

NORTH CAROLINA REGISTER

VOLUME 36 • ISSUE 14 • Pages 1192 – 1273

January 18, 2022

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PUBLISHED BY

*The Office of Administrative Hearings
Rules Division
1711 New Hope Church Road
Raleigh, NC 27609
Telephone 984-236-1850
Fax 984-236-1947*

*Donald R. van der Vaart, Director
Ashley B. Snyder, Codifier of Rules
Dana McGhee, Publications Coordinator
Cathy Matthews-Thayer, Editorial Assistant*

Contact List for Rulemaking Questions or Concerns

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

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

Office of Administrative Hearings

Rules Division

1711 New Hope Church Road

Raleigh, North Carolina 27609

984-236-1850

984-236-1947 FAX

contact: Ashley B. Snyder, Codifier of Rules

ashley.snyder@oah.nc.gov

984-236-1941

Dana McGhee, Publications Coordinator

dana.mcghee@oah.nc.gov

984-236-1937

Cathy Matthews-Thayer, Editorial Assistant

cathy.thayer@oah.nc.gov

984-236-1901

Rule Review and Legal Issues

Rules Review Commission

1711 New Hope Church Road

Raleigh, North Carolina 27609

984-236-1850

984-236-1947 FAX

contact: Amber Cronk May, Commission Counsel

amber.may@oah.nc.gov

984-236-1936

Brian Liebman, Commission Counsel

brian.liebman@oah.nc.gov

984-236-1948

Lawrence Duke, Commission Counsel

lawrence.duke@oah.nc.gov

984-236-1938

Alexander Burgos, Paralegal

alexander.burgos@oah.nc.gov

984-236-1940

Julie Brincefield, Administrative Assistant

julie.brincefield@oah.nc.gov

984-236-1935

Fiscal Notes & Economic Analysis

Office of State Budget and Management

116 West Jones Street

Raleigh, North Carolina 27603-8005

Contact: Carrie Hollis, Economic Analyst

osbmruleanalysis@osbm.nc.gov

984-236-0689

NC Association of County Commissioners

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Amy Bason

919-715-2893

amy.bason@ncacc.org

NC League of Municipalities

424 Fayetteville Street, Suite 1900

Raleigh, North Carolina 27601

contact: Monica Jackson

919-715-2925

mjackson@ncmlm.org

Legislative Process Concerning Rulemaking

545 Legislative Office Building

300 North Salisbury Street

Raleigh, North Carolina 27611

919-733-2578

919-715-5460 FAX

Jason Moran-Bates, Staff Attorney

Chris Saunders, Staff Attorney

Aaron McGlothlin, Staff Attorney

NORTH CAROLINA REGISTER
Publication Schedule for January 2022 – December 2022

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 th day from publication in the Register
36:13	01/03/22	12/08/21	01/18/22	03/04/22	03/21/22	04/21/2022	05/01/22	09/30/22
36:14	01/18/22	12/22/21	02/02/22	03/21/22	04/20/22	05/19/2022	06/01/22	10/15/22
36:15	02/01/22	01/10/22	02/16/22	04/04/22	04/20/22	05/19/2022	06/01/22	10/29/22
36:16	02/15/22	01/25/22	03/02/22	04/18/22	04/20/22	05/19/2022	06/01/22	11/12/22
36:17	03/01/22	02/08/22	03/16/22	05/02/22	05/20/22	06/16/2022	07/01/22	11/26/22
36:18	03/15/22	02/22/22	03/30/22	05/16/22	05/20/22	06/16/2022	07/01/22	12/10/22
36:19	04/01/22	03/11/22	04/16/22	05/31/22	06/20/22	07/21/2022	08/01/22	12/27/22
36:20	04/18/22	03/25/22	05/03/22	06/17/22	06/20/22	07/21/2022	08/01/22	01/13/23
36:21	05/02/22	04/08/22	05/17/22	07/01/22	07/20/22	08/18/2022	09/01/22	01/27/23
36:22	05/16/22	04/25/22	05/31/22	07/15/22	07/20/22	08/18/2022	09/01/22	02/10/23
36:23	06/01/22	05/10/22	06/16/22	08/01/22	08/22/22	09/15/2022	10/01/22	02/26/23
36:24	06/15/22	05/24/22	06/30/22	08/15/22	08/22/22	09/15/2022	10/01/22	03/12/23
37:01	07/01/22	06/10/22	07/16/22	08/30/22	09/20/22	10/20/2022	11/01/22	03/28/23
37:02	07/15/22	06/23/22	07/30/22	09/13/22	09/20/22	10/20/2022	11/01/22	04/11/23
37:03	08/01/22	07/11/22	08/16/22	09/30/22	10/20/22	11/17/2022	12/01/22	04/28/23
37:04	08/15/22	07/25/22	08/30/22	10/14/22	10/20/22	11/17/2022	12/01/22	05/12/23
37:05	09/01/22	08/11/22	09/16/22	10/31/22	11/21/22	12/15/2022	01/01/23	05/29/23
37:06	09/15/22	08/24/22	09/30/22	11/14/22	11/21/22	12/15/2022	01/01/23	06/12/23
37:07	10/03/22	09/12/22	10/18/22	12/02/22	12/20/22	01/19/2023	02/01/23	06/30/23
37:08	10/17/22	09/26/22	11/01/22	12/16/22	12/20/22	01/19/2023	02/01/23	07/14/23
37:09	11/01/22	10/11/22	11/16/22	01/03/23	01/20/23	02/16/2023	03/01/23	07/29/23
37:10	11/15/22	10/24/22	11/30/22	01/17/23	01/20/23	02/16/2023	03/01/23	08/12/23
37:11	12/01/22	11/07/22	12/16/22	01/30/23	02/20/23	03/16/2023	04/01/23	08/28/23
37:12	12/15/22	11/22/22	12/30/22	02/13/23	02/20/23	03/16/2023	04/01/23	09/11/23

This document is prepared by the Office of Administrative Hearings as a public service and is not to be deemed binding or controlling.

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.



State of North Carolina

ROY COOPER
GOVERNOR

December 17, 2021

EXECUTIVE ORDER NO. 241

**DELEGATION OF AUTHORITY FROM THE GOVERNOR TO THE SECRETARY
OF PUBLIC SAFETY AND PROMULGATION AND IMPLEMENTATION OF THE
NORTH CAROLINA EMERGENCY OPERATIONS PLAN**

WHEREAS, the North Carolina Emergency Management Act ("Emergency Management Act"), Chapter 166A of North Carolina General Statutes, sets forth the authority and responsibility of the undersigned, state agencies, and local governments in prevention of, preparation for, response to, and recovery from natural or man-made emergencies or hostile military or paramilitary actions; and

WHEREAS, N.C. Gen. Stat. § 166A-19.1 provides that it is the responsibility of the undersigned, state agencies, and local governments to reduce vulnerability of people and property to damage, injury, and loss of life or property; to prepare for the prompt and efficient rescue, care, and treatment of threatened or affected persons; to provide for the rapid and orderly rehabilitation of persons and restoration of property; to cooperate and coordinate activities relating to emergency mitigation, preparedness, response, and recovery among agencies and officials of this state and with similar agencies and officials of other states and with other private and quasi-official organizations; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(1) authorizes and empowers the undersigned to exercise general direction and control of the State Emergency Management Program and the Emergency Management Act, other than those provisions that confer powers and duties exclusively on local governments; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial authority under the Emergency Management Act and to provide for the subdelegation of any such authority; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(7) authorizes and empowers the undersigned to utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the state in planning for and responding to emergencies and requires the officers and personnel of all such departments, offices, and agencies to cooperate with and extend such services and facilities upon request; and

WHEREAS, N.C. Gen. Stat. § 143B-601(8) requires the North Carolina Department of Public Safety ("NCDPS" or "Department") to ensure the preparation, coordination, and currency

of preparedness plans and effective conduct of emergency operations by all participating agencies resulting from emergencies and disasters due to natural or man-made causes; and

WHEREAS, N.C. Gen. Stat. § 143B-600 provides the authority of the Secretary of NCDPS ("Secretary") to direct and control the powers and duties of the deputy secretaries, commissioners, directors, and divisions of the Department; and

WHEREAS, N.C. Gen. Stat. § 166A-19.11 provides that the Secretary is responsible to the undersigned for state emergency management activities and allows for the subdelegation of authority to the appropriate member of the Department; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.12(2) the North Carolina Division of Emergency Management ("NCEM") shall prepare and maintain state plans for emergencies and those plans, or any parts thereof may be incorporated into department regulations and into executive orders issued by the undersigned; and

WHEREAS, this Executive Order is executed to facilitate a coordinated, effective relief and recovery effort among State and local government entities and agencies.

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

Section 1. All State and local government entities are directed to cooperate in the implementation of the provisions of the North Carolina Emergency Operations Plan (the "Plan").

Section 2. I hereby delegate to the Secretary, or the Secretary's designee, all power and authority granted to me and required of me by Chapter 166A of the General Statutes for the purposes of promulgating and implementing the Plan.

Section 3. The Secretary shall make necessary changes to the Plan with appropriate coordination and shall similarly promulgate additional annexes and appendices as required.

Section 4. The Secretary, as Chief Coordinating Officer for the State of North Carolina, shall exercise the powers prescribed in N.C. Gen. Stat. § 143B-602.

Section 5. This Executive Order supersedes Executive Order No. 37 (January 26, 2018). This Executive Order is effective immediately and shall remain in effect until rescinded or superseded.

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 17th of December in the year of our Lord two thousand and twenty-one.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State





State of North Carolina

ROY COOPER
GOVERNOR

December 17, 2021

EXECUTIVE ORDER NO. 242

**EXTENDING THE STATE EMERGENCY RESPONSE
COMMISSION**

WHEREAS, Congress enacted the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001-11050, to provide communities with the necessary resources to prepare for, respond to, mitigate, and address public health and safety emergencies (“the Act”); and

WHEREAS, 42 U.S.C. § 11001(a) requires the Governor of each state to appoint a State Emergency Response Commission to supervise and coordinate the activities of local emergency planning committees and receive and process public information requests under 42 U.S.C. § 11044, including Tier II information under 42 U.S.C. § 11022; and

WHEREAS, on April 20, 2017, the undersigned issued Executive Order No. 6, 31 N.C. Reg. 2204-2206 (May 15, 2017) (“Executive Order 6”), which established the North Carolina Emergency Response Commission (“the Commission”); and

WHEREAS, on October 17, 2019, the undersigned issued Exec. Order No. 110, 34 N.C. Reg. 829-832 (November 15, 2019) (“Executive Order 110”), which re-established the Commission and amended its membership; and

WHEREAS, in addition to its duties under the Act, the Commission is charged with supporting the State’s Homeland Security Advisor, and coordinating stakeholder input to inform the preparation, implementation, and revision of the North Carolina Emergency Management Program; and

WHEREAS, Executive Order 110 is set to expire on December 31, 2021, and pursuant to N.C. Gen. Stat. § 147-16.2 the duration of this Commission must be extended in order for the Commission to continue its important work.

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

Section 1. Membership

The Secretary of the North Carolina Department of Public Safety (“the Secretary”) shall serve as the Commission’s Chair and the Governor’s Homeland Security Advisor. The Commission shall be comprised of at least fifteen (15) members, including the following individuals or their designees as approved by the Commission Chair:

- a. Director of Emergency Management, North Carolina Department of Public

Safety, who shall serve as the Vice-Chair and Deputy Homeland Security Advisor;

- b. Director of the State Bureau of Investigation, North Carolina Department of Public Safety;
- c. The Adjutant General of the North Carolina National Guard, North Carolina Department of Public Safety;
- d. Commander of the State Highway Patrol, North Carolina Department of Public Safety;
- e. Secretary of the North Carolina Department of Environmental Quality;
- f. Secretary of the North Carolina Department of Transportation;
- g. Chief of the Office of Emergency Medical Services, Division of Health Service Regulation, North Carolina Department of Health and Human Services;
- h. State Fire Marshal, Office of the State Fire Marshal, North Carolina Department of Insurance;
- i. State Chief Information Risk Officer, North Carolina Department of Information Technology;
- j. Assistant Secretary for Public Health, Division of Public Health, North Carolina Department of Health and Human Services;
- k. Assistant Deputy Commissioner of Labor for Occupational Safety and Health, North Carolina Department of Labor;
- l. President of the North Carolina Community College System;
- m. Director of the Emergency Programs Division, North Carolina Department of Agriculture and Consumer Services; and
- n. Executive Director, North Carolina Center for Safer Schools, North Carolina Department of Public Instruction.

In addition to the foregoing, up to eight (8) members from local government, private industry, and the public may be appointed and serve two-year terms at the undersigned's pleasure. These members shall include the following:

- a. A Chief of Police;
- b. A Sheriff;
- c. A Fire Chief;
- d. A representative of emergency medical services in North Carolina;
- e. A representative of emergency managers in North Carolina;
- f. A representative of medium or large public assembly venues in North Carolina;
- g. A representative involved in the production, storage, or transportation of hazardous materials; and
- h. A private resident of North Carolina.

Section 2. Duties

- a. The Commission is designated as the State Emergency Response Commission as defined in the Act.
- b. The Commission will perform all the duties required under the Act and other advisory, administrative, regulatory, or legislative functions, which shall include the following:
 1. Designating emergency planning districts to facilitate the preparation and implementation of emergency plans as required under 42 U.S.C. § 11001(b) of the Act.
 2. Appointing local emergency planning committees as described under 42 U.S.C. § 11001(c) of the Act and supervising and coordinating the activities of such committees.
 3. Establishing procedures for reviewing and processing public information requests under 42 U.S.C. § 11044 of the Act.
 4. Designating additional facilities that may be subject to 42 U.S.C. § 11002 of the Act.
 5. Reviewing all emergency plans submitted by state and local emergency planning committees and recommending revisions to the plans that may be necessary to ensure their coordination with emergency response plans of other emergency planning districts.
 6. Notify the Administrator of the Environmental Protection Agency of facilities subject to the requirements of 42 U.S.C. § 11002(d) of the Act.
- c. The Commission will act as a Senior Advisory Committee to the Homeland Security Advisor, as designated by the Governor, to provide input regarding the activities of the North Carolina State Homeland Security Program and the Domestic Preparedness Regions. Specifically, the Commission will:
 1. Review the State Homeland Security Strategy to ensure it is aligned with local, state, and federal priorities as required by the United States Department of Homeland Security (“DHS”), and that its goals and objectives are being met in accordance with program intent.
 2. Review DHS Homeland Security grant applications to ensure that they align with the State’s Threat Hazard Identification Risk Assessment (“THIRA”) and fill capability shortfalls identified in the State Preparedness Report (“SPR”). Commissioners will be briefed at least annually on the THIRA and SPR.
 3. Review grant allocations for state and regional homeland security projects and advise the Homeland Security Advisor regarding the funding of program priorities. The Homeland Security Advisor is authorized to make the final decision regarding DHS grant funding.
 4. Review plans for preventing, preparing for, responding to, and recovering from acts of terrorism and all hazards, whether man-made or natural.
 5. Support the coordination of integrating preparedness activities across disciplines with the goal of reducing duplication of effort.
- d. The Commission will act in an advisory capacity to provide coordinated stakeholder input to the Secretary and the Director of Emergency Management in the preparation, implementation, evaluation, and revision of the North

Carolina Emergency Management Program. To that end, the Commission will do the following:

1. Support efforts to enhance state and local core capabilities to prevent, protect from, mitigate, respond to, and recover from all hazards, whether man-made or natural.
2. Coordinate training, education, technical assistance, and outreach activities.

Section 3. Administration

- a. The Department of Public Safety shall provide administrative support and staff to the Commission as necessary.
- b. Members of the Commission shall serve without compensation but may receive reimbursement for travel and subsistence expenses in accordance with state law and guidelines, and contingent upon the availability of funds.

Section 4. Effect and Duration

This Executive Order is effective immediately. It supersedes and replaces all other executive orders on this subject, including Executive Orders 6 and 110. It shall remain in effect until December 31, 2023, pursuant to N.C. Gen. Stat. § 147-16.2, or until rescinded.

IN WITNESS WHEREOF, I have hereunto signed by name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 17th day of December in the year of our Lord two thousand and twenty-one.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State



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 03 – OFFICE OF THE STATE AUDITOR

SECTION .0300 – PETITION FOR RULEMAKING

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of the State Auditor intends to adopt the rule cited as 03 NCAC 01 .0301.

Link to agency website pursuant to G.S. 150B-19.1(c): www.auditor.nc.gov

Proposed Effective Date: June 1, 2022

Public Hearing:

Date: February 2, 2022

Time: 10:00 a.m.

Virtual:

https://ncgov.webex.com/ncgov/j.php?MTID=m734c2fa63b871994462b673aecf568b3

Reason for Proposed Action: Proposed rule is to provide a process to comply with NCGS 150B-20.

Comments may be submitted to: Judy Estevez, General Counsel, 20601 Mail Service Center, Raleigh, NC 27699-0600; phone (919) 807-7500; email judy_estevez@ncauditor.net

Comment period ends: March 21, 2022

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

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

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

CHAPTER 01 - DEPARTMENTAL RULES

03 NCAC 01 .0301 PETITIONS FOR RULEMAKING

(a) Any person may request the adoption of a new rule, or the amendment or repeal of an existing rule promulgated by the Office of the State Auditor by addressing a petition to the Rulemaking Coordinator, Office of the State Auditor, 20601 Mail Service Center, Raleigh, N.C. 27699-0600.

(b) The petition must be titled "Petition for Rulemaking" and contain the following information:

(1) name, address and email address of each petitioner;

(2) a citation to any rule petitioner desires to amend or repeal, a draft of the proposed rule or amendment, or a summary of the major elements of a proposed rule.

(c) The petition may contain the following information:

(1) the reason for submitting the petition;

(2) the anticipated cost factors;

(3) any additional data supporting the petition.

(d) Within 30 days of submission of the petition, the State Auditor, or deputy pursuant to G.S. 147-64.10, shall render a final decision. If the decision is to deny the petition, the petitioner shall be notified in writing, stating the reasons for the denial and refer to the appeal rights set forth in G.S. 150B-20(d). If the decision is to grant the petition, written notice of the decision shall be provided as set forth in G.S. 150B-20(c) and rulemaking proceedings shall be initiated.

Authority G.S. 147-64.9, 150B-20.

TITLE 07 – DEPARTMENT OF NATURAL AND CULTURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Natural and Cultural Resources intends to amend the rules cited as 07 NCAC 02H .0303, .0305, .0306 and repeal the rule cited as 07 NCAC 02H .0307.

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

Link to agency website pursuant to G.S. 150B-19.1(c): https://www.ncdcr.gov

Proposed Effective Date: June 1, 2022

Public Hearing:

Date: February 24, 2022

Time: 10:00 a.m.-11:00 a.m.

Location: This public hearing will be held by teleconference at (919) 814-6771 (no access code needed).

Reason for Proposed Action: The following rules are being amended to simplify and clarify procedures for the Accessible Books and Library Services: 07 NCAC 02H .0303, .0305, and .0306. The following rule is being repealed because it is no longer necessary because of proposed changes in the readopted rules: 07 NCAC 02H .0307.

Comments may be submitted to: Jonathan Avery, 1615 Mail Service Center, Raleigh, NC 27699-1615; phone (919) 814-6771; email jonathan.avery@ncdcr.gov

Comment period ends: March 21, 2022

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

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

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

CHAPTER 02 - STATE LIBRARY

SUBCHAPTER 02H - LIBRARY SERVICES

SECTION .0300 - LIBRARY FOR THE BLIND AND PHYSICALLY HANDICAPPED

07 NCAC 02H .0303 APPLICATION

(a) To obtain services from the Library for the Blind and Physically Handicapped, Accessible Books and Library Services, users shall submit an application to the Library, 1841 Capital Boulevard, Raleigh, North Carolina 27635. Applications shall be submitted on a form prepared by the Library and include the user's:

- (1) name, address, and telephone number;
(2) county of residence;
(3) date of birth;

- (4)(1) gender; applicant's basic facts, such as applicant name and contact information;
(5)(2) name, address, and telephone number of a friend or relative; an alternative contact;
(6)(3) status as an honorably discharged veteran of the Armed Forces of the United States; States military;
(7)(4) qualifying disability; disability including:
(A) blindness;
(B) visual handicap;
(C) physical handicap;
(D) reading disability; or
(E) deaf and blind;
(8)(5) degree of hearing impairment of either: impairment, if any;
(A) moderate some difficulty understanding speech; or
(B) profound cannot hear or understand speech;
(9) preferred items such as books recorded on digital cartridge with digital player, braille books, large print books, or music;
(10) necessity for special attachments such as headphones, amplifier, breath switch, or remote control;
(11) language preference;
(12) service preference such as:
(A) requested materials only; or
(B) materials requested by the Library based upon selected reading preferences;
(13) reading preferences such as Fiction, Non-Fiction, Adventure, Aging/Retirement, Animal Stories, Arts, Best Sellers, Biography, Black Literature, Technology/Computers, Classics, Cooking/Homemaking, Current Events, Disabilities, Family Stories, Fantasy, Folklore/Fairy Tales, General Fiction, Health/Medicine, Historical Fiction, History-US, History World, Humor, Marriage/Family, Mysteries, Nature, North Carolina, Occult/Horror, Plays, Poetry, Politics/Government, Psychology, Religious Inspiration, Religion (scholarly), Romance, Science, Science Fiction, Sea Stories, Short Stories, Sports, Spy Stories, Business, Travel, War Stories, or Western; and
(14)(6) reading restrictions such as strong language, violence, or explicit descriptions of sex. language, reading and service delivery method preferences.

