

(b) Monitoring ~~will include, but is not limited to,~~ the review of documentation and individual and aggregate data to ensure that the agency meets the requirements specified in Sections .0300 and .0400 of this Subchapter.

(c) Other targeted monitoring may be completed in response to incidents, complaints, or deficiencies found during routine DMH/DD/SAS or DMA or LME monitoring or audits or at the request of any Division of the Department or an LME.

(d) The CABHA ~~is required to~~ shall cooperate with all Department staff, contractors and ~~or~~ LME staff involved in the monitoring activities described in this rule. Upon request, the CABHA shall promptly make available to the Department and its contractors and ~~or~~ the LME(s) copies of any and all documentation needed to evaluate compliance with all applicable federal and state laws, rules, regulations, medical coverage policies and provider agreements. ~~Failure to promptly make documentation available or to permit access to provider site locations for any site visits may result in CABHA decertification or other sanctions. For unannounced monitoring visits, "promptly" means immediately if documentation is stored on-site, and within one business day if documentation is stored off-site. For scheduled monitoring visits, "promptly" means immediately regardless of where documentation is stored.~~

(e) CABHAs shall ~~be required to~~ successfully complete and implement a Plan of Correction in response to all deficiencies ~~that require a Plan of Correction~~ identified as a result of monitoring visits, unless the CABHA is decertified in accordance with Rule .0602 of this Subchapter.

History Note: Authority G.S. 108A-54; 42 U.S.C. 1396a; 42 C.F.R. 431.51; S.L. 2009-451, Section 10.58(d); Temporary Adoption Eff. December 28, 2010.

10A NCAC 22P .0602 DECERTIFICATION AND SUSPENSION

(a) A Critical Access Behavioral Health Agency (CABHA) shall be decertified or suspended by the Department ~~or its Divisions under, but not limited to,~~ the following circumstances:

- (1) Loss of national accreditation;
- (2) Medical or Clinical Director vacancy in violation of Section .0400 of this Subchapter;
- (3) A revocation issued by DMH/DD/SAS in accordance with Subchapter 26C against any MH/SA provider site location owned and operated by the CABHA;
- (4) Failure to implement a Plan of Correction required pursuant to .0601 of this Section.
- (5) The CABHA fails to meet the staffing requirements outlined in Section .0400 of this Subchapter;
- (6) Termination of the Medicaid Administrative Participation Agreement ~~for any reason to provide a service~~ between the department and the CABHA under which the CABHA was enrolled to deliver any service listed in Rule .0301 of this Subchapter;

- (7) A license revocation issued by the Division of Health Service Regulation (DHSR) pursuant to G.S. 122C-23 or any other DHSR licensure action against any provider agency or site location owned and operated by the CABHA;
- (8) Withdrawal of the CABHA's endorsement pursuant to G.S. 122C-115.4(b)(2) to provide a service listed in Rule .0301 of this Subchapter;
- (9) Local monitoring and compliance reviews indicate the CABHA is not in compliance with the requirements of this Subchapter or other applicable federal and state laws, rules, regulations, medical coverage policies and provider agreements;
- (10) Loss of good standing with DHSR, DMA, or DMH/DD/SAS for any reason; ~~or~~
- (11) Lack of good standing with the North Carolina Secretary of State's Office, the U.S. Internal Revenue Service, the U.S. Department of Labor, or the North Carolina Departments of Labor and Revenue; or
- (12) Failure to cooperate with monitoring, failure to permit access to the Department and its contractors ~~and/or~~ the LME, or failure to promptly make documentation available upon request in accordance with Rule .0601(d) of this Section.

(b) The Department may make exceptions to the circumstances listed in Paragraph (a) of this Rule in order to ensure access to care for Medicaid recipients.

(c) The Department ~~or its Divisions~~ may decertify or suspend a CABHA without first requesting a Plan of Correction.

(d) If a CABHA is decertified or suspended, the agency must transition consumers who receive services required to be delivered by a CABHA as set forth in Rule .0301 of this Subchapter to CABHA-certified providers within 30 calendar days of notification. The agency may submit a request for a suspension to be rescinded no sooner than one month from the date of suspension if the action that caused the suspension has been rectified.

(e) If a CABHA is decertified or suspended, the agency may re-apply after a period of six months when the action that caused the decertification has been rectified and a Plan of Correction has been approved and implemented.

(f) The CABHA may appeal decertification or suspension in accordance with Rule .0603 of this Subchapter.

(g) Following decertification or suspension, the CABHA may be subject to further sanctions by DMA ~~to include~~ including termination from the Medicaid program.

History Note: Authority G.S. 108A-54; 42 U.S.C. 1396a; 42 C.F.R. 431.51; S.L. 2009-451, Section 10.58(d); Temporary Adoption Eff. December 28, 2010.

10A NCAC 22P .0603 APPEAL PROCEDURES

(a) A proposed decision of the Department to deny Critical Access Behavioral Health Agency (CABHA) certification or to suspend or decertify a CABHA may be appealed in accordance with this Rule.

(b) The first review shall be a reconsideration review before the Department.

(c) The provider may not file a petition with the Office of Administrative Hearings without first going through the reconsideration review process, unless the reconsideration review is waived by the Secretary.

(d) The provider shall file a written notice of appeal of the decision to deny or withdraw certification within 15 calendar days of the date of the decision.

(1) "File or Filing" means personal delivery, delivery by certified mail, or delivery by overnight express mail to the current Director of the DMH/DD/SAS. A document or paper is deemed filed as of the date it is delivered to the Director. Filings addressed to a person other than the Division Director, or which fail to be filed within the time periods established by this Rule, or which otherwise fail to be filed in conformity with the rules in this Section shall be considered as improper filings and be denied.

(2) The Department shall conduct a paper review within 45 calendar days after the notice of appeal is filed. All documents and written statements must be presented to the individual or panel assigned to conduct the review within fifteen calendar days after the filing of the appeal.

~~(3) The Department:~~

~~(A) Shall notify the parties when all documents and written statements must be presented to the individual or panel assigned to conduct the review;~~

~~(B) May afford the opportunity for rebuttal statements to either of the presenting parties; and~~

~~(C) May impose page limits for presentations.~~

~~(4) The Department may obtain any form of legal or technical assistance or consultation relevant to the appeal.~~

(e) The hearing decision shall be issued in writing by trackable mail within 30 calendar days of the conclusion of the reconsideration review.

(f) The provider may appeal the Department's reconsideration review decision to the Office of Administrative Hearings in accordance with Chapter 150B of the North Carolina General Statutes within 60 calendar days of the date of the decision. ~~Regardless of any stay issued by the Office of Administrative Hearings,~~ †The Department shall not reimburse a provider for CABHA services during the pendency of any appeal to the Office of Administrative Hearings.

History Note: Authority G.S. 108A-54; 42 U.S.C. 1396a; 42 C.F.R. 431.51; S.L. 2009-451, Section 10.58(d); Temporary Adoption Eff. December 28, 2010.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: *Environmental Management Commission*

Rule Citation: *15A NCAC 02B .0235, .0275, .0276, .0277, .0278, .0279, .0280, .0281, .0282, .0315*

Effective Date: *January 15, 2011*

Date Approved by the Rules Review Commission: *December 16, 2010*

Reason for Action: *Section 3 of S.L. 2009-486 calls for the EMC to adopt temporary rules concurrent with the permanent rules to ensure the nutrient load reduction requirements are in effect by the required legislative deadline of January 15, 2011 and allow implementation of the requirements to begin while the permanent rules advance through the Rules Review Commission and General Assembly.*

Note from the Codifier: *The following temporary rules were approved by the Rules Review Commission on December 16, 2010. These Rules have been replaced by identical permanent rules approved by the RRC on that same date.*

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0200 - CLASSIFICATIONS AND WATER QUALITY STANDARDS APPLICABLE TO SURFACE WATERS AND WETLANDS OF NORTH CAROLINA

15A NCAC 02B .0235 NEUSE RIVER BASIN-NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: BASINWIDE STORMWATER REQUIREMENTS

The following is the urban stormwater management strategy for the Neuse River Basin:

(1) The following local governments ~~shall be~~ are designated, based on population and other factors, ~~for as parties responsible for implementing~~ stormwater management requirements as part of the Neuse River Nutrient Sensitive Waters stormwater management strategy:

- (a) Cary,
- (b) Durham,
- (c) Garner,
- (d) Goldsboro,
- (e) Havelock,
- (f) Kinston,
- (g) New Bern,
- (h) Raleigh,
- (i) Smithfield,
- (j) Wilson,

- (k) Durham County,
 - (l) Johnston County,
 - (m) Orange County,
 - (n) Wake County, and
 - (o) Wayne County.
- (2) Other incorporated areas and other counties, not listed under Item (1) of this Rule, may seek to implement their own local stormwater management plan by complying with the requirements specified in Items (5), ~~(6)~~(5) and ~~(7)~~(6) of this Rule.
- (3) The Environmental Management Commission may designate additional local governments by amending this Rule based on their potential to contribute significant nutrient loads to the Neuse River. At a minimum, the Commission shall review the need for additional designations to the stormwater management program as part of the basinwide planning process for the Neuse River Basin. Any local governments that are designated at a later date under the Neuse Nutrient Sensitive Waters Stormwater Program shall meet the requirements under Items ~~(5)~~, ~~(6)~~ and ~~(7)~~ (5) and (6) of this Rule.
- (4) ~~Within 12 months of the effective date of this Rule, the Division of Water Quality shall submit a model local stormwater management program plan to control nutrients to the Commission for approval. The Division shall work in cooperation with subject local governments in developing this model plan. The model plan—Local [Stormwater] stormwater programs shall address nitrogen reductions for both existing and new development and include include, but not be limited to, the following elements:~~
- (a) Review and approval of stormwater management plans for new developments to ensure that:
 - (i) the nitrogen load contributed by new development activities is held at 70 percent of the average nitrogen load contributed by the 1995 land uses of the non-urban areas of the Neuse River Basin. The local governments shall use a nitrogen export standard of 3.6 pounds/acre/year, determined by the Environmental Management Commission as 70 percent of the average collective nitrogen load for the 1995 non-urban land uses in the basin above New Bern. The EMC may periodically

update the design standard based on the availability of new scientific information. Developers shall have the option of offsetting part of their nitrogen load by funding offsite management measures by making payment to the NC Ecosystem Enhancement Program or to another seller of offset credits approved by the Division or may implement other offset measures contingent upon approval by the Division. Offset payments shall meet the requirements of Rule .0240 of this Section, which establishes procedural requirements for nutrient offset payments, partially offsetting their nitrogen loads by funding wetland or riparian area restoration through the North Carolina Wetland Restoration Fund at the rate specified in Rule .0240 of this Section. However, before using offset payments, the development must attain, at a minimum, a nitrogen export that does not exceed 6 pounds/acre/year for residential development and 10 pounds/acre/year for commercial or industrial ~~development.~~ development.

(ii) For the following local governments and any additional local governments identified in rule by the Commission, the post-construction requirements of 15 NCAC 02B .0277 shall supersede the requirements in this Sub-item for areas within their jurisdiction within the watershed of the Falls of the Neuse Reservoir: Durham, Raleigh, Durham County, Orange County, and Wake County; and

(iii) there is no net increase in peak flow leaving the site from the predevelopment conditions for the 1-year, 24-hour storm.

- (b) Review of new development plans for compliance with requirements for protecting and maintaining existing riparian areas as specified in 15A NCAC 02B .0233;
 - (c) Implementation of public education programs;
 - (d) Identification and removal of illegal discharges;
 - (e) Identification of suitable locations for potential stormwater retrofits (such as riparian areas) that could be funded by various sources; and
 - (f) Submittal of an annual report on October 30 to the Division documenting progress on and net changes to nitrogen load from the local government's planning jurisdiction.
- (5) ~~Within 12 months of the EMC's approval of the model local government stormwater program or later designation (as described in Item (3) of this Rule), subject local governments shall submit their local stormwater management program plans to the Commission for review and approval. These local plans shall equal or exceed the requirements in Item (4) of this Rule. Local governments may submit a more stringent local stormwater management program plan. Local stormwater management programs and modifications to these programs shall be kept on file by the Division of Water Quality.~~
- (6)(5) ~~Within 18 months of the EMC's approval of the model local government stormwater program or designation, subject local governments shall adopt and~~ Local governments shall implement a local stormwater management program programs according to their plans approved by the Commission as of March 2001 approved plan. Local governments administering a stormwater management program shall submit annual reports to the Division documenting their progress and net changes to nitrogen load by October 30 of each year.
- (7)(6) If a local government fails to submit an acceptable local stormwater management program plan within the time frames established in this Rule or fails to properly implement an approved plan, then stormwater management requirements for existing and new urban areas within its jurisdiction shall be administered through the NPDES municipal stormwater permitting program per ~~15A NCAC 2H .0126.~~ 15A NCAC 02H .0126:
- (a) Subject local governments shall develop and implement

comprehensive stormwater management programs, tailored toward nitrogen reduction, for both existing and new development.

- (b) These stormwater management programs shall provide all components that are required of local government stormwater programs in Sub-items (4)(a) through (f) of this Rule.
- (c) Local governments that are subject to an NPDES permit shall be covered by the permit for at least one permitting cycle (five years) before they are eligible to submit a local stormwater management program for consideration and approval by the EMC.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 1995, c. 572; Eff. August 1, 1998; Temporary Amendment Eff. January 15, 2011.

15A NCAC 02B .0275 FALLS WATER SUPPLY NUTRIENT STRATEGY: PURPOSE AND SCOPE

PURPOSE. The purpose of this Rule and Rules 15A NCAC 02B .0276 through .0282 and .0315(q) shall be to attain the full classified uses of Falls of the Neuse Reservoir set out in 15A NCAC 02B .0211 from current impaired conditions related to excess nutrient inputs; protect its classified uses as set out in 15A NCAC 02B .0216, including use as a source of water supply for drinking water; and maintain ~~or~~ and enhance protections currently implemented by local governments in existing water supply watersheds encompassed by the watershed of Falls of the Neuse Reservoir. The reservoir, and all waters draining to it, have been supplementally classified as Nutrient Sensitive waters (NSW) pursuant to 15A NCAC 02B .0101(e)(3) and 15A NCAC 02B .0223. These Rules, as enumerated in Item (6) of this Rule, together shall constitute the Falls water supply nutrient strategy, or Falls nutrient strategy, and shall be implemented in accordance with 15A NCAC 02B .0223. The following items establish the framework of the Falls nutrient strategy:

- (1) SCOPE AND LIMITATION. Falls of the Neuse Reservoir is hereafter referred to as Falls Reservoir. All lands and waters draining to Falls Reservoir are hereafter referred to as the Falls watershed. The Falls nutrient strategy rules require controls that reduce nitrogen and phosphorus loads from significant sources of these nutrients throughout the Falls watershed. These Rules do not address atmospheric emission sources of nitrogen that is deposited into the watershed but do include provisions to account for reductions in such deposition as the water quality benefits of air quality regulations are quantified. Neither do these rules address

sources on which there is insufficient scientific knowledge to base regulation, other sources deemed adequately addressed by existing regulations, sources currently considered minor, or nutrient contributions from lake sediments, which are considered outside the scope of these Rules. The Commission may undertake additional rulemaking in the future or make recommendations to other rulemaking bodies as deemed appropriate to more fully address nutrient sources to Falls ~~Reservoir;~~ Reservoir. While the scope of these Rules is limited to the reduction of nutrient loads to surface waters, practitioners are encouraged to maximize opportunities for concurrently benefiting other ecosystem services where feasible in the course of achieving the nutrient [objectives;] objectives.

(2) CRITICAL WATER SUPPLY WATERSHED DESIGNATION. Water supply waters designated WS-II, WS-III, and WS-IV within the Falls watershed shall retain their classifications. The remaining waters in the Falls watershed shall be classified WS-V. ~~For waters classified WS-V, the requirements of water supply Rule 15A NCAC 02B .0218 shall be applied.~~ The requirements of all of these water supply classifications shall be retained and applied except as specifically noted elsewhere within the Falls nutrient strategy. In addition, pursuant to G.S. 143-214.5(b), the entire Falls watershed shall be designated a critical water supply watershed and through the Falls nutrient strategy given additional, more stringent requirements than the state minimum water supply watershed management requirements. Water supply requirements of 15A NCAC 02B .0104 apply except to the extent that requirements of the Falls nutrient strategy are more stringent than provisions addressing agriculture, forestry, and existing development. These requirements supplement the water quality standards applicable to Class C waters, as described in Rule .0211 of this Section, which apply throughout the Falls watershed. ~~For WS-II, WS-III, and WS-IV waters, the retained requirements of Rules 15A NCAC 02B .0214 through .0216 are characterized as follows:~~ Water supply watershed requirements shall be as follows:

- (a) For WS-II, WS-III, and WS-IV waters, the retained requirements of Rules 15A NCAC 02B .0214 through .0216 are characterized as follows:
 - (i) Item (1) addressing best usages;
 - (ii) Item (2) addressing predominant watershed

development conditions, discharges expressly allowed watershed-wide, general prohibitions on and allowances for domestic and industrial discharges, Maximum Contaminant Levels following treatment, and the local option to seek more protective classifications for portions of existing water supply watersheds;

- (iii) Sub-Item (3)(a) addressing ~~waste-wastewater~~ discharge limitations;
- (iv) Sub-Item (3)(b) addressing nonpoint source and stormwater controls; and
- (v) Sub-Items (3)(c) through (3)(h) addressing aesthetic and human health standards.

(b) For waters classified WS-V, the requirements of water supply Rule 15A NCAC 02B .0218 shall be applied.

(3) GOAL AND OBJECTIVES. To achieve the purpose of the Falls nutrient strategy, the Commission establishes the goal of attaining and maintaining nutrient-related water quality standards identified in ~~Rule .0211 of this section~~ 15A NCAC 02B .0211 throughout Falls Reservoir pursuant to G.S. 143-215.8B and 143B-282(c) and (d) of the Clean Water Responsibility Act of 1997. The Commission establishes a staged and adaptive implementation plan, outlined hereafter, to achieve the following objectives. The objective of Stage I is to, at minimum, achieve and maintain nutrient-related water quality standards in the Lower Falls Reservoir as soon as possible but no later than [2021] January 15, 2021 and to improve water quality in the Upper Falls Reservoir. The objective of Stage II is to achieve and maintain nutrient-related water quality standards throughout ~~the Falls Reservoir~~ Reservoir. This is estimated to require a reduction of 40 and 77 percent in by reducing—average annual mass loads of nitrogen and phosphorus respectively, delivered from the sources named in Item (6) in the Upper Falls Watershed by forty and seventy seven percent, respectively, from a baseline of 2006. The resulting Stage II [cumulative] allowable loads to Falls Reservoir from the watersheds of Ellerbe Creek, Eno River, Little River, Flat River, and Knap of Reeds Creek shall be 658,000 pounds

of nitrogen per year and 35,000 pounds of phosphorus per year. ~~Portions of Falls Reservoir and its watershed shall be defined as follows:~~

- ~~(a) Upper Falls Reservoir shall mean that portion of the reservoir upstream of State Route 50;~~
- ~~(b) Upper Falls Watershed shall mean the area of Falls watershed draining to Upper Falls Reservoir;~~
- ~~(c) Lower Falls Reservoir shall mean that portion of the reservoir downstream of State Route 50; and~~
- ~~(d) Lower Falls Watershed shall mean the area of Falls watershed draining to Lower Falls Reservoir without first passing through Upper Falls Reservoir.~~

(4) **STAGED IMPLEMENTATION.** The Commission shall employ the staged implementation plan set forth below to achieve the goal of the Falls nutrient strategy:

(a) **STAGE I.** Stage I requires intermediate or currently achievable controls throughout the Falls watershed with ~~a minimum~~ the objective of reducing nitrogen and phosphorus ~~loading to loading, and attain attaining~~ nutrient-related water quality standards in ~~at least~~ the Lower Falls Reservoir as soon as possible but no later than January 15, 2021, while also improving water quality in the Upper Falls Reservoir as described in this Item. Implementation timeframes are described in individual rules, with full implementation occurring no later than January 15, 2021;

(b) **STAGE II.** Stage II requires implementation of additional controls in the Upper Falls Watershed beginning no later than January 15, 2021 to achieve ~~the nutrient-related water quality standards throughout Falls Reservoir by 2041~~ percent reduction objective to the maximum extent technically and economically feasible ~~feasible by 2041. [2041,]~~ with [incremental] progress toward this overall objective as described in [Sub-Item (5)(a).] Sub-Item(5)(a); and implementation timeframes are described in individual rules, with full implementation occurring no later than 2036; and

(c) **MAINTENANCE OF ALLOCATIONS.** Throughout these implementation stages and

~~indefinitely beyond sources. Sources shall maintain the load reductions required under these Rules beyond the implementation stages they achieve and the ultimate allowable loads they attain.~~

(5) **ADAPTIVE IMPLEMENTATION.** The Commission shall employ the following adaptive implementation plan in concert with the staged implementation approach described in this Rule:

(a) The Division shall perform water quality monitoring throughout Falls Reservoir and shall accept reservoir water quality monitoring data provided by other parties that meet Division standards and quality assurance protocols. The Division shall utilize this data to estimate load reduction achieved ~~produce load reduction estimates~~ and to perform periodic use support assessments pursuant to 40 CFR 130.7(b). It shall ~~utilize~~ evaluate use support determinations to judge progress on and compliance with the goal of the Falls nutrient strategy, including the following assessments:

(i) Attainment of nutrient-related water quality standards downstream of Highway NC-98 crossing of Falls Reservoir no later than January 15, 2016;

(ii) Attainment of nutrient-related water quality standards in the Lower Falls Reservoir no later than January 15, 2021;

(iii) Attainment of nutrient-related water quality standards in the Lick Creek arm of Falls Reservoir and points downstream no later than January 15, 2026;

(iv) Attainment of nutrient-related water quality standards in the Ledge and Little Lick Creek arms of Falls Reservoir and points downstream no later than January 15, 2031;

(v) Attainment of nutrient-related water quality standards at points downstream of the Interstate 85 crossing of Falls Reservoir no later than January 15, 2036;

- ~~(v)(vi)~~ Attainment of nutrient-related water quality standards throughout Falls Reservoir no later than 2041;
- ~~(vi)(vii)~~ Where the Division finds that acceptable progress has not been made towards achieving nutrient-related water quality standards throughout Falls Reservoir standards are not attained as described defined in Sub-Items (i) through (v)(vi) of this Item or that conditions have deteriorated in a portion segment of Falls Reservoir as described in this Item, of Falls Reservoir at any time, it shall evaluate compliance with the Falls nutrient strategy rules, and may request Commission approval to initiate additional rulemaking;
- ~~(vii)(viii)~~ Where the Division finds, based on reservoir monitoring, that nutrient-related water quality standards are attained in a previously impaired portion segment of Falls Reservoir, as described in this [Item,] item of Falls Reservoir, and are met for sufficient time to provide reasonable assurance demonstrate of sustained maintenance of standards, as specified in individual rules of this strategy strategy, it may shall notify affected parties in that portion's segment's watershed that further load reductions are not required and of requirements for maintenance of measures to prevent loading increases; increases. Sufficient time is defined as at least two consecutive use support assessments demonstrating compliance with nutrient-related water quality standards in a given segment of Falls Reservoir, and
- ~~(viii)~~ Where the Division finds that average annual mass loads of nitrogen and phosphorus from the

watersheds of Ellerbe Creek, Eno River, Little River, Flat River, and Knap of Reeds Creek have been reduced to the allowable loads identified in Item (3), but that nutrient related water quality standards are not attained in a portion or portions of Falls Reservoir, and that standards may not be attained, it may consider re-modeling Falls Reservoir for the purpose of establishing revised reduction needs and developing a revised nutrient strategy through additional rulemaking. The Division shall determine the likelihood of attaining standards by comparing the scale of impairment against the recency and magnitude of load reduction measures implemented in Upper Falls watershed.

- ~~(b)~~ Recognizing the uncertainty associated with model based load reduction targets, to ensure that allowable loads to Falls Reservoir remain appropriate as implementation proceeds, a party may develop and submit for Commission approval supplemental nutrient response modeling of Falls Reservoir based on additional data collected after a period of implementation. The Commission may consider revisions to the requirements of Stage II based on the results of such modeling according to the following criteria:
 - ~~(i)~~ A party shall obtain Division review and approval of any monitoring study plan and description of the modeling framework to be used prior to commencement of such a study. The study plan and modeling framework shall meet any Division requirements for data quality and model support or design in place at that time;
 - ~~(ii)~~ Supplemental modeling shall include a minimum of three years of lake water quality data unless a party can provide information to

- demonstrate that a shorter time span is sufficient;
- (iii) ~~The Commission may review Stage II requirements if a party submits supplemental modeling data, products and results acceptable to the Commission for this purpose;~~
 - (iv) ~~The Commission may accept modeling products and results that estimate a range of combinations of nitrogen and phosphorus percentage load reductions needed to meet the goal of the Falls nutrient strategy, along with associated allowable loads to Falls Reservoir, from the watersheds of Ellerbe Creek, Eno River, Little River, Flat River, and Knap of Reeds Creek and that otherwise comply with the requirements of this Item. Such modeling may incorporate the results of studies that provide new data on various nutrient sources such as atmospheric deposition, internal loading, and loading from tributaries other than those identified in this Sub item;~~
 - (v) ~~Where supplemental modeling is accepted by the Commission, and results indicate allowable loads of nitrogen and phosphorus to Falls Reservoir from the watersheds of Ellerbe Creek, Eno River, Little River, Flat River, and Knap of Reeds Creek that are substantially different than those identified in Item (3), then the Commission may establish those allowable loads as the revised objective of Stage II relative to their associated baseline values. Otherwise, the Commission shall continue to implement the Falls nutrient strategy as established in this Rule;~~
 - (vi) ~~Where the substantially different allowable loads to~~
- Falls Reservoir are greater than those identified in Item (3), the Division shall work with affected parties to revise the accounting and implementation for individual rules according to these less stringent requirements. The Division shall establish revised allocations and the Director shall notify all affected parties of these revised requirements and allocations. Until such revisions are completed, implementation shall continue according to existing requirements; and
- (vii) ~~Where the substantially different allowable loads to Falls Reservoir are lesser than those identified in Item (3), the Commission may initiate rulemaking to amend the Falls nutrient strategy rules to incorporate these more stringent objectives. Until such amendments become effective, strategy implementation shall continue according to existing requirements.~~
- (c) ~~Nothing in this strategy shall be construed to limit, expand, or modify the authority of the Commission to undertake alternative regulatory actions otherwise authorized by state or federal law, including the reclassification of waters of the State pursuant to G.S. 143-214.1, the revision of water quality standards pursuant to G.S. 143-214.3, and the granting of variances pursuant to G.S. 143-215.3.~~
 - (d)(b) ~~Given that these regulations require significant load reductions over extended timeframes, The Division, to address resulting uncertainties including those related to technological advancement, scientific understanding, actions chosen by affected parties, resultant loading effects, and loading effects of other regulations, the Division shall report to the Commission and provide information to the public in January 2016 and every five years thereafter~~

as necessary. The reports shall address all of the following subjects:

- (i) Changes in nutrient loading to Falls Reservoir and [incremental] progress in attaining nutrient-related water quality standards as described in Sub-Items (5)(a)(i) through (vi) of this Rule;
- (ii) The state of wastewater and stormwater nitrogen and phosphorus control technology, including technological and economic feasibility;
- (iii) Use and projected use of wastewater reuse and land application opportunities;
- (iv) The utilization and nature of nutrient offsets and projected changes; This shall include an assessment of [the]any load reduction value derived from preservation of existing forested land cover;
- (v) Results of any studies evaluating instream loading changes resulting from implementation of individual rules;
- (vi) Results of any studies evaluating nutrient loading from conventional septic systems and discharging sand filter systems;
- (vii) Assessment of the instream benefits of local programmatic management measures such as fertilizer or pet waste ordinances, improved street sweeping and the extent to which local governments have implemented these controls;
- (viii) Results of applicable studies, monitoring, and modeling from which a baseline will be established to address changes in atmospheric deposition of nitrogen; and establish a baseline for atmospheric nitrogen deposition;
- (ix) Recent or anticipated changes in regulations affecting atmospheric nitrogen emissions and their

projected effect on nitrogen deposition;

- (viii) Projected reductions in atmospheric deposition based on current modeling;
- (ix)(x) Results of any studies evaluating nutrient loading from groundwater;
- (x)(xi) Updates to nutrient loading accounting tools; and Evaluation of available nutrient related lake monitoring data; and
- (c) The Division shall submit a report to the Commission in July 2025 that shall address the following subjects in addition to the content required elsewhere under this Sub-item: Item:
 - (i) The physical, chemical, and biological conditions of the Upper Falls Reservoir including nutrient loading impacts;
 - (ii) Whether alternative regulatory action pursuant to Sub-Item (5) [(4)] (g) would be sufficient to protect existing uses as required under the Clean Water Act;
 - (iv) The impact of management of the Falls Reservoir on water quality in the Upper Falls Reservoir;
 - (v) The methodology used to establish compliance with nutrient-related water quality standards in Falls Reservoir and the potential for using alternative methods;
 - (vi) The feasibility of achieving the Stage II objective; and
 - (vii) The estimated costs and benefits of achieving the Stage II [objective-] objective;
- (d) The Division shall make recommendations, if any, on rule revisions based on the information reported pursuant to Sub-Items (b) and [(4)] (c) of this [Rule,] Rule;
- (e) In developing the reports required under Sub-Items (b) and [(4)] (c) of this Rule, the Division shall consult with and consider information submitted by local governments and other persons with an interest in Falls Reservoir. Following receipt of a report, the Commission shall consider whether revisions to the requirements

of Stage II are needed and may initiate rulemaking or any other action allowed by ~~law~~ law:

(f) Recognizing the uncertainty associated with model-based load reduction targets, to ensure that allowable loads to Falls Reservoir remain appropriate as implementation proceeds, a person may at any time during implementation of the Falls nutrient strategy develop and submit for Commission approval supplemental nutrient response modeling of Falls Reservoir based on additional data collected after a period of implementation. The Commission may consider revisions to the requirements of Stage II based on the results of such modeling as follows:

(i) A person shall obtain Division review and approval of any monitoring study plan and description of the modeling framework to be used prior to commencement of such a study. The study plan and modeling framework shall meet any Division requirements for data quality and model support or design in place at that time. Within 180 days of receipt, the division shall either approve the plan and modeling framework or notify the person seeking to perform the supplemental modeling of changes to the plan and modeling framework required by the Division;

(ii) Supplemental modeling shall include a minimum of three years of lake water quality data unless the person performing the modeling can provide information to the Division demonstrating that a shorter time span is sufficient;

(iii) The Commission may accept modeling products and results that estimate a range of combinations of nitrogen and phosphorus percentage load reductions needed to meet the goal of the Falls nutrient strategy, along with

associated allowable loads to Falls Reservoir, from the watersheds of Ellerbe Creek, Eno River, Little River, Flat River, and Knap of Reeds Creek and that otherwise comply with the requirements of this Item. Such modeling may incorporate the results of studies that provide new data on various nutrient sources such as atmospheric deposition, internal loading, and loading from tributaries other than those identified in this Sub-item. The Division shall assure that the supplemental modeling is conducted in accordance with the quality assurance requirements of the Division;

(iv) The Commission shall review Stage II requirements if a party submits supplemental modeling data, products and results acceptable to the Commission for this purpose. Where supplemental modeling is accepted by the Commission, and results indicate allowable loads of nitrogen and phosphorus to Falls Reservoir from the watersheds of Ellerbe Creek, Eno River, Little River, Flat River, and Knap of Reeds Creek that are substantially different than those identified in Item (3), then the Commission may initiate rulemaking to establish those allowable loads as the revised objective of Stage II relative to their associated baseline values;

(g) Nothing in this strategy shall be construed to limit, expand, or modify the authority of the Commission to undertake alternative regulatory actions otherwise authorized by state or federal law, including the reclassification of waters of the State pursuant to G.S. 143-214.1, the revision of water quality standards pursuant to G.S. 143-214.3, and the

- (6) granting of variances pursuant to G.S. 143-215.3.
 RULES ENUMERATED. The Falls nutrient strategy rules ~~shall be consists of the following rules~~ titled as follows:
- (a) Rule .0275 Purpose and Scope;
 - (b) Rule .0276 Definitions. An individual rule may contain additional definitions for terms that are used in that rule only;
 - (c) Rule .0277 Stormwater Management for New Development;
 - (d) Rule .0278 Stormwater Management for Existing Development;
 - (e) Rule .0279 Wastewater Discharge Requirements;
 - (f) Rule .0280 Agriculture;
 - (g) Rule .0281 Stormwater Requirements for State and Federal Entities;
 - (h) Rule .0282 Options for Offsetting Nutrient Loads; and
 - (i) ~~Rule .0283 Fertilizer Management; and Rule .0315 Neuse River Basin.~~
 - (j) ~~Rule .0315 Neuse River Basin.~~
- (7) APPLICABILITY. Categories of parties ~~responsible for implementing required to implement~~ the Falls nutrient strategy rules and, as applicable, their geographic scope of responsibility, are identified in each rule. The specific local governments responsible for implementing Rules .0277, .0278, and .0282 shall be as follows:
- (a) All incorporated municipalities, as identified by the Office of the Secretary of State, with planning jurisdiction within or partially within the Falls watershed. Those municipalities are currently:
 - (i) Butner;
 - (ii) Creedmoor;
 - (iii) Durham;
 - (iv) Hillsborough;
 - (v) Raleigh;
 - (vi) Roxboro;
 - (vii) Stem; and
 - (viii) ~~Wake Forest.~~ Wake Forest;
 - (b) All counties with jurisdiction in Falls watershed and for land where municipalities listed in Sub-Item (6)(7)(a) do not have an implementation requirement:
 - (i) Durham;
 - (ii) Franklin;
 - (iii) Granville;
 - (iv) Orange;
 - (v) Person; and
 - (vi) ~~Wake.~~ Wake;
 - (c) A unit of government may arrange through interlocal agreement or other

instrument of mutual agreement for another unit of government to implement portions or the entirety of a program required or allowed under any rule of this strategy to the extent that such an arrangement is otherwise allowed by statute. The governments involved shall submit documentation of any such agreement to the Division. No such agreement shall relieve a unit of government from its responsibilities under these Rules.

- (8) ENFORCEMENT. Failure to meet requirements of Rules .0275, .0277, .0278, .0279, .0280, .0281, or .0282 of this Section may result in imposition of enforcement measures as authorized by G.S. 143-215.6A (civil penalties), G.S. 143-215.6B (criminal penalties), and G.S. 143-215.6C (injunctive relief).

History Note: Authority G. S. 143-214.1; 143-214.3; 143-214.5; 143-214.7; 143-215.1; 143-215.3; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143 215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; S.L. 2009-337; S.L. 2009-486;

Temporary Adoption Eff. January 15, 2011.

15A NCAC 02B .0276 FALLS WATER SUPPLY NUTRIENT STRATEGY: DEFINITIONS

(a) Unless the context indicates otherwise, The the following words and phrases, which are not defined in G.S. 143, Article 21, shall be interpreted as follows for the purposes of the Falls nutrient strategy:

- (1) "Allocation" means the mass quantity of nitrogen or phosphorus that a discharger, group of dischargers, nonpoint source, or collection of nonpoint sources is ~~assigned~~ assigned as part of a TMDL. For point sources, possession of allocation does not authorize the discharge of nutrients but is prerequisite to such authorization through a NPDES ~~permit~~ permit, and allocation may be further distinguished as follows:
 - (A) "Active" allocation means that portion of an allocation that has been applied toward and is expressed as a nutrient limit in an individual NPDES [permit.] permit;
 - (B) "Reserve" allocation means allocation that is held by a permittee or other person but which has not been applied toward and is not expressed as a nutrient limit in an individual NPDES [permit.] permit;
- (2) "Applicator" means the same as defined in ~~15A NCAC 02B .0202(4).~~ 15A NCAC 02B .0202(4);

- (3) “Atmospheric nitrogen” means total oxidized nitrogen (NO_v) which includes all nitrogen oxides (including NO₂, NO, N₂, nitrogen trioxide [N₂O₃], nitrogen tetroxide [N₂O₄], dinitrogen pentoxide [N₂O₅], nitric acid (HNO₃) peroxyacetyl nitrates (PAN)), the sum of which is referred to as reduced nitrogen [NH_x]- (NH_x);
- ~~(3)~~(4) "Delivered," as in delivered allocation, load, or limit, means the allocation, load, or limit that is measured or predicted at Falls Reservoir-Reservoir; ~~—A delivered value is equivalent to a discharge value multiplied by the transport factor for that discharge location.~~
- (4)(5) "Development" means the same as defined in ~~15A NCAC 02B .0202(23).~~ 15A NCAC 02B .0202(23);
- ~~(5)~~(6) "Discharge," as in discharge allocation, load, or limit means the allocation, load, or limit that is measured at the point of discharge into surface waters in the Falls watershed- watershed; ~~A discharge value is equivalent to a delivered value divided by the transport factor for that discharge location.~~
- ~~(6)~~(7) "Existing development" means development, other than that associated with agricultural or forest management activities that meets one of the following criteria:
- ~~(a)~~(A) It either is built or has established a vested right based on statutory or common law as interpreted by the courts, as of the effective date of either local new development stormwater programs implemented under 15A NCAC 02B .0277 for projects that do not require a state permit or, as of the applicable compliance date established in 15A NCAC 02B .0281(5) and (6); or
- ~~(b)~~(B) It occurs after the compliance date set out in Sub-Item ~~(4)~~ (5) (d) of Rule .0277 but does not result in a net increase in built-upon area- area;
- ~~(7)~~ "Intermittent stream" means ~~a well defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water.~~
- (8) "Falls nutrient strategy," or "Falls water supply nutrient strategy" means the set of 15A NCAC 02B .0275 through .0282 and ~~.0315(p).~~ .0315(p);
- (9) "Falls Reservoir" means the surface water impoundment operated by the US Army Corps of Engineers and named Falls of Neuse Reservoir-Reservoir;
- (10) "Upper Falls Reservoir" means that portion of the reservoir upstream of State ~~Route 50.~~ Route 50;
- (11) "Upper Falls Watershed" means that area of Falls watershed draining to Upper Falls Reservoir-Reservoir;
- (12) "Lower Falls Reservoir" means that portion of the reservoir downstream of State ~~Route 50.~~ Route 50;
- (13) "Lower Falls Watershed" means that are of Falls watershed draining to lower falls Reservoir without first passing through Upper Falls Reservoir-Reservoir;
- (14) "Load" means the mass quantity of a nutrient or pollutant released into surface waters over a given time period. Loads may be expressed in terms of pounds per year and may be expressed as "delivered load" or an equivalent ~~"discharge load."~~ "discharge load;"
- (15) "Load allocation" means the same as set forth in federal regulations 40 CFR 130.2(g), which is incorporated herein by reference, including subsequent amendments and editions. These regulations may be obtained at no cost from <http://www.epa.gov/lawsregs/search/40cfr.html> or from the U.S. Government Printing Office, 732 North Capitol St. NW, Washington D.C., ~~20401.~~ 20401;
- (16) "New development" means any development project that does not meet the definition of existing development set out in this Rule;
- (17) "Nitrogen" ~~or "total nitrogen"~~ means the sum of the organic, nitrate, nitrite, and ammonia forms of nitrogen in a water or ~~wastewater.~~ wastewater;
- (18) "NPDES" means National Pollutant Discharge Elimination System, and connotes the permitting process required for the operation of point source discharges in accordance with the requirements of Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.
- (19) "Nutrients" means total nitrogen and total ~~phosphorus.~~ phosphorus;
- ~~(20)~~ "Perennial stream" means ~~a well defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.~~
- ~~(21)~~(20) "Phosphorus" or "total phosphorus" means the sum of the orthophosphate, polyphosphate,

and organic forms of phosphorus in a water or ~~wastewater, wastewater;~~

- ~~(22)~~(21) "Stream" means a body of concentrated flowing water in a natural low area or natural channel on the land ~~surface, surface;~~
- ~~(23)~~(22) "Surface waters" means all waters of the state as defined in G.S. 143-212 except underground ~~waters, waters;~~
- ~~(24)~~(23) "Technical specialist" means the same as defined in ~~15A NCAC 06H .0102(9), 15A NCAC 06H .0102(9);~~
- ~~(25)~~ "Total Maximum Daily Load," or "TMDL," means the same as set forth in federal regulations 40 CFR 130.2(i) and 130.7(e)(1), which are incorporated herein by reference, including subsequent amendments and editions. These regulations may be obtained at no cost from <http://www.epa.gov/lawsregs/search/40cfr.html> or from the U.S. Government Printing Office, 732 North Capitol St. NW, Washington D.C., 20401.
- ~~(26)~~(24) "Total nitrogen" or "nitrogen" means the same as 'nitrogen' defined in Item ~~[(17)-] (17); sum of the organic, nitrate, nitrite, and ammonia forms of nitrogen in a water or wastewater.~~
- ~~(27)~~(25) "Total phosphorus" or "phosphorus" means the same as 'phosphorus' defined in Item ~~[(20)-] (20); sum of the orthophosphate, polyphosphate, and organic forms of phosphorus in a water or wastewater.~~
- ~~(28)~~(26) "Wasteload" means the mass quantity of a nutrient or pollutant released into surface waters by a wastewater discharge over a given time period. Wasteloads may be expressed in terms of pounds per year and may be expressed as "delivered wasteload" or an equivalent "~~discharge wasteload.~~" "discharge wasteload;" and
- ~~(29)~~(27) "Wasteload allocation" means the same as set forth in federal regulations 40 CFR 130.2(h), which is incorporated herein by reference, including subsequent amendments and editions. These regulations may be obtained at no cost from <http://www.epa.gov/lawsregs/search/40cfr.html> or from the U.S. Government Printing Office, 732 North Capitol St. NW, Washington D.C., 20401.

(b) The definitions in Rule .0279 shall also apply throughout these Falls Water Supply Nutrient Strategy rules.

History Note: Authority G.S. 143-214.1; 1432-214.3; 143-214.5; 143-214.7; 143-215.1; 143215.3; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143 215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; S.L. 2009-337; S.L. 2009-486;
Temporary Adoption Eff. January 15, 2011.

15A NCAC 02B .0277 FALLS RESERVOIR WATER SUPPLY NUTRIENT STRATEGY: STORMWATER MANAGEMENT FOR NEW DEVELOPMENT

The following is the stormwater strategy, as prefaced in 15A NCAC 02B .0275, for new development activities within the Falls watershed:

- (1) PURPOSE. The purposes of this Rule are as follows:
 - (a) To achieve and maintain the nitrogen and phosphorus loading objectives established for Falls Reservoir in 15A NCAC 02B .0275 from lands in the Falls watershed on which new development occurs;
 - (b) To provide control for stormwater runoff from new development in Falls watershed to ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows; and
 - (c) To protect the water supply, aquatic life and recreational uses of Falls Reservoir from the potential impacts of new development.
- (2) APPLICABILITY. This Rule shall apply to those areas of new ~~development~~development, as defined in 15A NCAC 02B .0276, that lie within the Falls watershed and the planning jurisdiction of a municipality or county that is identified in 15A NCAC 02B .0275. This Rule shall not apply to development activities on state and federal lands that are [captured under] set out in Rule .0281 of this Section.
- (3) REQUIREMENTS. All local governments subject to this Rule shall develop stormwater management programs for submission to and approval by the Commission, to be implemented in areas described in Item (2) of this Rule. Rule, based on the standards in this Item. Nothing in this Rule preempts local governments from establishing requirements that are more restrictive than those set forth in this Rule. Local government stormwater management programs shall include the following elements and the standards contained in Item (4):
****~~(Land Disturbance Threshold Option: A)**~~**
 - (a) ~~An approved~~The requirement that a stormwater management plan shall be ~~required~~ submitted for local government approval based on the standards in Item (4) for all proposed new development disturbing ~~one one-half~~ one-half acre or more for single family and duplex residential property and recreational facilities, and ~~one half~~ 12,000 square feet or more for

commercial, industrial, institutional, multifamily residential, or local government ~~property-property~~. These ~~stormwater plans shall not be approved by the subject local governments unless the following criteria are met:~~

~~** (Land Disturbance Threshold Option: B) **~~

~~(a) An approved stormwater management plan shall be submitted for local government approval based on the standards in Item (4) required for all proposed new development disturbing 5,000 square feet or more. These stormwater plans shall not be approved by the subject local governments unless the following criteria are met:~~

~~(i) Nitrogen and phosphorus loads contributed by the proposed new development activity shall not exceed the unit area mass loading rates as follows for nitrogen and phosphorus, respectively, expressed in units of pound/acre/year: 1.1 and 0.33. The developer shall determine the load reductions needed to meet these loading rate targets by using the load calculation method called for in Sub-Item (4)(a) or other equivalent method acceptable to the Division;~~

~~(b) A plan to ensure maintenance of best management practices (BMPs) implemented to comply with this rule for the life of the development; and~~

~~(c) A plan to ensure enforcement and compliance with the provisions in Item (4) of this Rule for the life of the new development.~~

~~(4) PLAN APPROVAL REQUIREMENTS. A developer's stormwater [plans] plan shall not be approved by a subject local [governments] government unless the following criteria are met:~~

~~(a) Nitrogen and phosphorus loads contributed by the proposed new development activity shall not exceed the following unit-area mass loading rates for nitrogen and phosphorus, respectively, expressed in units of pounds/acre/year: 2.2 and 0.33. Proposed development that would replace or expand structures or improvements that existed as of~~

December 2006, the end of the baseline period, and that would not result in a net increase in built-upon area shall not be required to meet the nutrient loading targets or high-density requirements except to the extent that the developer shall provide stormwater control at least equal to the previous development. Proposed development that would replace or expand existing structures or improvements and would result in a net increase in built-upon area shall have the option either to achieve at least the percentage loading reduction objectives stated in 15A NCAC 02B .0275 as applied to nitrogen and phosphorus loading from the previous development for the entire project site, or to meet the loading rate targets described in this Item. These requirements shall supersede those identified in 15A NCAC 02B .0104(q). The developer shall determine the load reductions needed to meet these loading rate targets by using the loading calculation method called for in Sub-Item (5)(a) or other equivalent method acceptable to the [Division.] Division;

~~** (Onsite Treatment Option: A (50 Percent N / 60 Percent P) **~~

(ii) The developer shall have the option of offsetting part of the nitrogen and phosphorus load by implementing or funding offsite management measures. Before using an offsite offset option, a development shall implement structural stormwater controls that attain a minimum of 60 percent reduction in post-construction nitrogen loading rate and 60 percent reduction in post-construction phosphorus loading rate on site and shall meet any requirements for engineered stormwater controls described in Sub-Item (3)(a)(iii) of this Rule. Offsite offsetting measures shall achieve at least equivalent reductions in nitrogen and phosphorus loading to the remaining reduction needed onsite to

comply with the loading rate targets set out in Sub-Item (3)(a)(i) of this Rule. A developer may make offset payments to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that Program. A developer may use an offset option provided by the local government in which the development activity occurs. A developer may propose other offset measures to the local government, including providing his or her own offsite offset or utilizing a private seller. All offset measures identified in this Sub-Item shall meet the requirements of 15A NCAC 02B .0282;

(b) The developer shall have the option of offsetting part of the nitrogen and phosphorus load by implementing or funding offsite ~~[management]~~ offset measures. Before using an offsite offset option, a development shall implement onsite structural stormwater controls ~~[onsite]~~ that ~~[achieves]~~ achieve one of the following levels of reductions:

- (i) Proposed new development activity disturbing at least one-half acre but less than one acre of land for single family and duplex residential property and recreational facilities, except as stated in Sub-Item ~~[(3)(b)(iii);]~~ (4)(b)(iv), shall achieve 30 percent or more of the needed load reduction in both nitrogen and phosphorus loading onsite and shall meet any requirements for engineered stormwater controls described in Sub-Item ~~[(3)(d)]~~ (4)(e) of this Rule;
- (ii) Proposed new development activity disturbing at least 12,000 but less than one acre of land for commercial, industrial, institutional, multifamily residential, or local government property, except as stated in Sub-Item

~~[(3)(b)(iii);]~~ (4)(b)(iv), shall achieve 30 percent or more of the needed load reduction in both nitrogen and phosphorus loading onsite and shall meet any requirements for engineered stormwater controls described in Sub-Item ~~[(3)(d)]~~ (4)(e) of this Rule;

(iii) Except as stated in Sub-Item ~~[(3)(b)(iii);]~~ (4)(b)(iv), proposed new development activity that disturbs one acre of land or more shall achieve 50 percent or more of the needed load reduction in both nitrogen and phosphorus loading onsite and shall meet any requirements for engineered stormwater controls described in Sub-Item ~~[(3)(d)]~~ (4)(e) of this Rule; or

(iv) Proposed development that would replace or expand structures or improvements that existed as of December ~~[2006;]~~ 2006 ~~[the end of the baseline period;]~~ and that increases impervious surface within a local government's designated downtown area, regardless of area disturbed, shall achieve 30 percent of the needed load reduction in both nitrogen and phosphorus onsite, and shall meet any requirements for engineered stormwater controls described in Sub-Item ~~[(3)(d)]~~ (4)(e) of this ~~[Rule;]~~ Rule;

(c) Offsite offsetting measures shall achieve at least equivalent reductions in nitrogen and phosphorus loading to the remaining reduction needed onsite to comply with the loading rate targets set out in Sub-Item ~~[(3)(a)(i)]~~ (4)(a) of this ~~[Rule;]~~ Item. A developer may use any measure that complies with the requirements of Rules .0240 and .0282. of this ~~[Section;]~~ Section;

~~**~~(Onsite Treatment Option: B (60 Percent N / 60 Percent P))~~**~~

(ii) The developer shall have the option of offsetting part of

~~the nitrogen and phosphorus load by implementing or funding offsite management measures. Before using an offsite offset option, a development shall implement structural stormwater controls that attain a minimum of 60 percent reduction in post-construction nitrogen loading rate and 60 percent reduction in post-construction phosphorus loading rate on-site and shall meet any requirements for engineered stormwater controls described in Sub-Item (3)(a)(iii) of this Rule. Offsite offsetting measures shall achieve at least equivalent reductions in nitrogen and phosphorus loading to the remaining reduction needed onsite to comply with the loading rate targets set out in Sub-Item (3)(a)(i) of this Rule. A developer may make offset payments to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that Program. A developer may use an offset option provided by the local government in which the development activity occurs. A developer may propose other offset measures to the local government, including providing his or her own offsite offset or utilizing a private seller. All offset measures identified in this Sub-Item shall meet the requirements of 15A NCAC 02B .0282;~~

(iii)(d) Proposed new development subject to NPDES, water supply, and other state-mandated stormwater regulations shall comply with those regulations in addition to the other requirements of this ~~Sub-Item~~Sub-item. Proposed new development in any water supply watershed in the Falls watershed designated WS-II, WS-III, or WS-IV shall comply with the density-based restrictions,

obligations, and requirements for engineered stormwater controls, clustering options, operation and maintenance responsibilities, vegetated setbacks, land application, and landfill provisions described in Sub-Items (3)(b)(i) and (3)(b)(ii) of the applicable Rule among 15A NCAC 02B .0214 through .0216. ~~Notwithstanding~~ Provided, the allowance in water supply watershed rules for 10 percent of a jurisdiction to be developed at up to 70 percent built-upon area without stormwater treatment, ~~proposed new development in the Falls watershed shall not have the option to forego treatment; treatment shall not be available in the Falls [watershed:] watershed;~~

(iv)(e) Stormwater systems shall be designed to control and treat at a minimum the runoff generated from all surfaces in the project area by one inch of rainfall. The treatment volume shall be drawn down pursuant to standards specific to each practice as provided in the ~~most recent version~~ July 2007 version of the *Stormwater Best Management Practices Manual* published by the Division, or other at least technically equivalent standards acceptable to the ~~Division~~Division. To ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows, stormwater flows from new development shall not contribute to degradation of waters of the State. ~~At a minimum, the new development shall not result in a net increase in peak flow leaving the site pre-development conditions for the one year, 24-hour storm event;~~

(f) ~~To ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows, at a minimum, the new development shall not result in a net increase in [peak] peak flow leaving the site from pre-development conditions for the one-year, 24-hour storm [event:] event;~~

(v) ~~Proposed development that would replace or expand structures or improvements that existed as of December 2006, the end of the baseline~~

period, and that would not result in a net increase in built-upon area shall not be required to meet the nutrient loading targets or high-density requirements except to the extent that it shall provide stormwater control at least equal to the previous development. Proposed new development that would replace or expand existing structures or improvements and would result in a net increase in built-upon area shall have the option either to achieve at least the percentage loading reduction objectives stated in 15A NCAC 02B .0275 as applied to nitrogen and phosphorus loading from the previous development for the entire project site, or to meet the loading rate targets described in Sub Item (3)(a)(i). These requirements shall supersede those identified in 15A NCAC 02B .0104(q);

(vi) Proposed redevelopment that increases impervious surface within a local government's designated downtown area shall achieve a 30 percent reduction in both nitrogen and phosphorus loading from the untreated condition onsite before the remainder of the 40 percent nitrogen and 77 percent phosphorus reduction from the previous condition may be achieved through offsite offsets;

(vii)(g) New development may satisfy the requirements of this Rule rule by meeting the post-development hydrologic criteria set out in Chapter 2 of the North Carolina Low Impact Development Guidebook dated June 2009, or the hydrologic criteria in the most recent version of this that guidebook;

(viii)(h) Proposed new development shall demonstrate compliance with the riparian buffer protection requirements of 15A NCAC 02B .0233 and ~~.0242~~ .0242 or subsequent

amendments or replacements to those requirements.