(b) Applications shall be certified by a competent authority an individual authorized under 36 CFR 701.6 to certify an applicant's eligibility and shall include the competent authority's certifying individual's name, address and telephone number, title and occupation, and an original signature. A competent authority shall be defined as provided in 36 CFR 701.6(b)(2), which is incorporated by reference, including subsequent amendments and editions, and available for free at https://www.ecfr.gov/cgi-

~~bin/textidx?SID=56ff245ec016601b46b55f2331b4b7ee&mc=true&node=se36.3.701_16&rgn=di8. https://www.ecfr.gov/cgi-bin/text-idx?SID=56ff245ec016601b46b55f2331b4b7ee&mc=true&node=se36.3.701_16&rgn=div8. A competent authority~~ The certifying individual shall not be relatives a relative of the applicant, even if otherwise qualified.

Authority G.S. 125-2.

07 NCAC 02H .0305 CIRCULATION

(a) The Library shall provide materials and playback equipment to users in accordance with the Library of Congress' NLS Network Library Manual hereby incorporated by reference, including subsequent amendments and editions, and accessible to users free of charge at <https://statelibrary.ncdcr.gov/blind-print-disabled/apply-services/loan-policies-and-handbook#nls-administrative-procedures>.

(b) The following violations by any Library user shall may result in the suspension of Library services:

- (1) failure to return materials within the borrowing period. The borrowing period for materials are as follows:
 - (A) six weeks for books;
 - (B) two weeks for magazines; and
 - (C) three weeks for DVD and VHS tapes;
- (2) damage to equipment or materials;
- (3) unauthorized use of materials or equipment, such as loaning materials or equipment to an ineligible person or modification of items owned by the Library; or
- (4) exhibiting verbal or physical behavior toward Library staff that is abusive, offensive, or threatening, as determined by the Director of the Accessible Books and Library Services.

(c) The period of suspension shall not exceed six months as determined by the Director of the Accessible Books and Library Services. In setting the period of suspension, the Director shall consider the violation, the extent of harm to the Library's property, and any violations previously committed by the user. The Director shall send a letter of suspension to the user via U.S. Mail. The letter shall specify the violation and the period of suspension. Upon expiration of the suspension period, the user may contact the Library for resumption of services.

Authority G.S. 125-2.

07 NCAC 02H .0306 REPRODUCTION SERVICE

The Library shall may reproduce in Braille or audio recording materials requested by Library patrons for their personal use as approved by the ~~Regional Librarian~~ Director based on staff availability and consideration of higher priority work. ~~availability.~~

Authority G.S. 125-2; 143B-10.

07 NCAC 02H .0307 VOLUNTEERS

Authority G.S. 125-2; 143B-10.

TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Alarm Systems Licensing Board intends to amend the rules cited as 14B NCAC 17 .0201, and .0301.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://www.ncdps.gov/dps-services/permits-licenses/alarm-system-licensing-board>

Proposed Effective Date: June 1, 2022

Public Hearing:

Date: February 8, 2022

Time: 2:00 p.m.

Location: 3101 Industrial Dr., Suite 104, Raleigh, NC 27609

Reason for Proposed Action: One rule amendment establishes a new procedure to allow character letters to be submitted electronically. The second amendment created a deadline for application completion.

Comments may be submitted to: Paul Sherwin, 3101 Industrial Dr., Suite 4, Raleigh, NC 27609; phone (919) 788-5320; fax (919) 715-0370; email Paul.sherwin@ncdps.gov

Comment period ends: March 22, 2022

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

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

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

CHAPTER 17 - ALARM SYSTEMS LICENSING BOARD

SECTION .0200 – PROVISIONS FOR LICENSEES

14B NCAC 17 .0201 APPLICATION FOR LICENSE

(a) Each applicant for a license shall submit an online application on the website provided by the Board. When this online application is submitted, it shall be accompanied by:

- (1) electronic submission of fingerprints from a Live Scan or similar system approved by the State Bureau of Investigation or one set of classifiable fingerprints on an F.B.I. fingerprint card provided by the Board and mailed separately to the Board's office;
- (2) one head and shoulders digital photograph of the applicant in JPG format of sufficient quality for identification, taken within six months prior to the online submission, and uploaded with the application submission;
- (3) statements of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74D-2.1(a) for any state where the applicant has resided within the preceding 60 months; and
- (4) a minimum of three letters attesting to the good character and reputation of the applicant using the online character letter submission process; and
- ~~(4)~~(5) the applicant's application fee, along with a four dollar (\$4.00) convenience fee charged by the third-party vendor and credit card transaction fee charged by the applicant's credit card provider and collected online.

(b) Each applicant shall upload evidence of high school graduation either by diploma, G.E.D. certificate, or other equivalent documentation.

(c) Each applicant for a license shall meet personally with either a Board investigator, the Screening Committee, the Director, or a Board representative designated by the Director prior to being issued a license. The applicant shall discuss the provisions of G.S. 74D and the administrative rules in this Chapter during the personal meeting. The applicant shall sign a form provided by the Board stating that the applicant has reviewed the information with the Board's representative and that the applicant understands G.S. 74D and the administrative rules in this Chapter. During a national or State declared state of emergency that restricts or prohibits travel, the personal meeting requirement may be waived if requested by the applicant in favor of alternative means of communication.

(d) Each applicant for a branch office license shall submit an online application on the website provided by the Board. This online application shall be accompanied by the branch office application fee.

(e) All photographs, record checks, proof of insurance, explanations of criminal charges, explanations of credit history, or requested documents shall be submitted online through the Board's website by any applicant for a permit, license, registration, or certificate within 60 days of the Board's receipt of the application form or a request from Board staff, whichever is later. Any failure to submit required or requested documents to complete the application process within this 60-day period shall void the application and require re-application.

Authority G.S. 74D-2; 74D-2.1; 74D-3; 74D-5; 74D-7; 74D-8.

SECTION .0300 – PROVISIONS FOR REGISTRANTS

14B NCAC 17 .0301 APPLICATION FOR REGISTRATION

(a) Each licensee or qualifying agent shall submit an online application for the registration of his or her employee on the website provided by the Board. When this online application is submitted, it shall be accompanied by:

- (1) electronic submission of fingerprints from a Live Scan or similar system approved by the State Bureau of Investigation or one set of classifiable fingerprints on a standard F.B.I. fingerprint card mailed separately to the Board's office;
- (2) one original signed S.B.I. release of information form uploaded online and the original mailed separately to the Board's office;
- (3) one head and shoulders digital photograph of the applicant of acceptable quality for identification, taken within six months prior to online submission, and uploaded with the application submission;
- (4) statements of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74D-2.1(a) for any state where the applicant has resided within the preceding 60 months;
- (5) the registration fee required by Rule .0302 of this Section, along with a four dollar (\$4.00) convenience fee charged by the third-party provider and credit card transaction fee charged by the applicant's credit card provider and collected online; and
- (6) a completed affidavit form and public notice statement form.

(b) The employer of an applicant who is currently registered with another alarm business shall complete an online application form provided by the Board. This form shall be accompanied by the applicant's multiple registration fee along with a four dollar (\$4.00) convenience fee charged by the third-party provider and credit card transaction fee charged by the applicant's credit card provider and collected online. This online application shall be accompanied by a completed affidavit form and public notice statement form.

(c) The employer of each applicant for registration shall print and retain a copy of the applicant's online application in the individual applicant's personnel file in the employer's office.

(d) All photographs, record checks, proof of insurance, explanations of criminal charges, explanations of credit history, or requested documents shall be submitted online through the Board's website by any applicant for a permit, license, registration, or certificate within 60 days of the Board's receipt of the application form or a request from Board staff, whichever is later. Any failure to submit required or requested documents to complete the application process within this 60-day period shall void the application and require re-application.

Authority G.S. 74D-2.1; 74D-5; 74D-8.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02Q .0103, .0503-.0505, .0507-.0509, .0514, .0516, .0518, .0521, .0522, .0525 and .0526.

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

Proposed Effective Date: July 1, 2022

Public Hearing:

Date: February 23, 2022

Time: 6:00 p.m.

Location:

Cisco WebEx, Digital Hearing Link: https://bit.ly/3E1yOb2

Meeting Password: NCDQAQ

Audio conference: To receive a call back, provide your phone number when you join the event, or call the number below and enter the access code. US TOLL +1-415-655-0003, Access code: 2435 717 6335

If you wish to speak at the digital public hearing, you must register, provide the required information, and follow instructions on ways to join the public hearing. Registration must be completed by 4:00 p.m. on February 23, 2022. To register, please go to https://forms.office.com/g/WNMUhmaaBr

*For instructions on ways to join the public hearing, please refer to the following links: https://files.nc.gov/ncdeq/Air%20Quality/rules/hearing/instructions-on-ways-to-join-webex.pdf

https://www.webex.com/test-meeting.html

*If you have technical difficulties, the following automated voicemail has been set up to receive your verbal comments: 919-707-8403.

Reason for Proposed Action: To receive comments on the proposed amendments to the Title V rules in 15A NCAC 02Q .0103 and .0500. Also, to receive comment on the accompanying regulatory impact analysis for the proposed amendments.

On August 31, 2001, the North Carolina Division of Air Quality (DAQ) obtained Environmental Protection Agency (EPA) approval of its Title V operating permit program. EPA conducted the first three Title V program reviews for North Carolina in 2005, 2010, and 2014. DAQ is proposing revisions to the Title V rules in 15A NCAC 02Q .0103 and .0500 to address comments received from EPA during the fourth program review, which began in 2020. The proposed revisions primarily include corrections to typographical and rule reference errors, revisions to align the rules with the requirements of 40 CFR Part 70, and revisions relating to procedural aspects of the Title V program, such as permit processing timeframes, the public participation process, and the submittal of documents to EPA.

To allow the DAQ to address EPA's comments on the Title V rules, the Environmental Management Commission (EMC) is proposing to revise the Title V rules in 15A NCAC 02Q .0103 and .0500.

On November 18, 2021, the EMC approved proceeding to public comment on the proposed Title V Rule revisions.

The text of the rules and regulatory impact analysis are available on the DAQ website: http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process.

Comments may be submitted to: Patrick Knowlson, 217 West Jones St., 1641 Mail Service Center, Raleigh, NC 27699-1641; phone (919) 707-8711; fax (919) 715-0717; email daq.publiccomments@ncdenr.gov (Please type "Title V Rule Revisions" in the subject line)

Comment period ends: March 21, 2022

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

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

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

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02Q - AIR QUALITY PERMITS PROCEDURES

SECTION .0100 - GENERAL PROVISIONS

15A NCAC 02Q .0103 DEFINITIONS

For the purposes of this Subchapter, the definitions in G.S. 143-212 and G.S. 143-213 and the following definitions apply:

- (1) "Administrator" means, when it appears in any Code of Federal Regulation incorporated by reference in 15A NCAC 02Q, the Director of the Division of Air Quality unless:
(a) a specific rule in this Subchapter specifies otherwise, or

- (b) the U.S. Environmental Protection Agency in its delegation or approval states that a specific authority of the Administrator of the Environmental Protection Agency is not included in its delegation or approval.
- (2) "Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive substance, or matter that is emitted into or otherwise enters the ambient air. Water vapor shall not be considered an air pollutant.
- (3) "Allowable emissions" means the maximum emissions allowed by the applicable rules set forth in 15A NCAC 02D or by permit conditions if the permit limits emissions to a lesser amount.
- (4) "Alter or change" means to make a modification.
- (5) "Applicable requirements" means:
 - (a) any requirement of 15A NCAC 02Q .0500;
 - (b) any standard or other requirement provided for in the implementation plan approved or promulgated by EPA through rulemaking pursuant to Title I of the federal Clean Air Act, that implements the relevant requirements of the federal Clean Air Act including any revisions to 40 CFR Part 52;
 - (c) any term or condition of a construction permit issued to a facility pursuant to 15A NCAC 02D .0530, .0531, or .0532;
 - (d) any standard or other requirement pursuant to Section 111 or 112 of the federal Clean Air Act, but not including the contents of any risk management plan required pursuant to Section 112 of the federal Clean Air Act;
 - (e) any standard or other requirement pursuant to Title IV of the federal Clean Air Act;
 - (f) any standard or other requirement governing solid waste incineration pursuant to Section 129 of the federal Clean Air Act;
 - (g) any standard or other requirement pursuant to Section 183(e), 183(f), or 328 of the federal Clean Air Act;
 - (h) any standard or requirement pursuant to Title VI of the federal Clean Air Act unless a permit for such requirement is not required pursuant to this Section;
 - (i) any requirement pursuant to Section 504(b) or 114(a)(3) of the federal Clean Air Act; or
- (j) any national ambient air quality standard or increment or visibility requirement pursuant to Part C of Title I of the federal Clean Air Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the federal Clean Air Act.
- (6) "Applicant" means a person who is applying for an air quality permit from the Division.
- (7) "Application package" means all elements or documents required to make an application complete.
- (8) "CFR" means the Code of Federal Regulations.
- (9) "Construction" means change in the method of operation or any physical change, including on-site fabrication, erection, installation, replacement, demolition, or modification of a source, that results in a change in emissions or affects the compliance status. The following activities shall not be considered construction:
 - (a) clearing and grading;
 - (b) building access roads, driveways, and parking lots;
 - (c) building and installing underground pipe work, including water, sewer, electric, and telecommunications utilities; or
 - (d) building ancillary structures, including fences and office buildings that are not a necessary component of an air contaminant source, equipment, or associated air cleaning device for which a permit is required pursuant to G.S. 143-215.108.
- (10) "Director" means the Director of the Division of Air Quality.
- (11) "Division" means the Division of Air Quality.
- (12) "EPA" means the United States Environmental Protection Agency or the Administrator of the Environmental Protection Agency.
- (13) "EPA approves" means full approval, interim approval, or partial approval by EPA.
- (14) "Equivalent unadulterated fuels" means used oils that have been refined such that the content of toxic additives or contaminants in the oil are no greater than those in unadulterated fossil fuels.
- (15) "Facility" means all of the pollutant-emitting activities, except transportation facilities, that are located on one or more adjacent properties under common control.
- (16) "~~Federally enforceable~~" ~~or~~ "~~federal enforceable~~" "Federally-enforceable" means enforceable by EPA; EPA, Administrator as defined in Item (1) of this Rule, and citizens under the federal Clean Air Act.
- (17) "Fuel combustion equipment" means any fuel burning source covered pursuant to 15A NCAC

- 02D .0503, .0504, .0536, or 40 CFR Part 60 Subpart D, Da, Db, or Dc.
- (18) "Green wood" means wood with a moisture content of 18% or more.
- (19) "Hazardous air pollutant" means any pollutant that has been listed pursuant to Section 112(b) of the federal Clean Air Act. Pollutants listed only in 15A NCAC 02D .1104 (Toxic Air Pollutant Guidelines), but not pursuant to Section 112(b), shall not be included in this definition.
- (20) "Insignificant activities" means activities defined as insignificant activities because of category or as insignificant activities because of size or production rate pursuant to 15A NCAC 02Q .0503.
- (21) "Lesser quantity cutoff" means:
- (a) for a source subject to the requirements of Section 112(d) or (j) of the federal Clean Air Act, the level of emissions of hazardous air pollutants below which the following are not required:
- (i) maximum achievable control technology (MACT) or generally available control technology (GACT), including work practice standards, pursuant to Section 112(d) of the federal Clean Air Act;
- (ii) a MACT standard established pursuant to Section 112(j) of the federal Clean Air Act; or
- (iii) substitute MACT or GACT adopted pursuant to Section 112(l) of the federal Clean Air Act;
- (b) for modification of a source subject to, or that may be subject to, the requirements of Section 112(g) of the federal Clean Air Act, the level of emissions of hazardous air pollutants below which MACT is not required to be applied pursuant to Section 112(g) of the federal Clean Air Act; or
- (c) for all other sources, potential emissions of each hazardous air pollutant below 10 tons per year and the aggregate potential emissions of all hazardous air pollutants below 25 tons per year.
- (22) "Major facility" means a major source as defined pursuant to 40 CFR 70.2.
- (23) "Modification" means any physical change or change in method of operation that results in a change in emissions or affects compliance status of the source or facility.
- (24) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, source, or air pollution control equipment.
- (25) "Peak shaving generator" means a generator that is located at a facility and is used only to serve that facility's on-site electrical load during peak demand periods for the purpose of reducing the cost of electricity; it does not generate electricity for resale. A peak shaving generator may also be used for emergency backup.
- (26) "Permit" means the binding written document, including any revisions thereto, issued pursuant to G.S. 143-215.108 to the owner or operator of a facility or source that emits one or more air pollutants and that allows that facility or source to operate in compliance with G.S. 143-215.108. This document shall specify the requirements applicable to the facility or source and to the permittee.
- (27) "Permittee" means the person who has been issued an air quality permit from the Division.
- (28) "Potential emissions" means the rate of emissions of any air pollutant that would occur at the facility's maximum capacity to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a facility to emit an air pollutant shall be treated as a part of its design if the limitation is federally enforceable. Such physical or operational limitations shall include air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed. Potential emissions shall include fugitive emissions as specified in the definition of major source in 40 CFR 70.2. Potential emissions shall not include a facility's secondary emissions such as those from motor vehicles associated with the facility and shall not include emissions from insignificant activities because of category as defined in 15A NCAC 02Q .0503. If a rule in 40 CFR Part 63 uses a different methodology to calculate potential emissions, that methodology shall be used for sources and pollutants regulated pursuant to that rule.
- (29) "Portable generator" means a generator permanently mounted on a trailer or a frame with wheels.
- (30) "Regulated air pollutant" means:
- (a) nitrogen oxides or any volatile organic compound as defined pursuant to 40 CFR 51.100;
- (b) any pollutant for which there is an ambient air quality standard pursuant to 40 CFR Part 50;

- (c) any pollutant regulated pursuant to 15A NCAC 02D .0524, .1110, or .1111; or 40 CFR Part 60, 61, or 63;
 - (d) any pollutant subject to a standard promulgated pursuant to Section 112 of the federal Clean Air Act or other requirements established pursuant to Section 112 of the federal Clean Air Act, including Section 112(g) (but only for the facility subject to Section 112(g)(2) of the federal Clean Air Act), (j), or (r) of the federal Clean Air Act; or
 - (e) any Class I or II substance listed pursuant to Section 602 of the federal Clean Air Act.
- (31) "Sawmill" means a place or operation where logs are sawed into lumber consisting of one or more of these activities: debarking, sawing, and sawdust handling. Activities that shall not be considered part of a sawmill include chipping, sanding, planing, routing, lathing, and drilling.
- (32) "Source" means any stationary article, machine, process equipment, or other contrivance, or combination thereof, from which air pollutants emanate or are emitted, either directly or indirectly.
- (33) "State-enforceable only" means terms and conditions that are not required under the Act or under any of its applicable requirements. Terms and conditions designated as State-enforceable only are not subject to the requirements of 40 CFR Part 70.
- ~~(33)~~(34) "Toxic air pollutant" means any of the carcinogens, chronic toxicants, acute systemic toxicants, or acute irritants that are listed in 15A NCAC 02D .1104.
- ~~(34)~~(35) "Transportation facility" shall be considered a complex source as defined in G.S. 143-213(22).
- ~~(35)~~(36) "Unadulterated fossil fuel" means fuel oils, coal, natural gas, or liquefied petroleum gas to which no toxic additives have been added that may result in the emissions of a toxic air pollutant listed pursuant to 15A NCAC 02D .1104.
- (a) contiguous to North Carolina and located less than $D=Q/12.5$ from the facility, where:
 - (i) Q = emissions of the pollutant emitted at the highest permitted rate in tons per year, and
 - (ii) D = distance from the facility to the contiguous state or local air pollution control agency in miles unless the applicant can demonstrate that the ambient impact in the contiguous states or local air pollution control agencies is less than the incremental ambient levels in 15A NCAC 02D .0532(c)(5); or
 - (b) within 50 miles of the permitted facility.
- (2) "Complete application" means an application that provides all information described in 40 CFR 70.5(c) and such other information that is necessary to determine compliance with all applicable federal and State requirements.
- (3) "Draft permit" means the version of a permit that the Division offers for public participation pursuant to 15A NCAC 02Q .0521 or affected ~~State~~ state review pursuant to 15A NCAC 02Q .0522.
- (4) "Emissions allowable under the permit" means an emissions limit (including a work practice standard) established by a federally enforceable permit term or condition, or a federally enforceable emissions cap that the facility has assumed to avoid an applicable requirement to which the facility would otherwise be subject.
- (5) "Final permit" means the version of a permit that the Director issues that has completed all review procedures required pursuant to this Section if the permittee does not file a petition pursuant to Article 3 of G.S. 150B that is related to the permit.
- (6) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.
- (7) "Insignificant activities because of category" means:
 - (a) mobile sources;
 - (b) air-conditioning units used for human comfort that are not subject to applicable requirements pursuant to Title VI of the federal Clean Air Act and do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;