(b) ~~A plan to ensure maintenance of best management practices (BMPs) implemented as a result of the provisions in Sub Item (3)(a) of this Rule for the life of the development;~~

(c) ~~A plan to ensure enforcement and compliance with the provisions in Sub Item (3)(a) of this Rule for the life of the new development;~~

(d) ~~Nothing in these rules preempts local governments from establishing requirements that are more restrictive than those set forth in these rules.~~

(4)(5) RULE IMPLEMENTATION. This Rule shall be implemented as follows:

(a) No later than March 15, 2011, ~~Within two months after the effective date of this Rule,~~ the Division shall submit a model local stormwater program, including a model local ordinance that embodies the criteria described in ~~Item~~ Items (3) and (4) of this Rule rule to the Commission for approval. The model program shall include a tool that will allow developers to account for nutrient loading from development lands and loading changes due to BMP implementation to meet the requirements of ~~Item~~ Items (3) and (4) of this Rule. The accounting tool shall utilize nutrient efficiencies and associated design criteria established for individual BMPs in the most recent version July 2007 version of the Stormwater Best Management Practices Manual published by the Division, or other more precise standards acceptable to the Division. At such time as data quantifying nutrient loads from onsite wastewater systems is made available, the new development nutrient export accounting tool shall be revised to require accounting for nutrient loading from onsite wastewater from newly developed lands that use such systems. Should research quantify significant loading from onsite wastewater systems, the Division may also make recommendations to the Commission for Public Health to initiate rulemaking to reduce nutrient loading to surface waters from these systems. The Division shall work in cooperation with subject local governments and other watershed

- interests in developing this model ~~program-program~~.
- (b) Within five months after the Commission's approval of the model local stormwater program and model ordinance, subject local governments shall submit stormwater management programs, in conjunction with similar requirements in 15A NCAC 02B .0278, to the Division for preliminary approval. These local programs shall meet or exceed the requirements in ~~Item-Items (3) and (4)~~ of this Rule;
 - (c) Within 10 months after the Commission's approval of the model local stormwater program, the Division shall provide recommendations to the Commission on local stormwater programs. The Commission shall either approve the programs or require changes based on the standards set out in ~~Item-Items (3) and (4)~~ of this Rule. Should the Commission require changes, the applicable local government shall have two months to submit revisions, and the Division shall provide follow-up recommendations to the Commission within two months after receiving revisions;
 - (d) Within six months after the Commission's approval of a local program, or upon the Division's first renewal of a local government's NPDES stormwater permit, whichever occurs later, the affected local government shall complete adoption of and implement its local stormwater management program; and
 - (e) Upon implementation, subject local governments shall submit annual reports to the Division summarizing their activities in implementing each of the requirements in ~~Item-Items (3) and (4)~~ of this Rule, including changes to nutrient loading ~~loading due to implementation of Sub-Item (3)(a) of this Rule.~~

~~(5)(6)~~ **EQUIVALENT PROGRAM OPTION.** A local government may in its program submittal under Sub-Item ~~(4)(b) (5)(b)~~ of this Rule ~~rule~~ request that the Division accept the local government's implementation of another stormwater program or programs as satisfying one or more of the requirements set forth in ~~Item-Items (3) and (4)~~ of this Rule. The Division ~~will~~ shall provide determination on the acceptability of any such alternative prior

to requesting Commission approval of local programs as required in Sub-Item ~~(4)(e) (5)(c)~~ of this Rule. Should a local government propose alternative requirements to achieve and maintain the rate targets described in Sub-Item ~~(3)(a)(i) (4)(a)~~ of this Rule, it shall include in its program submittal technical information demonstrating the adequacy of those ~~requirements, requirements.~~ Should an alternative program propose monitoring of watersheds to compare measured loading to expected loading, it shall ~~and~~ at a minimum include the following:

- (a) Engineering calculations that quantify expected loading from new development projects based on stormwater controls currently enforced;
- (b) At least three years of continuous flow and nutrient monitoring data demonstrating that watershed loading rates are at or below ~~the rate targets described in rates that would result from meeting the requirements of this Rule and Rule .0278 of this Section based on the land cover composition of the watershed; Sub-Item (43)(a)(i) of this Rule;~~
- (c) An ongoing water quality monitoring program based on continuous flow and concentration sampling to be performed indefinitely into the future with results reported annually to the Division for review and approval;
- (d) A corrective action plan to be implemented should data collected under the ongoing monitoring program demonstrate watershed loading is within 10 percent of the ~~rate targets described in Sub-Item (43)(a)(i) of this Rule~~ estimated in compliance with this Item; and
- (e) Should a local government submit an alternate program for consideration that includes areas within its jurisdiction outside of the monitored watershed it shall submit technical information demonstrating the areas outside of the monitored watershed can reasonably be expected to load at equal or lesser rates than ~~the rate targets described in Sub-Item [(4)](3)(a)(i) of this Rule~~ those estimated in compliance with this Item based on comparative analysis of land uses and other factors affecting nutrient loading.

History Note: Authority G. S. 143-214.1; 143-214.3; 143-214.5; 143-214.7; 143-215.1; 143-215.3; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; S.L. 2009-337; S.L. 2009-486;

Temporary Adoption Eff. January 15, 2011.

**15A NCAC 02B .0278 FALLS WATER SUPPLY
NUTRIENT STRATEGY: STORMWATER
MANAGEMENT FOR EXISTING DEVELOPMENT**

This Rule establishes a staged, adaptive approach by which municipalities and counties shall contribute to achieving the nonpoint source loading objectives of the Falls Reservoir nutrient strategy by reducing or otherwise offsetting nutrient contributions from existing development. It provides local governments three years to develop ~~plan programs~~ that propose Stage I load reduction actions to the Division and requires local governments to begin and track measures to reduce nutrient loads from existing developed lands within their jurisdiction by ~~January 15, 2014, within three years of the effective date of this Rule~~, as specified in Item (7). Local governments shall submit for approval and implement Stage II load reduction programs by ~~January 15, 2021, within ten years after the effective date of this Rule~~ and submit revised load reductions ~~plan programs~~ every five years thereafter. The following is the watershed stormwater strategy, as prefaced in Rule 15A NCAC 02B .0275, for existing development in the Falls watershed:

- (1) PURPOSE. The purposes of this Rule are as follows:
 - (a) To achieve and maintain the nonpoint source nitrogen and phosphorus percentage reduction objectives established for Falls Reservoir in Rule 15A NCAC 02B .0275 on nutrient loading from existing development in the Falls watershed relative to the baseline period defined in that Rule. Existing development is defined in Rule 15A NCAC 02B .0276; and
 - (b) To protect the water supply, aquatic life, and recreational uses of Falls Reservoir.
- (2) APPLICABILITY. This Rule shall apply to municipalities and counties in the Falls watershed as identified in Rule 15A NCAC 02B .0275.
- (3) STAGED AND ADAPTIVE IMPLEMENTATION REQUIREMENTS. Local governments shall employ the following staged and adaptive implementation ~~plan program~~. All local governments subject to this Rule shall develop load-reducing programs for submission to and approval by the Commission that include the following staged elements and meet the associated minimum standards for each stage of implementation:

- (a) In Stage I, a local government subject to this Rule shall implement a load reduction program that provides estimates of, and plans for offsetting ~~by calendar year 2020, within 10 years of the effective date of this Rule~~, nutrient loading increases from lands developed subsequent to the baseline period ~~but prior to implementation of and not subject to the requirements of the local government's Falls Lake new development stormwater program~~. For these post-baseline existing developed lands, the current loading rate shall be compared to the loading rate for these lands prior to development for the acres involved, and the difference shall constitute the load reduction need in annual mass load, in pounds per year. Alternatively, a local government may assume uniform pre-development loading rates of 2.89 pounds/acre/year N and 0.63 pounds/acre/year P for these lands. The local government shall achieve this Stage I load reduction ~~by calendar year 2020, within 10 years of the effective date of this Rule~~. This Stage I program shall meet the criteria defined in Item (4) of this ~~Rule~~ Rule;
 - (b) ~~[Ten]10 years after the effective date of this Rule [rule]~~ By January 15, 2021 and every five years thereafter, a local government located in the Upper Falls Watershed ~~as defined in Item (3) of Rule 15A NCAC 02B .0275 .0276~~ shall submit and ~~[concurrently] begin implementing~~ a Stage II load reduction program ~~designed to achieve the percent load reduction goals from existing developed lands in its jurisdiction, that includes timeframes for achieving these goals and that meets the criteria defined in Item (4) of this Rule that meets the following requirements:~~
 - (i) ~~[Provided that]~~ If a local government achieves the Stage I reduction objectives described in this Item, a local government's initial Stage II load reduction program shall, at the local government's election, either (A) achieve additional annual reductions in nitrogen

and phosphorus loads from existing development greater than or equal to the average annual additional reductions achieved in the last seven years of Stage I or (B) provide for an annual expenditure that equals or exceeds the average annual amount the local government has spent to achieve nutrient reductions from existing development during the last seven years of Stage I. A local government's expenditures shall include all local government funds, including any state and federal grant funds used to achieve nutrient reductions from existing developed lands. The cost of achieving reductions from municipal wastewater treatment plants shall not be included in calculating a local government's expenditures. Notwithstanding this requirement, the EMC may approve an initial Stage II load reduction program based on a lower annual level of reduction or a lower annual level of expenditure if the local government demonstrates that continuing the prior annual level of reduction or annual level of expenditure is not reasonable or cost-effective given the reductions that will be achieved, or the expenditure would cause serious financial hardship to the local [government.] government;

(ii) If Stage I reduction objectives are not achieved, a local government's initial Stage II load reduction program shall, at the local government's election, either (A) achieve additional annual reductions in nitrogen and phosphorus loads from existing development greater than or equal to the average annual additional reductions achieved in the highest three

years of implementation of Stage I or (B) provide for an annual expenditure that equals or exceeds the average annual amount the local government has spent to achieve nutrient reductions from existing development during the highest three years of implementation of Stage I. Annual expenditures shall be calculated in accordance with Sub-Item (3)(b)(i) of this [item.] Item;

(iii) Subsequent five year programs shall be designed to achieve the Stage II percent load reduction goals from existing developed lands in a local government's jurisdiction, shall include timeframes for achieving these goals and shall meet the requirements of Item (4) of this [Rule.] Rule;

(4) ELEMENTS OF LOAD REDUCTION PROGRAMS. A local government's Stage I and Stage II load reduction program shall address the following elements:

(a) Jurisdictions in the Eno River and Little River subwatersheds shall, as a part of their Stage I load reduction programs, begin and continuously implement a program to reduce loading from discharging sand filters and malfunctioning septic systems discharging into waters of the State within those jurisdictions and ~~subwatersheds-subwatersheds;~~

(b) Jurisdictions within any Falls subwatershed in which chlorophyll a levels have exceeded 40 micrograms/liter in more than seventy-five percent of the monitoring events in any calendar year shall, as part of their Stage I load reduction programs, begin and continuously implement a program to reduce nutrient loading into the waters of the State within those jurisdictions and that ~~subwatershed-subwatersheds;~~

(c) The total amount of nutrient loading reductions in Stage I is not increased for local jurisdictions by the requirements to add specific program components to address loading from

- malfunctioning septic systems and discharging sand filters or high nutrient loading levels pursuant to Sub-Items (4)(a) and (b) of this ~~Rule-Item~~ Item;
- (d) In preparation for implementation of their Stage I and Stage II load reduction programs, local governments shall develop inventories and characterize load reduction potential to the extent that accounting methods allow of the following ~~by January 2013 within two years of the effective date of this Rule~~ by January 2013:
- (i) Wastewater collection systems;
 - (ii) Discharging sand filter systems, including availability of or potential for central sewer connection;
 - (iii) Properly functioning and malfunctioning septic systems;
 - (iv) Restoration opportunities in utility corridors;
 - (v) Fertilizer management plans for local government-owned lands;
 - (vi) Structural stormwater practices, including intended purpose, condition, potential for greater nutrient control; and
 - (vii) Wetlands and riparian buffers including potential for restoration ~~opportunities~~ opportunities;
- (e) A local government's load reduction need shall be based on the developed lands that fall within its general police powers and within the Falls ~~watershed~~ watershed;
- (f) The load reduction need shall not include lands under state or federal control, and a county shall not include lands within its jurisdictional boundaries that are under municipal police ~~powers~~ powers;
- (g) Nitrogen and phosphorus loading from existing ~~developed lands~~ development, including loading from onsite wastewater treatment systems to the extent that accounting methods allow, shall be calculated by applying the accounting tool described in Sub-Item (7)(a) and shall quantify baseline loads of nitrogen and phosphorus to surface waters in the local government's jurisdiction as well as loading changes post-baseline. It shall also calculate target nitrogen and phosphorus loads and corresponding load reduction ~~needs-needs~~ needs;
- (h) The Commission shall recognize reduction credit for early implementation of policies and practices implemented after January 1, 2007 and before timeframes required by this Rule, to reduce runoff and discharge of nitrogen and phosphorus per Session Law 2009-486. The load reduction program shall identify specific load-reducing practices implemented to date subsequent to the baseline period and for which the local government is seeking credit. It shall estimate load reductions for these practices and their anticipated duration using methods provided for in Sub-Item ~~(5)(a)-(5)(a)~~ (5)(a);
- (i) The ~~plan~~ program shall include a proposed implementation schedule that includes annual implementation expectations. The load reduction program shall identify the types of activities the local government intends to implement and types of existing development affected, ~~relative proportions or a prioritization of practices, relative magnitude of reductions it expects to achieve from each, and the relative costs and efficiencies of each activity to the extent information is available~~. The program shall identify the duration of anticipated loading reductions, and may seek activities that provide long-term ~~reductions-reductions~~ reductions;
- (j) The load reduction program shall identify anticipated funding mechanisms or sources and discuss steps take or planned to secure such ~~funding-funding~~ funding;
- (k) The ~~plan~~ program shall address the extent of load reduction opportunities intended from the following types of lands:
- (i) Lands owned or otherwise controlled by the local government;
 - (ii) Each land use type of privately owned existing development ~~as defined in Item (10) of Rule 15A-NCAC 02B .0276, including redevelopment that does not result in net increase in built~~

- upon ~~an~~ area projected redevelopment, on which the local government's load reduction need is based as described in this Item; and
- (iii) Lands other than those on which the local government's load reduction need is based as described in this Item, including lands both within and outside its jurisdiction and including ~~through~~ the use of interlocal agreements and private third party ~~sellers~~ sellers;
- (l) The ~~plan~~ program shall address the extent of load reduction proposed ~~from, at a minimum, from~~ the following stormwater and ecosystem restoration activities:
- (i) Bioretention;
 - (ii) Constructed wetland;
 - (iii) Sand filter;
 - (iv) Filter strip;
 - (v) Grassed swale;
 - (vi) Infiltration device;
 - (vii) Extended dry detention;
 - (viii) Rainwater harvesting system;
 - (ix) Treatment of redevelopment;
 - (x) Overtreatment of new development;
 - (xi) Removal of impervious surface;
 - (xii) Retrofitting treatment into existing stormwater ponds;
 - (xiii) Off-line regional treatment systems;
 - (xiv) Wetland or riparian buffer restoration; and
 - (xv) Reforestation with conservation easement or other protective ~~covenant~~ covenant;
- ~~(m) A local government may propose in its load reduction program the use of the following measures in addition to items listed in (l) and (n), or may propose other measures for which it can provide accounting methods acceptable to the Division:~~
- ~~(i) Redirecting runoff away from impervious surfaces;~~
 - ~~(ii) Soil amendments;~~
 - ~~(iii) Stream restoration;~~
 - ~~(iv) Improved street sweeping; and~~
 - ~~(v) Source control, such as pet waste and fertilizer ordinances.~~
- ~~(n)(m) The ~~plan~~ program shall evaluate the ~~extent of~~ load reduction ~~proposed~~ potential from the following wastewater activities:~~
- ~~(i) Creation of surplus relative to an allocation established in Rule 15A NCAC 02B .0279;~~
 - ~~(ii) Expansion of surplus allocation through regionalization;~~
 - ~~(iii) Connection of discharging sand filters and malfunctioning septic systems to central sewer or replacement with permitted non-discharge alternatives;~~
 - ~~(iv) Removal of illegal discharges; and~~
 - ~~(v) Improvement of wastewater collection ~~systems~~ systems;~~
- ~~(n) A local government may propose in its load reduction program the use of the following measures in addition to items listed in (l) and (m), or may propose other measures for which it can provide accounting methods acceptable to the Division:~~
- ~~(i) Redirecting runoff away from impervious surfaces;~~
 - ~~(ii) Soil amendments;~~
 - ~~(iii) Stream restoration;~~
 - ~~(iv) Improved street sweeping; and~~
 - ~~(v) Source control, such as pet waste and fertilizer ~~ordinances~~ ordinances;~~
- (o) The ~~plan~~ program shall ~~explicitly~~ include evaluate the extent evaluation of load ~~reductions~~ reduction potential relative to the following factors:
- (i) Extent of physical opportunities for installation;
 - (ii) Landowner acceptance;
 - (iii) Incentive and education options for improving landowner acceptance;
 - (iv) Existing and potential funding sources and magnitudes;
 - (v) Practice cost-effectiveness (e.g., cost per pound of nutrient removed);
 - (vi) Increase in per capita cost of a local government's stormwater management program to implement the program;

- ~~(vi)~~(vii) Implementation rate without the use of eminent domain; and
- ~~(vii)~~(viii) Need for and projected role of eminent domain:
- (5) The Commission shall approve a Stage I load reduction ~~plan~~program if it is consistent with Items (3) and (4) of this Rule. The Commission shall Approve a Stage II load reduction ~~plan~~program if it is consistent with Items (3) and (4) of this Rule unless the Commission finds that the local governments can, through the implementation of reasonable and cost-effective measures not included in the proposed program, meet the Stage II nutrient load reductions required by this Rule by a date earlier than that proposed by the local government. If the Commission finds that there are additional or alternative reasonable and cost-effective measures, the Commission may require the local government to modify its proposed program to include such measures to achieve the required reductions by the earlier date. If the Commission requires such modifications, the local government shall submit a modified program within two months. The Division shall recommend that the Commission approve or disapprove the modified program within three months after receiving the modified program. In determining whether additional or alternative load reduction measures are reasonable and cost effective, the Commission shall consider factors [including, but not limited to those] identified in Sub-Item (4)(o) of this Rule, and if it finds that the plan achieves the maximum level of reductions that is technically and economically feasible within the proposed timeframe of implementation based on plan elements identified elsewhere in this Item. Economic feasibility is determined by considering environmental impacts, capital cost of compliance, annual incremental compliance, per capita cost of local stormwater programs, cost-effectiveness of available measures, and impacts on local and regional commerce. The Commission shall not require additional or alternative measures that would require a local government to:
- (a) Install or require installation of a new stormwater collection system in an area of existing development unless the area is being redeveloped;
 - (b) Acquire developed private property; or
 - (c) Reduce or require the reduction of impervious surfaces within an area of existing development unless the area is being redeveloped.
- (6) A municipality shall have the option of working with the county or counties in which it falls, or with another municipality or municipalities within the same subwatershed, to jointly meet the loading targets from all lands within their combined jurisdictions within a subwatershed. A local government may utilize private or third party sellers. All reductions involving trading with other parties shall meet the requirements of Rule 15A NCAC 02B .0282.
- (7) **RULE IMPLEMENTATION.** This Rule shall be implemented as follows:
- (a) ~~Within 30 months after the effective date of this Rule~~ By July 2013, the Division shall submit a Stage I model local program to the Commission for approval that embodies the criteria described in Items (3)(a) and (4) of this Rule. The Division shall work in cooperation with subject local governments and other watershed interests in developing this model program, which shall include the following:
 - (i) Model local ordinances as applicable;
 - (ii) Methods to quantify load reduction requirements and resulting load reduction assignments for individual local governments;
 - (iii) Methods to account for discharging sand filters, malfunctioning septic systems, and leaking collection systems; and
 - (iv) Methods to account for load reduction credits from various activities.
 - (b) Within six months after the Commission's approval of the Stage I model local program, subject local governments shall submit load reduction programs that meet or exceed the requirements of Items (3) and (4) of this Rule to the Division for review and preliminary approval and shall begin implementation and tracking of measures to reduce nutrient loads from existing developed lands within their jurisdictions.
 - (c) Within 20 months of the Commission's approval of the Stage I model local program, the Division shall provide recommendations to the Commission on existing development load reduction programs. The

Commission shall either approve the programs or require changes based on the standards set out in Item (4) of this Rule. Should the Commission require changes, the applicable local government shall have two months to submit revisions, and the Division shall provide follow-up recommendations to the Commission within two months after receiving ~~revisions-revisions~~:

- (d) Within three months after the Commission's approval of a Stage I local existing development load reduction program, the ~~affected~~-local government shall complete adoption of and begin implementation of its existing development Stage I load reduction ~~program-program~~.
- (e) Upon implementation of the programs required under Item (4) of this Rule, local governments shall provide annual reports to the Division documenting their progress in implementing those requirements within three months following each anniversary of program implementation date until such time the Commission determines they are no longer needed to ensure maintenance of reductions or that standards are protected. Annual reports shall include accounting of total annual expenditures, including local government funds and any state and federal grants used toward load reductions achieved from existing developed lands. Local governments shall indefinitely maintain and ensure performance of implemented load-reducing ~~measures-measures~~.
- (f) ~~Ten years after the effective date of this Rule~~ By January 15, 2021 and every five years thereafter until ~~either~~ accounting determines that assigned load reductions have been achieved, standards are met in the lake, or the Commission takes other actions per Rule 15A NCAC 02B .0275, local governments located in the upper Falls watershed as defined in Item (3) of Rule 15A NCAC 02B .0275 shall submit and [concurrently] begin implementation of begin—to implement and shall submit a Stage ~~II~~ load reduction program or program revision to the Division. Within nine months after submittal, the Division shall make

recommendations to the Commission on approval of these programs. The Commission shall either approve the programs or require changes based on the standards set out in this Rule. ~~should~~ If the Commission require changes, the applicable local governments shall submit revisions within two months, and the Division shall provide follow-up recommendations to the Commission within three months after receiving revisions. Upon program approval, local governments shall revise implementation as necessary based on the approved ~~program-program~~.

- (g) A local government may, at any time after commencing implementation of its load reduction program, submit program revisions to the Division for approval based on identification of more cost-effective strategies or other factors not originally ~~recognized-recognized~~.
- (h) Once either load reductions are achieved per annual reporting or water quality standards are met in the lake per Rule 15A NCAC 02B .0275, local governments shall submit ~~plan programs~~ to ensure no load increases and shall report annually per Item (e) on compliance with no increases and take additional actions as ~~necessary-necessary~~.
- (i) At least every five years after the effective date, the Division shall review the accounting methods stipulated under Sub-Item (7)(a) to determine the need for revisions to those methods and to loading reductions assigned using those methods. Its review shall include values subject to change over time independent of changes resulting from implementation of this Rule, such as untreated export rates that may change with changes in atmospheric deposition. It shall also review values subject to refinement, such as nutrient removal efficiencies.

History Note: Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-214.12; 143-214.21; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143 215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; S.L. 2009-337; Temporary Adoption Eff. January 15, 2011.

**15A NCAC 02B .0279 FALLS WATER SUPPLY
NUTRIENT STRATEGY: WASTEWATER DISCHARGE
REQUIREMENTS**

The following is the NPDES wastewater discharge management strategy for the Falls of the Neuse Reservoir watershed (the Falls watershed):

- (1) **PURPOSE.** The purpose of this Rule is to establish minimum nutrient control requirements for point source wastewater discharges in the Falls watershed in order to restore and maintain water quality in the reservoir and protect its designated uses.
- (2) **APPLICABILITY.** This Rule applies to all wastewater treatment facilities discharging in the Falls watershed that receive nutrient-bearing wastewater and are subject to requirements for individual NPDES permits.
- (3) **DEFINITIONS.** For the purposes of this Rule, the definitions in 15A NCAC 02B .0276 and the following definitions apply:
 - (a) In regard to point source dischargers, treatment facilities, and wastewater flows and discharges,
 - (i) "Existing" means that which was subject to an NPDES permit as of December 31, 2006;
 - (ii) "Expanding" means that which has increased or will increase beyond its permitted flow as defined in this Rule; and
 - (iii) "New" means that which was not subject to an NPDES permit as of December 31, ~~2006~~, 2006;
 - ~~(b) "Active" allocation means that portion of an allocation that has been applied toward and is expressed as a nutrient limit in an individual NPDES permit. Allocation that is held but not~~

~~applied in this way is "reserve" allocation.~~

- ~~(e) "Current flow" means the actual discharge flow reported by a facility for the period from July 2008 through June 2009.~~
- ~~(d)(b) "Limit;" or "limitation," except when specified as a concentration limit, means the mass quantity of nitrogen or phosphorus that a discharger or group of dischargers is authorized through an NPDES permit to release into surface waters of the Falls watershed.~~
- ~~(e)(c) "MGD" means million gallons per day.~~
- ~~(f)(d) "Permitted flow" means the maximum monthly average flow authorized in a facility's NPDES permit as of December 31, 2006.~~
- ~~(g) "Reserve" allocation means allocation that is held by a permittee or other person but which has not been applied toward and is not expressed as a nutrient limit in an individual NPDES permit. Allocation that has been applied and expressed in this way is "active" allocation.~~

(4) **INITIAL NUTRIENT ALLOCATIONS FOR EXISTING UPPER FALLS DISCHARGERS.** This Item establishes initial Stage I and Stage II nutrient allocations for existing dischargers in the Upper Falls ~~watershed.~~ watershed:

- (a) Stage I nitrogen and phosphorus allocations for dischargers with permitted flows of 0.1 MGD or greater are as follows:

Facility Name	NPDES No.	Mass Allocations (pounds/year)	
		Total Nitrogen	Total Phosphorus
North Durham	NC0023841	97,665	10,631
SGWASA	NC0026824	22,420	2,486
Hillsborough	NC0026433	10,422	1,352

- (b) Stage I allocations for dischargers with permitted flows less than 0.1 MGD are equal to the Stage II allocations specified in Sub-Items (c) and (d) of this ~~Item.~~ item;
- (c) Stage II nitrogen and phosphorus allocations are as follows:

Discharger Subcategories	Mass Allocations (pounds/year)	
	Total Nitrogen	Total Phosphorus
Permitted flows ≥ 0.1 MGD	97,617	5,438
Permitted flows < 0.1 MGD	1,052	175

- (d) The Stage II allocations in Sub-Item (c) of this Item shall be divided among the existing dischargers in

each subcategory in proportion to the dischargers' permitted flows as defined in this Rule, and the resulting

- nutrient allocations shall be assigned to each individual discharger.
- (5) ~~This Item describes allowable~~ CHANGES IN NUTRIENT ALLOCATIONS.
- (a) The aggregate and individual nutrient allocations available to point source dischargers in the Falls watershed are subject to change:
- (i) Whenever the Commission, through rulemaking, revises the nutrient reduction targets in or pursuant to 15A NCAC 02B .0275 in order to ensure the protection of water quality in the reservoir and its tributaries or to conform with applicable state or federal requirements;
- (ii) Whenever one or more point source dischargers acquires any portion of the nonpoint load allocations under the provisions in this Rule and 15A NCAC 02B .0282, Options for Offsetting Nutrient Loads; or
- (iii) As the result of allocation transfers conducted between point sources or between point and nonpoint sources and in accordance with this Rule, provided that nutrient allocation can be transferred and applied only within the portion of the Falls watershed to which it was originally assigned (~~Upper or Lower~~); (Upper or Lower); and
- (b) In the event that the Commission changes any nutrient reduction target specified in 15A NCAC 02B .0275 or in Item (4) of this Rule, the Commission shall also re-evaluate the apportionment among the dischargers and shall revise the individual allocations as necessary.
- (6) ~~This Item establishes~~ NUTRIENT DISCHARGE LIMITATIONS FOR EXISTING ~~facilities discharging in the~~ UPPER FALLS ~~watershed~~ DISCHARGERS.
- (a) Beginning with calendar year 2016, any existing discharger with a permitted flow of 0.1 MGD or greater shall limit its total nitrogen and phosphorus discharges to its active, individual Stage I allocations as defined or modified pursuant to this ~~Rule~~ Rule;
- (b) Beginning with calendar year 2036, except as provided in Sub-item (d) of this Item, each existing discharger with a permitted flow greater than or equal to 0.1 MGD shall limit its total nitrogen and phosphorus discharges to its active, individual Stage II allocations as defined or modified pursuant to this ~~Rule~~ Rule;
- (c) Not later than ~~60 days after the effective date of this Rule~~ March 15, 2011, the Director shall notify existing permittees of the individual Stage I and Stage II nutrient allocations initially assigned to them pursuant to this ~~Rule~~ Rule;
- (d) Not later than ~~sixteen years after the effective date of this Rule~~ January 15, 2027, each existing discharger with a permitted flow greater than or equal to 0.1 MGD shall submit to the Division a plan for meeting its Stage II mass limitations. The plan shall describe the discharger's strategy for complying with the limitations and shall include a schedule for the design and construction of facility improvements and for the development and implementation of related programs necessary to the strategy. If a discharger determines that it cannot meet its limitations by calendar year 2036, the discharger may include its findings in the plan and request an extension of its compliance dates for the nitrogen and phosphorus limitations. This alternate plan shall document the compliance strategies considered and the reasons each was judged infeasible; identify the minimum loadings that are technically and economically feasible by 2036; and propose intermediate limits for the period beginning with 2036 and extending until the Stage II limitations can be met. Within 180 days of ~~Receipt~~ receipt, the Division shall approve the plan as submitted, which could include intermediate limits, or inform the discharger of any changes or additional information needed for approval. The Division shall incorporate the approved nitrogen and phosphorus mass limitations and compliance dates into the discharger's NPDES permit upon the next renewal or other major permit action following plan approval. If the Division extends the

- dates by which a discharger must meet Stage II limitations, the discharger shall update and submit its plan for Division approval every five years after the original submittal, and the Division shall take necessary and appropriate action as with the original plan, until the Stage II limitations are ~~satisfied~~ satisfied;
- (e) It is the intent of this Item that all dischargers shall make continued progress toward complying with Stage II mass limitations. The Division shall not approve intermediate limitations that exceed either the applicable Stage I limitations or intermediate limitations previously approved pursuant to this Item.
- (7) ~~This Item establishes~~ NUTRIENT DISCHARGE LIMITATIONS FOR EXISTING LOWER FALLS DISCHARGERS, facilities discharging in the Lower Falls watershed.
- (a) Beginning with calendar year 2016, any existing discharger with a permitted flow of 0.1 MGD or greater shall limit its total nitrogen and phosphorus discharges as specified in ~~this Item~~ this item;
- (b) CONCENTRATION LIMITS. The nitrogen and phosphorus discharge limits for existing dischargers shall be as follows:

Discharge Limits (milligrams/liter)

<u>Limit Type</u>	<u>Total Nitrogen</u>	<u>Total Phosphorus</u>
Monthly Average	8.0	1.0
<u>Annual Average</u>	<u>5.5</u>	<u>0.5</u>

Existing facilities must meet both [Monthly Average] monthly average and [Annual Average] annual average limits in any given calendar year.

- (c) MASS LIMITS.
- (i) In addition to the concentration limits specified in this Item, the collective annual mass discharge of ~~Total Phosphorus~~ total phosphorus shall not exceed 911 pounds in any calendar ~~year~~ year and
- (ii) Any discharger may request a mass discharge limit in lieu of the concentration limit for nitrogen or phosphorus or both, in which case the Director shall set a limit equivalent to the annual average concentration limit at the facility's permitted flow. The resulting mass limit shall become effective with the ensuing calendar year or with calendar year 2016, whichever is ~~later~~ later;
- (8) ~~This Item identifies~~ NUTRIENT CONTROL REQUIREMENTS SPECIFIC TO FOR NEW DISCHARGES DISCHARGERS.
- (a) Any person proposing a new wastewater discharge in the Upper Falls watershed shall meet the following requirements prior to applying for an NPDES permit:
- (i) Evaluate all practical alternatives to said discharge, pursuant to 15A NCAC 02H .0105(c)(2);
- (ii) If the results of the evaluation support a new discharge, acquire sufficient nitrogen and phosphorus allocations for the discharge. The proponent may obtain allocation for the proposed discharge from existing dischargers pursuant to the applicable requirements of Item (10) of this Rule or obtain allocation from other sources to offset the increased nutrient loads resulting from the proposed discharge. The proponent may fund offset measures by making payment to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that ~~Program~~ program or to another seller of offset credits approved by the Division or may implement other offset measures contingent upon approval by the Division, either of which shall meet the requirements

- of Rule 15A NCAC 02B .0282. The amount of allocation or offsets obtained shall be sufficient for the duration of the discharge or for a period of 30 years, whichever is shorter. Payment for each allocation or offset shall be made prior to the ensuing permit issuance;
- (iii) Determine whether the proposed discharge of nutrients will cause local water quality impacts; and
 - (iv) Provide documentation with its NPDES permit application demonstrating that the requirements of Sub-Items (a)(i) through (a)(iii) of this Item have been ~~met~~. met;
- (b) The nutrient discharge ~~allocations and offsets~~ limits for a new facility in the Upper Falls watershed shall not exceed the mass loads equivalent to a concentration of 3.0 milligrams per liter nitrogen or 0.1 milligrams per liter phosphorus at the permitted flow in the discharger's NPDES ~~permit~~. permit;
- (c) Upon the effective date of its NPDES permit, a new discharger in the Upper Falls watershed shall be subject to nitrogen and phosphorus limits not to exceed its active individual discharge allocations in any given calendar ~~year~~. year;
- (d) The Director shall not issue an NPDES permit for any new wastewater facility that would discharge in the Lower Falls watershed and to which this Rule would apply.
- (9) ~~This Item identifies~~ **NUTRIENT CONTROL REQUIREMENTS SPECIFIC TO FOR EXPANDING DISCHARGES-DISCHARGERS.**
- (a) Any person proposing to expand an existing wastewater discharge beyond its permitted flow in the Upper Falls watershed ~~beyond its permitted flow as defined in this Rule~~ shall meet the following requirements prior to applying for an NPDES permit:
 - (i) Evaluate all practical alternatives to said discharge, pursuant to 15A NCAC 02H .0105(c)(2);
 - (ii) If the results of the evaluation support an expanded discharge, acquire sufficient nitrogen and phosphorus allocations for the discharge. The proponent may obtain allocation for the proposed discharge from existing dischargers pursuant to the applicable requirements of Item (10) of this Rule or obtain allocation from other sources to offset the increased nutrient loads resulting from the proposed discharge. The proponent may fund offset measures by making payment to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that ~~Program or program~~ or to another seller of offset credits approved by the Division or may implement other offset measures contingent upon approval by the Division, either of which shall meet the requirements of Rule 15A NCAC 02B .0282. The amount of allocation or offsets obtained shall be sufficient for the duration of the discharge or for a period of 30 years, whichever is shorter. Payment for each allocation or offset shall be made prior to the ensuing permit issuance;
 - (iii) Determine whether the proposed discharge of nutrients will cause local water quality impact; and
 - (iv) Provide documentation with its NPDES permit application demonstrating that the requirements of Sub-Items (a)(i) through (a)(iii) of this Item have been ~~met~~. met;
 - (b) The nutrient discharge limits for an expanding facility in the Upper Falls watershed shall not exceed the mass value equivalent to a concentration of 3.0 milligrams per liter nitrogen or 0.1 milligrams per liter phosphorus at the expanded flow limit in the discharger's NPDES permit; except

- that this provision shall not result in an active allocation or limit that is less than originally assigned to the discharger under this ~~Rule~~ Rule;
- (c) Upon expansion or upon notification by the Director that it is necessary to protect water quality, any discharger with a permitted flow of less than 0.1 MGD in the Upper Falls watershed, as defined under this Rule, shall become subject to total nitrogen and total phosphorus permit limits not to exceed its active individual discharge ~~allocations~~ allocations;
- (d) The Director shall not issue an NPDES permit for the expansion of any wastewater discharge in the Lower Falls watershed to which this Rule applies.
- (10) ~~This Item describes~~ ADDITIONAL REQUIREMENTS ~~PROVISIONS REGARDING NUTRIENT DISCHARGE ALLOCATIONS AND LIMITATIONS~~ limits for wastewater facilities:
- (a) Annual mass nutrient limits shall be established as calendar-year ~~limits~~ limits;
- (b) Any discharger holding nutrient allocations pursuant to this Rule may by mutual agreement transfer all or part of its allocations to any new, existing, or expanding dischargers or to other person(s) in the Falls watershed, subject to the provisions of this Rule and the Falls nutrient strategy, except that allocation shall not be transferred between the Upper and Lower Falls ~~watersheds~~ watershed;
- (c) For NPDES compliance purposes, the enforceable nutrient limits for an individual facility or for a compliance association described in Item (11) of this Rule shall be the effective limits in the governing permit, regardless of the allocation held by the discharger or ~~association~~ association;
- (d) The Director may establish more stringent nitrogen or phosphorus discharge limits for any discharger upon finding that such limits are necessary to prevent the discharge from causing adverse water quality impacts on surface waters tributary to Falls Reservoir. The Director shall establish such limits through modification of the discharger's NPDES permit in accordance with applicable rules and regulations.
- When the Director does so, the discharger retains its nutrient allocations, and the non-active portion of the discharger's allocation becomes reserve allocation. The allocation remains in reserve until the Director determines that less stringent limits are allowable or until the allocation is applied to another discharge not subject to such water quality-based ~~limits~~ limits;
- (e) In order for any transfer of allocation to become effective as a discharge limit in an individual NPDES permit, the discharger must request and obtain modification of the permit. Such request shall:
- (i) Describe the purpose and nature of the modification;
- (ii) Describe the nature of the transfer agreement, the amount of allocation transferred, and the dischargers or persons involved;
- (iii) Provide copies of the transaction agreements with original signatures consistent with NPDES signatory requirements; and
- (iv) Demonstrate to the Director's satisfaction that the increased nutrient discharge will not violate water quality standards in ~~localized areas~~ areas;
- (f) Changes in a discharger's nutrient limits shall become effective upon modification of its individual permit but no sooner than January 1 of the year following modification. If the modified permit is issued after January 1, the Director may make the limit effective on that January 1 provided that the discharger made acceptable application in a timely ~~manner~~ manner; and
- (g) REGIONAL FACILITIES. In the event that an existing discharger or group of dischargers accepts wastewater from another NPDES-permitted treatment facility and that acceptance results in the elimination of the discharge from the other treatment facility, the eliminated facility's nutrient allocations shall be transferred and added to the accepting discharger's allocations, except that allocation shall not be transferred

- between the Upper and Lower Falls watersheds.
- (11) ~~This Item describes the option for dischargers to join a GROUP COMPLIANCE OPTION association to collectively meet nutrient control requirements.~~
- (a) Any ~~or all~~ facilities within the Upper or the Lower Falls watersheds may form a group compliance association to meet nutrient limits collectively within their respective portion of the Falls watershed. More than one group compliance association may be established in either portion of the watershed. No facility may be a co-permittee member of more than one association for any given calendar ~~year.~~ year.
- (b) Any such association must apply for and shall be subject to an NPDES permit that establishes the effective nutrient limits for the association and for its ~~members.~~ members.
- (c) No later than 180 days prior to the proposed date of a new association's operation or expiration of an existing association's NPDES permit, the association and its members shall submit an application for an NPDES permit for the discharge of nutrients to surface waters of the Falls watershed. The association's NPDES permit shall be issued to the association and its members. It shall specify the nutrient limits for the association and for each of its co-permittee members. Association members shall be deemed in compliance with the permit limits for nitrogen and phosphorus contained in their individually issued NPDES permits so long as they remain members in an ~~association.~~ association.
- (d) An association's nitrogen and phosphorus limits shall be the sum of its members' individual active allocations for each nutrient plus any other active allocation obtained by the association or its ~~members.~~ members.
- (e) The individual limits for each member in the association permit shall initially be equivalent to the discharge limits in effect in the member's NPDES permit. Thereafter, changes in individual allocations or limits shall be incorporated into the members' individual permits before

- they are included in the association ~~permit.~~ permit.
- (f) An association and its members may reapportion the individual allocations of its members on an annual basis. Changes in individual allocations or limits must be incorporated into the members' individual permits before they are included in the association ~~permit.~~ permit.
- (g) Changes in an association's nutrient limits shall become effective no sooner than January 1 of the year following permit modification. If the modified permit is issued after January 1, the Director may make the limit effective on that January 1 provided that the association made acceptable application in a timely ~~manner.~~ manner.
- (h) Beginning with the first full calendar year that the nitrogen or phosphorus limits are effective, an association that does not meet its permit limit for nitrogen or phosphorus for a calendar year shall, no later than May 1 of the year following the exceedance, make an offset payment to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that ~~Program.~~ program or by implementing other load offsetting measures contingent upon approval by the Division, either of which shall meet the requirements of Rule ~~45A NCAC 02B .0282.~~ 15A NCAC 02B .0282; and
- (i) Association members shall be deemed in compliance with their individual limits in the association NPDES permit for any calendar year in which the association is in compliance with its group limit for that nutrient. If the association fails to meet its limit, the association and the members that have failed to meet their individual nutrient limits in the association NPDES permit shall be deemed out of compliance with the association NPDES permit.

History Note: Authority G.S. 143-214.1; 143-214.5; 143-215; 143-215.1; 143-215.3(a)(1); 143-215B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; Temporary Adoption Eff. January 15, 2011.

15A NCAC 02B .0280 FALLS RESERVOIR WATER SUPPLY NUTRIENT STRATEGY: AGRICULTURE

This Rule sets forth a staged process, as prefaced in 15A NCAC 02B .0275, by which agricultural operations in the Falls watershed will collectively limit their nitrogen and phosphorus loading to the Falls Reservoir. This process is as follows:

- (1) **PURPOSE.** The purposes of this Rule are to achieve and maintain the percentage reduction objectives defined in 15A NCAC 02B .0275 for the collective agricultural loading of nitrogen and phosphorus from their respective 2006 baseline levels, to the extent that best available accounting practices will allow, in two stages. Stage I shall be 10 years and Stage II shall be 15 years, as set out in Item (5) of this Rule. Additionally this Rule will protect the water supply uses of the Falls Reservoir.
- (2) **PROCESS.** This Rule requires accounting for agricultural land management practices at the county level in the Falls watershed, and implementation of practices by farmers to collectively achieve the nutrient reduction objectives on a watershed basis. Producers may be eligible to obtain cost share and technical assistance from the NC Agriculture Cost Share Program and similar federal programs to contribute to their counties' nutrient reductions. A Watershed Oversight Committee and Local Advisory Committees will develop strategies, coordinate activities, and account for progress.
- (3) **LIMITATION.** This Rule ~~may not~~ **does not** fully address significant agricultural nutrient sources in that it does not directly address atmospheric sources of nitrogen to the Falls watershed from agricultural operations located both within and outside of the Falls watershed. As better information becomes available from ongoing research on atmospheric nitrogen loading to the Falls watershed from these sources, and on measures to control this loading, the Commission may undertake separate rule-making to require such measures it deems necessary from these sources to support the objectives of the Falls Nutrient Strategy.
- (4) **APPLICABILITY.** This Rule shall apply to all persons engaging in agricultural operations in the Falls watershed, including those related to crops, horticulture, livestock, and poultry. This Rule applies to livestock and poultry operations above the size thresholds in this Item in addition to requirements for animal operations set forth in general permits issued pursuant to G.S. 143-215.10C. Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality standard by any agricultural operation, including any livestock or poultry

operation below the size thresholds in this Item. This Rule shall not apply to dedicated land application sites permitted under 15A NCAC 02T .1100. This Rule does not require specific actions by any individual person or operation if agriculture in the Falls watershed can collectively achieve its Stage I nutrient reduction objectives, in the manner described in Item (5) of this Rule, by calendar year 2020, within ten years of the effective date of this Rule.—If the Stage I nutrient reduction objectives are not met by calendar year 2020 within ten years of the effective date of the rule, Stage II of implementation shall require specific actions by individuals and operations. For the purposes of this Rule, agricultural operations are activities that relate to any of the following pursuits:

- (a) The commercial production of crops or horticultural products other than trees. As used in this Rule, commercial shall mean activities conducted primarily for financial profit.
- (b) Research activities in support of such commercial production.
- (c) The production or management of any of the following number of livestock or poultry at any time, excluding nursing young:
 - (i) Five or more horses;
 - (ii) 20 or more cattle;
 - (iii) 20 or more swine not kept in a feedlot, or 150 or more swine kept in a feedlot;
 - (iv) 120 or more sheep;
 - (v) 130 or more goats;
 - (vi) 650 or more turkeys;
 - (vii) 3,500 or more chickens; or
 - (viii) Any single species of any other livestock or poultry, or any combination of species of livestock or poultry that exceeds 20,000 pounds of live weight at any time.

(5) **METHOD FOR RULE IMPLEMENTATION.** This Rule shall be implemented in two stages and through a cooperative effort between the Watershed Oversight Committee and Local Advisory Committees in each county. The membership, roles and responsibilities of these committees are set forth in Items (7) and (8) of this Rule. Committee's activities shall be guided by the ~~following~~ **following constraints:**

- (a) In Stage I, agriculture shall achieve a collective 20 percent reduction in nitrogen loading and a 40 percent reduction in phosphorus loading relative to the 2006 baseline by

- calendar year 2020. ~~within 10 years after the effective date of this Rule.~~
- (b) In Stage II, beginning in calendar year 2021 ~~[10 years after the effective date of this Rule,]~~ agriculture shall achieve a collective 40 percent reduction in nitrogen loading and a 77 percent reduction in phosphorus loading relative to the 2006 baseline by calendar year 2035. ~~within 25 years after the effective date of this Rule.~~
- (c) By January 15, 2013, ~~Within two years after the effective date of this Rule~~—the Watershed Oversight Committee shall provide the Commission with an initial assessment of the extent to which agricultural operations in the Falls watershed have achieved the Stage I nitrogen and phosphorus reduction objectives identified in Item (1) of this ~~Rule~~ rule through activities conducted since the baseline period. The Watershed Oversight Committee shall use the accounting process described in Items (7) and (8) of this ~~Rule~~ rule to make its assessment.
- ~~(d) Stage II shall require a collective 40 percent reduction in nitrogen loading and 77 percent reduction in phosphorus loading relative to the 2006 baseline to be achieved within 25 years after the effective date of this Rule.~~
- ~~(e)~~(d) If annual reporting following the 10th year of implementation indicates that agriculture has not collectively achieved its Stage I nitrogen and phosphorus reduction objectives identified in this ~~Item~~ Item ~~within ten years of the effective date of this Rule~~, Stage II ~~of implementation~~ shall include ~~additional~~ specific implementation requirements for individual ~~operators~~ operators. ~~to buffer all cropland and pasture and exclude all livestock from surface waters~~ Specifically, within five years of the start of Stage II, cropland operators shall establish vegetated riparian buffers adjacent to streams on all cropland where such buffers do not already exist. Additionally, pastured livestock operators shall establish excluded vegetated riparian buffers adjacent to streams where such excluded buffers do not already exist. Streams to which these requirements apply shall be those that

meet the classification of intermittent or perennial streams using the September 2010 ~~most recent~~ version of the *Identification Methods for the Origins of Intermittent and Perennial Streams Manual* published by the Division. Existing and newly established riparian buffers shall be a minimum of 20 feet in width with criteria further defined by the Watershed Oversight Committee.