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

SECTION .0500 - TITLE V PROCEDURES

15A NCAC 02Q .0503 DEFINITIONS

For the purposes of this Section, the definitions in G.S. 143-212, G.S. 143-213, 15A NCAC 02Q .0103, and the following definitions apply:

- (1) "Affected States" means all states or local air pollution control agencies whose areas of jurisdiction are:

- (c) ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;
 - (d) heating units used for human comfort that have a heat input of less than 10,000,000 Btu per hour and that do not provide heat for any manufacturing or other industrial process;
 - (e) noncommercial food preparation;
 - (f) consumer use of office equipment and products;
 - (g) janitorial services and consumer use of janitorial products;
 - (h) internal combustion engines used for landscaping purposes;
 - (i) new residential wood heaters subject to 40 CFR Part 60, Subpart AAA; and
 - (j) demolition and renovation activities covered solely pursuant to 40 CFR Part 61, Subpart M.
- (8) "Insignificant activities because of size or production rate" means any activity whose emissions would not violate any applicable emissions standard and whose potential emission of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide before air pollution control devices, are each no more than five tons per year and whose potential emissions of hazardous air pollutants before air pollution control devices, are each below 1000 pounds per year.
- (9) "Minor facility" means any facility that is not a major facility.
- (10) "Operation" means the use of equipment that emits regulated pollutants.
- (11) "Permit renewal" means the process by which a permit is reissued at the end of its term.
- (12) "Permit revision" means any permit modification pursuant to 15A NCAC 02Q .0515, .0516, or .0517 or any administrative permit amendment pursuant to 15A NCAC 02Q .0514.
- (13) "Proposed permit" means the version of a permit that the Director proposes to issue and forwards to EPA for review pursuant to 15A NCAC 02Q .0522.
- (14) "Relevant source" means only those sources that are subject to applicable requirements.
- (15) "Responsible official" means a responsible official as defined in 40 CFR 70.2.
- (16) "Section 502(b)(10) changes" means changes that contravene an express permit term or condition. Such changes shall not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.
- (17) "Synthetic minor facility" means a facility that would otherwise be required to follow the procedures of this Section except that the potential to emit is restricted by one or more federally enforceable physical or operational limitations, including air pollution control equipment and restrictions on hours or operation, the type or amount of material combusted, stored, or processed, or similar parameters.
- (18) "Timely" means:
- (a) for a new facility or newly subject facility, 12 months from the date that the facility or source becomes subject to the Title V operating permit program pursuant to 15A NCAC 02Q .0500; one year after commencing operation;
 - (b) for renewal of a permit previously issued pursuant to this Section, six months before the expiration of that permit;
 - (c) for a minor modification pursuant to 15A NCAC 02Q .0515, before commencing the modification;
 - (d) for a significant modification pursuant to 15A NCAC 02Q .0516 where the change would not contravene or conflict with a condition in the existing permit, 12 months after commencing operation;
 - (e) for reopening for cause pursuant to 15A NCAC 02Q .0517, as specified by the Director in a request for additional information by the Director;
 - (f) for requests for additional information, as specified by the Director in a request for additional information by the Director; or
 - (g) for modifications made pursuant to Section 112(j) of the federal Clean Air Act, 18 months after EPA fails to promulgate a standard for that category of source pursuant to Section 112 of the federal Clean Air Act by the date established pursuant to Section 112(e)(1) or (3) of the federal Clean Air Act.

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

15A NCAC 02Q .0504 OPTION FOR OBTAINING CONSTRUCTION AND OPERATION PERMIT

- (a) Pursuant to 15A NCAC 02Q ~~.0501(e)(2)~~.0501(b)(2) or ~~(d)(2)(c)(2)~~, the owner or operator of a new or modified facility subject to the requirements of this Section that chooses to obtain

a construction and operation permit before the facility must obtain a permit pursuant to this Section may file an application pursuant to 15A NCAC 02Q .0300.

(b) The applicant shall state in his permit application that he or she wishes to follow the procedures in this Rule.

~~(c) If the option allowed pursuant to 15A NCAC 02Q .0501(b)(1) is used, then the application processing procedures for prevention of significant deterioration in 15A NCAC 02D .0530 and new source review for nonattainment areas in 15A NCAC 02D .0531 do not apply. If the option allowed pursuant to 15A NCAC 02Q .0501(b)(2) is used, then the application processing procedures in this Section and in either of the following rules shall apply:~~

- ~~(1) 15A NCAC 02D .0530 for prevention of significant deterioration; or~~
- ~~(2) 15A NCAC 02D .0531 for new source review for nonattainment areas.~~

~~(c)~~(c) If the procedures in 15A NCAC 02Q .0300 are followed, the permittee shall have ~~one year~~ 12 months after the facility or source becomes subject to the permit program in 15A NCAC 02Q .0500 if the permittee is applying for a Title V permit first time. Otherwise, the permittee shall have from 12 months from the date of beginning operation of the modified facility or source to file an amended application following the procedures in this Section. The Director shall place a condition in the construction and operation permit stating this requirement.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

15A NCAC 02Q .0505 APPLICATION SUBMITTAL CONTENT

If an applicant does not submit, the following information with its application package, the application package shall be returned:

- (1) for new facilities and modified facilities:
 - (a) an application fee as required pursuant to 15A NCAC 02Q .0200;
 - (b) a consistency determination as required pursuant to 15A NCAC 02Q .0507(d)(1);
 - (c) the documentation required pursuant to 15A NCAC 02Q .0507(d)(2);
 - (d) a financial qualification or substantial compliance statement if required; and
 - (e) applications as required pursuant to 15A NCAC 02Q .0507(a) and (e) and signed as required by 15A NCAC 02Q .0520;
- (2) for renewals: applications as required pursuant to 15A NCAC 02Q .0507(a) and (e) and signed as required by 15A NCAC 02Q .0520;
- (3) for a name change: three copies of a letter signed by a responsible official in accordance with 15A NCAC 02Q .0520 indicating the current facility name, the date on which the name change will occur, and the new facility name;
- (4) for an ownership change: an application fee as required pursuant to 15A NCAC 02Q .0200; ~~and~~ and three copies of a letter bearing the

signature of both the seller and buyer and containing a written agreement with a specific date for the transfer of permit responsibility, coverage, and liability between the current and new permittee; and

- ~~(a) three copies of a letters signed by the seller and the buyer indicating the change; or~~
- ~~(b) three copies of a letter bearing the signature of both the seller and buyer and containing a written agreement with a specific date for the transfer of permit responsibility, coverage, and liability between the current and new permittee; and~~

- (5) for corrections of typographical errors; changes of the name, address, or telephone number of any individual identified in the permit; changes in test dates or construction dates; or similar minor changes: three copies of a letter signed by a responsible official in accordance with 15A NCAC 02Q .0520 describing the proposed change and explaining the need for the proposed change.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

15A NCAC 02Q .0507 APPLICATION

- (a) Except for:
 - (1) minor permit modifications covered pursuant to 15A NCAC 02Q .0515;
 - (2) significant modifications covered pursuant to 15A NCAC 02Q .0516(c); or
 - (3) renewals submitted pursuant to 15A NCAC 02Q .0513;

the owner or operator of a source shall have 12 months after the one year from the date of beginning of operation of a source that facility or source becomes subject to the Title V operating permit program pursuant to 15A NCAC 02Q .0500 to file a complete application for a permit or permit revision. However, the owner or operator of a source shall not begin construction or operation of a source until he or she has obtained a construction and operation permit pursuant to 15A NCAC 02Q .0501(e), 0501(b) or ~~(c)~~ and 15A NCAC 02Q .0504.

(b) An application shall include all the information described in 40 CFR 70.3(d) and 70.5(c), including a list of insignificant activities because of size or production rate but not including insignificant activities because of category. An application shall be certified by a responsible official for truth, accuracy, and completeness. In an application submitted pursuant to this Rule, the applicant may attach copies of applications submitted pursuant to 15A NCAC 02Q .0400 or 15A NCAC 02D .0530 or .0531 if the information in those applications contains information required in this Section and is current, accurate, and complete.

(c) Application for a permit, permit revision, or permit renewal shall be made in accordance with 15A NCAC 02Q .0104 on forms of the Division and shall include plans and specifications giving all necessary data and information as required by this Rule. If the

information provided on these forms does not describe the source or its air pollution abatement equipment to the extent necessary to evaluate the application, the Director shall request that the applicant provide any other information necessary to evaluate the source and its air pollution abatement equipment.

(d) Along with filing a complete application, the applicant shall also file the following:

- (1) for a new facility or an expansion of existing facility, a consistency determination in accordance with G.S. 143-215.108(f) that:
 - (A) bears the date of receipt entered by the clerk of the local government; or
 - (B) consists of a letter from the local government indicating that all zoning or subdivision ordinances are met by the facility;
- (2) for a new facility or an expansion of an existing facility in an area without zoning, an affidavit and proof of publication of a legal notice as required pursuant to 15A NCAC 02Q .0113; and
- (3) if required by the Director, information showing that:
 - (A) the applicant is financially qualified to carry out the permitted activities; or
 - (B) the applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged and has been in substantial compliance with federal and state environmental laws and rules.

(e) The applicant shall submit copies of the application package as follows:

- (1) for sources subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200, five copies plus one additional copy for each affected state that the Director has to notify pursuant to 15A NCAC 02Q .0521 and 15A NCAC 02Q .0522;
- (2) for sources not subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200, three copies plus one additional copy for each affected state that the Director has to notify pursuant to 15A NCAC 02Q .0521 and 15A NCAC 02Q .0522.

(f) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date ~~he~~ the applicant filed a complete application but prior to release of a draft permit.

(g) The applicant shall submit the same number of copies of additional information as required for the application package.

(h) The submittal of a complete permit application shall not affect the requirement that any facility have a permit pursuant to 15A

NCAC 02D .0530, .0531, or .0532 or pursuant to 15A NCAC 02Q .0400.

(i) The Director shall give priority to permit applications containing early reduction demonstrations pursuant to Section 112(i)(5) of the federal Clean Air Act. The Director shall take final action on such permit applications after receipt of the complete permit application.

(j) Except as specified in 15A NCAC 02Q .0203(i), a non-refundable permit application processing fee, defined in 15A NCAC 02Q .0200, shall accompany each application. Each permit application shall be deemed incomplete until the permit application processing fee is received.

(k) The applicant shall retain for the duration of the permit term one complete copy of the application package and all information submitted in support of the application package.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

15A NCAC 02Q .0508 PERMIT CONTENT

(a) A permit shall specify and reference the origin and authority for each term or condition and shall identify any differences compared to the applicable requirement on which the term or condition is based.

(b) A permit shall specify emission limitations and standards, including operational requirements and limitations, that assure compliance with all applicable requirements at the time of permit issuance.

(c) Where an applicable requirement of the federal Clean Air Act is more stringent than an applicable requirement of rules promulgated pursuant to Title IV, both provisions shall be placed in a permit. A permit shall state that both provisions are enforceable by EPA.

(d) A permit for sources using an alternative emission limit established in 15A NCAC 02D .0501 (d) or 15A NCAC 02D .0952 shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(e) The expiration date of a permit shall be for a fixed term of five years for sources covered by Title IV and for a term of no more than five years from the date of issuance for all other sources including solid waste incineration units combusting municipal waste subject to standards in Section 129(e) of the federal Clean Air Act.

(f) A permit shall contain monitoring and related recordkeeping and reporting requirements as specified in 40 CFR 70.6(a)(3) and 70.6(c)(1), including conditions requiring:

- (1) the permittee to submit reports of required monitoring at least every six months. The permittee shall submit reports:
 - (A) on forms obtained from the Division at the address in 15A NCAC 02Q .0104;
 - (B) in a manner as specified by a permit condition; or
 - (C) on other forms that contain the information required by this Subchapter or as specified by a permit condition;
- (2) the permittee to report:

- (A) malfunctions, emergencies, and other upset conditions as prescribed in 15A NCAC 02D .0524, .0535, .1110, or .1111; and
- (B) deviations quarterly from permit requirements not covered by 15A NCAC 02D .0524, .0535, .1110, or .1111. The permittee shall include the probable cause of such deviations and any corrective actions or preventive measures taken; and
- (3) the responsible official to certify all deviations from permit requirements.

(g) At the request of a permittee, the Director may allow records to be maintained in electronic form in lieu of maintaining paper records. The Director shall make this decision based on factors such as whether the electronic records contain the same information as the paper records and the availability of the electronic records for inspection to demonstrate compliance.

(h) A permit for facilities covered by 15A NCAC 02D .2100, Risk Management Program, shall contain:

- (1) a statement listing 15A NCAC 02D .2100 as an applicable requirement; and
- (2) conditions that require the owner or operator of the facility to submit:
 - (A) a compliance schedule for meeting the requirements of 15A NCAC 02D .2100 by the dates provided in 15A NCAC 02D .2101(a); or
 - (B) as part of the compliance certification required by Paragraph (n) of this Rule, a certification statement that the source is in compliance with all requirements of 15A NCAC 02D .2100, including the registration and submission of the risk management plan.

The content of the risk management plan need not be incorporated as a permit term or condition.

(i) A permit shall:

- (1) contain a condition prohibiting emissions exceeding any allowances that a facility lawfully holds pursuant to Title IV but shall not limit the number of allowances held by a permittee. A permittee shall not use allowances as a defense to noncompliance with any other applicable requirement;
- (2) contain a severability clause so that various permit requirements will continue to be valid in the event of a challenge to any other portion of the permit;
- (3) state that noncompliance with any condition of the permit constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application;
- (4) state that the permittee may not use as a defense in an enforcement action that it would have

been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit;

- (5) state that the Director may reopen, modify, revoke and reissue, or terminate the permit for reasons specified in 15A NCAC 02Q .0517 or ~~.0519~~ .0519;
- (6) state that the filing of a request by the permittee for a permit revision, revocation and reissuance, termination, notification of planned changes, or anticipated noncompliance does not stay any permit condition;
- (7) specify the conditions in which the permit will be reopened before the expiration of the permit;
- (8) state that the permit does not convey any property rights of any sort, or any exclusive privileges;
- (9) state that the permittee will furnish to the Division, in a timely manner:
 - (A) any information that the Director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit, and
 - (B) copies of records required to be kept by the permit when such copies are requested by the Director.
- (10) contain a provision to ensure that the permittee pays fees required by 15A NCAC 02Q .0200;
- (11) contain a condition that authorizes the permittee to make Section 502(b)(10) changes, off-permit changes, or emission trades in accordance with 15A NCAC 02Q .0523;
- (12) include all applicable requirements for all sources covered by the permit;
- (13) include fugitive emissions ~~emissions, if regulated,~~ in the same manner as stack emissions;
- (14) contain a condition requiring annual reporting of actual emissions as required by 15A NCAC 02Q 0207;
- (15) include all sources including insignificant activities; and
- (16) contain other provisions the Director considers appropriate.

~~(The~~ The permit shall also state that for information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of ~~confidentiality~~ confidentiality;

(j) A permit shall state the terms and conditions for reasonably anticipated operating scenarios identified by the applicant in the application. These terms and conditions shall:

- (1) require the permittee, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted

facility a record of the operating scenario in which it is operating;

- (2) extend the permit shield described in 15A NCAC 02Q .0512 to all terms and conditions in each such operating scenario; and
- (3) ensure that each operating scenario meets all applicable requirements of Subchapter 02D of this Chapter and of this Section.

(k) A permit shall identify which terms and conditions are enforceable by: by the Division only.

- ~~(1) both EPA and the Division;~~
- ~~(2) the Division only; and~~
- ~~(3) EPA only and~~
- ~~(4) citizens pursuant to the federal Clean Air Act.~~

(l) A permit shall state that the permittee will allow personnel of the Division to:

- (1) enter the permittee's premises where the permitted facility is located or emissions-related activity is conducted, or where records are kept by the conditions of the permit;
- (2) have access to and copy any records that are required to be kept by the conditions of the permit;
- (3) inspect any source, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required by the permit; and
- (4) sample or monitor substances or parameters, for the purpose of assuring compliance with the permit or applicable requirements.

(m) When a compliance schedule is required by 40 CFR 70.5(c)(8) or by a rule contained in Subchapter 02D of this Chapter, the permit shall contain the compliance schedule and shall state that the permittee shall submit at least semiannually, or more frequently if specified in the applicable requirement, a progress report. The progress report shall contain:

- (1) dates for achieving the activities, milestones, or compliance required in the compliance schedule and dates when such activities, milestones, or compliance were achieved; and
- (2) an explanation of why any dates in the compliance schedule were not or will not be met and any preventive or corrective measures adopted.

(n) The permit shall contain requirements for compliance certification with the terms and conditions in the permit that are enforceable by EPA pursuant to Title V of the federal Clean Air Act, including emissions limitations, standards, and work practices. The permit shall specify:

- (1) the frequency (not less than annually or more frequently as specified in the applicable requirements) of submissions of compliance certifications;
- (2) a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices; ~~and~~
- (3) a requirement that the compliance certification include:

(A) the identification of each term or condition of the permit that is the basis of the certification;

(B) the status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the methods or means designated in 40 CFR 70.6(c)(5)(iii)(B). The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance was required and in which an excursion or exceedance as defined in 40 CFR 64 occurred;

(C) whether compliance was continuous or intermittent;

(D) the identification of the methods or other means used by the owner and operator for determining the compliance status with each term and condition during the certification period; these methods shall include the methods and means required in 40 CFR Part ~~70.6(a)(3);~~ 70.6(a)(3). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with Section 113(c)(2) of the federal Clean Air Act, which prohibits knowingly making a false certification or omitting material information; and

(E) such other facts as the Director may require to determine the compliance status of the source; and

(4) that all compliance certifications be submitted to EPA as well as to the Division.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108.

15A NCAC 02Q .0509 PERMITTING OF NUMEROUS SIMILAR FACILITIES

(a) The Director shall not issue a single permit to cover numerous similar facilities or sources unless a notice and opportunity for public participation has been provided as required by 15A NCAC 02Q .0521.

(b) The Director shall not issue a single permit for numerous similar facilities and sources pursuant to this Rule unless:

(1) there is no difference between the facilities or sources that would require special permit conditions for any individual facility or source; and

(2) no unique analysis is required for any facility or source covered by the permit.

- (c) A permit issued pursuant to this Rule shall comply with all the requirements of this Section.
- (d) A permit issued pursuant to this Rule shall identify criteria by which facilities or sources may qualify for the permit. To facilities or sources that qualify, the Director shall grant the terms and conditions of the permit.
- (e) The facility or source shall be subject to enforcement action for operating without a permit if the facility or source is later determined not to qualify for the terms and conditions of the permit issued pursuant to this Rule.
- (f) Sources subject to Title IV shall not be eligible for a permit issued pursuant to this Rule.
- (g) The owner or operator of a facility or source that qualifies for a permit issued pursuant to this Rule shall apply for coverage by the terms of the permit issued pursuant to this Rule or shall apply for a standard permit for each facility or source pursuant to this Section.
- (h) The Division need not repeat the public participation procedures pursuant to 15A NCAC 02Q .0521 if it grants a request by a permit applicant to operate by a permit issued pursuant to this Rule. Rule, but such a grant shall not be a final permit action for purposes of judicial review.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

15A NCAC 02Q .0514 ADMINISTRATIVE PERMIT AMENDMENTS

- (a) An "administrative permit amendment" means a permit revision that:
 - (1) corrects typographical errors;
 - (2) identifies a change in the name, address, or telephone number of any individual identified in the permit or provides a similar minor administrative change at the facility;
 - (3) requires more frequent monitoring or reporting by the permittee;
 - (4) changes test dates or construction dates provided that no applicable requirements are violated by the change in test dates or construction dates;
 - (5) ~~moves~~ removes designation of State-enforceable only from terms and conditions from the State-enforceable only portion of a permit to the State and federal enforceable portion of the permit provided that the terms and conditions being moved have become federally enforceable through Section 110, 111, or 112 or other parts of the federal Clean Air Act;
 - (6) ~~moves terms and conditions from the federal enforceable only portion of a permit to the State and federal enforceable portion of the permit;~~
 - (7)(6) changes the permit number without changing any portion of the permit ~~that is federally enforceable~~ that would not otherwise qualify as an administrative amendment; or

- ~~(8)(7)~~ removes references and non-applicable permit conditions; requirements for equipment that has been permanently removed from service. ~~or~~
- ~~(9)~~ removes references to equipment that has been permanently removed from service.