The Commission may also consider alternative recommendations from the Watershed Oversight Committee based on ~~its~~ the ~~Committee's~~ assessment of the practicability of agricultural operations meeting the ~~watershed~~ Stage I objectives. Should the Commission ~~require~~ accept some alternative form of individual compliance, then it shall also subsequently approve a framework proposed by the Watershed Oversight Committee for allowing producers to obtain credit through offsite measures. Such offsite measures shall meet the requirements of 15A NCAC 02B .0282.

~~(f)~~(e) Should a committee called for under Item (5) of this Rule not form nor follow through on its responsibilities such that a local strategy is not implemented in keeping with Item (8) of this Rule, the Commission shall require all persons subject to this Rule in the affected area to implement BMPs as needed to meet the objectives of this Rule.

- (6) RULE REQUIREMENTS FOR INDIVIDUAL OPERATIONS. Persons subject to this Rule shall adhere to the following requirements:
- (a) Persons subject to this Rule shall register their operations with their Local Advisory Committee according to the requirements of Item (8) of this Rule;
- (b) ~~With the exception of Sub-Item (d) of this Item, persons~~ Persons are not required to implement any specific BMPs in ~~Stage I~~ Stage I, ~~with the exception of Sub-Item (d) of this Item~~, but may elect to contribute to the collective local nutrient strategy by implementing any BMPs they choose that are recognized by the Watershed Oversight Committee as nitrogen-reducing or phosphorus-reducing BMPs;
- (c) The Division shall require that residuals application, animal waste application, and surface irrigation pursuant to permits issued

under 15A NCAC 02T .1100, 15A NCAC 02T .1300, and 15A NCAC 02T.0500 respectively, to lands within the Falls watershed be done in a manner that minimizes the potential for nitrogen and phosphorus loading to surface waters by implementing the following measures: Persons subject to these permitting requirements shall meet Realistic Expectation Yield based nitrogen application rates and shall apply phosphorus in compliance with guidance established in the most recent version of North Carolina Agricultural research Service's Technical Bulletin 323, "North Carolina Phosphorus Loss Assessment: I Model Description and II. Scientific Basis and Supporting literature" developed by the Department of Soil Science and Biological and Agricultural Engineering at North Carolina State University. The Division shall modify all existing permits for affected lands to include these requirements upon their next renewal after effective date, and shall include these requirements in all new permits issued after effective date. Permittees shall be required to comply with this condition upon permit issuance or renewal as applicable; and

(i) Animal waste application operators subject to the permitting requirements in [Sub-Item(6)(e)] this Sub-item shall meet [Realistic Expectation Yield] Realistic Yield Expectation based nitrogen application rates and shall apply phosphorus in compliance with guidance established in the most recent version of North Carolina Agricultural [research] Research Service's Technical Bulletin 323, "North Carolina Phosphorus Loss Assessment: I Model Description and II. Scientific Basis and Supporting Literature" developed by the Department of Soil Science and Biological and Agricultural Engineering at North Carolina State University. The Division shall modify all existing permits for affected lands to include these requirements upon their next renewal after effective date, and shall include these requirements in all new permits issued

after effective date. Permittees shall be required to comply with this condition upon permit issuance or renewal as applicable; and

(ii) Residual application and surface irrigation operators subject to the permitting requirements in [Sub-Item(6)(e)] this Sub-item shall meet Realistic Yield Expectation based nitrogen application rates and shall conduct and provide to the Division annual assessments of their soil test phosphorus index results and phosphorus loading rates. At such time as data quantifying the fate and transport of chemically bound phosphorus are made available, the Division may make recommendations to the Commission to consider whether revisions to the requirements of this Rule are needed and may initiate rulemaking or any other action allowed by law.

(d) Should a local strategy not achieve its Stage I objectives by calendar year 2020, within ten years of the effective date of this Rule, operations within that local area shall face specific implementation requirements, as described under Sub-Item (5)(e) (5)(d) of this Rule.

(7) WATERSHED OVERSIGHT COMMITTEE. The Watershed Oversight Committee shall have the following membership, role and responsibilities:

(a) MEMBERSHIP. The Director shall be responsible for forming a Watershed Oversight Committee by March 15, 2011, within two months of the effective date of this Rule. Until such time as the Commission determines that long-term maintenance of the nutrient loads is assured, the Director shall either reappoint members or replace members at least every six years. The Director shall solicit nominations for membership on this Committee to represent each of the following interests, and shall appoint one nominee to represent each interest except where a greater number is

noted. The Director of the Division of Water Quality may appoint a replacement at any time for an interest in Sub-Items (7)(a)(vi) through (7)(a)(x) of this Rule upon request of representatives of that interest or by the request of the Commissioner of Agriculture:

- (i) Division of Soil and Water Conservation;
 - (ii) United States Department of Agriculture-Natural Resources Conservation Service (shall serve in an "ex-officio" non-voting capacity and shall function as a technical program advisor to the Committee);
 - (iii) North Carolina Department of Agriculture and Consumer Services;
 - (iv) North Carolina Cooperative Extension Service;
 - (v) Division of Water Quality;
 - (vi) Three environmental interests, at least two of which are residents of the Falls watershed;
 - (vii) General farming interests;
 - (viii) Pasture-based livestock interests;
 - (ix) Equine livestock interests;
 - (x) Cropland farming interests; and
 - (xi) The scientific community with experience related to water quality problems in the Falls watershed.
- (b) **ROLE.** The Watershed Oversight Committee shall:
- (i) Develop tracking and accounting methods for nitrogen and phosphorus loading. ~~Submit loading and submit~~ methods to the Water Quality Committee of the Commission for approval based on the standards set out in Sub-Item (7)(c) of this Rule by March 15, 2012; within 15 months after the effective date of this Rule;
 - (ii) Identify and implement future refinements to the accounting methods as needed to reflect advances in scientific understanding, including establishment or

- (iii) refinement of nutrient reduction efficiencies for BMPs;
~~By January 15, 2013, Within two years after the effective date of this Rule,~~ collect data needed to conduct initial nutrient loading accounting for the baseline period and the most current year feasible, perform this accounting, and determine the extent to which agricultural operations have achieved the Stage I nitrogen loading objective and phosphorus loading trend indicators for the ~~watershed.~~ Present watershed and present findings to the Water Quality Committee of the Commission;
- (iv) Review, approve, and summarize local nutrient strategies if required pursuant to Sub-Item (5)(d) of this Rule and according to the timeframe identified in Sub-Item (8)(c)(ii) of this Rule. Provide these strategies to the Division;
- (v) Establish requirements for, review, approve and summarize local nitrogen and phosphorus loading annual reports as described under Sub-Item (8)(e) of this Rule, and present the report to the Division annually, until such time as the Commission determines that annual reports are no longer needed to fulfill the purposes of Rule. Present a report in January 2014~~three years after the effective date~~ to the Commission. Should that report find that agriculture in the watershed has not met its collective nitrogen or phosphorus objective, include an assessment in that report of the practicability of producers achieving the Stage I objective by calendar year 2020~~within ten years after the effective date~~, and recommendations to the

- Commission as deemed appropriate;
- (vi) Obtain nutrient reduction efficiencies for BMPs from the scientific community associated with design criteria identified in rules adopted by the Soil and Water Conservation Commission, including 15A NCAC 06E .0104 and 15A NCAC 06F .0104; and
- (vii) Investigate and, if feasible, develop an accounting method to equate implementation of specific ~~nitrogen~~ nutrient-reducing practices on cropland or pastureland to reductions in ~~nitrogen~~ nutrient loading delivered to ~~streams~~ streams; Quantify ~~[quantify]~~ the nitrogen and phosphorus credits generated [generated] by such practices for the purpose of selling or buying credits. [credits;] Establish ~~[establish]~~ criteria and a process as needed for the exchange of nitrogen [nutrient] credits between parties meeting the criteria of Sub-section (4)(a)(b) or (c) of [subject to] this Rule [rule] with [each other or with] parties subject to other nutrient strategy rules in the Falls lake watershed pursuant to the requirements of 15A NCAC 02B .0282. [-0282.] Approve [obtain approval from the Division for this trading program pursuant to the requirements of Rule .0282; approve] eligible trades,; and ensure that such practices [credits traded for purpose of meeting this Rule] are accounted for and tracked separately from those contributing to the objectives of this Rule. [other rules of the Falls nutrient strategy.]
- (vii) Quantify the nitrogen and phosphorus credits generated by such practices for the purpose of selling or buying credits; establish criteria and

a process as needed for the exchange of nutrient credits between parties subject to this rule with each other or with parties subject to other nutrient strategy rules in the Falls lake watershed pursuant to the requirements of 15A NCAC 02B .0282; obtain approval from the Division for this trading program pursuant to the requirements of Rule .0282; approve eligible trades; and ensure that such credits traded for purposes of meeting this rule are accounted for and tracked separately from those contributing to the objectives of other rules of the Falls nutrient strategy.

- (c) **ACCOUNTING METHODS.** Success in meeting this Rule's purpose will be gauged by estimating percentage changes in nitrogen loading from agricultural lands in the Falls watershed and by evaluating broader trends in indicators of phosphorus loading from agricultural lands in the Falls watershed. The Watershed Oversight Committee shall develop accounting methods that meet the following requirements:
 - (i) The nitrogen method shall estimate baseline and annual total nitrogen loading from agricultural operations in each county and for the entire Falls watershed;
 - (ii) The nitrogen and phosphorus methods shall include a means of tracking implementation of BMPs, including number, type, and area affected;
 - (iii) The nitrogen method shall include a means of estimating incremental nitrogen loading reductions from actual BMP implementation and of evaluating progress toward and maintenance of the nutrient objectives from changes in BMP implementation, fertilization, individual crop acres, and agricultural land use acres;

- (iv) The nitrogen and phosphorus methods shall be refined as research and technical advances allow;
 - (v) The phosphorus method shall quantify baseline values for and annual changes in factors affecting agricultural phosphorus loading as identified by the phosphorus technical advisory committee established under 15A NCAC 02B .0256(f)(2)(C). The method shall provide for periodic qualitative assessment of likely trends in agricultural phosphorus loading from the Falls watershed relative to baseline conditions;
 - (vi) Phosphorus accounting may also include a scientifically valid, survey-based sampling of farms in the Falls watershed for the purpose of conducting field-scale phosphorus loading assessments and extrapolating phosphorus loading for the Falls watershed for the baseline period and at periodic intervals; and
 - (vii) Aspects of pasture-based livestock operations that potentially affect nutrient loading and are not captured by the accounting methods described above shall be accounted for in annual reporting to the extent that advances in scientific understanding reasonably allow. Such accounting shall, at a minimum, quantify by quantifying changes in the extent of livestock-related nutrient controlling BMPs. Progress may be judged based on percent change in the extent of implementation relative to percentage objectives identified in ~~the objectives~~ rule-Item (5) of this Rule.
- (8) LOCAL ADVISORY COMMITTEES. Local Advisory Committees ~~required by Sub-Item (5)(a) of this Rule~~ shall be formed for each county within the watershed by January 15, 2012, within one year after the effective date of this Rule, and shall have the following membership, roles, and responsibilities:
- (a) MEMBERSHIP. A Local Advisory Committee shall be appointed as provided for in this Item. It shall terminate upon a finding by the Commission that it is no longer needed to fulfill the purposes of this Rule. Each Local Advisory Committee shall consist of:
 - (i) One representative of the county Soil and Water Conservation District;
 - (ii) One representative of the county office of the United States Department of Agriculture Natural Resources Conservation Service;
 - (iii) One representative of the North Carolina Department of Agriculture and Consumer ~~Services; Services whose regional assignment includes the county;~~
 - (iv) One representative of the county office of the North Carolina Cooperative Extension Service;
 - (v) One representative of the North Carolina Division of Soil and Water Conservation whose regional assignment includes the county;
 - (vi) At least two farmers who reside in the county; and
 - (vii) One representative of equine livestock interests.
 - (b) APPOINTMENT OF MEMBERS. The Director of the Division of Water Quality and the Director of the Division of Soil and Water Conservation of the Department of Environment and Natural Resources shall appoint members described in Sub-Items (8)(a)(i), (8)(a)(ii), (8)(a)(iv), and (8)(a)(v) of this Rule. The Director of the Division of Water Quality, with recommendations from the Director of the Division of Soil and Water Conservation and the Commissioner of Agriculture, shall appoint the members described in Sub-Items (8)(a)(iii) and (8)(a)(vi) of this Rule from persons nominated by nongovernmental organizations whose members produce or manage

agricultural commodities in each county. Members of the Local Advisory Committees shall serve at the pleasure of their appointing authorities.

(c) **ROLE.** The Local Advisory Committees shall:

- (i) Conduct a registration process for persons subject to this Rule. This registration process shall be completed by January 15, 2012, within 12 months after the effective date of this Rule. The registration process shall request at a minimum the type and acreage of agricultural operations. It shall provide persons with information on requirements and options under this Rule, and on available technical assistance and cost share options;
- (ii) Develop local nutrient control strategies for agricultural operations, pursuant to Sub-Item (8)(d) of this Rule, to meet the nitrogen and phosphorus objectives of this Rule. Strategies shall be submitted to the Watershed Oversight Committee by July 2012; ~~no later than 18 months after the effective date of this Rule;~~ (iii) Ensure that any changes to the design of the local strategy will continue to meet the nutrient objectives of this Rule; and
- (iv) Submit reports to the Watershed Oversight Committee, pursuant to Sub-Item (8)(e) of this Rule, annually beginning in calendar year 2012 ~~two years after the effective date of this Rule~~ until such time as the Commission determines that annual reports are no longer needed to fulfill the purposes of this Rule.

(d) **LOCAL NUTRIENT CONTROL STRATEGIES.** Local Advisory Committees shall develop nutrient control strategies that meet

~~the following requirements.~~ If a Local Advisory Committee fails to submit a nutrient control strategy required in Sub-Item (8)(c)(ii) of this Rule, the Commission may develop one based on the accounting methods that it approves pursuant to Sub-Item (7)(b)(i) of this Rule. Local strategies shall meet the following requirements:

- (i) Local nutrient control strategies shall be designed to achieve the required nitrogen loading reduction objectives and qualitative trends in indicators of agricultural phosphorus loading by calendar year 2020, within 10 years after the effective date of this Rule, and to maintain those reductions in perpetuity or until such time as this ~~Rule~~ rule is revised to modify this requirement; and
- (ii) Local nutrient control strategies shall specify the numbers, acres, and types of all agricultural operations within their areas, numbers of BMPs that will be implemented by enrolled operations and acres to be affected by those BMPs, estimated nitrogen and phosphorus loading reductions, schedule for BMP implementation, and operation and maintenance requirements.

(e) **ANNUAL REPORTS.** The Local Advisory Committees shall be responsible for submitting annual reports for their counties to the Watershed Oversight Committee until such time as the Commission determines that annual reports are no longer needed to fulfill the purposes of this Rule. The Watershed Oversight Committee shall determine reporting requirements to meet these objectives. Those requirements may include information on BMPs implemented by individual farms, proper BMP operation and maintenance, BMPs discontinued, changes in agricultural land use or activity, and resultant net nitrogen loading and phosphorus trend

indicator changes. The annual reports in 2016 and 2026 shall address agriculture's success in complying with the load reduction requirements described in Items ~~(5)(b)~~(5)(a) and ~~(5)(f)~~(5)(b) of this Rule and shall include adjustments to address deficiencies to achieve compliance.

- (f) PROGRESS. In 2016 the Division of Water Quality, in consultation with the Watershed Oversight Committee, shall submit a report to the Commission gauging the extent to which reasonable progress has been achieved towards the Stage I objectives described in this Rule.

History Note: Authority G.S. 143-214.1; 143-214.3; 143-214.5; 143-214.7; 143-215.1; 143-215.3; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; S.L. 2009-337; S.L. 2009-486;

Temporary Adoption Eff. January 15, 2011.

**15A NCAC 02B .0281 FALLS WATER SUPPLY
NUTRIENT STRATEGY: STORMWATER
REQUIREMENTS FOR STATE AND FEDERAL
ENTITIES**

The following is the stormwater strategy, as prefaced in Rule 02B .0275, for the activities of state and federal entities within the Falls watershed.

- (1) PURPOSE. The purposes of this Rule are as follows.
 - (a) To achieve and maintain, on new non-road development lands, the nonpoint source nitrogen and phosphorus percentage reduction objectives established for Falls Reservoir in 15A NCAC 02B .0275 relative to the baseline period defined in Rule, to provide the highest practicable level of treatment on new road development, and to achieve and maintain the percentage objectives on existing developed lands by reducing loading from state-maintained roadways and facilities, and from lands controlled by other state and federal entities in the Falls watershed;
 - (b) To ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows from state-maintained roadways and facilities and from lands controlled by other state and federal entities in the Falls watershed; and

- (c) To protect the water supply, aquatic life, and recreational uses of Falls Reservoir.

- (2) APPLICABILITY. This Rule shall apply to all existing and new development, both as defined in 15A NCAC 02B .0276, that lies within or partially within the Falls watershed under the control of the NC Department of Transportation (NCDOT), including roadways and facilities, and to all lands controlled by other state and federal entities in the Falls watershed.

- (3) NON-NCDOT REQUIREMENTS. With the exception of the NCDOT, all state and federal entities that control lands within the Falls watershed shall meet the following requirements:

~~**Land Disturbance Threshold Option: A)**~~

- ~~(a) For any new development proposed within their jurisdictions that would disturb one-half acre or more, non-NCDOT state and federal entities shall develop stormwater management plans for submission to and approval by the Division. These stormwater plans shall not be approved by the Division unless the following criteria are met:~~

~~**Land Disturbance Threshold Option: B)**~~

- ~~(a) For any new development proposed within their jurisdictions that would disturb 5,000 one quarter acre square feet or more, non-NCDOT state and federal entities shall develop stormwater management plans for submission to and approval by the Division. These stormwater plans shall not be approved unless the following criteria are met:~~
 - ~~(i) Nitrogen and phosphorus loads contributed by the proposed new development activity shall not exceed the unit area mass loading rates as follows for nitrogen and phosphorus, respectively, expressed in units of pounds/acre/year: 2.2 and 0.33. The developer shall determine the need for engineered stormwater controls to meet these loading rate targets by using the loading calculation method called for in Sub-Item (4)(a) of 15A NCAC 02B .0277 or other equivalent method acceptable to the Division.~~

- (b) The non-NC DOT state or federal entity shall include measures to ensure maintenance of best management practices (BMPs) implemented as a result of the provisions in [Sub-Item (3)(a) of this Rule] Sub-Item (a) of this Item for the life of the development;
 - (c) A plan to ensure enforcement and compliance with the provisions in Sub-Item (4) of this Rule for the life of the new development.
- (4) PLAN APPROVAL REQUIREMENTS. A developer's stormwater plan shall not be approved unless the following criteria are met:
- (a) Nitrogen and phosphorus loads contributed by the proposed new development activity shall not exceed the following unit-area mass loading rates for nitrogen and phosphorus, respectively, expressed in units of pounds/acre/year: 2.2 and 0.33. Proposed development that would replace or expand structures or improvements that existed as of December 2006, the end of the baseline period, and that would not result in a net increase in built-upon area shall not be required to meet the nutrient loading targets or high-density requirements except to the extent that the developer shall provide stormwater control at least equal to the previous development. Proposed development that would replace or expand existing structures or improvements and would result in [an] a net increase in built-upon [are] area shall have the option either to achieve at least the percentage loading reduction objectives stated in 15A NCAC 02B .0275 as applied to nitrogen and phosphorus loading from the previous development for the entire project site, or to meet the loading rate targets described in this item. These requirements shall supersede those identified in 15A NCAC 02B .0104(q). The developer shall determine the need for engineered stormwater controls to meet these loading rate targets by using the loading calculation method called for in Sub-Item (4)(a) of 15A NCAC 02B .0277 or other equivalent method acceptable to the [Division.] Division;
** (Onsite Treatment Option: A (50 percent N / 60 percent P)) **
 - (ii) ~~The developer shall have the option of offsetting part of their nitrogen and phosphorus loads by implementing or funding offsite management measures. Before using an offsite offset option, a development shall implement structural stormwater controls that attain a minimum of 50 percent reduction in the post construction nitrogen and 60 percent reduction in post construction phosphorus loading rate onsite and shall meet any requirements for engineered stormwater controls described in Sub-Item (3)(a)(iv) of this Rule. Offsite offsetting measures shall achieve at least equivalent reductions in nitrogen and phosphorus loading to the remaining reduction needed onsite to comply with the loading rate targets set out in Sub-Item (3)(a)(i) of this Rule. A developer may make offset payments to the NC Ecosystem Enhancement Program or a public or private seller of reduction credit contingent upon acceptance of payments by that Program. All offset measures identified in this Sub-Item shall meet the requirements of 15A NCAC 02B .0282;~~
 - (b) The developer shall have the option of offsetting part of their nitrogen and phosphorus loads by implementing or funding offsite [management] offset measures. Before using an offsite offset option, a development shall implement onsite structural stormwater controls [onsite] that [achieves] achieve one of the following levels of reductions:
 - (i) Proposed new development activity disturbing at least one quarter acre but less than one acre of land, except as stated [in Sub-Item (3)(b)(iii)] in this Item, shall

- achieve 30 percent or more of the needed load reduction in both nitrogen and phosphorus loading onsite and shall meet any requirements for engineered stormwater controls described in this item; [~~Sub-Item (3)(d) of this Rule;~~]
- (ii) ~~Except as stated in [in Sub-Item (3)(b)(iii);] in this Item, proposed new development activity that disturbs one acre of land or more shall achieve 50 percent or more of the needed load reduction in both nitrogen and phosphorus loading onsite and shall meet any requirements for engineered stormwater controls described in this Item; [Sub-Item (3)(d) of this Rule;] or~~
- (iii) ~~Proposed development that would replace or expand structures or improvements that existed as of December 2006, the end of the baseline period, and that increases impervious surface within a [non-DOT state or federal entity's] designated downtown area, regardless of area disturbed, shall achieve 30 percent of the needed load reduction in both nitrogen and phosphorus onsite, and shall meet any requirements for engineered stormwater controls described in this Item; [Sub-Item (3)(d) of this Rule.]~~
- (b)(c) ~~Offsite offsetting measures shall achieve at least equivalent reductions in nitrogen and phosphorus loading to the remaining reduction needed onsite to comply with the loading rate targets set out in [Sub-Item (3)(a)(i) of] this [Rule.] Item. A developer may use any measure that complies with the requirements of Rules .0240 and .0282 of this[Section.] Section:~~
~~**[Onsite Treatment Option: B (60 percent N / 60 percent P)]**~~
- (ii) ~~The developer shall have the option of offsetting part of their nitrogen and phosphorus loads by~~
- ~~implementing or funding offsite management measures. Before using an offsite offset option, a development shall implement structural stormwater controls that attain a minimum of 60 percent reduction in the post construction nitrogen and 60 percent reduction in post construction phosphorus loading rate onsite and shall meet any requirements for engineered stormwater controls described in Sub-Item (3)(a)(iv) of this Rule. Offsite offsetting measures shall achieve at least equivalent reductions in nitrogen and phosphorus loading to the remaining reduction needed onsite to comply with the loading rate targets set out in Sub-Item (3)(a)(i) of this Rule. A developer may make offset payments to the NC Ecosystem Enhancement Program or a public or private seller of reduction credit contingent upon acceptance of payments by that Program. All offset measures identified in this Sub-Item shall meet the requirements of 15A NCAC 02B .0282;~~
- (iii)(d) Proposed new development subject to NPDES, water supply, and other state-mandated stormwater regulations shall comply with those regulations and with applicable permit limits in addition to the other requirements of this ~~Sub-Item~~ sub-item. Proposed new development in any water supply watershed in the Falls watershed designated WS-II, WS-III, or WS-IV shall comply with the density-based restrictions, obligations, and requirements for engineered stormwater controls, clustering options, operation and maintenance responsibilities, vegetated setbacks, land application, and landfill provisions described in Sub-Items (3)(b)(i) and (3)(b)(ii) of the applicable rule among 15A

NCAC 02B .0214 through .0216. ~~Notwithstanding Provided, the allowance in water supply watershed rules for 10 percent of a jurisdiction to be developed at up to 70 percent built-upon area without stormwater treatment, treatment shall not be available in the Falls [watershed.] watershed; proposed new development in the Falls watershed shall not have the option to forego treatment;~~

(iv)(c) Stormwater systems shall be designed to control and treat at a minimum the runoff generated from all surfaces in the project area by one inch of rainfall. The treatment volume shall be drawn down pursuant to standards specific to each practice as provided in the July 2007 version ~~most recent version~~ of the *Stormwater Best Management Practices Manual* published by the Division, or other at least technically equivalent standards acceptable to the ~~Division~~ Division; ~~To ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows, stormwater flows from the new development shall not contribute to degradation of waters of the State. At a minimum, the new development shall not result in a net increase in peak flow leaving the site from pre-development conditions for the one year, 24-hour storm event;~~

(f) To ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows, at a minimum, the new development shall not result in a net increase in peak flow leaving the site from pre-development conditions for the one-year, 24-hour storm event;

(v) ~~Proposed development that would replace or expand structures or improvements that existed as of December 2006, the end of the baseline period, and that would not result in a net increase in built-upon area shall not be required to meet the nutrient loading targets or high-density requirements except to the extent that it shall provide stormwater control~~

~~at least equal to the previous development. Proposed new development that would replace or expand existing structures or improvements and would result in a net increase in built-upon area shall have the option either to achieve at least the percentage loading reduction objectives stated in 15A NCAC 02B .0275 as applied to nitrogen and phosphorus loading from the previous development for the entire project site, or to meet the loading rate targets described in Sub-Item (3)(a)(i). These requirements shall supersede those identified in 15A NCAC 02B .0104(q);~~

(vi)(g) New development may satisfy the requirements of this Rule by meeting the post-development hydrologic criteria set out in Chapter 2 of the *North Carolina Low Impact Development Guidebook* dated June 2009, or the hydrologic criteria in the most recent version of ~~this~~ that guidebook; and

(vii)(h) Proposed new development shall demonstrate compliance with the riparian buffer protection requirements of 15A NCAC 02B .0233 and .0242; .0242.

(viii) ~~The non-NCDOT state or federal entity shall include measures to ensure maintenance of best management practices (BMPs) implemented as a result of the provisions in Sub-Item (3)(a) of this Rule for the life of the development;~~

(ix) ~~A plan to ensure enforcement and compliance with the provisions in Sub-Item (3)(a) of this Rule for the life of the new development.~~

(b)(5) NON-NCDOT STAGED AND ADAPTIVE IMPLEMENTATION REQUIREMENTS. For existing development, non-NCDOT state and federal entities shall develop and implement staged load reduction programs for achieving and maintaining nutrient load reductions from existing development based on the standards

set out in this ~~Sub-Item~~ Item. Such entities shall submit these load-reducing programs for approval by the Commission that include the following staged elements and meet the ~~associated~~ minimum standards for each stage of implementation:

~~(i)(a)~~ In Stage I, entities subject to this rule shall implement a load reduction program that provides estimates of, and plans for offsetting ~~within by calendar year 2020, 10 years of the date of this Rule;~~ nutrient loading increases from lands developed subsequent to the baseline ~~(2006) period but prior to implementation and not subject to the requirements of the Falls Lake new development stormwater programs.~~ program. For these ~~post-baseline~~ existing developed lands, the current loading rate shall be compared to the loading rate for these lands prior to development for the acres involved, and the difference shall constitute the load reduction need in annual mass load, in pounds per year. Alternatively, a state or federal entity may assume uniform pre-development loading rates of 2.89 pounds per acre per year N and 0.63 pounds per acre per year P for these lands. The entity shall achieve this stage one load reduction by calendar year 2020, within 10 years of the effective date of this Rule. This Stage I program shall meet the criteria defined in Item (4) of 15A NCAC 02B ~~.0278, .0278; and~~

~~(ii)(b)~~ Ten years after the effective date of this Rule ~~By January 15, 2021,~~ and every five years thereafter, a state ~~and~~ or federal entity located in the Upper Falls Watershed as defined in Item ~~(3)~~ (11) of 15A NCAC 02B ~~.0275 .0276~~ shall submit ~~and~~ [concurrently] begin implementing a Stage II load reduction program or revision designed to achieve the percent load reduction objectives from existing developed lands under its control, that includes timeframes for achieving these objectives and that meets the criteria defined in ~~Item (4) [(5)] of this Rule~~ Items (5) and (6) of this Rule.

~~(4)~~ (6) ELEMENTS OF NON-NCDOT LOAD REDUCTION PROGRAMS. A non-NCDOT state or federal entity load reduction program shall address the following elements:

- (a) State and federal entities in the Eno River and Little River subwatersheds shall, as part of their Stage I load reduction programs, begin and continuously implement a program to reduce loading from discharging sand filters and malfunctioning septic systems owned or used by state or federal agencies discharging into waters of the State within those ~~subwatersheds.~~ subwatersheds;
- (b) State and federal entities in any Falls subwatershed in which chlorophyll a levels have exceeded 40 ug/L in more than seventy-five percent of the monitoring events in any calendar year shall, as part of their Stage I load reduction programs, begin and continuously implement a program to reduce nutrient loading into the waters of the State within that ~~subwatershed.~~ subwatersheds;
- (c) The total amount of nutrient loading reductions in Stage I is not increased for state and federal entities by the requirements to add specific program components to address loading from malfunctioning septic systems and discharging sand filters or high nutrient loading levels pursuant to ~~Sub-Item (4)(a) and (b) of this Rule.~~ Sub-Items (a) and (b) of this [item.] Item;
- (d) In preparation for implementation of their Stage I and Stage II load reduction programs, state and federal entities shall develop inventories and characterize load reduction potential to the extent that accounting methods allow for the following:
 - (i) Wastewater collection systems;
 - (ii) Discharging sand filter systems, including availability of or potential for central sewer connection;
 - (iii) Properly functioning and malfunctioning septic systems;
 - (iv) Restoration opportunities in utility corridors;
 - (v) Fertilizer management plans for state and federally owned lands;
 - (vi) Structural stormwater practices, including intended purpose, condition, potential for greater nutrient control; and

- (vii) Wetlands and riparian buffers including potential for restoration opportunities.
- (e) A state or federal entities load reduction need shall be based on the developed lands owned or used by the state or federal entity within the Falls ~~watershed.~~ watershed;
- (f) Nitrogen and phosphorous loading from existing developed lands, including loading from onsite wastewater treatment systems to the extent accounting methods allow, shall be calculated by applying the accounting tool described in Item ~~(11)~~ (12) and shall quantify baseline loads of nitrogen and phosphorus to surface waters from the lands under the entity's control as well as loading changes post-baseline. It shall also calculate target nitrogen and phosphorus loads and corresponding reduction ~~needs.~~ needs;
- (g) Nitrogen and phosphorus loading from existing developed lands, including loading from onsite wastewater treatment systems to the extent accounting methods allow, shall be calculated by applying the accounting too described in Item ~~(11)~~ (12) of this ~~Rule~~ rule and shall quantify baseline loads of nitrogen and phosphorus to surface waters from state and federal entities as well as loading changes post-baseline. It shall calculate target nitrogen and phosphorus loads and corresponding load reduction ~~needs.~~ needs;
- (h) The Commission shall recognize reduction credit for ~~early~~ implementation of policies and practices implemented after January 1, 2007 and before January 15, 2011, ~~timeframes required by [the effective date of] this Rule~~, to reduce runoff and discharge of nitrogen and phosphorus per Session Law 2009-486. The load reduction program shall identify specific load-reducing practices implemented ~~to~~ date subsequent to the baseline period and for which the entity is seeking credit. It shall estimate load reductions for these practices and their anticipated duration using methods provided for in ~~Sub Item (8).~~ [Sub] Item [(9); (12)];
- (i) The plan program shall include a proposed implementation schedule that includes annual implementation expectations. The load reduction program shall identify the types of activities the state ~~of~~ or federal entity intends to implement and types of existing development affected, relative proportions or prioritization of practices, relative magnitude of reductions it expects to achieve from each, and the relative costs and efficiencies of each activity to the extent information is available. The program shall identify the duration of anticipated loading reductions, and may seek activities that provide long-term ~~reductions.~~ reductions;
- (j) The load reduction program shall identify anticipated funding mechanisms or sources and discuss steps taken or planned to secure such ~~funding.~~ funding;
- (k) The plan program shall address the extent of load reduction opportunities intended from the following types of lands:
 - (i) Lands owned or otherwise controlled by the state or federal entity; and
 - (ii) Lands other than those on which the entity's load reduction need is based as described in this Item, including lands both within and outside its jurisdiction and third party sellers.
- (l) The plan program shall address the extent of load reduction proposed from, at a minimum, the following stormwater and ecosystem restoration activities:
 - (i) Bioretention;
 - (ii) Constructed wetland;
 - (iii) Sand filter;
 - (iv) Filter Strip;
 - (v) Grassed swale;
 - (vi) Infiltration device;
 - (vii) Extended dry detention;
 - (viii) Rainwater harvesting system;
 - (ix) Treatment of Redevelopment;
 - (x) Overtreatment of new development;
 - (xi) Removal of impervious surface;
 - (xii) Retrofitting treatment into existing stormwater ponds;
 - (xiii) Off-line regional treatment systems;

- (xiv) Wetland or riparian buffer restoration; and
- (xv) Reforestation with conservation easement or other protective covenant.
- ~~(m)~~ A state or federal entity may propose in its load reduction program the use of the following measures in addition to items listed in (l) and (n), or may propose other measures for which it can provide [equivalent] accounting methods acceptable to the Division:
 - ~~(i)~~ Redirecting runoff away from impervious surfaces;
 - ~~(ii)~~ Soil amendments;
 - ~~(iii)~~ Stream restoration;
 - ~~(iv)~~ Improved street sweeping; and
 - ~~(v)~~ Source control, such as per waste and fertilizer controls.
- ~~(n)~~(m) The plan program shall evaluate the extent of load reduction proposed potential from the following wastewater activities:
 - (i) Creation of surplus relative to an allocation established in 15A NCAC 02B .0279;
 - (ii) Expansion of surplus allocation through regionalization;
 - (iii) Connection of discharging sand filters and malfunctioning septic systems to central sewer or replacement with permitted non-discharge alternatives;
 - (iv) Removal of illegal discharges; and
 - (v) Improvement of wastewater collection systems.
- ~~(n)~~ A state or federal entity may propose in its load reduction program the use of the following measures in addition to items listed in (l) and (m), or may propose other measures for which it can provide equivalent accounting methods acceptable to the Division:
 - ~~(i)~~ Redirecting runoff away from impervious surfaces;
 - ~~(ii)~~ Soil amendments;
 - ~~(iii)~~ Stream restoration;
 - ~~(iv)~~ Improved street sweeping; and
 - ~~(v)~~ Source control, such as waste and fertilizer controls.
- (o) The plan program shall include [explicit] evaluate the extent evaluation of load reduction potential

~~proposed~~ relative to the following factors:

- (i) Extent of physical opportunities for installation;
- (ii) Landowner acceptance;
- (iii) Incentive and education options for improving landowner ~~acceptance~~ acceptance;
- (iv) Existing and potential funding sources and magnitudes; ~~and~~
- (v) Practice cost-effectiveness (e.g., cost per pound of nutrient removed);
- ~~(vi)~~ Increase in per capita cost of a non-NC DOT state or federal entity's stormwater management program to implement the program;
- ~~(vi)~~(vii) Implementation rate without the use of eminent domain; and
- ~~(vii)~~(viii) Need for and projected role of eminent domain.

~~(5)~~(7) The Commission shall approve a non-NC DOT Stage I load reduction plan program if it meets the requirements of Items ~~(3)~~(4) and ~~(4)~~(5) (5) and (6) of this Rule. The Commission shall approve a Stage II load reduction plan program if it meets the requirements of Items ~~(3)~~(4) and ~~(4)~~(5) (5) and (6) of this Rule unless the Commission finds that the local [non- DOT] non-NC DOT state or federal entity can, through the implementation of reasonable and cost-effective measures not included in the proposed program, meet the Stage II nutrient load reductions required by this Rule by a date earlier than that proposed by the [non- DOT] non-NC DOT state or federal entity. If the Commission finds that there are additional or alternative reasonable and cost-effective measures, the Commission may require the [non- DOT] non-NC DOT state or federal entity to modify its proposed program to include such measures to achieve the required reductions by the earlier date. If the Commission requires such modifications, the [non- DOT] non-NC DOT state or federal entity shall submit a modified program within two months. The Division shall recommend that the Commission approve or disapprove the modified program within three months after receiving the modified program. In determining whether additional or alternative load reduction measures are reasonable and cost effective, the Commission shall consider factors including, but not limited to those identified in Sub-Item ~~(5)~~(6) (6)(o) of this

~~Rule, and if it finds that the plan achieves the maximum level of reductions that is technically and economically feasible within the proposed timeframe of implementation based on plan elements identified elsewhere in this Item. Economic feasibility is determined by considering environmental impacts, capital cost of compliance, annual incremental compliance, per capita cost of stormwater programs, cost effectiveness of available measures, and impacts on local and regional commerce. The Commission shall not require additional or alternative measures that would require a non-NCDOT state or federal entity to:~~

- ~~(a) Install a new stormwater collection system in an area of existing development unless the area is being redeveloped; or~~
- ~~(b) Reduce impervious surfaces within an area of existing development unless the area is being redeveloped.~~

~~(6)(8) A non-NCDOT state or federal entity shall have the option of working with the county or counties in which it falls, or with a municipality or municipalities within the same subwatershed, to jointly meet the loading targets from all lands within their combined jurisdictions within a subwatershed. The entity may utilize private or third party sellers. All reductions involving trading with other parties shall meet the requirements of 15A NCAC 02B .0282.~~

~~(7)(9) NCDOT REQUIREMENTS. The NCDOT shall develop a single Stormwater Management Program that will be applicable to the entire Falls watershed and submit this program for approval by the Division according to the standards set forth below. In addition, the program shall, at a minimum, comply with NCDOT's then-current stormwater permit. This program shall:~~

- ~~(a) Identify NCDOT stormwater outfalls from Interstate, US, and NC primary routes;~~
- ~~(b) Identify and eliminate illegal discharges into the NCDOT's stormwater conveyance system;~~
- ~~(c) Establish a program for post-construction stormwater runoff control for new development, including new and widening NCDOT roads and facilities. The program shall establish a process by which the Division shall review and approve stormwater designs for new NCDOT development projects. The program shall delineate the scope of vested projects that would be considered as~~

existing development, and shall define lower thresholds of significance for activities considered new development. In addition, the following criteria shall apply:

- ~~(i) For new and widening roads roads, weight weigh stations, and replacement of existing bridges, compliance with the riparian buffer protection requirements of Rules 15A NCAC 02B .0233 and .0242 shall be deemed as compliance with the purposes of this Rule;~~
- ~~(ii) New non-road development shall achieve and maintain the nitrogen and phosphorus percentage load reduction objectives established in 15A NCAC 02B .0275 relative to either area-weighted average loading rates of all developable lands as of the baseline period defined in 15A NCAC 02B .0275, or to project-specific pre-development loading rates. Values for area-weighted average loading rate targets for nitrogen and phosphorus, respectively, are expressed in units of pounds per acre per year: 2.2 and 0.33. The NCDOT shall determine the need for engineered stormwater controls to meet these loading rate targets by using the loading calculation method called for in Item (12) of this Rule ~~Sub-Item (4)(a) of 15A NCAC 02B .0277~~ or other equivalent method acceptable to the Division. Where stormwater treatment systems are needed to meet these targets, they shall be designed to control and treat the runoff generated from all surfaces by one inch of rainfall. Such systems shall be assumed to achieve the nutrient removal efficiencies identified in the ~~most recent version July 2007 version~~ of the Stormwater Best Management Practices~~

Manual published by the Division provided that they meet associated drawdown and other design specifications included in the same document. The NCDOT may propose to the Division nutrient removal rates for practices currently included in the BMP Toolbox required under its NPDES stormwater permit, or may propose revisions to those practices or additional practices with associated nutrient removal rates. The NCDOT may use any such practices approved by the Division to meet loading rate targets identified in this Sub-item. New non-road development shall also control runoff flows to meet the purpose of this Rule regarding protection of the nutrient functions and integrity of receiving waters; and

~~** (Onsite Treatment Option: A (50 percent N / 60 percent P) **~~

~~(ii)(iii)~~ For new non-road development, the NCDOT shall have the option of offsetting part of their nitrogen and phosphorus loads by implementing or funding offsite management measures. Before using an offsite offset option, a development shall implement structural stormwater controls that achieve 50 percent or more of the needed load reduction in both nitrogen and phosphorus loading onsite attain a minimum of 50 percent reduction in the post construction nitrogen and 60 percent reduction in post construction phosphorus loading rate on-site and shall meet any requirements for engineered stormwater controls described in this Item, Sub-Item (7)(c)(ii) [(8)(c)(ii)] of this Rule. Offsite offsetting measures shall achieve at

least equivalent reductions in nitrogen and phosphorus loading to the remaining reduction needed onsite to comply with the loading rate targets set out in this Item, Sub-Item (7)(c)(ii) [(8)(c)(ii)] of this Rule. The NCDOT may use any measure that complies with the requirements of Rules .0240 and .0282 of this Section. ~~may make offset payments to the NC Ecosystem Enhancement Program or a public or private seller of reduction credit contingent upon acceptance of payments by that Program. All offset measures identified in this Sub-Item shall meet the requirements of 15A NCAC 02B .0282.~~

~~** (Onsite Treatment Option: B (60 percent N / 60 percent P) **~~

~~(iii)~~ For new non-road development, the NCDOT shall have the option of offsetting part of their nitrogen and phosphorus loads by implementing or funding offsite management measures. Before using an offsite offset option, a development shall implement structural stormwater controls that attain a minimum of 60 percent reduction in the post construction nitrogen and 60 percent reduction in post construction phosphorus loading rate on-site and shall meet any requirements for engineered stormwater controls described in Sub-Item (7)(c)(ii) of this Rule. Offsite offsetting measures shall achieve at least equivalent reductions in nitrogen and phosphorus loading to the remaining reduction needed onsite to comply with the loading rate targets set out in Sub-Item (7)(c)(ii) of this Rule. The NCDOT may make offset

~~payments to the NC Ecosystem Enhancement Program or a public or private seller of reduction credit contingent upon acceptance of payments by that Program. All offset measures identified in this Sub Item shall meet the requirements of 15A NCAC 02B .0282.~~

(d) Establish a program to identify and implement load-reducing opportunities on existing development within the watershed. The long-term objective of this effort shall be for the NCDOT to achieve the nutrient load objectives in 15A NCAC 02B .0275 as applied to existing development under its control, including roads and ~~facilities.~~ facilities.

(i) The NCDOT may achieve the nutrient load reduction objective in 15A NCAC 02B .0275 for existing roadway and non-roadway development under its control by the development of a load reduction program that addresses both roadway and non-roadway development in the Falls watershed. As part of the accounting process described in Item ~~(11)~~(12) of this Rule, baseline nutrient loads shall be established for roadways and industrial facilities using stormwater runoff nutrient load characterization data collected through the National Pollutant Discharge Elimination System (NPDES) Research Program under NCS0000250 Permit Part II Section ~~G-G~~.

(ii) The program shall include estimates of, and plans for offsetting, nutrient load increases from lands developed subsequent to the baseline period but prior to implementation of its new development program. It shall include a technical analysis that includes a proposed implementation

rate and schedule. This schedule shall provide for proportionate annual progress toward reduction objectives as practicable throughout the proposed compliance period. The program shall identify the types of activities NCDOT intends to implement and types of existing roadway and non-roadway development affected, relative proportions or a prioritization of practices, and the relative magnitude of reductions it expects to achieve from ~~each.~~ each.

(iii) The program to address roadway and non-roadway development may include stormwater retrofits and other load reducing activities in the watershed including: illicit discharge removal; street sweeping; source control activities such as fertilizer management at NCDOT facilities; improvement of existing stormwater structures; use of rain barrels and cisterns; stormwater capture and reuse; and purchase of nutrient reduction ~~credits.~~ credits.

(iv) NCDOT may meet minimum implementation rate and schedule requirements by implementing a combination of at least six stormwater retrofits per year for existing development in the Falls watershed or some other minimum amount based on more accurate reduction estimates developed during the accounting tool development ~~process.~~ process.

(v) To the maximum extent practicable, retrofits shall be designed to treat the runoff generated from all surfaces by one inch of rainfall, and shall conform to the standards and criteria established in the most

recent version of the Division-approved NCDOT BMP Toolbox required under NCDOT's NPDES stormwater permit. To establish removal rates for nutrients for individual practices described in the Toolbox, NCDOT shall submit technical documentation on the nutrient removal performance of BMPs in the Toolbox for Division approval. Upon approval, NCDOT shall incorporate nutrient removal performance data into the BMP Toolbox. If a retrofit is proposed that is not described in the NCDOT BMP Toolbox, then to the maximum extent practicable, such retrofit shall conform to the standards and criteria set forth in the ~~most recent July 2007~~ most recent July 2007 version of the *Stormwater Best Management Practices Manual* published by the Division, or other technically equivalent guidance acceptable to the ~~Division~~ Division.

- (e) Initiate a "Nutrient Management Education Program" for NCDOT staff and contractors engaged in the application of fertilizers on highway rights of way. The purpose of this program shall be to contribute to the load reduction objectives established in 15A NCAC 02B .0275 through proper application of nutrients, both inorganic fertilizer and organic nutrients, to highway rights of way in the Falls watershed in keeping with the most current state-recognized technical guidance on proper nutrient management; and
- (f) Address compliance with the riparian buffer protection requirements of 15A NCAC 02B .0233 and .0242 through a Division approval process.

~~(8)~~(10) **NON-NCDOT RULE IMPLEMENTATION.** For all state and federal entities that control lands within the Falls watershed with the exception of the NCDOT, this Rule shall be implemented as follows:

- (a) Upon Commission approval of the accounting methods required in Item ~~(9)~~ (12) of this Rule, subject entities shall comply with the requirements of Items (3) and (4) of this Rule; [~~Sub-Item (3)]~~
- (b) ~~Within 30 months after the effective date of this Rule, By July 15, 2013,~~ the Division shall submit a Stage I model local program to the Commission for approval that embodies the criteria described in Items (5) and (6) ~~Items (3)(b) and (4)~~ of this Rule. The Division shall work in cooperation with subject state and federal entities and other watershed interests in developing this model program, which shall include the following:
 - (i) Methods to quantify load reduction requirements and resulting load reduction assignments for individual entities;
 - (ii) Methods to account for discharging sand filters, malfunctioning septic systems, and leaking collection systems; and
 - (iii) Methods to account for load reduction credits from various ~~activities~~ activities;
- ~~(b)(c)~~ Within six months after the Commission's approval of the Stage I model local program, subject entities shall submit load reduction programs that meet or exceed the requirements of ~~Items (3)(a) and (4)~~ Items (5) and (6) of this Rule to the Division for review and preliminary approval and shall begin implementation and tracking of measures to reduce nutrient loads from existing developed lands owned or controlled by the responsible state or federal ~~entity~~ entity;
- ~~(e)(d)~~ Within 20 months of the Commission's approval of the Stage I model local program, the Division shall provide recommendations to the Commission on existing development load reduction programs. The Commission shall either approve the programs or require changes based on the standards set out in Items (4) of this Rule. Should the Commission require changes, the applicable state or federal entity shall have two months to submit revisions, and the

Division shall provide follow-up recommendations to the Commission within two months after receiving ~~revisions-revisions:~~

~~(d)(e)~~ Within three months after the Commission's approval of a Stage I existing development load reduction program, the affected entity shall complete adoption of and begin implementation of its existing development Stage I load reduction ~~program-program:~~

~~(e)(f)~~ Upon implementation of the programs required under Item (4) of this Rule, state and federal entities subject to this Rule shall provide annual reports to the Division documenting their progress in implementing those requirements within three months following each anniversary of program implementation date until such time the Commission determines they are no longer needed to ensure maintenance of reductions or that standards are protected. State and federal entities shall indefinitely maintain and ensure performance of implemented load-reducing ~~measures-~~measures:

~~(f)(g)~~ ~~Ten years after the effective date of this Rule, By January 15, 2021 and every five years thereafter until either accounting determines load reductions have been achieved, standards are met,are meeting the lake or the Commission takes other actions per 15A NCAC 02B .0275, state and federal entities located in the upper Falls watershed as defined in Item (3) of 15A NCAC 02B .0275 shall begin implementing and shall submit and concurrently begin implementation of Stage II load reduction program or program revision to the Division. Within nine months after submittal, the division shall make recommendations to the Commission on approval of these programs. The Commission shall either approve the programs or require changes based on the standards seer out in this Rule. Should the Commission require changes, the applicable state or federal entity shall submit revisions within two months, and the Division shall provide follow-up recommendations to the Commission~~

within three months after receiving revisions. Upon approval, the state or federal entity shall adjust implementation based on its approved ~~program-program:~~

~~(g)(h)~~ A state or federal entity may, at any time after commencing implementation of its load reduction program, submit program revisions to the Division for approval based on identification of more cost-effective strategies or other factors not originally ~~recognized-recognized:~~

~~(h)(i)~~ Once either load reductions are achieved per annual reporting or water quality standards are met in the lake per 15A NCAC 02B .0275, state and federal entities shall submit ~~planprograms~~ to ensure no load increases and shall report annually per Sub-Item ~~(8)(e)~~ (10)(e) on compliance with no increases and take additional actions as ~~necessary-~~necessary; and

~~(i)(j)~~ ~~At least Beginning January 2016 and every five years after the effective date, thereafter,~~ the Division shall review the accounting methods stipulated under Sub-Item ~~(8)(a)~~ (9)(a) to determine the need for revisions to those methods and to loading reductions assigned using those methods. Its review shall include values subject to change over time independent of changes resulting from implementation of this Rule, such as untreated export rates that may change with changes in atmospheric deposition. It shall also review values subject to refinement, such as nutrient removal efficiencies.