- (b) In making administrative permit amendments, the Director:
 - (1) shall take final action on a request for an administrative permit amendment within 60 days after receiving such request;
 - (2) may make administrative amendments without providing notice to the public or any affected states pursuant to 15A NCAC 02Q .0521(a), provided he or she designates any such permit revision as having been made pursuant to this Rule; and
 - (3) shall submit a copy of the revised permit to EPA.

(c) The permittee may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

~~(d) Upon taking final action granting a request for an administrative permit amendment, the Director shall allow coverage by the permit shield pursuant to 15A NCAC 02Q .0512 for the administrative permit amendments made.~~

- ~~(e)(d)~~ Administrative amendments for sources covered pursuant to Title IV shall be governed by rules in 15A NCAC 02Q .0400.
- ~~(f)(e)~~ This Rule shall not apply to the state-enforceable only part of a Title V permit. For the ~~state-enforceable~~ State-enforceable only part of a Title V permit, 15A NCAC 02Q .0316 shall govern administrative permit amendments.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

15A NCAC 02Q .0516 SIGNIFICANT PERMIT MODIFICATION

- (a) The procedures set out in this Rule shall apply to applications requesting permit modifications pursuant to this Rule or permit modifications that are not governed by 15A NCAC 02Q .0514, .0515, .0523, or .0524.
- (b) An application for a significant permit modification that would contravene or conflict with an existing permit shall be processed following the procedure set out in 15A NCAC 02Q .0501(c).
- (c) An application for a significant permit modification that does not contravene or conflict with an existing permit shall be processed following the procedure set out in 15A NCAC 02Q .0501(b).
- (d) This Rule shall not preclude the permittee from making changes consistent with this Section that would render existing permit compliance terms and conditions irrelevant.
- (e) Except for the State-enforceable only portion of the permit, the procedures set out in 15A NCAC 02Q .0507, .0521, or .0522 shall be followed to revise a permit pursuant to this Rule. If the State-enforceable only portion of the permit is revised, the procedures in 15A NCAC 02Q .0300 shall be followed. The proceedings shall affect only those parts of the permit related to the significant modification.

(f) Significant permit modifications shall be covered by the permit shield in accordance with 15A NCAC 02Q .0512.

(g) Significant permit modifications shall be processed in accordance with 15A NCAC 02Q .0525.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

15A NCAC 02Q .0518 FINAL ACTION

(a) The Director ~~may~~ shall:

- (1) issue a permit, permit revision, or renewal containing the conditions necessary to carry out the purposes of G.S. 143, Article 21B and the federal Clean Air Act;
- (2) rescind a permit upon request by the permittee; or
- (3) deny a permit application when necessary to carry out the purposes of G.S. 143, Article 21B and the federal Clean Air Act.

(b) The Director ~~may~~ shall not issue a final permit or permit revision, except administrative permit amendments pursuant to 15A NCAC 02Q .0514, .0514 and .0524, until 15 days after the end of EPA's 45-day review period has expired or until EPA has notified the Director that EPA will not object to issuance of the permit or permit revision, whichever occurs first. ~~The Director shall issue the permit or permit revision within five days of receipt of notification from EPA that it will not object to issuance or of the expiration of EPA's 45-day review period, whichever occurs first.~~

(c) If EPA objects to a proposed permit, the Director shall respond to EPA's objection within 90 days after receipt of EPA's objection. The Director shall not issue a permit pursuant to this Section over EPA's objection.

(d) If EPA does not object in writing to the issuance of a permit, any person may petition EPA to make such objections by following the procedures and meeting the requirements of 40 CFR 70.8(d).

(e) No permit shall be issued, revised, or renewed pursuant to this Section unless all the procedures set out in this Section have been followed and all the requirements of this Section have been met. The Director shall not issue any permit, permit revision, or permit renewal pursuant to this Section by default.

(f) Notwithstanding the application processing schedules set forth in 15A NCAC 02Q .0514, .0515, and .0524, the Division shall take final action on each permit application, including a request for permit modification or renewal, within 18 months of receipt of a complete application.

~~(g)~~ Thirty days after issuing a permit, including a permit issued pursuant to 15A NCAC 02Q .0509, that is not challenged by the applicant, the Director shall notice the issuance of the final permit. The notice shall be issued on the North Carolina Division of Air Quality web site at <http://deq.nc.gov/about/divisions/air-quality>. The notice shall include the name and address of the facility and the permit number.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

15A NCAC 02Q .0521 PUBLIC PARTICIPATION

(a) The Director shall give public notice with an opportunity for comments and a hearing on all draft permits and permit revisions except permit revisions issued pursuant to 15A NCAC 02Q .0514, .0515, and .0524. The Director shall give public notice with an opportunity for comments and a hearing on draft permit revisions issued pursuant to 15A NCAC 02Q .0514, .0515, and .0524 if the Director finds it is in the best interest of the public.

(b) Notice of any draft permit for an existing facility for which a public hearing is scheduled or for a new facility shall be given by publication in a newspaper of general circulation in the area where the facility is located, posted on the North Carolina Division of Air Quality web site at ~~<http://deq.nc.gov/about/divisions/air-quality>~~, <http://deq.nc.gov/about/divisions/air-quality> for the duration of the public comment period, and emailed to persons who are on the Division's emailing list for air quality permits.

(c) Notice for existing facilities for which a public hearing is not scheduled shall be given by posting the draft permit on the North Carolina Division of Air Quality web site at <http://deq.nc.gov/about/divisions/air-quality> for the duration of the public comment period and shall be emailed to persons who are on the Division's emailing list for air quality permit notices.

(d) The notice shall identify:

- (1) the affected facility;
- (2) the name and address of the permittee;
- (3) the name and address of the person to whom to send comments and requests for public hearing;
- (4) the name, address, and telephone number of Divisional staff from whom interested persons may obtain additional information, including copies of the permit draft, the application, compliance plan, monitoring and compliance reports, all other relevant supporting materials, and all other materials available to Division that are relevant to the permit decision;
- (5) the activity or activities involved in the permitted action;
- (6) any emissions change involved in any permit modification;
- (7) a brief description of the comment procedures;
- (8) the procedures to follow to request a hearing unless a hearing has already been scheduled; and
- (9) the time and place of all hearing that have already been scheduled.

(e) The Director shall send a copy of the notice to affected states and EPA.

(f) The notice shall allow 30 days for public comments.

~~(g) If the Director finds that a public hearing is in the best interest of the public, the Director shall require a public hearing to be held on a draft permit.~~ Notice of a any public hearing shall be given at least 30 days before the hearing.

(h) The Division shall keep a record of the public participation process, including the following:

- (1) the names of all commenters;
- (2) the issues raised during the public participation process; and
- (3) all written comments submitted during the public participation process.

If EPA requests a record of the comments and of the issues raised during the public participation process, the Director shall provide EPA this record.

(i) The Division shall respond in writing to comments raised during the public participation process, including any such written comments submitted during the public comment period and any such comments raised during any public hearing on the permit. The response to comments shall be included in the statement of basis and a Hearing Officer's report, if applicable.

~~(j)~~ Persons who desire to be placed on the Division's email notification list for air quality permit notices shall subscribe to the permits email list serve at <http://deq.nc.gov/about/divisions/air-quality>.

Authority G.S. 143-215.3(a)(1),(3); 143-215.107(a)(10); 143-215.108; 143-215.111(4).

15A NCAC 02Q .0522 REVIEW BY EPA AND AFFECTED STATES

(a) The Director shall provide EPA with a copy of each permit application, including any application for permit revision, the statement of basis required under Paragraph (b) of this Rule, each proposed permit, and each final permit issued pursuant to this Section. If EPA has informed the Director that a permit application summary and relevant portion of the permit application and compliance plan are sufficient, the Director may provide these documents instead of the complete application.

(b) The Division shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references for the applicable statutory or regulatory provisions. The Division shall provide this statement to EPA and any other person who requests it.

(c) If comments are received during the public participation process, the written responses shall be provided to EPA through submittal of a statement of basis, required pursuant to 15A NCAC 02Q .0521, with an explanation of how those public comments and the Division's responses are available to the public.

~~(d)~~ The Division shall retain for five years a copy of all permit applications, permits, and other related material submitted to or issued by the Division pursuant to this Section.

~~(e)~~ The Director shall provide notice to each affected state of each draft permit at or before the time notice is provided to the public pursuant to 15A NCAC 02Q .0521.

~~(f)~~ The Director, in writing, shall notify EPA and any affected state of any refusal by the Division to accept all recommendations for the proposed permit that the affected state submitted during the public or affected state review period and shall state the reasons for not accepting any such recommendations.

(g) To the extent practicable, the information specified in Paragraphs (a) through (c) of this Rule shall be provided to EPA in a computer-readable format compatible with EPA's national database management system.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; 143-215.111(5).

15A NCAC 02Q .0525 APPLICATION PROCESSING SCHEDULE

The Division shall adhere to the following schedule in processing permit applications:

- (1) The Division shall send written acknowledgment of receipt of an application to the applicant within 10 days of receipt of the application.
- (2) The Division shall review all permit applications within 60 days of receipt of the application to determine whether the application is complete or incomplete. The Division shall notify the applicant by letter:
 - (a) stating that the application as submitted is complete and specifying the completeness date;
 - (b) stating that the application is incomplete, requesting additional ~~information~~, information necessary to conduct the technical review of the application, and specifying the date by which the requested information is required to be received by the Division; or
 - (c) stating that the application is incomplete and requesting that the applicant rewrite and resubmit the application.

If the Division does not notify the applicant by letter dated within 60 days of receipt of the application that the application is incomplete, the application shall be deemed complete. A completeness determination shall not prevent the Director from requesting additional information at a later date if such information is necessary to properly evaluate the source, its air pollution abatement equipment, or the facility. If the applicant has not provided the requested additional information by the date specified in the letter requesting additional information, the Director shall cease processing the application until additional information is provided. The applicant may request a time extension for submittal of the requested additional information. A completeness determination shall not be necessary for minor modifications pursuant to 15A NCAC 02Q .0515.

- (3) ~~The Division shall determine within 60 days of receipt of a complete application if any additional information is needed to conduct the technical review of the application. A technical completeness determination shall not prevent the Director from requesting additional information at a later date when such information is necessary to properly evaluate the source, its air pollution abatement equipment or the facility. The Division shall complete the technical review of significant modifications received pursuant to 15A NCAC~~

- ~~02Q .0516 in accordance with 40 CFR 70.7(e)(4)(ii), within 270 days of receipt of a complete application or 10 days after receipt of requested additional information, whichever is later.~~
- (4) The Division shall provide for public participation in accordance with 15A NCAC 02Q .0521. The Director shall send the public notice for public comment on the draft permit to affected states, to EPA, and to persons on the mailing list within 270 days after receipt of a complete application or 10 days after receipt of requested additional information, whichever is later. If a public hearing is required and approved by the Director for a draft permit, it shall be held within 45 days of the Director's decision to hold a public hearing.
- (5) If a public hearing is requested and approved by the Director for a draft permit, it shall be held within 45 days of the Director's decision to hold a public hearing.
- (6)(5) The Director shall complete the review of the record and send the proposed permit to EPA: EPA and affected states in accordance with 15A NCAC 02Q .0522.
- (a) ~~within 30 days after the close of the public comment period if there is no public hearing on the draft permit; or~~
- (b) ~~within 45 days after the close of the public hearing if there is a public hearing on the draft permit.~~
- (7) ~~If EPA does not object to the proposed permit, the Director shall issue the permit within five days after:~~
- (a) ~~expiration of EPA 45 day review period; or~~
- (b) ~~receipt of notice from EPA that it will not object to issuance, whichever comes first.~~
- (8) ~~If EPA objects to the proposed permit, the Director shall respond to EPA's objection within 90 days after receipt of EPA's objections~~
- (6) Final permit action shall be taken in accordance with 15A NCAC 02Q .0518.

- is equivalent to the MACT standard that EPA would have promulgated pursuant to Section 112(d) or (h) of the federal Clean Air Act.
- (2) "Source category schedule for standards" means the schedule for promulgating MACT standards issued pursuant to Section 112(e) of the federal Clean Air Act.
- (3) "Title V permit" means a permit issued pursuant to this Section.
- (c) Except as provided for in Paragraph (d) or (e) of this Rule, the owner or operator of a source required to apply MACT pursuant to 15A NCAC 02D .1109 shall submit an application for a permit or for a significant permit revision, as applicable pursuant to this Section.
- (d) Approval process for new and existing affected sources that are subject to Section 112(j) as of the Section 112(j) deadline. The requirements of Subparagraphs (d)(1) and (2) of this Paragraph shall apply to major sources that include, as of the Section 112(j) deadline, one or more sources in a category or subcategory for which the EPA has failed to promulgate an emission standard pursuant to 40 CFR Part 63 on or before an applicable Section 112(j) deadline. Existing source MACT requirements (including relevant compliance deadlines), as specified in a Title V permit issued to the facility pursuant to the requirements of 40 CFR Part 63, Subpart B, shall apply to such sources.
- (1) The owner or operator shall submit an application for a permit or for a revision to an existing Title V permit issued or a pending Title V permit that meets the requirements of Subparagraph (m)(1) of this Rule by the Section 112(j) deadline if the owner or operator can reasonably determine that one or more sources at the facility belong in a category or subcategory subject to Section 112(j) of the federal Clean Air Act.
- (2) The owner or operator of a source that does not submit an application pursuant to Subparagraph ~~(d)(1)(A)~~(d)(1) of this Rule and is notified in writing by the Division that one or more sources at the facility belong to a category or subcategory subject to Section 112(j) of the federal Clean Air Act shall submit an application for a Title V permit or for a revision to an existing Title V permit that meets the requirements of Paragraph (m)(1) of this Rule within 30 days after being notified in writing by the Division. The Division shall not be required to make this notification.
- (3) The requirements in Parts (A) and (B) of this Subparagraph shall apply if the owner or operator has obtained a Title V permit that incorporates a Section 112(g) case-by-case MACT determination by the Division pursuant to 15A NCAC 02D .1112, but has not submitted an application for a Title V permit revision that addresses the emission limitation requirements of Section 112(j) of the federal Clean Air Act.
- (A) If the owner or operator has a Title V permit that incorporates a Section

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

15A NCAC 02Q .0526 112(J) CASE-BY-CASE MACT PROCEDURES

- (a) An owner or operator of a source required to apply maximum achievable control technology (MACT) pursuant to 15A NCAC 02D .1109 shall follow the permit procedures set out in this Rule.
- (b) For the purposes of this Rule, the definitions in 15A NCAC 02D .1109, 40 CFR 63.51, 40 CFR 63.2, and the following definitions apply:
- (1) "Equivalent emission limitation" means an emission limitation, established pursuant to Section 112(j) of the federal Clean Air Act, that

112(g) case-by-case MACT determination pursuant to 15A NCAC 02D .1112, the owner or operator shall submit an application that meets the requirements of Paragraph (m)(1) of this Rule for a Title V permit revision within 30 days of the Section 112(j) deadline or within 30 days of being notified in writing by the Division that one or more sources at the major facility belong in such category or subcategory. The Division shall use the procedures in 40 CFR 63.52(e) to determine whether the emission limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations that Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question. If the Division determines the previously adopted 112(g) emission limitations are substantially as effective, then the Division shall retain the existing limitations in the permit to effectuate Section 112(j) of the federal Clean Air Act. If the Division does not retain the previously adopted 112(g) emission limitations, the MACT requirements of this Rule shall be satisfied upon issuance of a revised Title V permit incorporating any additional Section 112(j) requirements.

- (B) If the owner or operator that has submitted a Title V permit application that incorporates a Section 112(g) case-by-case MACT determination by the Division pursuant to 15A NCAC 02D .1112, but has not received the permit incorporating the Section 112(g) requirements, the owner or operator shall continue to apply for a Title V permit that addresses the requirements of Section 112(g) of the federal Clean Air Act. The owner or operator shall submit a permit application meeting the requirements of Paragraph (m)(1) of this Rule within 30 days of issuance of that Title V permit. The Division shall use the procedures in 40 CFR 63.52(e) to determine whether the emissions limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations that the Division would otherwise

adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question. If the Division determines that the previously adopted 112(g) emission limitations are substantially as effective, then the Director shall retain the existing emission limitations to effectuate Section 112(j) of the federal Clean Air Act and revise the permit accordingly. If the Division does not retain the previously adopted 112(g) emission limitations, the MACT requirements of this Rule shall be satisfied upon issuance of a revised Title V permit incorporating any additional Section 112(j) requirements.

- (e) Sources that become subject to Section 112(j) of the federal Clean Air Act after the Section 112(j) deadline and that do not have a Title V permit addressing Section 112(j) requirements. The requirements of this Paragraph shall apply to sources that do not meet the criteria in Paragraph (d) of this Rule on the Section 112(j) deadline and are not subject to Section 112(j) of the federal Clean Air Act on that date, but subsequent to the Section 112(j) deadline the source becomes subject to the requirements of this Rule and the source does not have a Title V permit that addresses the requirements of Section 112(j) of the federal Clean Air Act.

- (1) If one or more sources in a category or subcategory subject to the requirements of this Rule are installed at a major source or result in the source becoming a major source due to the installation, and the installation does not invoke Section 112(g) requirements in 15A NCAC 02D .1112, the owner or operator shall submit an application meeting the requirements of Paragraph (m)(1) of this Rule within 30 days of startup of the source. Existing source MACT requirements (including relevant compliance deadlines), as specified in a Title V permit issued pursuant to the requirements of this Rule, shall apply to such sources. The Division shall use the procedures in 40 CFR 63.52(e) to determine whether the emissions limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations that the Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question. If the Division determines the previously adopted 112(g) emission limitations are substantially as effective, then the Division shall retain the existing emission limitations to effectuate Section 112(j) of the federal Clean Air Act and revise the permit accordingly. If the Division does not retain the previously adopted 112(g) emission limitations, the MACT requirements of this Rule shall be satisfied upon issuance of

- a revised Title V permit incorporating any additional Section 112(j) requirements.
- (2) If one or more sources in a category or subcategory subject to 112(j) requirements are installed at a major source or result in the source becoming a major source due to the installation, and the installation requires 112(g) emission limitations to be established and permitted pursuant to 15A NCAC 02Q .0528 and the owner or operator has not submitted an application for a Title V permit revision that addresses the emission limitation requirements of Section 112(j) of the federal Clean Air Act, the owner or operator shall apply for and obtain a Title V permit that addresses the emission limitation requirements of Section 112(g) of the federal Clean Air Act. Within 30 days of issuance of that Title V permit, the owner or operator shall submit an application that meets the requirements of Paragraph (m)(1) of this Rule for a revision to the existing Title V permit. The Division shall determine whether the emissions limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations that the Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question. If the Division determines the previously adopted 112(g) emission limitations are substantially as effective, then the Division shall retain the existing emission limitations to effectuate Section 112(j) of the federal Clean Air Act and revise the permit accordingly. If the Division does not retain the previously adopted 112(g) emission limitations, the permit shall be revised to incorporate any additional Section 112(j) requirements.
- (3) The owner or operator of an area source that, due to a relaxation in any federally enforceable emission limitation (such as a restriction on hours of operation) increases its potential to emit hazardous air pollutants such that the source becomes a major source that is subject to this Rule, shall submit an application meeting the requirements of Paragraph (m)(1) of this Rule within 30 days after the date that such source becomes a major source. The Director shall use the procedures in Paragraph (n) of this Rule in reviewing the application. The existing source MACT requirements (including relevant compliance deadlines) shall apply to such sources.
- (4) If EPA establishes a lesser quantity emission rate pursuant to Section 112(a)(1) of the Federal Clean Air Act that results in an area source becoming a major source that is subject to this Rule, then the owner or operator of such a major source shall submit an application that meets the requirements of Paragraph (m)(1) of this Rule on or before the date six months after the date that such source becomes a major source. Existing source MACT requirements (including relevant compliance deadlines), as specified in a Title V permit issued pursuant to the requirements of this Rule, shall apply to such sources.
- (f) Sources that have a Title V permit addressing Section 112(j) requirements. The requirements of this Paragraph apply to major sources that include one or more sources in a category or subcategory for which EPA fails to promulgate an emission standard on or before the Section 112(j) deadline, the owner or operator has a permit meeting the Section 112(j) requirements, and if changes occur at the major source to equipment, activities, or both subsequent to the Section 112(j) deadline.
- (1) If the Title V permit already provides the requirements that address the events described in this Paragraph subsequent to the Section 112(j) deadline, then the source shall comply with the applicable new source MACT or existing source MACT requirements as specified in the permit, and the Section 112(j) requirements shall be deemed satisfied.
- (2) If the Title V permit does not contain the requirements that address the events described in this Paragraph subsequent to the Section 112(j) deadline, then the owner operator shall submit an application for a revision of the existing Title V permit that meets the requirements of Paragraph (m)(1) of this Rule within 30 days of beginning construction. Existing source MACT requirements (including relevant compliance deadlines), as specified in a Title V permit issued pursuant to the requirements of this Rule, shall apply to such sources.
- (g) Requests for applicability determination. An owner or operator who is unsure of whether one or more sources at a major source belong in a category or subcategory for which EPA has failed to promulgate an emission standard pursuant to 40 CFR Part 63 may, on or before an applicable Section 112(j) deadline, request an applicability determination from the Division by submitting an application that meets the requirements of Paragraph (m)(1) of this Rule by the applicable deadlines specified in Paragraphs (d), (e), or (f) of this Rule.
- (h) An owner or operator who submits a Part 1 MACT application that meets the requirements of Paragraph (m)(1) of this Rule shall submit a Part 2 MACT application that meets the requirements of Paragraph (m)(2) of this Rule no later than the applicable date specified in 40 CFR 63 Subpart B Table 1. The submission date specified in 40 CFR 63 Subpart B Table 1 for Miscellaneous Organic Chemical Manufacturing shall apply to sources in each of the source categories listed in 40 CFR 63 Subpart B Table 2. If an owner or operator is required by 15A NCAC 02D .1109 and this Rule to submit an application meeting the requirements of Paragraph (m)(1) of this Rule by a date that is after the date for a Part 2 MACT application for sources in the category or subcategory in question established by 40 CFR 63 Subpart B

Table 1, the owner or operator shall submit a Part 2 MACT application meeting the requirements of Paragraph (m)(2) of this Rule within 60 additional days after the applicable deadline for submission of the Part 1 MACT application. The Part 2 applications shall be reviewed by the Division according to the procedures established in 40 CFR 63.55.