~~(9)(11)~~ NCDOT RULE IMPLEMENTATION. For the NCDOT, Rule, shall be implemented as follows:

(a) ~~Within 30 months of the effective date of this Rule, By July 2013,~~ the NCDOT shall submit the Stormwater Management Program for the Falls watershed to the Division for approval. This Program shall meet or exceed the requirements in Item ~~(7)(9)~~ of this Rule;

(b) ~~Within 36 months of the effective date of this Rule, By January 15, 2014,~~ the Division shall request the Commission's approval of the NCDOT Stormwater Management Program;

- (c) ~~Within 36 months of the effective date of this Rule. By January 15, 2014,~~ the NCDOT shall implement the Commission-approved Stormwater Management Program; and
- (d) Upon implementation, the NCDOT shall submit annual reports to the Division summarizing its activities in implementing each of the requirements in Item ~~(7)~~(9) of this Rule. This annual reporting may be incorporated into annual reporting required under NCDOT's NPDES stormwater permit.

~~(10)~~(12) **RELATIONSHIP TO OTHER REQUIREMENTS.** A party may in its program submittal request that the Division accept its implementation of another stormwater program or programs, such as NPDES stormwater requirements, as satisfying one or more of the requirements set forth in ~~Item-Items (3)(4) or (4)(5)~~ of this Rule. The Division shall provide determination on acceptability of any such alternatives prior to requesting Commission approval of programs under this Rule. The party shall include in its program submittal technical information demonstrating the adequacy of the alternative requirements.

~~(11)~~(13) **ACCOUNTING METHODS.** ~~Within 18 months after the effective date of this Rule, By July 15, 2012,~~ the Division shall submit a nutrient accounting framework to the Commission for approval. This framework shall include tools for quantifying load reduction assignments on existing development for parties subject to this Rule, load reduction credits from various activities on existing developed lands, and a tool that will allow subject parties to account for loading from new and existing development and loading changes due to BMP implementation. The Division shall work in cooperation with subject parties and other watershed interests in developing this framework. The Division shall periodically revisit these accounting methods to determine the need for revisions to both the methods and to existing development load reduction assignments made using the methods set out in this Rule. It shall do so no less frequently than every 10 years. Its review shall include values subject to change over time independent of changes resulting from implementation of this Rule, such as untreated export rates that may change with changes in atmospheric deposition. It shall also review values subject

to refinement, such as BMP nutrient removal efficiencies.

History Note: Authority G. S. 143-214.1; 143-214.3; 143-214.5; 143-214.7; 143-215.1; 143-215.3; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143 215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; S.L. 2009-337; S.L. 2009-486; Temporary Adoption Eff. January 15, 2011.

15A NCAC 02B .0282 FALLS WATER SUPPLY NUTRIENT STRATEGY: OPTIONS FOR OFFSETTING NUTRIENT LOADS

PURPOSE. This Rule provides parties subject to other rules within the Falls nutrient strategy with options for meeting rule requirements by obtaining or buying credit for nutrient load-reducing activities conducted by others (sellers). It provides the potential for parties who achieve excess load reductions under the Falls nutrient strategy to recover certain costs by selling such credits, and it provides opportunity for third parties to produce reductions and sell credits. Overall it provides the potential for more cost-effective achievement of strategy reduction objectives. Accounting is required to ensure and track the availability and use of trading credits. This accounting will be compared against compliance accounting required under other rules of the Falls nutrient strategy to ensure that crediting is properly accounted for. This Rule furthers the adaptive management intent of the strategy to protect the water supply, aquatic life, and recreational uses of Falls Reservoir. The minimum requirements for the exchange of load reduction credits are:

- (1) **PREREQUISITES.** The following buyers shall meet applicable criteria identified here and in rules imposing reduction requirements on them before utilizing the option outlined in this Rule:
 - (a) Agriculture Rule .0280: Owners of Agricultural agricultural producers land shall receive approval from the Watershed Oversight Committee to obtain offsite credit pursuant to the conditions of Sub-Item ~~(5)~~(7) (b)(vii) of Rule .0280;
 - (b) New Development Rule .0277: Developers shall meet onsite reduction requirements enumerated in Sub-Item ~~(3)(a)(vii)~~ (4)(b) of Rule .0277 before obtaining offsite credit;
 - (c) Wastewater Rule .0279: New and expanding dischargers shall first make all reasonable efforts to obtain allocation from existing dischargers as stated in Sub-Items (7)(a)(ii) and (8)(a)(ii), respectively of Rule .0279; and
 - (d) State and Federal Entities Stormwater Rule .0281:
 - (i) Non-DOT entities shall meet onsite new development

- reduction requirements enumerated in Sub-Item ~~(3)(a)(ii)~~ (4)(b) of Rule .0281; and
- (ii) NC DOT shall meet onsite non-road new development reduction requirements enumerated in Sub-Item ~~(4)(e)(iii)~~ (9)(c) of Rule .0281 before obtaining offsite credit.
- (2) The party seeking approval to sell loading load reduction credits pursuant to this Rule shall demonstrate to the Division that such reductions meet the following criteria:
- (a) Load reductions eligible for credit shall not include reductions ~~achieved that result from actions required to mitigate or offset nutrient load-increasing actions that increase nutrient loading under regulations other than the Falls nutrient strategy~~ any regulation, except where a rule in this Section expressly allows such credit; and
- (b) The party seeking to sell credits shall define the nature of the activities that would produce reductions and define the magnitude and duration of those reductions to the Division, including addressing the following items:
- (i) Quantify and account for the relative uncertainties in reduction need estimates and loading load reduction estimates;
- (ii) Ensure that loading load reductions shall take place at the time and for the duration in which the reduction need occurs; and
- (iii) Demonstrate adequate means adequate for assuring the achievement and claimed duration of loading load reduction, including the cooperative involvement of any other involved ~~parties~~ parties;
- ~~(3)(c)~~ Geographic Restrictions. Eligibility to use loading load reductions as credit is based on the following geographic criteria:
- ~~(a)(i)~~ Impacts in the upper Falls watershed as defined in Item (19) of 15A NCAC 02B.0276 may be offset only by loading load reductions achieved in the upper Falls watershed; and
- ~~(b)(ii)~~ Impacts in the lower Falls watershed as defined in Item (20) of 15A NCAC 02B.0276 ~~may shall~~ be offset ~~only~~ by loading load reductions achieved anywhere within the Falls watershed.
- ~~(4)(3)~~ The party seeking approval to sell loading load reduction credits shall provide for accounting and tracking methods that ensure genuine, accurate, and verifiable achievement of the purposes of this ~~Rule, rule, and shall otherwise meet the requirements of Rule .0240 of this [Section,]section, which establishes procedural requirements for nutrient offset payments.~~ The Division shall work cooperatively with interested parties at their request to develop such accounting and tracking methods to support the requirements of Item (2) of this Rule.
- ~~(5)(4)~~ Local governments have the option of combining their reduction needs from NPDES dischargers assigned allocations in 15A NCAC 02B .0279 and existing development as described in 15A NCAC 02B .0278, including loads from properly functioning and malfunctioning septic systems and discharging sand filters, into one reduction and allocation requirement and meet them jointly.
- ~~(6)(5)~~ Proposals for use of offsetting actions as described in this Rule shall become effective after determination by the Director that the proposal contains adequate scientific or engineering standards or procedures necessary to achieve and account for load reductions as required under Items (2) ~~through (4) and (3)~~ of this Rule, and that specific accounting tools required for these purposes in individual rules have been adequately established. In making this determination, the Director shall also evaluate the potential for loading load offset elsewhere ~~that results in to produce~~ localized adverse water quality impacts that contribute to impairment of classified uses of the affected waters.
- ~~(7)(6)~~ A party seeking to purchase nutrient offset credit from the NC Ecosystem Enhancement Program or from a public or private seller of reduction credit shall meet the applicable requirements of Rule .0240 of this Section, which establishes procedural requirements for nutrient offset payments, in addition to applicable requirements of this Rule. Requirements of Rule .0240 include, but are not limited to, the requirement for non-governmental entities to purchase credit from a

- provider other than the NC Ecosystem Enhancement Program if such credit is available.
- (7) The Watershed Oversight Committee under Rule 15A NCAC 02B .0280 may satisfy the seller requirements of Items (2) and (3) of this Rule and the trading provisions of Rule .0280 for individual agricultural land owners by submitting to the Division for approval a trading program, or revisions to such a program, that demonstrates how individual trades shall meet the requirements of [both rules.] this Rule and Rule .0280, and by subsequently including in annual reports required under Rule .0280 separate tracking and accounting for such trades.

History Note: Authority G S. 143-214.1; 1432-214.3; 143-214.5; 143-214.7; 143-215.1; 143215.3; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143 215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; S.L 2009-337; S.L 2009-486;

Temporary Adoption Eff. January 15, 2011.

15A NCAC 02B .0315 NEUSE RIVER BASIN

(a) The Neuse River Basin Schedule of Classification and Water Quality Standards may be inspected at the following places:

- (1) the Internet at <http://h2o.enr.state.nc.us/csu/>; and
- (2) the North Carolina Department of Environment and Natural Resources:
 - (A) Raleigh Regional Office
3800 Barrett Drive
Raleigh, North Carolina—North Carolina;
 - (B) Washington Regional Office
943 Washington Square Mall
Washington, North Carolina—North Carolina;
 - (C) Wilmington Regional Office
127 Cardinal Drive
Wilmington, North Carolina—North Carolina;
 - (D) Division of Water Quality
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) The Neuse River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) March 1, 1977; 1977 see Paragraph (c) of this Rule;
- (2) December 13, 1979; 1979 see Paragraph (d) of this Rule;
- (3) September 14, 1980; 1980 see Paragraph (e) of this Rule;
- (4) August 9, 1981; 1981 see Paragraph (f) of this Rule;
- (5) January 1, 1982; 1982 see Paragraph (g) of this Rule;

- (6) April 1, 1982; 1982 see Paragraph (h) of this Rule;
- (7) December 1, 1983; 1983 see Paragraph (i) of this Rule;
- (8) January 1, 1985; 1985 see Paragraph (j) of this Rule;
- (9) August 1, 1985; 1985 see Paragraph (k) of this Rule;
- (10) February 1, 1986; 1986 see Paragraph (l) of this Rule;
- (11) May 1, 1988; 1988 see Paragraph (m) of this Rule;
- (12) July 1, 1988; 1988 see Paragraph (n) of this Rule;
- (13) October 1, 1988; 1988 see Paragraph (o) of this Rule;
- (14) January 1, 1990; 1990 see Paragraph (p) of this Rule;
- (15) August 1, 1990;
- (16) December 1, 1990; 1990 see Paragraph (q) of this Rule;
- (17) July 1, 1991; 1991 see Paragraph (r) of this Rule;
- (18) August 3, 1992;
- (19) April 1, 1994; 1994 see Paragraph (s) of this Rule;
- (20) July 1, 1996; 1996 see Paragraph (t) of this Rule;
- (21) September 1, 1996; 1996 see Paragraph (u) of this Rule;
- (22) April 1, 1997; 1997 see Paragraph (v) of this Rule;
- (23) August 1, 1998; 1998 see Paragraph (w) of this Rule;
- (24) August 1, 2002; 2002 see Paragraph (x) of this Rule;
- (25) July 1, 2004; 2004 see Paragraph (y) of this Rule;
- (26) November 1, 2007; see Paragraph (z) of this Rule;
- (27) January 15, 2011 see Paragraph (aa) of this Rule.

(c) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective March 1, 1977 with the a total of 179 streams in the Neuse River Basin reclassified from Class D to Class C.

(d) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective December 13, 1979 as follows: Little River [Index No. 27-57-(21.5)] from source to the dam at Wake Forest Reservoir has been reclassified from Class A-II to Class A-II and B

(e) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective September 14, 1980 as follows: The Eno River from Durham County State Road 1003 to U.S Highway 501 [Index No. 27-2-(16)] was reclassified from Class C and B to Class A-II and B.

(f) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 9,

1981 to remove the swamp water designation from all waters designated SA in the Neuse River Basin.

(g) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective January 1, 1982 as follows: The Trent River from the mouth of Brice Creek to the Neuse River [Index No. 27-101-(39)] was reclassified from Class SC Sw to Class SB Sw.

(h) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective April 1, 1982 as follows:

- (1) Longview Branch from source to Crabtree Creek [Index No. 27-33-(21)] was reclassified from Class C1 to Class C.
- (2) Watson Branch from source to Walnut Creek [Index No. 27-34-(8)] was reclassified from Class C1 to Class C.

(i) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective December 1, 1983 to add the Nutrient Sensitive Waters classification to the entire river basin above Falls dam.

(j) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective January 1, 1985 as follows: Nobel Canal from source to Swift Creek [Index No. 27-97-(2)] was reclassified from Class C1 to Class C.

(k) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective August 1, 1985 as follows:

- (1) Southeast Prong Beaverdam Creek from source to Beaverdam Creek [Index No. 27-33-15(2)] was reclassified from Class C1 to Class C.
- (2) Pigeon House branch from source to Crabtree Creek [Index No. 27-33-(18)] was reclassified from Class C1 to Class C.
- (3) Rocky Branch from source to Pullen Road [Index No. 27-34-6-(1)] was reclassified from Class C1 to Class C.
- (4) Chavis Branch from source to Watson Branch [Index No. 27-37-8-1] was reclassified from Class C1 to Class C.

(l) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective February 1, 1986 to reclassify all Class A-I and Class A-II streams in the Neuse River Basin to WS-I and WS-III.

(m) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective May 1, 1988 to add the Nutrient Sensitive Waters classification to the waters of the Neuse River Basin below the Falls Lake dam.

(~~e~~)(n) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective July 1, 1988 as follows:

- (1) Smith Creek [Index No. 27-23-(1)] from source to the dam at Wake Forest Reservoir has been reclassified from Class WS-III to WS-I.
- (2) Little River [Index No. 27-57-(1)] from source to the N.C. Hwy. 97 Bridge near Zebulon including all tributaries has been reclassified from Class WS-III to WS-I.

(3) An unnamed tributary to Buffalo Creek just upstream of Robertson's Pond in Wake County from source to Buffalo Creek including Leo's Pond has been reclassified from Class C to B.

(~~d~~)(o) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective October 1, 1988 as follows:

- (1) Walnut Creek (Lake Johnson, Lake Raleigh) [Index No. 27-34-(1)]. Lake Johnson and Lake Raleigh have been reclassified from Class WS-III to Class WS-III B.
- (2) Haw Creek (Camp Charles Lake) (Index No. 27-86-3-7) from the backwaters of Camp Charles Lake to dam at Camp Charles Lake has been reclassified from Class C to Class B.

(~~e~~)(p) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective January 1, 1990 as follows:

- (1) Neuse-Southeast Pamlico Sound ORW Area which includes all waters within a line beginning at the southwest tip of Ocracoke Island, and extending north west along the Tar-Pamlico River Basin and Neuse River Basin boundary line to Lat. 35 degrees 06' 30", thence in a southwest direction to Ship Point and all tributaries, were reclassified from Class SA NSW to Class SA NSW ORW.
- (2) Core Sound (Index No. 27-149) from northeastern limit of White Oak River Basin (a line from Hall Point to Drum Inlet) to Pamlico Sound and all tributaries, except Thorofare, John Day Ditch were reclassified from Class SA NSW to Class SA NSW ORW.

(~~f~~)(q) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective December 1, 1990 with the reclassification of the following waters as described in (1) through (3) of this Paragraph.

- (1) Northwest Creek from its source to the Neuse River (Index No. 27-105) from Class SC Sw NSW to Class SB Sw NSW;
- (2) Upper Broad Creek [Index No. 27-106-(7)] from Pamlico County SR 1103 at Lees Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW; and
- (3) Goose Creek [Index No. 27-107-(11)] from Wood Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW.

(~~g~~)(r) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 1991 with the reclassification of the Bay River [Index No. 27-150-(1)] within a line running from Flea Point to the Hammock, east to a line running from Bell Point to Darby Point, including Harper Creek, Tempe Gut, Moore Creek and Newton Creek, and excluding that portion of the Bay River landward of a line running from Poorhouse Point to Darby Point from Classes SC Sw NSW and SC Sw NSW HQW to Class SA NSW.

(~~h~~)(s) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 3, 1992 with the reclassification of all water supply

waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

~~(h)~~(l) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective April 1, 1994 as follows:

- (1) Lake Crabtree [Index No. 27-33-(1)] was reclassified from Class C NSW to Class B NSW.
- (2) The Eno River from Orange County State Road 1561 to Durham County State Road 1003 [Index No. 27-10-(16)] was reclassified from Class WS-IV NSW to Class WS-IV B NSW.
- (3) Silver Lake (Index No. 27-43-5) was reclassified from Class WS-III NSW to Class WS-III B NSW.

~~(j)~~(u) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 1996 with the reclassification of Austin Creek [Index Nos. 27-23-3-(1) and 27-23-3-(2)] from its source to Smith Creek from classes WS-III NSW and WS-III NSW CA to class C NSW.

~~(k)~~(v) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective September 1, 1996 with the reclassification of an unnamed tributary to Hannah Creek (Tuckers Lake) [Index No. 27-52-6-0.5] from Class C NSW to Class B NSW.

~~(h)~~(w) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective April 1, 1997 with the reclassification of the Neuse River (including tributaries) from mouth of Marks Creek to a point 1.3 miles downstream of Johnston County State Road 1908 to class WS-IV NSW and from a point 1.3 miles downstream of Johnston County State Road 1908 to the Johnston County Water Supply intake (located 1.8 miles downstream of Johnston County State Road 1908) to class WS-IV CA NSW [Index Nos. 27-(36) and 27-(38.5)].

~~(m)~~(x) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 1, 1998 with the revision of the Critical Area and Protected Area boundaries surrounding the Falls Lake water supply reservoir. The revisions to these boundaries is the result of the Corps of Engineers raising the lake's normal pool elevation. The result of these revisions is the Critical and Protected Area boundaries (classifications) may extend further upstream than the current designations. The Critical Area for a WS-IV reservoir is defined as .5 miles and draining to the normal pool elevation. The Protected Area for a WS-IV

reservoir is defined as 5 miles and draining to the normal pool elevation. The normal pool elevation of the Falls Lake reservoir has changed from 250.1 feet mean sea level (msl) to 251.5 feet msl.

~~(n)~~(y) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 1, 2002 with the reclassification of the Neuse River [portions of Index No. 27-(56)], including portions of its tributaries, from a point 0.7 mile downstream of the mouth of Coxes Creek to a point 0.6 mile upstream of Lenoir County proposed water supply intake from Class C NSW to Class WS-IV NSW and from a point 0.6 mile upstream of Lenoir County proposed water supply intake to Lenoir proposed water supply intake from Class C NSW to Class WS-IV CA NSW.

~~(o)~~(z) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 2004 with the reclassification of the Neuse River (including tributaries in Wake County) [Index Nos. 27-(20.7), 27-21, 27-21-1] from the dam at Falls Lake to a point 0.5 mile upstream of the Town of Wake Forest Water Supply Intake (former water supply intake for Burlington Mills Wake Finishing Plant) from Class C NSW to Class WS-IV NSW and from a point 0.5 mile upstream of the Town of Wake Forest proposed water supply intake to Town of Wake Forest proposed water supply intake [Index No. 27-(20.1)] from Class C NSW to Class WS-IV NSW CA. Fantasy Lake [Index No. 27 -57-3-1-1], a former rock quarry within a WS-II NSW water supply watershed, was reclassified from Class WS-II NSW to Class WS-II NSW CA.

~~(p)~~(aa) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective November 1, 2007 with the reclassification of the entire watershed of Deep Creek (Index No. 27-3-4) from source to Flat River from Class WS-III NSW to Class WS-III ORW NSW.

~~(q)~~(bb) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin [was] is amended effective January 15, 2011 with the reclassification of all Class C NSW waters and all Class B NSW waters upstream of the dam at Falls Reservoir from Class C NSW and Class B NSW to Class WS-V NSW and Class WS-V & B NSW, respectively. All waters within the Falls Watershed are within a designated Critical Water Supply Watershed and are subject to a special management strategy specified in Rules 15A NCAC 02B .0275 through .0283.

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

Eff. February 1, 1976;

Amended Eff. November 1, 2007; July 1, 2004 (see SL 2001-361); August 1, 2002; August 1, 1998; April 1, 1997; September 1, 1996; July 1, 1996; April 1, 1994; August 3, 1992; July 1, 1991;

Temporary Amendment Eff. January 15, 2011.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Monday, November 29, 2010 and Thursday December 16, 2010 9:00 a.m. 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 919-431-3100. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate
Jim R. Funderburk - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Ralph A. Walker
Jerry R. Crisp
Jeffrey P. Gray

Appointed by House
Jennie J. Hayman - Chairman
Daniel F. McLawhorn
Curtis Venable
Ann Reed

COMMISSION COUNSEL

Joe Deluca (919)431-3081
Bobby Bryan (919)431-3079

RULES REVIEW COMMISSION MEETING DATES

January 20, 2011 February 17, 2011
March 18, 2011 April 21, 2011

**LIST OF APPROVED PERMANENT RULES
December 16, 2010 Meeting**

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Re-Inspections 02 NCAC 34 .1103

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Protection From and Abatement of Bee Diseases 02 NCAC 48A .0202

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The Transportation of Bees 02 NCAC 48A .0206

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Location of Bees 02 NCAC 48A .0208

Inspection of Nuclei and Queen Breeding Apiaries 02 NCAC 48A .0209

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<u>Registration of Honeybee Colonies</u>	02 NCAC 48A .0225
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RULES REVIEW COMMISSION

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<u>Definitions</u>	15A	NCAC 02T	.0902
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RULES REVIEW COMMISSION

<u>Application Submittal - Conjunctive Systems</u>	15A NCAC 02T .0904
<u>Application Submittal - Non-Conjunctive Systems</u>	15A NCAC 02T .0905
<u>Reclaimed Water Effluent Standards</u>	15A NCAC 02T .0906
<u>Design Criteria for Wastewater Treatment Facilities - Con...</u>	15A NCAC 02T .0907
<u>Design Criteria for Wastewater Treatment Facilities - Non...</u>	15A NCAC 02T .0908
<u>Design Criteria for Distribution Lines</u>	15A NCAC 02T .0909
<u>Reclaimed Water Utilization</u>	15A NCAC 02T .0910
<u>Bulk Distribution of Reclaimed Water</u>	15A NCAC 02T .0911
<u>Setbacks</u>	15A NCAC 02T .0912
<u>Operation and Maintenance Plan</u>	15A NCAC 02T .0913
<u>Residuals Management Plan</u>	15A NCAC 02T .0914
<u>Local Program Approval</u>	15A NCAC 02T .0915
<u>Purpose</u>	15A NCAC 02U .0101
<u>Scope</u>	15A NCAC 02U .0102
<u>Definitions</u>	15A NCAC 02U .0103
<u>Activities Which Require a Permit</u>	15A NCAC 02U .0104
<u>General Requirements</u>	15A NCAC 02U .0105
<u>Submission of Permit Applications</u>	15A NCAC 02U .0106
<u>Staff Review and Permit Preparation</u>	15A NCAC 02U .0107
<u>Final Action on Permit Applications to the Division</u>	15A NCAC 02U .0108
<u>Permit Renewals</u>	15A NCAC 02U .0109
<u>Modification and Revocation of Permits</u>	15A NCAC 02U .0110
<u>Conditions for Issuing General Permits</u>	15A NCAC 02U .0111
<u>Delegation of Authority</u>	15A NCAC 02U .0112
<u>Permitting by Regulation</u>	15A NCAC 02U .0113
<u>Wastewater Design Flow Rates</u>	15A NCAC 02U .0114
<u>Operational Agreements</u>	15A NCAC 02U .0115
<u>Certification of Completion</u>	15A NCAC 02U .0116
<u>Treatment Facility Operation and Maintenance</u>	15A NCAC 02U .0117
<u>Historical Consideration in Permit Approval</u>	15A NCAC 02U .0120
<u>Application Submittal - Conjunctive Systems</u>	15A NCAC 02U .0201
<u>Application Submittal - Non Conjunctive Systems</u>	15A NCAC 02U .0202
<u>Reclaimed Water Effluent Standards</u>	15A NCAC 02U .0301
<u>Design Criteria for Wastewater Treatment Facilities - Con...</u>	15A NCAC 02U .0401
<u>Design Criteria for Wastewater Treatment Facilities - Non...</u>	15A NCAC 02U .0402
<u>Design Criteria for Distribution Lines</u>	15A NCAC 02U .0403
<u>Reclaimed Water Utilization</u>	15A NCAC 02U .0501
<u>Bulk Distribution of Reclaimed Water</u>	15A NCAC 02U .0601
<u>Setbacks</u>	15A NCAC 02U .0701
<u>Operation and Maintenance Plan</u>	15A NCAC 02U .0801
<u>Residuals Management Plan</u>	15A NCAC 02U .0802
<u>Local Program Approval</u>	15A NCAC 02U .0901
<u>Wetlands Augmentation</u>	15A NCAC 02U .1101
<u>Irrigation to Food Chain Crops</u>	15A NCAC 02U .1401

WILDLIFE RESOURCES COMMISSION

<u>Deer (White Tailed)</u>	15A NCAC 10B .0203
<u>Definitions</u>	15A NCAC 10B .0301
<u>Traps</u>	15A NCAC 10B .0305
<u>Public Mountain Trout Waters</u>	15A NCAC 10C .0205
<u>Possession of Certain Fishes</u>	15A NCAC 10C .0211
<u>Open Seasons: Creel and Size Limits</u>	15A NCAC 10C .0305
<u>Manner of Taking Non-game Fishes: Purchase and Sale</u>	15A NCAC 10C .0401
<u>General Regulations Regarding Use</u>	15A NCAC 10D .0102
<u>Hunting On Game Lands</u>	15A NCAC 10D .0103

PUBLIC HEALTH, COMMISSION FOR

<u>Special Purpose Commercial Hazardous Waste Facility</u>	15A NCAC 13A .0116
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ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF

<u>Fee Schedules</u>	15A NCAC 13A .0117
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STATE TREASURER, DEPARTMENT OF

<u>Fees</u>	20 NCAC 03 .0112
<u>Fees and Expenses</u>	20 NCAC 09 .0602

CERTIFIED PUBLIC ACCOUNTANT EXAMINERS, BOARD OF

<u>Definitions</u>	21 NCAC 08A .0301
<u>Concentration in Accounting</u>	21 NCAC 08A .0309
<u>Hearing Exhibits</u>	21 NCAC 08C .0126
<u>Education and Work Experience Required Prior to CPA Exam</u>	21 NCAC 08F .0302
<u>Waiver of Education Required Prior to Examination</u>	21 NCAC 08F .0304
<u>Work Experience Required of Candidates for CPA Certification</u>	21 NCAC 08F .0401
<u>Education Required of Candidates for CPA Certification</u>	21 NCAC 08F .0410
<u>Reciprocal Certificates</u>	21 NCAC 08H .0101
<u>Annual Renewal of Certificate, Forfeiture, and Reapplication</u>	21 NCAC 08J .0101
<u>Retired and Inactive Status: Change of Status</u>	21 NCAC 08J .0105
<u>CPA Firm Registration</u>	21 NCAC 08J .0108
<u>CPA Firm Practice Privilege Notification</u>	21 NCAC 08J .0109
<u>Peer Review Requirements</u>	21 NCAC 08M .0105
<u>Violation of Tax Law</u>	21 NCAC 08N .0207
<u>International Financial Accounting Standards</u>	21 NCAC 08N .0215
<u>Forms of Practice</u>	21 NCAC 08N .0302
<u>Advertising or Other Forms of Solicitation</u>	21 NCAC 08N .0306
<u>CPA Firm Names</u>	21 NCAC 08N .0307
<u>Independence</u>	21 NCAC 08N .0402
<u>Government Auditing Standards</u>	21 NCAC 08N .0409

COSMETIC ART EXAMINERS, BOARD OF

<u>Sanitary Ratings and Posting of Ratings</u>	21 NCAC 14H .0105
<u>Water Supply</u>	21 NCAC 14H .0107

<u>Cleanliness of Clinic Area</u>	21	NCAC 14H .0112
<u>Whirlpool, Footspa and Facial Steamer Sanitation</u>	21	NCAC 14H .0120
<u>Prohibited Practices</u>	21	NCAC 14H .0121
<u>General Examination Instructions</u>	21	NCAC 14N .0103
<u>Continuing Education Requirements</u>	21	NCAC 14R .0101

APPRAISAL BOARD

<u>Continuing Education</u>	21	NCAC 57A .0204
<u>Expired Registration, License or Certificate</u>	21	NCAC 57A .0206
<u>Appraisal Reports</u>	21	NCAC 57A .0405
<u>Appraisal Management Companies</u>	21	NCAC 57A .0410
<u>Form of Complaints and Pleadings</u>	21	NCAC 57C .0101
<u>Form</u>	21	NCAC 57D .0101
<u>Filing and Fees</u>	21	NCAC 57D .0102
<u>Registration Renewal</u>	21	NCAC 57D .0202
<u>Expired Registration</u>	21	NCAC 57D .0203
<u>Payment of Fees to the Board</u>	21	NCAC 57D .0204
<u>Use of Registration Number</u>	21	NCAC 57D .0301
<u>Change of Name or Contact Information</u>	21	NCAC 57D .0302
<u>Appraiser Qualifications</u>	21	NCAC 57D .0304
<u>Appraiser Competency</u>	21	NCAC 57D .0305
<u>Appraisal Review</u>	21	NCAC 57D .0306
<u>Records</u>	21	NCAC 57D .0307
<u>Production of Records</u>	21	NCAC 57D .0308
<u>Complaints Against Appraisers</u>	21	NCAC 57D .0309
<u>Payment of Fees to Appraisers</u>	21	NCAC 57D .0310
<u>Removal of an Appraiser from an Appraiser Panel</u>	21	NCAC 57D .0311
<u>Requesting Additional Information from an Appraiser</u>	21	NCAC 57D .0312
<u>Business Practices</u>	21	NCAC 57D .0401

STATE PERSONNEL COMMISSION

<u>Leave Offsetting</u>	25	NCAC 01E .0103
<u>Vacation Leave Credits</u>	25	NCAC 01E .0203
<u>Policy</u>	25	NCAC 01E .1801
<u>Definitions</u>	25	NCAC 01E .1802
<u>Recruitment Documentation</u>	25	NCAC 01E .1803
<u>Eligibility Requirements</u>	25	NCAC 01E .1804
<u>Amount of Leave</u>	25	NCAC 01E .1805
<u>Relationship to Other Leave</u>	25	NCAC 01E .1806
<u>Carry-over and Payment of Leave</u>	25	NCAC 01E .1807
<u>Definitions</u>	25	NCAC 01J .0614
<u>Special Provisions</u>	25	NCAC 01J .0615
<u>Purpose</u>	25	NCAC 01N .0601
<u>Policy</u>	25	NCAC 01N .0602
<u>Office of State Personnel Policy</u>	25	NCAC 01N .0603
<u>Agencies Responsibilities</u>	25	NCAC 01N .0604

**LIST OF APPROVED TEMPORARY RULES
December 16, 2010 Meeting****HHS - MEDICAL ASSISTANCE, DIVISION OF**

<u>Purpose and Scope</u>	10A NCAC 22P .0101
<u>Definitions</u>	10A NCAC 22P .0201
<u>Service Delivery</u>	10A NCAC 22P .0301
<u>Access to Care</u>	10A NCAC 22P .0302
<u>Coordination of Benefits</u>	10A NCAC 22P .0303
<u>Certification Requirements</u>	10A NCAC 22P .0401
<u>Good Standing</u>	10A NCAC 22P .0402
<u>Medical Director Requirements</u>	10A NCAC 22P .0403
<u>Clinical Director</u>	10A NCAC 22P .0404
<u>Quality Management Director</u>	10A NCAC 22P .0405
<u>Training Director</u>	10A NCAC 22P .0406
<u>Exception Process</u>	10A NCAC 22P .0407
<u>Medical School/Teaching Hospital Exception</u>	10A NCAC 22P .0408
<u>Letter of Attestation and Desk Review</u>	10A NCAC 22P .0501
<u>Interview</u>	10A NCAC 22P .0502
<u>Verification Review</u>	10A NCAC 22P .0503
<u>Existing CABHAS</u>	10A NCAC 22P .0504
<u>Monitoring</u>	10A NCAC 22P .0601
<u>Decertification and Suspension</u>	10A NCAC 22P .0602
<u>Appeal Procedures</u>	10A NCAC 22P .0603

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Neuse River Basin-Nutrient Sensitive Waters Management St...</u>	15A NCAC 02B .0235
<u>Falls Water Supply Nutrient Strategy: Purpose and Scope</u>	15A NCAC 02B .0275
<u>Falls Water Supply Nutrient Strategy: Definitions</u>	15A NCAC 02B .0276
<u>Falls Reservoir Water Supply Nutrient Strategy: Stormwater</u>	15A NCAC 02B .0277
<u>Falls Water Supply Nutrient Strategy: Stormwater Manageme...</u>	15A NCAC 02B .0278
<u>Falls Water Supply Nutrient Strategy: Wastewater Discharge</u>	15A NCAC 02B .0279
<u>Falls Water Supply Nutrient Strategy: Agriculture</u>	15A NCAC 02B .0280
<u>Falls Water Supply Nutrient Strategy: Stormwater Requirem...</u>	15A NCAC 02B .0281
<u>Falls Water Supply Nutrient Strategy: Options for Offsett...</u>	15A NCAC 02B .0282
<u>Neuse River Basin</u>	15A NCAC 02B .0315

**AGENDA
RULES REVIEW COMMISSION
Thursday, January 20, 2011 9:00 A.M.**

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting

- III. Follow-Up Matters:
- A. Structural Pest Control Committee – 02 NCAC 34 .1103 (Bryan)
 - B. Board of Agriculture – 02 NCAC 48A .0246 (DeLuca)
 - C. Department of Environment and Natural Resources – 15A NCAC 11 .1105, .1106, .1423 (Bryan)
 - D. Board of Certified Public Accountant Examiners – 21 NCAC 08F .0101, .0103, .0105 (Bryan)
 - E. Board of Certified Public Accountant Examiners – 21 NCAC 08J .0111 (Bryan)
 - F. Board of Certified Public Accountant Examiners – 21 NCAC 08K .0105 (Bryan)
 - G. Board of Certified Public Accountant Examiners – 21 NCAC 08M .0106 (Bryan)
 - H. Board of Certified Public Accountant Examiners – 21 NCAC 08N .0206 (Bryan)
 - I. Board of Cosmetic Art Examiners – 21 NCAC 14R .0102, .0103 (Bryan)
 - J. Onsite Wastewater and Inspector Board – 21 NCAC 39 .0101, .0102, .0201, .0301, .0401, .0402, .0403, .0404, .0501, .0601, .0602, .0603, .0604, .0605, .0701, .0702, .0703 (DeLuca)
 - K. Appraisal Board – 21 NCAC 57D .0201, .0303 (Bryan)
 - L. State Personnel Commission – 25 NCAC 01E .1808, .1809 (Bryan)
 - M. Building Code Council – 2012 NC Building Code – 424.1.13, 425.1, 1008.1.9.3, G101.4, 1704.1.1, 1704.1.3, 1807.2.4, 1807.2.5, 1810.3.5.2.5, 2210.3.1, 2210.3.3, 2303.4.1.4, 2303.4.3, 3603.6, 3604.1, 3604.2, 3604.3, 3606.1, 3606.7, 3607.2 (Bryan)
 - N. Building Code Council – 2012 NC Fire Code – Chapter 2, 1008.1.9.3, 2206.2.3.1 (Bryan)
 - O. Building Code Council – 2012 NC Fuel Gas Code – Chapter 2 (Bryan)
 - P. Building Code Council – 2012 NC Mechanical Code – Chapter 2 (Bryan)
 - Q. Building Code Council – 2012 NC Plumbing Code – 607.1, 701.4, 803.5 (Bryan)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between November 23, 2010 and December 20, 2010
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days of the RRC Meeting
- VI. Review of 2011 State Medical Facilities Plan
- VII. Commission Business
- Next meeting: February 17, 2011

Commission Review
Log of Permanent Rule Filings
November 23, 2010 through December 20, 2010

* Approval Recommended, ** Objection Recommended, *** Other

STRUCTURAL PEST CONTROL COMMITTEE

The rules in Chapter 34 are from the Structural Pest Control Committee and include introduction and definitions (.0100); the structural pest control committee (0200); licensing and certification (.0300); public safety (.0400); wood-destroying organisms (.0500); wood-destroying organisms agreements (.0600); household pesticides (.0700); fumigation (.0800); duties and responsibilities of licensee (.0900); time for filing complaints (.1000); inspection fees (.1100); and administrative hearings: contested cases (.1200).

Definitions
Amend/*

02 NCAC 34 .0102

BANKS, OFFICE OF THE COMMISSIONER OF

The rules in Chapter 3 are from the Banking Commission or the Commissioner of Banks.

The rules in Subchapter 3M concern mortgage lending including general mortgage lending (.0100); licensing (.0200); education and examinations (.0300); reporting and notification requirements (.0400); record and bookkeeping requirements (.0500), origination practices (.0600); and servicing (.0700).

Seller Discounts for Use of Affiliated Mortgage Lender or... 04 NCAC 03M .0602
 Adopt/*

HOME INSPECTOR LICENSURE BOARD

The rules in Chapter 8 are the engineering and building codes including the approval of school maintenance electricians (.0400); qualification board-limited certificate (.0500); qualification board-probationary certificate (.0600); qualification board-standard certificate (.0700); disciplinary actions and other contested matters (.0800); manufactured housing board (.0900); NC Home Inspector Licensure Board (.1000); home inspector standards of practice and code of ethics (.1100); disciplinary actions (.1200); home inspector continuing education (.1300); Manufactured Housing Board continuing education (.1400); and alternate designs and construction appeals (.1500).

Continuing Education Required for Renewal of Active License 11 NCAC 08 .1302
 Amend/*

Elective Course Component 11 NCAC 08 .1318
 Amend/*

Application for Original Approval of an Elective Course 11 NCAC 08 .1319
 Amend/*

Per Student Fee 11 NCAC 08 .1332
 Amend/*

Renewal of Course and Sponsor Approval 11 NCAC 08 .1336
 Amend/*

INSURANCE, DEPARTMENT OF

The rules in Chapter 12 cover life and health insurance including general provisions applicable to all rules and all life and health insurance policies (.0100 - .0300); general life insurance provisions (.0400); general accident and health insurance provisions (.0500); replacement of insurance (.0600); credit insurance (.0700); medicare supplement insurance (.0800); long-term care insurance (.1000); mortgage insurance consolidations (.1100); accelerated benefits (.1200); small employer group health coverage (.1300); HMO and point-of-service coverage (.1400); uniform claim forms (.1500); retained asset accounts (.1600); viatical settlements (.1700); preferred provider plan product limitations (.1800); and domestic violence - prohibited acts (.1900).

Long-Term Care Partnership Standards 11 NCAC 12 .1030
 Adopt/*

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

The rules in Chapter 9 are from the Criminal Justice Education and Training Standards Commission. This Commission has primary responsibility for setting statewide education, training, employment, and retention standards for criminal justice personnel (not including sheriffs).

The rules in Subchapter 9B cover minimum standards for: employment (.0100); schools and training programs (.0200); criminal justice instructors (.0300); completion of training (.0400); school directors (.0500); and certification of post-secondary criminal justice education programs (.0600).

Admission of Trainees 12 NCAC 09B .0203
 Amend/*

Basic Law Enforcement Training 12 NCAC 09B .0205
 Amend/*

Specialized Instructor Certification 12 NCAC 09B .0304
Amend/*

The rules in Subchapter 9E relate to the law enforcement officers' in-service training program.

Required Annual In-Service Training Topics 12 NCAC 09E .0102
Amend/*

Minimum Training Specifications: Annual In-Service Training 12 NCAC 09E .0105
Amend/*

LABOR, DEPARTMENT OF

The rules in Chapter 7 are from the Commissioner of Labor and cover the Occupational and Safety Health Act (OSHA).

The rules in Subchapter 7F cover specific OSHA standards for various industries: general (.0100); construction (.0200); agriculture (.0300); shops fabricating structural steel and steel plate (.0400); maritime (.0500); communication towers (.0600); blasting and use of explosives (.0700); and cranes and derricks standards (.0900).

Scope 13 NCAC 07F .0901
Repeal/*

Incorporation by Reference 13 NCAC 07F .0902
Repeal/*

Definitions 13 NCAC 07F .0903
Repeal/*

Operator Qualification and Certification 13 NCAC 07F .0904
Repeal/*

Signal Person Qualification 13 NCAC 07F .0905
Repeal/*

Maintenance and Repair Employee Qualification 13 NCAC 07F .0906
Repeal/*

Training 13 NCAC 07F .0907
Repeal/*

Fall Protection 13 NCAC 07F .0908
Repeal/*

Design, Construction and Testing 13 NCAC 07F .0909
Repeal/*

Equipment With a Rated Hoisting/Lifting Capacity of 2,000 ... 13 NCAC 07F .0910
Repeal/*

Equipment Modifications 13 NCAC 07F .0911
Repeal/*

Assembly and Disassembly of Equipment 13 NCAC 07F .0912
Repeal/*

Power Line Safety 13 NCAC 07F .0913
Repeal/*

Wire Rope 13 NCAC 07F .0914
Repeal/*

Inspections 13 NCAC 07F .0915
Repeal/*

Operation of Equipment 13 NCAC 07F .0916
Repeal/*

Operational Aids 13 NCAC 07F .0917
Repeal/*

Safety Devices 13 NCAC 07F .0918
Repeal/*

<u>Signals</u>	13 NCAC 07F .0919
Repeal/*	
<u>Hoisting Personnel</u>	13 NCAC 07F .0920
Repeal/*	
<u>Tower Cranes</u>	13 NCAC 07F .0921
Repeal/*	
<u>Derricks</u>	13 NCAC 07F .0922
Repeal/*	
<u>Floating Cranes/Derricks and Land Cranes/Derricks on Barges</u>	13 NCAC 07F .0923
Repeal/*	
<u>Overhead and Gantry Cranes</u>	13 NCAC 07F .0924
Repeal/*	
<u>Dedicated Pile Drivers</u>	13 NCAC 07F .0925
Repeal/*	
<u>Sideboom Cranes</u>	13 NCAC 07F .0926
Repeal/*	
<u>Operator Certification - Written Examination - Technical ...</u>	13 NCAC 07F .0927
Repeal/*	

MARINE FISHERIES COMMISSION

The rules in Chapter 3 are from the Marine Fisheries Commission.

The rules in Subchapter 3H concern general information for the marine fisheries commission.

<u>Scope of Management</u>	15A NCAC 03H .0102
Amend/*	
<u>Proclamation Authority of Fisheries Director</u>	15A NCAC 03H .0103
Amend/*	
<u>Maps and Marking</u>	15A NCAC 03H .0104
Repeal/*	

The rules in Subchapter 3I are general and miscellaneous rules.

<u>Definitions</u>	15A NCAC 03I .0101
Amend/*	
<u>Coral and Live Rock</u>	15A NCAC 03I .0116
Amend/*	
<u>Maps and Marking</u>	15A NCAC 03I .0121
Repeal/*	

The rules in Subchapter 3J concern the use of nets in general (.0100) and in specific areas (.0200); the use of pots, dredges, and other fishing devices (.0300); fishing gear (.0400); and pound nets (.0500).

<u>Recreational Use of Pots</u>	15A NCAC 03J .0302
Amend/*	

The rules in Subchapter 3L concern shrimp (.0100); crabs (.0200); and lobsters (.0300).

<u>Horseshoe Crabs</u>	15A NCAC 03L .0207
Amend/*	

The rules in Subchapter 3M cover harvesting of finfish including general rules (.0100); striped bass (.0200); mackerel (.0300); menhaden and Atlantic herring (.0400); and other finfish (.0500).

RULES REVIEW COMMISSION

<u>Mutilated Finfish</u> Amend/*	15A NCAC 03M .0101
<u>Tuna</u> Amend/*	15A NCAC 03M .0520

The rules in Subchapter 3O cover various licenses (.0100); leases and franchises (.0200); license appeal procedures (.0300); Standard Commercial Fishing License Eligibility Board (.0400); and licenses, leases and franchises (.0500).

<u>Ocean Fishing Pier Blanket Coastal Recreational Fishing L...</u> Adopt/*	15A NCAC 03O .0113
<u>Shellfish Bottom and Water Column Lease Applications</u> Amend/*	15A NCAC 03O .0202
<u>Transfer of Interest</u> Amend/*	15A NCAC 03O .0209
<u>Procedures and Requirements to Obtain Permits</u> Adopt/*	15A NCAC 03O .0501

The rules in Subchapter 3R specify boundaries for various areas (.0100); and fishery management areas (.0200).

<u>Primary Nursery Areas</u> Amend/*	15A NCAC 03R .0103
<u>Permanent Secondary Nursery Areas</u> Amend/*	15A NCAC 03R .0104
<u>Special Secondary Nursery Areas</u> Amend/*	15A NCAC 03R .0105
<u>Attended Gill Net Areas</u> Amend/*	15A NCAC 03R .0112
<u>Oyster Sanctuaries</u> Amend/*	15A NCAC 03R .0117

COASTAL RESOURCES COMMISSION

The rules in Subchapter 7H are the state guidelines for areas of environmental concern (AECs) including introduction and general comments (.0100); the estuarine system (.0200); ocean hazard areas (.0300); public water supplies (.0400); natural and cultural resource areas (.0500); development standards (.0600); general permits for construction or maintenance of bulkheads and the placement of riprap for shoreline protection in estuarine and public trust waters (.1100); piers, docks and boat houses in estuarine and public trust waters (.1200); boat ramps along estuarine shorelines and into estuarine and public trust waters (.1300); groins in estuarine and public trust waters (.1400); excavation within or connecting to existing canals, channels, basins, or ditches in estuarine waters, public trust waters, and estuarine shoreline AECs (.1500); aerial and subaqueous utility lines with attendant structures in coastal wetlands, estuarine waters, public trust waters and estuarine shorelines (.1600); emergency work requiring a CAMA or a dredge and fill permit (.1700); beach bulldozing landward of the mean high-water mark in the ocean hazard AEC (.1800); temporary structures within the estuarine and ocean hazard AECs (.1900); authorizing minor modifications and repair to existing pier/mooring facilities in estuarine and public trust waters and ocean hazard areas (.2000); construction of sheetpile sill for shoreline protection in estuarine and public trust waters (.2100); construction of freestanding moorings in established waters and public trust areas (.2200); replacement of existing bridges and culverts in estuarine waters, estuarine shorelines, public trust areas and coastal wetlands (.2300); placement of riprap for wetland protection in estuarine and public trust waters (.2400); replacement of structures, the reconstruction of primary or frontal dune systems, and the maintenance excavation of existing canals, basins, channels, or ditches, damaged, destroyed, or filled in by hurricanes or tropical storms (.2500); construction of wetland, stream and buffer mitigation sites by the North Carolina Ecosystem Enhancement Program or the North Carolina Wetlands Restoration Program (.2600); and the construction of riprap sills for wetland enhancement in estuarine and public trust waters (.2700).

<u>General Definitions</u> Amend/*	15A NCAC 07H .0106
<u>Use Standards</u> Amend/*	15A NCAC 07H .0208

The rules in Subchapter 7M concern general policy guidelines for the coastal area including purpose and authority (.0100); shoreline erosion response policies (.0200); shorefront access policies (.0300); coastal energy policies (.0400); post-disaster policies (.0500); floating structure policies (.0600); mitigation policy (.0700); coastal water quality policies (.0800); policies on use of coastal airspace (.0900); policies on water and wetland based target areas for military training activities (.1000); policies on beneficial use and availability of materials resulting from the excavation or maintenance of navigational channels (.1100); and policies on ocean mining (.1200).

<u>Declaration of General Policy</u>	15A NCAC 07M .0401
Amend/*	
<u>Definitions</u>	15A NCAC 07M .0402
Amend/*	
<u>Policy Statements</u>	15A NCAC 07M .0403
Amend/*	

MASSAGE AND BODYWORK THERAPY, BOARD OF

The rules in Chapter 30 concern organization and general provisions (.0100); application for licensure (.0200); licensing (.0300); business practices (.0400); standards of professional conduct (.0500); massage and bodywork therapy schools (.0600); continuing education (.0700); rules (.0800); and complaints, disciplinary action and hearings (.0900).

<u>School Catalog</u>	21 NCAC 30 .0630
Amend/*	

STATE PERSONNEL COMMISSION

The rules in Subchapter 1E cover employee benefits including general leave provisions (.0100); vacation leave (.0200); sick leave (.0300); workers compensation leave (.0700); military leave (.0800); holidays (.0900); miscellaneous leave (.1000); other types of leave without pay (.1100); community involvement (.1200); the voluntary shared leave program (.1300); family and medical leave (.1400); child involvement leave (.1500); community services leave (.1600); administrative leave (.1700) and incentive leave (.1800).

<u>Policy</u>	25 NCAC 01E .1302
Amend/*	
<u>Donor Guidelines</u>	25 NCAC 01E .1305
Amend/*	

The rules in Subchapter 1J cover employee grievances (.0500), disciplinary actions including suspensions and dismissals (.0600), Governor's Award for Excellence (.0800); internal performance pay dispute resolution procedures (.0900); state employees assistance program (.1000); unlawful workplace harassment (.1100); employee grievances (.1200); employee appeals and grievance process (.1300); and employee mediation and grievance process (.1400).

<u>Appeals</u>	25 NCAC 01J .0603
Amend/*	
<u>Procedural Requirements</u>	25 NCAC 01J .0613
Amend/*	

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

Beecher R. Gray	Randall May
Selina Brooks	A. B. Elkins II
Melissa Owens Lassiter	Joe Webster
Don Overby	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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ABC Commission v. Ghulam Khan v. T/A West Green Market	09 ABC 4303	Brooks	04/19/10	
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ABC Commission v. Diversified Investments and Growth, LLC, T/A Petro Mart 6	10 ABC 0576	Webster	07/09/10	
ABC Commission v. Talmar Inc. D/B/A E-City Resturant and Lounge, Mary Ann Davidson and Ratanya Walker				
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James D. Harrison v. Notary Public Commission	10 SOS 1515	May	06/15/10	

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Elizabeth Danial Dominique v. NC Teaching Fellows Commission	09 TFC 6833	Webster	09/24/10	25:11 NCR 1366
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UNC HOSPITALS

Alexander Lee v. UNC Hospitals	10 UNC 1095	Elkins	08/30/10	
Edwin Matthews v. UNC Hospitals	10 UNC 2576	Overby	09/13/10	