- (1) Any owner or operator who submitted a request for an applicability determination on or before May 15, 2002, that remained pending as of May 30, 2003, and who still wishes to obtain such a determination shall resubmit that request by the date that is 60 days after the Administrator publishes in the Federal Register a proposed standard pursuant to Section 112(d) or 112(h) of the Clean Air Act for the category or subcategory in question. Such a resubmitted request shall be supplemented to discuss the relation between the sources in question and the applicability provision in the proposed standard for the category or subcategory in question, and to explain why there may still be uncertainties that require a determination of applicability. The Director shall take action on each supplemented and resubmitted request within an additional 60 days after the applicable deadline for the resubmitted request. If more than three years remain on the current Title V permit, the owner or operator shall submit an application for a Title V permit revision to make any conforming changes in the permit required to adopt the existing emission limitations as the Section 112(j) MACT emission limitations. If less than three years remain on the current Title V permit, any required conforming changes shall be made when the permit is renewed. If the applicability determination is positive, the owner or operator shall submit a Part 2 MACT application meeting the requirements of Paragraph (m)(2) of this Rule by the date specified in 40 CFR 63 Subpart B Table 1. If the applicability determination is negative, no further action by the owner or operator shall be necessary.
- (2) An owner or operator who has submitted an application that meets the requirements of Paragraph (m)(1) of this Rule may request a determination of whether emission limitations adopted pursuant to a prior case-by-case MACT determination pursuant to Section 112(g) that apply to one or more sources in a relevant category or subcategory are substantially as effective as the emission limitations that the Division would otherwise adopt pursuant to this Rule for the source in question. Such a request must be submitted by the date for the category or subcategory in question specified in 40 CFR 63 Subpart B Table 1. Each request for a determination pursuant to this Paragraph shall

be construed as a complete application for an equivalent emission limitation pursuant to this Rule. If the Director determines that the emission limitations in the prior case-by-case MACT determination are substantially as effective as the emission limitations the Director would otherwise adopt pursuant to this Rule, then the Director shall adopt the existing emission limitations in the permit as the emission limitations to effectuate Section 112(j) for the source in question. If the Director determines that the emission limitations in the prior case-by-case MACT determination pursuant to Section 112(g) are not substantially as effective as the emission limitations that the Director would otherwise adopt for the source in question pursuant to this Rule, the Director shall make a new MACT determination and adopt a Title V permit incorporating an appropriate equivalent emission limitation pursuant to this Rule. The Division shall use the procedures in 40 CFR 63.52(e) to determine whether the emission limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations which Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question.

- (i) If the Director disapproves a permit application submitted pursuant to this Rule or determines that the application is incomplete, the owner or operator shall revise and resubmit the application to meet the Director's objections not later than six months after first receiving notification that the application has been disapproved or is incomplete.
- (j) If the owner or operator of a source subject to this Rule has submitted a timely and complete application for a permit, significant permit revision, or administrative amendment required by this Rule, any failure to have this permit shall not be a violation of the requirements of this Rule unless the delay in final action is due to the failure of the applicant to submit, in a timely manner, information required or requested to process the application.
- (k) The permit shall contain the items specified in 40 CFR 63.52 including:
 - (1) specification of the affected source and the new affected source;
 - (2) emission limitations or emission standards equivalent to existing source MACT and emission limitations equivalent to new source MACT for control of emissions of hazardous air pollutants for that category or subcategory determined according to 40 CFR 63.55(a) on a case-by-case basis;
 - (3) emission limits, production limits, operational limits, or other terms and conditions necessary to ensure practicable enforceability of the MACT emission limitation;

- (4) notification, operation and maintenance, performance testing, monitoring, reporting, and recordkeeping requirements; and
- (5) compliance dates by which the owner or operator of an existing source is required to be in compliance with the MACT emission limitation and all other applicable terms and conditions of the permit, not to exceed three years from the date of issuance of the permit. The owner or operator of a new affected source shall comply with a new source MACT level of control immediately upon startup.

(l) Early reductions made pursuant to Section 112(i)(5)(A) of the federal Clean Air Act shall be achieved not later than the date on which the relevant standard should have been promulgated according to the source category schedule for standards.

(m) A permit application for a MACT determination shall consist of two parts.

- (1) The Part 1 application shall contain the information required by 40 CFR 63.53(a) and shall be submitted by the applicable deadline specified in Paragraph (d), (e), or (f) of this Rule.
- (2) The Part 2 application shall contain the information required by 40 CFR 63.53(b) and shall be submitted no later than the deadline in 40 CFR 63 Subpart B Table 1.

(n) Permit application review. The Director shall follow 40 CFR 63.55(a) in reviewing permit applications for MACT. The resulting MACT determination shall be incorporated into the facility's Title V permit according to the procedures established in this Section. Following submittal of a Part 1 or Part 2 MACT application, the Director may request, pursuant to 15A NCAC 02Q .0507(c) and .0525(a), additional information from the owner or operator; and the owner or operator shall submit the requested information within 30 days. A Part 2 MACT application shall be deemed complete if it is sufficient to begin processing the application for a Title V permit addressing Section 112(j) requirements. If the Division disapproves a permit application or determines that the application is incomplete, the owner or operator shall revise and resubmit the application to meet the objections of the Division within the time period specified by the Division, which shall not exceed six months from the date that the owner or operator is first notified that the application has been disapproved or is incomplete. After receipt of a complete Part 2 MACT application that is subsequently approved by the Division, the Director shall issue a Title V permit that meets Section 112(j) requirements, following the schedule in 15A NCAC 02Q .0525.

(o) The following requirements shall apply to case-by-case determinations of equivalent emission limitations when a MACT standard is subsequently promulgated:

- (1) If EPA promulgates an emission standard that is applicable to one or more sources within a major facility before the date a proposed permit pursuant to this Rule is approved, the permit shall contain the promulgated standard rather than the emission limitation determined pursuant to 15A NCAC 02D .1109, and the owner or operator of the source shall comply

with the promulgated standard by the compliance date in the promulgated standard.

- (2) If EPA promulgates an emission standard that is applicable to a source after the date that a permit is issued pursuant to this Rule, the Director shall revise the permit on its next renewal to reflect the promulgated standard. Subparagraph (a)(1) of 15A NCAC 02Q .0517 shall not apply to requirements established pursuant to this Rule. The Director shall establish a compliance date in the revised permit that assures that the owner or operator complies with the promulgated standard within a reasonable time, but no longer than eight years after such standard is promulgated or eight years after the date by which the owner or operator was first required to comply with the emission limitation established by permit, whichever is earlier. The period for compliance for existing sources shall not be shorter than that provided for existing sources in the promulgated standard.

- (3) Notwithstanding the requirements of Subparagraphs (1) or (2) of this Paragraph, if EPA promulgates an emission standard that is applicable to a source after the date a proposed permit is approved, the Director shall not be required to change the emission limitation in the permit to reflect the promulgated standard if the level of control required by the emission limitation in the permit is as effective as that required by the promulgated standard. If EPA promulgates an emission standard that is applicable to an affected source after the date a permit application is approved and the level of control required by the promulgated standard is less stringent than the level of control required by an emission limitation in the prior MACT determination, the Division shall not be required to incorporate a less stringent emission limitation of the promulgated standards after considering the effects on air quality. The Division may consider any more stringent provision of the MACT determination to be applicable legal requirements, as necessary to protect air quality, when issuing or revising such a Title V permit.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .0304-.0306, .0308-.0310; 07J .1201-.1206 and repeal the rules cited as 15A NCAC 07H .0104; and 07J .1301-.1303.

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

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

Proposed Effective Date: July 1, 2022

Public Hearing:

Date: February 10, 2022

Time: 1:30 p.m.

Location: Beaufort Hotel, 2440 Lennoxville Road, Beaufort, NC 28516

Reason for Proposed Action:

15A NCAC 07J .1200 creates procedures requesting and approving Beach Management Plans for oceanfront communities constructing large-scale beach fill projects in order to provide regulatory relief from oceanfront development setback provisions. Amendments to 15A NCAC 07H .0306 are associated with the Beach Management Plan procedures. Amendments to 15A NCAC 07H .0104, .0304, .0305, .0308-.0310 address inconsistencies and outdated provisions within the rules and provide clarifying language.

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

Comment period ends: March 21, 2022

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

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

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

CHAPTER 07 - COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0100 - INTRODUCTION AND GENERAL COMMENTS

15A NCAC 07H .0104 APPLICATION OF EROSION RATE SETBACK FACTORS

Authority G.S. 113A-107; 113A-113; 113A-124.

SECTION .0300 - OCEAN HAZARD AREAS

15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS

The ocean hazard AECs contain all of the following areas:

- (1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is the distance landward from the first line of stable and natural vegetation line as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long-term annual erosion rate times 90; provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 180 feet landward from the first line of stable and natural vegetation. vegetation line. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "North Carolina 2019 Oceanfront Setback Factors & Long-Term Average Annual Erosion Rate Update Study" and approved by the Coastal Resources Commission on February 28, 2019 (except as such rates may be varied in individual contested cases or in declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at http://www.nccoastalmanagement.net.
(2) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding, and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area extends landward from the mean low water line a distance encompassing that area within which the inlet migrates, based

on statistical analysis, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet, and external influences such as jetties, terminal groins, and channelization. The areas on the maps identified as Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference and are hereby designated as Inlet Hazard Areas, except for:

- (a) the location of a former inlet which has been closed for at least 15 years;
- (b) inlets that due to shoreline migration, no longer include the current location of the inlet; and
- (c) inlets providing access to a State Port via a channel maintained by the United States Army Corps of Engineers.

In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in no case shall the width of the inlet hazard area be less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environmental Quality, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website referenced in Item (1) of this Rule.

(3) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable and natural vegetation is present may be designated as Unvegetated Beach Areas on either a permanent or temporary basis as follows:

- (a) An area appropriate for permanent designation as an Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change due to wind and wave action. The areas in this category shall be designated following studies by the Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources Commission and available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at the website referenced in Item (1) of this Rule.
- (b) An area that is unvegetated as a result of a hurricane or other major storm event may be designated by the Coastal Resources Commission as an Unvegetated Beach Area for a specific period of time, or until the vegetation has re-established in accordance with 15A NCAC 07H .0305(a)(5). At the

expiration of the time specified or the re-establishment of the vegetation, the area shall return to its pre-storm designation.

- (c) The Commission designates as temporary unvegetated beach areas those oceanfront areas of:
 - (i) Surf City and North Topsail Beach in which the vegetation line as shown on the United States National Oceanic and Atmospheric Administration imagery dated September 17, 2018 was destroyed as a result of Hurricane Florence in September 2018; and
 - (ii) Oak Island in which the vegetation line as shown on the United States National Oceanic and Atmospheric Administration and Geological Survey imagery dated August 4, 2020 was destroyed as a result of Hurricane Isaias in August 2020.

The designation AEC boundaries can be found on the Division's website at https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unvegetated_beach_aec.pdf and https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unveg_beachAEC_Oak_Island.zip. This designation shall continue until such time as the stable and natural vegetation has reestablished, or until the area is permanently designated as an unvegetated beach area pursuant to Sub-Item (3)(a) of this Rule.

- (4) State Ports Inlet Management Area. These are areas adjacent to and within Beaufort Inlet and the mouth of the Cape Fear River, providing access to a State Port via a channel maintained by the United States Army Corps of Engineers. These areas are unique due to the influence of federally-maintained channels, and the critical nature of maintaining shipping access to North Carolina's State Ports. These areas may require specific management strategies not warranted at other inlets to address erosion and shoreline stabilization. State Ports Inlet Management Areas shall extend from the mean low water line landward as designated on maps approved by the Coastal Resources Commission and available without cost from the Division of Coastal Management, and on the internet at the website at

https://files.nc.gov/ncdeq/Coastal%20Management/GIS/state_port_aec.pdf

Authority G.S. 113A-107; 113A-107.1; 113A-113; 113A-124.

15A NCAC 07H .0305 GENERAL IDENTIFICATION DEFINITION AND DESCRIPTION OF LANDFORMS

~~(a)~~ This Paragraph Rule describes natural and man-made features that are found within the ocean hazard area of environmental concern.

- (1) Ocean Beaches. Ocean beaches are lands consisting of unconsolidated soil materials that extend from the mean low water line landward to a point where either:
 - ~~(A)~~(a) the growth of vegetation occurs; or
 - ~~(B)~~(b) a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward.
- (2) Nearshore. The nearshore is the portion of the beach seaward of mean low water that is characterized by dynamic changes both in space and time as a result of storms.
- (3) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. Primary dunes extend landward to the lowest elevation in the depression behind that same mound of sand commonly referred to as the "dune trough".
- (4) Frontal Dunes. The frontal dune is the first mound of sand located landward of ocean beaches that has stable and natural vegetation present.
- (5) Vegetation Line. The vegetation line refers to the first line of stable and natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line based on visual observations of plant composition and density. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes rather than planted individual rooted sets. Planted vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited,

providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring. In areas where there is no stable and natural vegetation present, this line may be established by interpolation between the nearest adjacent stable natural vegetation by on-ground observations or by aerial photographic interpretation.

- (6) ~~Static~~ Pre-project Vegetation Line. In areas within the boundaries of a large-scale beach fill project, the vegetation line that existed within one year prior to the onset of project construction shall be defined as the ~~static~~ "pre-project vegetation line". The "onset of project construction" shall be defined as the date sediment placement begins, with the exception of projects completed prior to the original effective date of this Rule, in which case the award of the contract date will be considered the onset of construction. A ~~static~~ pre-project vegetation line shall be established in coordination with the Division of Coastal Management using on-ground observation and survey or aerial imagery for all areas of oceanfront that undergo a large-scale beach fill project. Once a ~~static~~ pre-project vegetation line is established, and after the onset of project construction, this line shall be used as the reference point for measuring oceanfront setbacks in all locations where it is landward of the vegetation line. In all locations where the vegetation line as defined in this Rule is landward of the ~~static~~ pre-project vegetation line, the vegetation line shall be used as the reference point for measuring oceanfront setbacks. A ~~static~~ pre-project vegetation line shall not be established where a ~~static~~ pre-project vegetation line is already in place, including those established by the Division of Coastal Management prior to the effective date of this Rule. A record of all ~~static~~ pre-project vegetation lines, including those established by the Division of Coastal Management prior to the effective date of this Rule, shall be maintained by the Division of Coastal Management for determining development standards as set forth in Rule .0306 of this Section. Because the impact of Hurricane Floyd in September 1999 caused significant portions of the vegetation line in the Town of Oak Island and the Town of Ocean Isle Beach to be relocated landward of its pre-storm position, the ~~static~~ pre-project line for areas landward of the beach fill construction in the Town of Oak Island and the Town of Ocean Isle Beach, the onset of which occurred in 2000, shall be defined by the general trend of the vegetation line established by the Division of Coastal

Management from June 1998 aerial orthophotography.

- (7) Beach Fill. Beach fill refers to the placement of sediment along the oceanfront shoreline. Sediment used solely to establish or strengthen dunes shall not be considered a beach fill project under this Rule. A "large-scale beach fill project" shall be defined as any volume of sediment greater than 300,000 cubic yards or any storm protection project constructed by the U.S. Army Corps of Engineers.
- (8) Erosion Escarpment. The normal vertical drop in the beach profile caused from high tide or storm tide erosion.
- (9) Measurement Line. The line from which the ocean hazard setback as described in Rule .0306(a) of this Section is measured in the unvegetated beach area of environmental concern as described in Rule .0304(3) of this Section. In areas designated pursuant to Rule .0304(3)(b) of this Section, the Division of Coastal Management shall establish a measurement line by:
 - (A)(a) determining the average distance the pre-storm vegetation line receded at the closest vegetated site adjacent to the area designated by the Commission as the unvegetated beach AEC; and
 - (B)(b) mapping a line equal to the average recession determination in Part (A) of this Subparagraph, Sub-Item (a) of this Item, measured in a landward direction from the first line of stable and natural vegetation line on the most recent pre-storm aerial photography in the area designated as an unvegetated beach AEC.

~~(10) Development Line. The line established in accordance with 15A NCAC 07J .1300 by local governments representing the seaward most allowable location of oceanfront development. In areas that have development lines approved by the CRC, the vegetation line or measurement line shall be used as the reference point for measuring oceanfront setbacks instead of the static vegetation line, subject to the provisions of Rule .0306(a)(2) of this Section.~~

~~(b) For the purpose of public and administrative notice and convenience, each designated minor development permit letting agency with ocean hazard areas may designate, subject to CRC approval in accordance with the local implementation and enforcement plan as defined in 15A NCAC 07I .0500, an identifiable land area within which the ocean hazard areas occur. This designated notice area shall include all of the land areas defined in Rule .0304 of this Section. Natural or man made landmarks may be considered in delineating this area.~~

Authority G.S. 113A-107; 113A-113(b)(6); 113A-124.

15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission's rules shall be located according to whichever of the following is applicable:

- (1) The ocean hazard setback for development shall be measured in a landward direction from the vegetation line, the static pre-project vegetation line, or the measurement line, whichever is applicable.
- ~~(2) In areas with a development line, the ocean hazard setback shall be set in accordance with Subparagraphs (a)(3) through (9) of this Rule. With the exception of those types of development defined in 15A NCAC 07J .1301(d), in no case shall new development be sited seaward of the development line. In areas with a Static Line Exception approved in accordance with 15A NCAC 07J .1200 and a Development Line approved in accordance with 15A NCAC 07J .1300, the petitioner shall notify the Division of Coastal Management which one of the two approaches will be utilized and applied to the entire large scale project area as defined in 15A NCAC 07H .0305(a)(7).~~
- ~~(3) In no case shall a development line be created or established on State owned lands or oceanward of the mean high water line or perpetual property easement line, whichever is more restrictive.~~
- ~~(4)(2) The ocean hazard setback shall be determined by both the size of development and the shoreline long term erosion rate as defined in Rule .0304 of this Section. "Development size" is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:

 - (A) The total square footage of heated or air-conditioned living space;
 - (B) The total square footage of parking elevated above ground level; and
 - (C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing.
 Decks, roof-covered porches, and walkways shall not be included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.~~
- ~~(5)(3) With the exception of those types of development defined in 15A NCAC 07H .0309, 15A NCAC 07H .0309(a), no development,~~

including any portion of a building or structure, shall extend oceanward of the ocean hazard setback. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback shall be established based on the following criteria:

- (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
- (B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
- (C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate, whichever is greater;
- (D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;
- (E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;
- (F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;
- (G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;
- (H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
- (I) Infrastructure that is linear in nature, such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water,

telephone, cable television, data, storm water, and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;

- (J) Parking lots greater than or equal to 5,000 square feet require a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
- (K) Notwithstanding any other setback requirement of this Subparagraph, construction of a new building or other structure greater than or equal to 5,000 square feet in a community with a ~~an~~ unexpired static line exception or Beach Management Plan approved by the Commission in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either ~~the static vegetation line~~, the vegetation line, line or measurement line, whichever is farthest landward; and
- (L) Notwithstanding any other setback requirement of this Subparagraph, ~~replacement of single family or duplex residential structures with a total floor area greater than 5,000 square feet, and commercial and multi family residential structures a structure with a total floor area no greater than 10,000 square feet, feet~~ shall be allowed provided that the structure meets the following criteria:
 - (i) the structure is in a community with an unexpired static line exception, Beach Management Plan approved by the Commission, or was originally constructed prior to August 11, 2009;
 - (ii) the structure as replaced does not exceed the original footprint or square footage;
 - (iii) it is not possible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under Subparagraph (a)(5) of this Rule;
 - (iv) the structure as replaced meets the minimum setback required under Part (a)(5)(A) of this Rule; a minimum setback of 60 feet or 30 times

- the shoreline erosion rate, whichever is greater; and
- (v) the structure is rebuilt as far landward on the lot as feasible.
- (6)(4) If a primary dune exists in the ~~AEC~~ AEC, on or landward of the lot where the development is proposed, the development shall be landward of the applicable ocean hazard setback and the crest of the primary dune, the ocean hazard setback, or development line, whichever is farthest from vegetation line, static vegetation line, or measurement line, whichever is applicable. dune. For existing lots, ~~however,~~ lots where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback, ~~but~~ and shall not be located on or oceanward of a frontal ~~dune or the development line. The words dune,~~ dune. For the purposes of this Rule, "existing lots" in this Rule shall mean a lot or tract of land that, as of June 1, 1979, is specifically described in a recorded plat and cannot be enlarged by combining the lot or tract of land with a contiguous lot or tract of land under the same ownership.
- (7)(5) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot where the development is proposed, the development shall be set landward of the frontal ~~dune, dune or~~ dune or ocean hazard setback, ~~or development line,~~ whichever is farthest from the vegetation line, ~~static pre-project~~ static pre-project vegetation line, or measurement line, whichever is applicable.
- (8) ~~If neither a primary nor frontal dune exists in the AEC on or landward of the lot where development is proposed, the structure shall be landward of the ocean hazard setback or development line, whichever is more restrictive.~~
- (9)(6) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be ~~cosmetically, but shall not be structurally,~~ cosmetically but not be structurally attached to an existing structure that does not conform with current setback requirements.
- (10)(7) Established common law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or ~~restricted, restricted, nor shall~~ such development increase the risk of damage ~~to public trust areas.~~ Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.
- (11)(8) Development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the ~~static pre-project~~ static pre-project vegetation line as defined in this Section, unless a ~~development line~~ an unexpired static line exception or Beach Management Plan approved by the Commission has been approved for the local jurisdiction by the Coastal Resources Commission in accordance with ~~15A NCAC 07J .1300. 15A NCAC 07J .1200.~~
- (12)(9) ~~In order to allow for development landward of the large scale beach fill project that cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Subparagraphs (a)(1) and (a)(5) of this Rule, a local government, group of local governments involved in a regional beach fill project, or qualified "owners' association" as defined in G.S. 47F-1-103(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association and has jurisdiction over at least one mile of ocean shoreline, may petition the Coastal Resources Commission for a "static line exception" in accordance with 15A NCAC 07J .1200. The static line exception shall apply to development of property that lies both within the jurisdictional boundary of the petitioner and the boundaries of the large scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to use the setback provisions defined in Part (a)(5)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner, and the boundaries of the large scale beach fill project. approval of a "Beach Management Plan" in accordance with 15A NCAC 07J .1200. If the request for a Beach Management Plan is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static pre-project vegetation line under the following conditions:~~
- (A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and ~~(a)(5)(a)(3)~~ of this Rule;
- (B) Development setbacks shall be calculated from the shoreline erosion rate in place at the time of permit issuance;
- (C) No portion of a building or structure, including roof overhangs and elevated

portions that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent habitable building or structure. The alignment shall be measured from the most oceanward point of the adjacent building or structure's roof line, including roofed decks, if applicable. An "adjacent" property is one that shares a boundary line with the site of the proposed development. When no adjacent buildings or structures exist, or the configuration of a lot, street, or shoreline precludes the placement of a building or structure in line with the landward-most adjacent building or structure, an average line of construction shall be determined by the Division of Coastal Management on a case by case basis in order to determine an ocean hazard setback that is landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater; Director of the Division of Coastal Management based on an approximation of the average seaward-most positions of the rooflines of adjacent structures along the same shoreline, extending 500 feet in either direction. If no structures exist within this distance, the proposed structure must meet the applicable setback from the Vegetation Line but will not be held to the landward-most adjacent structure or an average line of structures.

- (D) With the exception of swimming pools, the ~~development~~ exceptions defined in Rule .0309(a) of this Section shall be allowed oceanward of the static vegetation line; and pre-project vegetation line.
- (E) ~~Development shall not be eligible for the exception defined in Rule .0309(b) of this Section.~~

~~(b) No development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon that would adversely affect the integrity of the dune. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these other dunes shall be allowed only to the extent permitted by 15A NCAC 07H .0308(b).~~

~~(c)(b) Development shall not cause irreversible damage to historic architectural or archaeological resources as documented by the local historic commission, the North Carolina Department~~

~~of Natural and Cultural Resources, or the National Historical Registry.~~

~~(d) Development shall comply with minimum lot size and setback requirements established by local regulations.~~

~~(e)(c) Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks existing as of June 1, 1979.~~

~~(f) Development shall comply with the general management objective for ocean hazard areas set forth in 15A NCAC 07H .0303.~~

~~(g) Development shall not interfere with legal access to, or use of, public resources, nor shall such development increase the risk of damage to public trust areas.~~

~~(h)(d) Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense and may include actions that:~~

- (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
- (2) restore the affected environment; or
- (3) compensate for the adverse impacts by replacing or providing substitute resources.

~~(i)(e) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written acknowledgment from the applicant to the Division of Coastal Management that the applicant is aware of the risks associated with development in this hazardous area and the limited suitability of this area for permanent structures. The acknowledgement shall state that the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.~~

~~(j)(f) All The relocation or elevation of structures shall require permit approval. Structures relocated with public funds shall comply with the applicable setback line and other applicable AEC rules. Structures, including septic tanks and other essential accessories, relocated entirely with non public funds shall be relocated the maximum feasible distance landward of the present location. Septic tanks shall not be located oceanward of the primary structure. All relocation of structures shall meet all other applicable local and state rules.~~

- (1) Structures relocated landward with public funds shall comply with the applicable ocean hazard setbacks and other applicable AEC rules.
- (2) Structures relocated landward entirely with non-public funds that do not meet current applicable ocean hazard setbacks may be relocated the maximum feasible distance landward of its present location. Septic tanks shall not be relocated oceanward of the primary structure.
- (3) Existing structures shall not be elevated if any portion of the structure is located seaward of the vegetation line.

~~(k)(g) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). Any such structure shall be relocated or dismantled within two eight years of the time when it becomes imminently threatened, and in any case upon its collapse~~

or subsidence. However, if natural shoreline recovery or beach fill takes place within ~~two~~ eight years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or ~~dismantled at that time.~~ dismantled. This permit condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed pursuant to 15A NCAC 07H .0308(a)(2).

Authority G.S. 113A-107; 113A-113(b)(6); 113A-124.

15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

(a) Ocean Shoreline Erosion Control Activities:

- (1) Use Standards Applicable to all Erosion Control Activities:
 - (A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.
 - (B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, unless specifically authorized under the Coastal Area Management Act, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters.
 - (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
 - (D) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule .0306(h) of this Section.
 - (E) Project construction shall be timed to minimize adverse effects on biological activity.
 - (F) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
 - (G) Permanent erosion control structures that would otherwise be prohibited by these standards may be permitted on finding by the Division that:
 - (i) the erosion control structure is necessary to protect a

- bridge that provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in Part (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
 - (iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.
- (H) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
- (i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in Part (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;
 - (iii) the structure is limited in extent and scope to that necessary to protect the site; and
 - (iv) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of significant adverse impacts on adjoining properties and on public access to and use of the beach.
- (I) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:

- (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits;
 - (ii) dredging alone is not practicable to maintain safe access to the affected channel;
 - (iii) the structure is limited in extent and scope to that necessary to maintain the channel;
 - (iv) the structure shall not have significant adverse impacts on fisheries or other public trust resources; and
 - (v) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any significant adverse impacts on adjoining properties and on public access to and use of the beach.
- (J) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:
- (i) the structure will not be enlarged beyond the dimensions set out in the permit;
 - (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and
 - (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.
- (K) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 07M .0200 and general and specific use standards within this Section.
- (2) Temporary Erosion Control Structures:
- (A) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.
 - (B) Temporary erosion control structures as defined in Part (A) of this Subparagraph may be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.
 - (C) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed under Rule .0309 of this Section as an exception to the erosion setback requirement.
 - (D) Temporary erosion control structures may be placed waterward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
 - (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected except to align with temporary erosion control structures on adjacent properties, where the Division has determined that gaps between adjacent erosion control structures may result in an increased risk of damage to the structure to be protected. The landward side of such

temporary erosion control structures shall not be located more than 20 feet waterward of the structure to be protected, or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet waterward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or the Director's designee in accordance with Part (A) of this Subparagraph.

(F) Temporary erosion control structures may remain in place for up to eight years for a building and its associated septic system, a bridge or a road. The property owner shall be responsible for removal of any portion of the temporary erosion control structure exposed above grade within 30 days of the end of the allowable time period.

(G) An imminently threatened structure or property may be protected only once, regardless of ownership, unless the threatened structure or property is located in a community that is actively pursuing a beach nourishment project, or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. Existing temporary erosion control structures may be permitted for additional eight-year periods provided that the structure or property being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter, and the community in which it is located is actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or

(H) of this Subparagraph shall begin at the time the initial erosion control structure was installed. For the purpose of this Rule:

- (i) a building and its septic system shall be considered separate structures,
- (ii) a road or highway may be incrementally protected as sections become imminently threatened. The time period for removal of each contiguous section of temporary erosion control structure shall begin at the time that the initial section was installed, in accordance with Part (F) of this Subparagraph.

(H) For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with G.S. 113A-115.1 if it:

- (i) has been issued an active CAMA permit, where necessary, approving such project; or
- (ii) has been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or
- (iii) has received a favorable economic evaluation report on a federal project; or
- (iv) is in the planning stages of a project designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and initiated by a local government or community with a commitment of local or state funds to construct the project or the identification of the financial resources or funding bases necessary to fund the beach nourishment,

inlet relocation or stabilization project.

If beach nourishment, inlet relocation or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Part (F) of this Subparagraph.

- (I) Once a temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, it shall be removed to the maximum extent practicable by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment project, or an inlet relocation or stabilization project, any portion of the temporary erosion control structure exposed above grade shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.
- (J) Removal of temporary erosion control structures is not required if they are covered by sand. Any portion of the temporary erosion control structure that becomes exposed above grade after the expiration of the permitted time period shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management.
- (K) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
- (L) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured

flat. Base width of the temporary erosion control structure shall not exceed 20 feet, and the total height shall not exceed six feet, as measured from the bottom of the lowest bag.

- (M) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- (N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.
- (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and in accordance with Rule .0312 of this Section.
- (4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the ~~first line of stable~~ vegetation line to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:
 - (A) The area on which this activity is being performed shall maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;
 - (B) The activity shall not exceed the lateral bounds of the applicant's property unless ~~he has permission of~~ is obtained from the adjoining land owner(s);
 - (C) Movement of material from seaward of the mean low water line will require a CAMA Major Development and State Dredge and Fill Permit;
 - (D) The activity shall not increase erosion on neighboring properties and shall not have an adverse effect on natural or cultural resources;
 - (E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.
- (b) ~~Dune Establishment~~ Protection, Establishment, Restoration and Stabilization.
 - (1) No development shall be permitted that involves the removal or relocation of primary

or frontal dune sand or vegetation thereon that would adversely affect the integrity of the dune. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these other dunes shall be allowed only to the extent permitted by this Rule.

- (1)(2) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same configuration as adjacent natural dunes.
- (2)(3) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.
- (3)(4) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas shall be replanted or temporarily stabilized until planting can be completed.
- (4)(5) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand in the area in which it is to be placed.
- (5)(6) No new dunes shall be created in inlet hazard areas. Reconstruction or repair of existing dune systems as defined in Rule .0305 of this Section and within the Inlet Hazard Area is permissible.
- (6)(7) Sand held in storage in any dune, other than the frontal or primary dune, shall remain on the lot or tract of land to the maximum extent practicable and may be redistributed within the Ocean Hazard AEC provided that it is not placed any farther oceanward than the crest of a primary dune, if present, or the crest of a frontal dune.
- (7)(8) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid dune impacts.

(c) Structural Accessways:

- (1) Structural accessways shall be permitted across primary or frontal dunes so long as they are designed and constructed in a manner that entails negligible alteration of the primary or frontal dune. Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a) of this Rule.
- (2) An accessway shall be considered to entail negligible alteration of primary or frontal dunes provided that:
 - (A) The accessway is exclusively for pedestrian use;
 - (B) The accessway is a maximum of six feet in width;
 - (C) Except in the case of beach matting for a local, State, or federal government's public access, the accessway is raised on posts or pilings of five feet or less

depth, so that wherever possible only the posts or pilings touch the ~~dune~~. ~~Where this is deemed by the Division of Coastal Management to be impossible due to dune, in accordance with any more restrictive local, State, or federal building requirements, the structure shall touch the dune only to the extent necessary.~~ Requirements. Beach matting for a local, State, or federal government's public access shall be installed at grade and not involve any excavation or fill of the dune; and

(D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.

(3) An accessway that does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this Paragraph. Public fishing piers are ~~not prohibited~~ allowed provided all other applicable standards of this Rule are met.

(4) In order to preserve the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") may be provided for off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than 15 feet in width and may be constructed of wooden sections fastened together, or other materials approved by the Division, over the length of the affected dune area. Installation of a Hatteras ramp shall be done in a manner that will preserve the dune's function as a protective barrier against flooding and erosion by not reducing the volume of the dune.

(5) Structural accessways may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune, provided they do not interfere with public trust rights and emergency access along the beach. Structural accessways are not restricted by the requirement to be landward of the FLSNV as described in Rule .0309(a) of this Section.

(d) Building Construction Standards. New building construction and any construction identified in .0306(a)(5) of this Section and 15A NCAC 07J .0210 shall comply with the following standards:

(1) In order to avoid danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any building constructed within the ocean hazard area shall comply with relevant sections of the North Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local flood

damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.

- (2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.
- (3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on or seaward of the primary dune, the pilings shall extend to five feet below mean sea level.
- (4) All foundations shall be designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100-year storm. Cantilevered decks and walkways shall meet the requirements of this Part or shall be designed to break-away without structural damage to the main structure.

Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-115.1; 113A-124.

15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

(a) The following types of development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:

- (1) campsites;
- (2) driveways and parking areas with clay, packed sand, or gravel;
- (3) elevated decks not exceeding a footprint of 500 square ~~feet;~~ feet. Existing decks exceeding a footprint of 500 square feet may be replaced with no enlargement beyond their original dimensions;
- (4) beach accessways consistent with Rule .0308(c) of this Section;
- (5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
- (6) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
- (7) temporary amusement stands consistent with Section .1900 of this Subchapter;
- (8) sand fences; ~~and~~
- (9) swimming ~~pools;~~ pools; and
- (10) fill not associated with dune creation that is obtained from an upland source and is of the same general characteristics as the sand in the area in which it is to be placed.

In all cases, this development shall be permitted only if it is landward of the vegetation line or ~~static~~ pre-project vegetation line, whichever is applicable; involves no alteration or removal of

primary or frontal dunes which would compromise the integrity of the dune as a protective landform or the dune vegetation; ~~has overwalks to protect any existing dunes;~~ is not essential to the continued existence or use of an associated principal development; ~~is not required to satisfy minimum requirements of local zoning, subdivision or health regulations;~~ and meets all other non-setback requirements of this Subchapter.

(b) Where application of the oceanfront setback requirements of Rule .0306(a) of this Section would preclude placement of ~~permanent substantial structures on lots~~ a structure on a lot existing as of June 1, 1979, ~~buildings~~ the structure shall be permitted seaward of the applicable setback line in ~~ocean erodible areas and Ocean Erodeble Areas,~~ Ocean Erodeble Areas, State Ports Inlet Management Areas, and Inlet Hazard Areas, but not ~~inlet hazard areas or unvegetated beach areas,~~ Unvegetated Beach Areas if each of the following conditions are met:

- (1) The development is set back from the ocean the maximum feasible distance possible on the existing lot and the development is designed to minimize encroachment into the setback area;
- (2) The development is at least 60 feet landward of the vegetation ~~line or static vegetation~~ line, measurement line, or pre-project vegetation line whichever is applicable;
- (3) The development is not located on or ~~in front~~ oceanward of a frontal dune, but is entirely behind the landward toe of the frontal dune;
- (4) The development incorporates each of the following design standards, which are in addition to those required by Rule .0308(d) of this Section.
 - (A) All pilings shall have a tip penetration that extends to at least four feet below mean sea level;
 - (B) The footprint of the structure shall be no more than 1,000 square feet, and the total floor area of the structure shall be no more than 2,000 square feet. For the purpose of this Section, roof-covered decks and porches that are structurally attached shall be included in the calculation of footprint;
 - (C) Driveways and parking areas shall be constructed of clay, packed sand or gravel except in those cases where the development does not abut the ocean and is located landward of a paved public street or highway currently in use. In those ~~cases concrete, asphalt, or turfstone may also~~ cases, other material may be used;
 - (D) No portion of a building's total floor area, including elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, may extend oceanward of the total floor area of the landward-most ~~adjacent~~

~~building. Habitable building or structure. The alignment shall be measured from the most oceanward point of the adjacent building or structure's roof line, including roofed decks, if applicable. An "adjacent" property is one that shares a boundary line with the site of the proposed development. When no adjacent building or structure exists, or the geometry or orientation of a lot or shoreline precludes the placement of a building in line with the landward most adjacent structure of similar use, an average line of construction shall be determined by the Division of Coastal Management on a case by case basis in order to determine an only by the Director of the Division of Coastal Management based on an approximation of the average seaward-most positions of the rooflines of adjacent structures along the same shoreline, extending 500 feet in either direction. If no structures exist within this distance, the proposed structure shall meet the applicable setback from the Vegetation Line but shall not be held to the landward-most adjacent structure or an average line of structures. The ocean hazard setback that is shall extend~~ landward of the vegetation line, static vegetation line or measurement line, whichever is applicable, a distance no less than 60 feet.

- (5) All other provisions of this Subchapter and other state and local regulations are met. If the development is to be serviced by an on-site waste disposal system, a copy of a valid permit for such a system shall be submitted as part of the CAMA permit application.

(c) The following types of water dependent development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:

- (1) piers providing public access; and
- (2) maintenance and replacement of existing state-owned bridges, and causeways and accessways to such bridges.

(d) Replacement or construction of a pier house associated with an ocean pier shall be permitted if each of the following conditions is met:

- (1) The ocean pier provides public access for fishing and other recreational purposes whether on a commercial, public, or nonprofit basis;
- (2) Commercial, non-water dependent uses of the ocean pier and associated pier house shall be limited to restaurants and retail services.

Residential uses, lodging, and parking areas shall be prohibited;

- (3) The pier house shall be limited to a maximum of two stories;
- (4) A new pier house shall not exceed a footprint of 5,000 square feet and shall be located landward of mean high water;
- (5) A replacement pier house may be rebuilt not to exceed its most recent footprint or a footprint of 5,000 square feet, whichever is larger;
- (6) The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and
- (7) If the pier has been destroyed or rendered unusable, replacement or expansion of the associated pier house shall be permitted only if the pier is being replaced and returned to its original function.

(e) In addition to the development authorized under Paragraph (d) of this Rule, small scale, non-essential development that does not induce further growth in the Ocean Hazard Area, such as the construction of single family piers and small scale erosion control measures that do not interfere with natural oceanfront processes, shall be permitted ~~on those non-oceanfront~~ in the Ocean Hazard Area along those portions of shoreline that exhibit features characteristic of an Estuarine Shoreline. Such features include the presence of wetland vegetation, and lower wave energy and erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 07H .1100, .1200 and 15A NCAC 07K .0203.

(f) Transmission lines necessary to transmit electricity from an offshore energy-producing facility may be permitted provided that each of the following conditions is met:

- (1) The transmission lines are buried under the ocean beach, nearshore area, and primary and frontal dunes, all as defined in Rule .0305 of this Section, in such a manner so as to ensure that the placement of the transmission lines involves no alteration or removal of the primary or frontal dunes; and
- (2) The design and placement of the transmission lines shall be performed in a manner so as not to endanger the public or the public's use of the beach.

(g) Existing stormwater outfalls as of the last amended date of this rule within the Ocean Hazard AEC that are owned or maintained by a State agency or local government, may be extended oceanward subject to the provisions contained within 15A NCAC 07J .0200. Outfalls may be extended below mean low water and may be maintained in accordance with 15A NCAC 07K .0103. Shortening or lengthening of outfall structures within the authorized dimensions, in response to changes in beach width, is considered maintenance under 15A NCAC 07K .0103. Outfall extensions may be marked with signage and shall not prevent pedestrian or vehicular access along the beach. This Paragraph does not apply to existing stormwater outfalls that are not owned or maintained by a State agency or local government.

Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a; 113A-113(b)(6)b; 113A-113(b)(6)d; 113A-124.

15A NCAC 07H .0310 USE STANDARDS FOR INLET HAZARD AREAS

(a) Inlet Hazard Areas of Environmental Concern as defined by Rule .0304 of this Section are subject to inlet migration, rapid and severe changes in watercourses, flooding and strong tides. Due to ~~this the~~ extremely hazardous nature of the Inlet Hazard Areas, all development within these areas shall be permitted in accordance with the following standards:

- (1) All development in the inlet hazard area shall be set back from the ~~first line of stable natural~~ vegetation line a distance equal to the setback required in the adjacent ocean hazard area;
- (2) Permanent structures shall be permitted at a density of no more than one commercial or residential unit per 15,000 square feet of land area on lots subdivided or created after July 23, 1981;
- (3) Only residential structures of four units or less or non-residential structures of less than 5,000 square feet total floor area shall be allowed within the inlet hazard area, except that access roads to those areas and maintenance and replacement of existing bridges shall be allowed;
- (4) Established common-law and statutory public rights of access to the public trust lands and waters in Inlet Hazard Areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways;
- (5) All other rules in this Subchapter pertaining to development in the ocean hazard areas shall be applied to development within the Inlet Hazard Areas.

(b) The inlet hazard area setback requirements shall not apply to the types of development exempted from the ocean setback rules in 15A NCAC 07H .0309(a), nor, to the types of development listed in 15A NCAC 07H .0309(c).

(c) In addition to the types of development excepted under Rule .0309 of this Section, small scale development that does not induce further growth in the Inlet Hazard Area, such as the construction of single-family piers and small scale erosion control measures that do not interfere with natural inlet movement, may be permitted on those portions of shoreline within a designated Inlet Hazard Area that exhibit features characteristic of Estuarine Shoreline. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 07H .1100, .1200 and 07K .0203.

History Note: Authority G.S. 113A-107; 113A-113(b); 113A-124.

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

SECTION .1200 – ~~STATIC AND VEGETATION LINE~~ EXCEPTION BEACH MANAGEMENT PLAN APPROVAL PROCEDURES

15A NCAC 07J .1201 ~~REQUESTING THE STATIC LINE EXCEPTION~~ BEACH MANAGEMENT PLAN APPROVAL

(a) A petitioner subject to a ~~static pre-project~~ static pre-project vegetation line pursuant to 15A NCAC 07H .0305 may petition the Coastal Resources Commission ~~for an exception to the static vegetation line to approve a Beach Management Plan~~ in accordance with the provisions of this Section. A "petitioner" shall be defined as:

- (1) Any local government;
- (2) Any group of local governments involved in a regional beach fill ~~project;~~ project; or
- (3) Any qualified homeowner's association defined in G.S. 47F-1-103(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association, and has jurisdiction over at least one mile of ocean ~~shoreline;~~ shoreline.
- (4) ~~A permit holder of a large scale beach fill project.~~

(b) A petitioner shall be eligible to submit a request ~~for a static vegetation line exception to approve a Beach Management Plan~~ after the completion of construction of the initial large-scale beach fill project(s) as defined in 15A NCAC 07H .0305 that required the creation of a ~~static pre-project~~ static pre-project vegetation line(s). For a ~~static pre-project~~ static pre-project vegetation line in existence prior to the effective date of this Rule, the award-of-contract date of the initial large-scale beach fill project, or the date of the aerial photography or other survey data used to define the ~~static pre-project~~ static pre-project vegetation line, whichever is most recent, shall be used in lieu of the completion of construction date.

(c) ~~A static vegetation line exception request applies to the entire static vegetation line within the jurisdiction of the petitioner, including segments of a static vegetation line that are associated with the same large scale beach fill project. If multiple static vegetation lines within the jurisdiction of the petitioner are associated with different large scale beach fill projects, then the static vegetation line exception in accordance with 15A NCAC 07H .0306 and the procedures outlined in this Section shall be considered separately for each large scale beach fill project. A Beach Management Plan applies to all pre-project vegetation lines within the Ocean Hazard Area of the petitioner's jurisdiction.~~

(d) ~~A static vegetation line exception request shall be made in writing by the petitioner. A complete static vegetation line exception request shall include the following: A complete Beach Management Plan shall consist of a comprehensive document with supporting appendices and data that includes the following:~~

- (1) A ~~summary~~ summary review of all beach fill projects in the area ~~for which the exception is being~~

requested of the Beach Management Plan including the initial large-scale beach fill project associated with the static pre-project vegetation line, subsequent maintenance of the initial large-scale projects(s) and beach fill projects occurring prior to the initial large-scale projects(s). To the extent historical data allows, the summary shall include construction dates, contract award dates, volume of sediment excavated, total cost of beach fill project(s), funding sources, maps, design schematics, pre- and post-project surveys and a project footprint; Plans and related materials including reports, maps, tables and diagrams for the design and construction of the initial large-scale beach fill project that required the static vegetation line, subsequent maintenance that has occurred, and planned maintenance needed to achieve a design life providing no less than 30 years of shore protection from the date of the static line exception request. A review of the maintenance needed to achieve a design life of no less than 30 years of shore protection. The plan shall include anticipated maintenance event volume triggers and schedules, long-term volumetric sand needs, annual monitoring protocols, an analysis of the impacts or any erosion control structures, and any relevant maps, tables, diagrams, studies or reports. The plans and related materials shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work;

(2) Documentation, including maps, geophysical, and geological data, to delineate the planned location and volume of compatible sediment as defined in 15A NCAC 07H .0312 necessary to construct and maintain the large-scale beach fill project defined in Subparagraph (d)(2) of this Rule over its design life. This documentation shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work; and

(4) Identification of the financial resources or funding sources necessary to fund the large-scale beach fill project over its design life, project, over the project design life, such as a dedicated percentage of occupancy taxes, special tax districts, or anticipated federal funding.

(e) Public Comment Requirements. The local jurisdiction shall provide an opportunity for public comments on the Beach Management Plan prior to submission to the Coastal Resources Commission for approval. Written comments on the Beach Management Plan shall be submitted by the local jurisdiction to the Division along with the request to approve the Beach Management Plan.

~~(e)(f) A static vegetation line exception request~~ A request to approve a Beach Management Plan shall be submitted to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a completed ~~static vegetation line exception~~ request, including notification of the date of the meeting at which the request will be considered by the Coastal Resources Commission, shall be provided to the petitioner by the Division of Coastal Management.

~~(f)(g) The Coastal Resources Commission shall consider a static vegetation line exception request~~ request to approve a Beach Management Plan no later than the second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management, except when the petitioner and the Division of Coastal Management agree upon a later date.

Authority G.S. 113A-107; 113A-113(b)(6); 113A-124.

15A NCAC 07J .1202 REVIEW OF THE STATIC LINE EXCEPTION BEACH MANAGEMENT PLAN APPROVAL REQUEST

(a) ~~The Division of Coastal Management shall prepare a written report of the static line exception request~~ Petitioner shall provide a summary of the Beach Management Plan to be presented to the Coastal Resources Commission. ~~This report shall include:~~ This summary shall include all of the elements required in 15A NCAC 07J .1201.

- (1) ~~A description of the area affected by the static line exception request;~~
- (2) ~~A summary of the large-scale beach fill project that required the static vegetation line as well as the completed and planned maintenance of the project(s);~~
- (3) ~~A summary of the evidence required for a static line exception; and~~
- (4) ~~A recommendation to grant or deny the static line exception.~~

(b) The Division of Coastal Management shall provide the Commission a review of the Beach Management Plan including a recommendation to grant or deny the request. The Division shall provide the petitioner requesting the static line exception approval of a Beach Management Plan an opportunity to review the report recommendation prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

Authority G.S. 113A-107; 113A-113(b)(6); 113A-124.

15A NCAC 07J .1203 PROCEDURES FOR APPROVING THE STATIC LINE EXCEPTION A BEACH MANAGEMENT PLAN

(a) ~~At the meeting at which the static line exception approval of a Beach Management Plan is considered by the Coastal Resources Commission, the following shall occur:~~

- (1) ~~The Division of Coastal Management~~ Petitioner shall orally present the report a summary of the Beach Management Plan described in 15A NCAC 07J .1202.

- (2) ~~A representative for the petitioner may provide written or oral comments about the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments in open session based upon the number of speakers wishing to speak. The Division of Coastal Management shall orally present its review of the Beach Management Plan and its recommendation to grant or deny the approval request.~~
- (3) ~~Additional parties may provide written or oral comments about the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments in open session based upon the number of speakers wishing to speak.~~

(b) The Coastal Resources Commission shall ~~authorize a static line exception request~~ approve a Beach Management Plan if the request contains the information required and meets the criteria presented in 15A NCAC 07J .1201(d)(1) through ~~(d)(4)~~. (d)(4), the Division of Coastal Management recommendation, and public comments on the Beach Management Plan submitted with the request to approve the Beach Management Plan. The final decision of the Coastal Resources Commission shall be made at the meeting at which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within 10 business days following the meeting at which the decision is reached.

(c) The decision to ~~authorize or deny a static line exception~~ approve or deny a Beach Management Plan is a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

Authority G.S. 113A-107; 113A-113(b)(6); 113A-124.

15A NCAC 07J .1204 REVIEW OF THE LARGE-SCALE BEACH-FILL PROJECT AND APPROVED STATIC LINE EXCEPTIONS BEACH MANAGEMENT PLANS

(a) Progress Reports. The petitioner that received ~~the static line exception~~ a Beach Management Plan approval shall provide a progress report to the Coastal Resources Commission every five years from date the ~~static line exception is authorized~~. Beach Management Plan is approved. The progress report shall address the criteria defined in 15A NCAC 07J .1201(d)(1) through (d)(4) and be submitted in writing to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. The Division of Coastal Management shall provide the petitioner with written acknowledgement of the receipt of a completed progress report, including notification of the meeting date at which the report will be presented to the Coastal Resources Commission.

(b) The Coastal Resources Commission shall review a ~~static line exception authorized~~ Beach Management Plan approved under 15A NCAC 07J .1203 every five years from the initial authorization in order to renew its findings for the conditions defined in ~~15A NCAC 07J .1201(d)(2) through (d)(4)~~. 15A

NCAC 07J .1201(d) through (e). The Coastal Resources Commission shall also consider the following conditions:

- (1) ~~Design changes to the initial large scale beach fill project defined in 15A NCAC 07J .1201(d)(1)~~ Updates to the Beach Management Plan, including performance of past projects and maintenance events, changes in conditions, and design changes to future projects, provided that the changes are designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work;
- (2) Design changes to the location and volume of compatible sediment, as defined by 15A NCAC 07H .0312, necessary to construct and maintain the large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2), including design changes defined in this Rule provided that the changes have been designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work; and
- (3) Changes in the financial resources or funding sources necessary to fund the large-scale beach fill project(s) defined in 15A NCAC 07J .1201(d)(2). If the project has been amended to include design changes defined in this Rule, then the Coastal Resources Commission shall consider the financial resources or funding sources necessary to fund the changes.
- (4) Local governments with an unexpired Static Line Exception approved by the Commission may petition the Commission for approval of a Beach Management Plan by supplementing information required under the Static Line Exception to be compliant with the provisions of 15A NCAC 07J .1200 prior to or upon the expiration of the previously approved Static Line Exception.

(c) ~~The Division of Coastal Management shall prepare a written Petitioner shall orally present a summary of the progress report and present it to the Coastal Resources Commission no later than the second scheduled meeting following the date the report was received, except when a later meeting is agreed upon by the local government or community submitting the progress report and the Division of Coastal Management. This written summary~~ The Division of Coastal Management shall include a recommendation from the Division of Coastal Management provide the Coastal Resources Commission with a review and recommendation of the progress report on whether the conditions defined in 15A NCAC 07J .1201(d)(1) through (d)(4) have been met. The petitioner submitting the progress report shall be provided an opportunity to review the ~~written summary~~ recommendation prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

~~(d) The following shall occur at the meeting at which the Coastal Resources Commission reviews the static line exception progress report:~~

- (1) ~~The Division of Coastal Management shall orally present the written summary of the progress report as defined in this Rule.~~
- (2) ~~A representative for the petitioner may provide written or oral comments relevant to the static line exception progress report. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments in open session based upon the number of speakers wishing to speak.~~
- (3) ~~Additional parties may provide written or oral comments relevant to the static line exception progress report. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments in open session based upon the number of speakers wishing to speak.~~

Authority G.S. 113A-107; 113A-113(b)(6); 113A-124.

15A NCAC 07J .1205 REVOCATION AND EXPIRATION OF THE STATIC LINE EXCEPTION BEACH MANAGEMENT PLAN APPROVAL

(a) ~~The static line exception Beach Management Plan approval shall be revoked if the Coastal Resources Commission determines, after the review of the petitioner's progress report identified in 15A NCAC 07J .1204, that any of the criteria under which the static line exception Beach Management Plan is authorized, as defined in 15A NCAC 07J .1201(d)(2) 15A NCAC 07J .1201(d)(1) through (d)(4), are not being met.~~

(b) ~~The static line exception shall expire at the end of the design life of the large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2), including subsequent design changes to the project as defined in 15A NCAC 07J .1204(b).~~

(c) ~~In the event a progress report is not received by the Division of Coastal Management five years from either the static line exception initial approval of the Beach Management Plan or the previous progress report, the static line exception the Beach Management Plan approval shall be revoked automatically at the end of the five-year interval defined in 15A NCAC 07J .1204(b) for which the progress report was not received.~~

(d) ~~The revocation or expiration of a static line exception Beach Management Plan approval shall be a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.~~

Authority G.S. 113A-107; 113A-113(b)(6); 113A-124.

15A NCAC 07J .1206 LOCAL GOVERNMENTS AND COMMUNITIES WITH STATIC VEGETATION LINES AND STATIC LINE EXCEPTIONS APPROVED BEACH MANAGEMENT PLANS

A list of ~~static vegetation lines in place for petitioners CRC approved Beach Management Plans~~ and the conditions under which the ~~static pre-project~~ vegetation lines exist, including the date(s) the ~~static pre-project~~ vegetation line was defined, shall be maintained by the Division of Coastal Management. A list of ~~static line exceptions in place for petitioners CRC approved Beach Management Plans~~ and the conditions under which the ~~exceptions~~

~~Plans exist, including the date the exception was granted, Plan was approved,~~ the dates the progress reports were received, the design life of the large-scale beach fill project and the potential expiration dates for the ~~static line exception~~, Beach Management Plans shall be maintained by the Division of Coastal Management. Both the ~~static pre-project~~ vegetation line list and the ~~static line exception~~ CRC approved Beach Management Plan list shall be available for inspection at the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.

Authority G.S. 113A-107; 113A-113(b)(6); 113A-124.

SECTION .1300 – DEVELOPMENT LINE PROCEDURES

15A NCAC 07J .1301 REQUESTING THE DEVELOPMENT LINE

Authority G.S. 113A-107; 113A-113(b)(6); 113A-124.

15A NCAC 07J .1302 PROCEDURES FOR APPROVING THE DEVELOPMENT LINE

Authority G.S. 113A-107; 113A-113(b)(6); 113A-123; 113A-124.

15A NCAC 07J .1303 LOCAL GOVERNMENTS AND COMMUNITIES WITH DEVELOPMENT LINES

Authority G.S. 113A-107; 113A-113(b)(6); 113A-124.

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Wildlife Resources Commission intends to adopt the rules cited as 15A NCAC 10C .0325, .0326, .0409-.0430, .0701, .0702, .0801, amend the rules cited as 15A NCAC 10C .0301, .0302, .0305-.0308, .0313, .0314, .0319, .0321-.0324, .0401, .0402, readopt with substantive changes the rules cited as 15A NCAC 10C .0103, .0104, .0106, .0107, .0110, .0304, readopt without substantive changes the rules cited as 15A NCAC 10C .0101, .0102, .0105, .0109, .0318, .0404-.0407, and repeal through readoption the rules cited as 15A NCAC 10C .0108 and .0111.

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

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://www.ncwildlife.org/Proposed-Regulations>

Proposed Effective Date: June 1, 2022

Public Hearing:

Date: February 15, 2022

Time: 7:00 p.m.

Location: Register online here: https://ncwildlife.org.zoomgov.com/webinar/register/WN_E1SApnj3Tair8wScIUZgDw

Join by phone toll free (888-788-0099 or 877-853-5247) using Webinar ID: 160 349 4763

Reason for Proposed Action: Pursuant to G.S. 150B-21.3A, rules classified as "necessary with substantive public interest" are required to be readopted as part of the periodic review. Additionally, rules are proposed for amendment and adoption to clarify recreational fishing and inland game fish requirements.

Comments may be submitted to: Rulemaking Coordinator, 1701 Mail Service Center, Raleigh, NC 27699; email regulations@ncwildlife.org

Comment period ends: March 21, 2022

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

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

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

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0100 - JURISDICTION OF AGENCIES: CLASSIFICATION OF WATERS

15A NCAC 10C .0101 SCOPE AND PURPOSE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 10C .0102 INLAND FISHING WATERS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 10C .0103 COASTAL FISHING WATERS

~~(a) Coastal fishing waters are the Atlantic Ocean, the various coastal sounds, and estuarine waters up to the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission, those defined in G.S. 113-129. All waters which are tributary to coastal fishing waters and which that are not otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are coastal fishing waters. in rule shall be coastal fishing waters.~~

~~(b) The regulations regulation and licensing of fishing in coastal fishing waters is waters, excluding joint fishing waters, shall be under the jurisdiction of the Marine Fisheries Commission; except that the following inland game fish (exclusive of spotted sea trout, red drum, flounder, white perch, yellow perch, weakfish, and striped bass) are subject to regulations regulation by the Wildlife Resources Commission when found in coastal fishing waters. waters:~~

- ~~(1) brown, brook, and rainbow trout;~~
- ~~(2) muskellunge, chain, and redbfin pickerel;~~
- ~~(3) Alabama , largemouth, smallmouth, and spotted bass;~~
- ~~(4) Roanoke and rock bass;~~
- ~~(5) kokanee salmon;~~
- ~~(6) black and white crappie;~~
- ~~(7) bluegill, redbreast, redear, pumpkinseed, warmouth, flier, and all other species in the Centrarchidae family; and~~
- ~~(8) walleye and sauger.~~

~~(c) Regulations Rules and laws administered by the Marine Fisheries Commission regarding fishing in coastal fishing waters are waters, excluding joint fishing waters, shall be enforced by marine fisheries inspectors. Regulations Rules and laws regarding inland game fish specified in Paragraph (b) of this Rule, when found in coastal fishing waters are waters, shall be enforced by wildlife protectors officers, unless otherwise agreed to by the Wildlife Resources Commission.~~

Authority G.S. 113-129; 113-132; 113-134; 113-182; 113-292.

15A NCAC 10C .0104 JOINT FISHING WATERS

~~(a) Joint fishing waters are those coastal fishing waters, hereinafter set out, denominated defined in G.S. 113-129, adopted by agreement of both the Marine Fisheries Commission and the Wildlife Resources Commission pursuant to G.S. 113-132(e). 113-132(e) as joint fishing waters. All waters which are tributary to joint fishing waters and which that are not otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are classified as in rule shall be joint fishing waters. The regulation and licensing of fishing in joint waters shall be as stated in 15A NCAC 10C .0106.~~

~~(b) Rules and laws regarding fishing in joint fishing waters may be enforced by both marine fisheries inspectors and wildlife officers.~~

Authority G.S. 113-132; 113-134; 113-292.

15A NCAC 10C .0105 POSTING DIVIDING LINES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 10C .0106 APPLICABILITY OF REGULATIONS: RULES: JOINT FISHING WATERS

(a) All coastal fishing laws and regulations rules administered by the Department of Environment, Health, and Natural Resources Environmental Quality and the Marine Fisheries Commission shall apply to joint fishing waters except as otherwise provided and shall be enforced by fisheries enforcement officers. provided.

(b) The following inland fishing laws and regulations rules administered by the Wildlife Resources Commission shall apply to joint fishing waters and shall be enforced by wildlife enforcement officers: waters:

- (1) all laws and regulations rules pertaining to inland game fishes, fishes specified in Rule .0103 of this Section;
(2) all laws and regulations pertaining to inland fishing license requirements for hook and line fishing,
(3)(2) all laws and regulations rules pertaining to hook and line fishing except as hereinafter provided. provided; and
(3) all laws and rules pertaining to fish, crustacea, and mollusks identified on the protected animal list, as defined in G.S. 113-331.

Authority G.S. 113-132; 113-134; 113-271; 113-275; 113-182; 113-292; 113-333.

15A NCAC 10C .0107 SPECIAL REGULATIONS: REGULATIONS FOR JOINT FISHING WATERS

The following requirements shall apply in joint fishing waters and In order to effectively manage all fisheries resources in joint waters and in order to confer enforcement powers on both fisheries enforcement officers and wildlife enforcement officers with respect to certain rules, the Marine Fisheries Commission and the Wildlife Resources Commission deem it necessary to adopt special rules for joint waters. Such rules supersede any inconsistent rules of the Marine Fisheries Commission or the Wildlife Resources Commission that would otherwise be applicable in joint waters under the provisions of 15A NCAC 10C .0106:

- (1) Striped Bass
(a) It is it shall be unlawful to possess any striped bass or striped bass hybrid that is less than 18 inches long (total length).
(b) It is it shall be unlawful to possess striped bass or striped bass hybrids between the lengths of 22 and 27 inches (total length) in joint fishing waters of the Central Southern Management Area as designated in 15A NCAC 03R .0201.
(c) It is it shall be unlawful to possess striped bass or striped bass hybrids May through September in the joint fishing waters of the Central Southern

Management Area and the Albemarle Sound Management Area.

- (d) It is it shall be unlawful to possess striped bass or striped bass hybrids taken from the joint fishing waters of the Cape Fear River.
(e) It is it shall be unlawful to possess more than one daily creel limit of striped bass or striped bass hybrids, in the aggregate, per person per day, regardless of the number of management areas fished.
(f) Possession possession of fish shall be assessed for the creel and size limits of the management area in which the individual is found to be fishing, regardless of the size or creel limits for other management areas visited by that individual in a given day.
(g) It is it shall be unlawful to engage in net fishing for striped bass or their hybrids in joint waters except as authorized by rules of the Marine Fisheries Commission.

(2) Lake Mattamuskeet

- (a) It is it shall be unlawful to set or attempt to set any gill net in Lake Mattamuskeet canals designated as joint waters.
(b) It is it shall be unlawful to use or attempt to use any trawl net or seines in Lake Mattamuskeet canals designated as joint waters.

(3) Cape Fear River. It is shall be unlawful to use or attempt to use any net, net stakes or electrical fishing device within 800 feet of the dam at Lock No. 1 on the Cape Fear River.

(4) Shad: It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per person per day taken by hook and line.

Authority G.S. 113-132; 113-134; 113-138; 113-182; 113-292.

15A NCAC 10C .0108 SPECIFIC CLASSIFICATION OF WATERS

Authority G.S. 113-129; 113-132; 113-134; 150B-14.

15A NCAC 10C .0109 PROTECTION OF SEA TURTLES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 10C .0110 MANAGEMENT RESPONSIBILITY FOR OF ESTUARINE STRIPED BASS IN JOINT WATERS THE ALBEMARLE SOUND AND ROANOKE RIVER MANAGEMENT AREAS

(a) The management areas for estuarine striped bass fisheries in coastal North Carolina are designated in 15A NCAC 03R .0201.

~~(b)(a)~~ In order to To effectively manage the recreational hook and line harvest in joint waters of the Albemarle Sound-Roanoke River stock of estuarine striped bass, the Marine Fisheries Commission and the Wildlife Resources Commission deem it necessary to establish two management areas: ~~the Albemarle Sound Management Area and the Roanoke River Management Area as designated in 15A NCAC 03R .0201.~~

(1) the Albemarle Sound Management Area is designated as Albemarle Sound and all its joint and inland water tributaries, (except for the Roanoke, Middle, Eastmost and Cashie rivers), Currituck, Roanoke and Croatan sounds and all their joint and inland water tributaries, including Oregon Inlet, north of a line beginning at a point 35° 48.5015' N - 75° 44.1228' W on Roanoke Marshes Point, running southeasterly to a point 35° 44 .1710' N - 75° 31 .0520' W on the north point of Eagle Nest Bay.

(2) the Roanoke River Management Area is designated as Roanoke River and its joint and inland tributaries, including Middle, Eastmost and Cashie rivers, up to the Roanoke Rapids dam.

(b) The Wildlife Resources Commission shall have principal management responsibility for the stock when it is in the ~~joint and~~ inland and joint fishing waters of the Roanoke River Management Area. The Marine Fisheries Commission shall have principal management responsibility for the stock in the coastal, ~~joint joint~~ and inland waters of the Albemarle Sound Management Area.

(c) The annual quota for recreational harvest of the Albemarle Sound Roanoke River striped bass stock shall be divided equally between the two management areas. Each Commission shall implement management actions for recreational harvest within their respective management ~~areas that shall be consistent with the North Carolina Estuarine Striped Bass Fishery Management Plan areas.~~

(d) To preserve jurisdictional authority of each Commission, the following means are established through which management measures may be implemented in the following management areas:

(1) in the Roanoke River Management Area, the exclusive authority to open and close seasons and areas, and establish size and creel limits, whether inland or joint fishing waters, shall be vested in the Wildlife Resources Commission.

(2) in the Albemarle Sound Management Area, the exclusive authority to open and close seasons and areas, and establish size and creel limits, whether coastal or joint fishing waters, shall be vested in the Marine Fisheries Commission. The season shall close by proclamation if the quota set by the North Carolina Estuarine Striped Bass Fishery Management Plan is projected to be taken.

Authority G.S. 113-132; 113-134; 113-138; 113-182; 113-292.

15A NCAC 10C .0111 IMPLEMENTATION OF ESTUARINE STRIPED BASS MANAGEMENT PLANS: RECREATIONAL FISHING

Authority G.S. 113-132; 113-134; 113-138; 113-182; 113-292.

SECTION .0300 - GAME FISH

SECTION .0300 – GAME FISH IN INLAND FISHING WATERS

15A NCAC 10C .0301 INLAND GAME FISHES DESIGNATED

(a) The following fishes are classified and designated as inland game fishes: fishes in inland, joint, and coastal fishing waters:

- ~~(1)~~ mountain trout, all species including but not limited to rainbow, brown and brook trout;
- ~~(2)~~ muskellunge, chain (jack) and redbfin pickerel;
- ~~(3)~~ yellow perch, when found in inland waters, walleye and sauger;
- ~~(4)~~ black bass, including Alabama, largemouth, smallmouth, spotted and redeye bass;
- ~~(5)~~ black and white crappie;
- (1) Alabama bass, largemouth bass, redeye bass, smallmouth bass, and spotted bass;
- (2) black crappie and white crappie;
- (3) chain pickerel (jack), muskellunge, and redbfin pickerel;
- (4) kokanee salmon;
- (5) mountain trout, all species including but not limited to brook trout, brown trout, and rainbow trout;
- (6) sauger and walleye; and
- ~~(6)~~(7) sunfish, including bluegill (bream), flier, pumpkinseed, redbreast (robin), redbear (shellcracker), pumpkinseed, warmouth, Roanoke bass, rock bass, bass (redeye), flier, Roanoke bass, warmouth, and all other species of the sunfish family (Centrarchidae) not specifically listed in this Rule; Rule.

(b) The following fishes are classified as inland game fishes when found in inland fishing waters:

- ~~(7)~~ spotted sea trout (speckled trout), when found in inland fishing waters;
- ~~(8)~~ flounder, when found in inland fishing waters;
- ~~(9)~~ red drum (channel bass, red fish, puppy drum), when found in inland fishing waters;
- ~~(10)~~ striped bass, white bass, white perch and Morone hybrids (striped bass white bass), when found in inland fishing waters;
- ~~(11)~~(1) American shad and hickory shad; shad, when found in inland fishing waters;
- ~~(12)~~ kokanee salmon; and
- ~~(13)~~(2) black bullhead, brown bullhead, flat bullhead, snail bullhead, white catfish, and yellow bullhead; bullhead, when found in inland fishing waters.
- (3) flounder;
- (4) red drum (channel bass, red fish, puppy drum);

- (5) spotted sea trout (spekeled trout);
- (6) striped bass, white bass, white perch, and Morone hybrids (striped bass-white bass); and
- (7) yellow perch.

Authority G.S. 113-134.

15A NCAC 10C .0302 MANNER OF TAKING INLAND GAME FISHES

- (a) Inland game fishes may only be taken with hook and line unless otherwise provided.
- (b) Landing nets may be used to land fishes caught on hook and line.
- (c) Game fishes taken incidental ~~to~~ to
 - (1) ~~commercial fishing operations in joint fishing waters or coastal fishing waters shall be immediately returned to the water unharmed.~~
 - (2) the use of special devices for taking nongame fishes from inland fishing waters as authorized in ~~Rule .0402 of this Subchapter~~ 15A NCAC 10C .0402 or as authorized by 15A NCAC 10C .0407 by anglers licensed under G.S. 113-272.2(c) shall be immediately returned to the water unharmed except:
 - (A)(1) that a daily creel limit of American and hickory shad may be taken with dip nets and bow nets from March 1 through April 30 in those waters where such gear may be lawfully used; and
 - (B)(2) white perch may be taken when captured in a cast net being used to collect nongame fishes in all impounded waters west of Interstate 95 and in the Tar River Reservoir (Nash County).

(d) Inland game fishes taken from Inland Fishing Waters shall not be sold.

~~(d)(e)~~ In the inland waters of the Roanoke River upstream of U.S. 258 bridge, only a single barbless hook or a lure with a single barbless hook may be used from 1 April to 30 June. "Barbless" as used in this Rule requires that the hook does not have a barb or the barb is bent down.

Authority G.S. 113-134; 113-272.3; 113-292.

15A NCAC 10C .0304 TAKING AND POSSESSION OF INLAND GAME FISHES

~~(a) It is unlawful to take in one day more than the daily creel limit of those species of inland game fish having a specified creel limit; to possess more fish than the daily creel limit in effect on those waters being fished; to possess any fish outside of the size limit in effect on those waters being fished; to possess more fish than the daily creel limit while boating or afield; or to possess at any place more than three days creel limit. It is unlawful to destroy unnecessarily any inland game fish taken from public fishing waters.~~

- (a) Individuals shall only take up to the daily creel limit of those species of inland game fish having a specified creel limit.
- (b) Individuals shall only possess on those waters being fished:

- (1) the specified daily creel limit for the species;
- (2) fish conforming to the size limit for the species; and
- (3) the daily creel limit while fishing or afield.

(c) Individuals shall only possess up to three days creel limit at any place.

~~(b)(d) No person person, while fishing or afield, shall shall: remove the head or tail or otherwise change the appearance of any game fish having a minimum size limit so as to render it impracticable to measure its total original length. No person while fishing shall change the appearance of any game fish having a daily creel limit so as to obscure its identification or render it impracticable to count the number of fish in possession.~~

- (1) unnecessarily destroy any inland game fish taken from inland fishing waters;
- (2) remove the head or tail or otherwise change the appearance of any game fish having a size limit so to render it impracticable to measure its total original length; or
- (3) change the appearance of any game fish having a daily creel limit so to obscure its identification or render it impracticable to count the number of fish in possession.

Authority G.S. 113-134; 113-135; 113-135.1; 113-292.

15A NCAC 10C .0305 LARGEMOUTH BASS

(a) The daily creel limit for Largemouth Bass is five fish, except in waters identified in Paragraphs ~~(b), (c), (d), (j), and (k)(d), (e), (f), (l), (m), and (n)~~ of this Rule.

(b) There is no minimum size limit for Largemouth Bass, but only two of them may be less than 14 inches except in waters identified in Paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l) (d) through (n) of this Rule.

(c) There is no closed season, except for waters identified in Paragraph (l) of this Rule.

~~(b)(d)~~ In Lake Cammack in Alamance County, and Lake Holt in Granville County the daily creel limit for Largemouth Bass is 10 fish and no more than two fish greater than 14 inches may be possessed.

~~(e)(e)~~ In Lake Santeetlah in Graham County, there is no daily creel limit for Largemouth Bass and Smallmouth Bass less than 14 inches. The daily creel limit for Largemouth Bass and Smallmouth Bass greater than 14 inches is five fish in aggregate.

~~(d)(f)~~ In Lake Chatuge in Clay County, the daily creel limit for Largemouth Bass, Smallmouth Bass, Alabama Bass, and Spotted Bass is 10 fish in aggregate. The minimum size limit for Largemouth Bass is 12 inches.

~~(e)(g)~~ The minimum size limit for Largemouth Bass is 14 inches in the following:

- (1) Lake Raleigh in Wake County;
- (2) Lake Sutton in New Hanover County;
- (3) Pungo Lake in Washington and Hyde counties;
- (4) New Lake in Hyde County; and
- (5) Currituck, Roanoke, Croatan, Albemarle sounds, and all their tributaries including Roanoke River downstream of Roanoke Rapids Dam, Chowan River, Meherrin River, Yeopim River, Pasquotank River, Perquimans River,

Little River, Big Flatty Creek, North River, Northwest River, Scuppernong River, Alligator River, including the Alligator/Pungo Canal east of the NC Hwy 264/45 bridge, and all other associated tributaries and canals in these river systems.

~~(f)~~(h) In Cane Creek Lake in Union County, and Buckhorn Reservoir in Wilson and Nash counties, the minimum size limit for Largemouth Bass is 16 inches.

~~(g)~~(i) In Lake Phelps in Tyrrell and Washington counties, the minimum size limit for Largemouth Bass is 14 inches, and no fish between 16 and 20 inches may be possessed.

~~(h)~~(j) In Shearon Harris Reservoir in Chatham and Wake counties and Lake Hampton in Yadkin County, there is no minimum size limit for Largemouth Bass, but only two Largemouth Bass less than 14 inches and no Largemouth Bass between 16 and 20 inches may be possessed.

~~(i)~~(k) In Lake Thom-A-Lex in Davidson County, the minimum size limit for Largemouth Bass is 18 inches.

~~(j)~~(l) In the Alleghany County portion of New River downstream of Fields Dam (Grayson County, Virginia), the daily creel limit for Largemouth Bass, Smallmouth Bass, and Spotted Bass is five fish in aggregate. There is no minimum size limit for Largemouth Bass, but no fish between 14 and 22 inches in length may be possessed and only one Largemouth Bass, Smallmouth Bass, or Spotted Bass greater than 22 inches may be possessed.

~~(k)~~(m) In Lake Mattamuskeet and associated canals in Hyde County, the minimum size limit for Largemouth Bass is 16 inches and only one Largemouth Bass greater than 20 inches may be possessed.

~~(l)~~(n) In Jean Guite Creek and associated canals within the Town of Southern Shores in Dare County and in the ponds associated with Martin Marietta Park in Craven County, no Largemouth Bass may be possessed.

Authority G.S. 113-134; 113-292.

15A NCAC 10C .0306 CRAPPIE

(a) There is no daily creel limit for Crappie, except for waters identified in Paragraphs ~~(b)~~, ~~(c)~~, ~~(d)~~, ~~(e)~~, and ~~(f)~~ (d) through (h) of this Rule.

~~(b)~~ There is no minimum size limit for these fish, except for in waters identified in Paragraphs ~~(d)~~, ~~(e)~~, and ~~(f)~~. (f) through (h) of this Rule.

~~(c)~~ There is no closed season.

~~(b)~~(d) In Buckhorn Reservoir in Wilson and Nash counties, the daily creel limit is 20 fish.

~~(e)~~(e) In Lake Chatuge in Clay County, the daily creel limit is 20 fish.

~~(d)~~(f) In the following waters, the daily creel limit is 20 fish and the minimum size limit is 10 inches:

- (1) B. Everett Jordan Reservoir;
- (2) Roanoke River and its tributaries downstream of Roanoke Rapids dam;
- (3) Cashie River and its tributaries;
- (4) Middle River and its tributaries;
- (5) Eastmost River and its tributaries; and
- (6) Lake Mattamuskeet and associated canals in Hyde County.

~~(e)~~(g) In the following waters, the daily creel limit is 20 fish and the minimum size limit is eight inches:

- (1) Lake Norman;
- (2) Lake Hycy;
- (3) Lake Ramseur;
- (4) Cane Creek Lake (Union County);
- (5) Lake Hampton (Yadkin County);
- (6) Tar River downstream of Tar River Reservoir Dam and all tributaries;
- (7) Neuse River downstream of Falls Lake Dam and all tributaries;
- (8) Haw River downstream of Jordan Lake Dam and all tributaries;
- (9) Deep River downstream of Lockville Dam and all tributaries;
- (10) Cape Fear River and all tributaries;
- (11) Waccamaw River downstream of Lake Waccamaw Dam and all tributaries;
- (12) Lumber River including Drowning Creek and all tributaries;
- (13) all other public fishing waters east of Interstate 95, except Tar River Reservoir in Nash County, Sutton Lake in New Hanover County, and waters listed in Paragraph ~~(d)~~(f) of this Rule; and
- (14) all public waters west of Interstate 77, except Lake Chatuge.

~~(f)~~(h) In John H. Kerr Reservoir, the daily creel limit is 25 fish and the minimum size limit is nine inches.

Authority G.S. 113-134; 113-292.

15A NCAC 10C .0307 FLOUNDER, SEA TROUT, AND RED DRUM FLOUNDER

~~In inland fishing waters, Sea Trout (Spotted or Speckled), Flounder, and Red Drum (also known as Channel Bass, Red Fish or Puppy Drum) recreational seasons, size limits, and creel limits are the same as those established in the Rules of the Marine Fisheries Commission or proclamations issued by the Fisheries Director in adjacent joint or coastal fishing waters.~~

- ~~(a)~~ The daily creel limit for flounder is four fish.
- ~~(b)~~ The minimum size limit is 15 inches.
- ~~(c)~~ The season for taking and possessing flounder is September 1 through September 14.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0308 KOKANEE SALMON

- ~~(a)~~ The daily creel limit for ~~Kokanee Salmon~~ kokanee salmon is four fish.
- ~~(b)~~ There is no minimum size limit. ~~limit for Kokanee Salmon.~~
- ~~(c)~~ There is no closed season. ~~season for Kokanee Salmon.~~

Authority G.S. 113-134; 113-292.

15A NCAC 10C .0313 AMERICAN SHAD AND HICKORY SHAD (AMERICAN AND HICKORY)

(a) The daily creel limit for American and ~~Hickory Shad~~ hickory shad in the aggregate is 10 fish, only one of which may be an

American ~~Shad, shad~~, except for waters identified in Paragraphs ~~(b), (c) and~~ (d) through (f) of this Rule.

~~(b)~~ There is no minimum size limit, limit for these fish.

~~(c)~~ There is no closed season, except for waters identified in Paragraph ~~(e)~~ (g) of this Rule.

~~(b)(d)~~ In the inland waters of the Tar-Pamlico River, Pungo River, Pee Dee River, and their tributaries, the daily creel limit for American and ~~Hickory Shad~~ hickory shad is 10 in the aggregate.

~~(e)(e)~~ In the inland waters of the Cape Fear River and its tributaries, the daily creel limit for American and ~~Hickory Shad~~ hickory shad is 10 in the aggregate, only five of which may be American ~~Shad, shad~~.

~~(d)(f)~~ In Roanoke Rapids Reservoir, Lake Gaston and John H. Kerr Reservoir, no American ~~Shad shad~~ may be possessed.

~~(e)(g)~~ The season for taking American and ~~Hickory Shad~~ hickory shad with dip nets and bow nets is March 1 through April 30.

Authority G.S. 113-134; 113-292.

15A NCAC 10C .0314 STRIPED BASS

(a) The daily creel limit for ~~Striped Bass~~ striped bass and its hybrids is four fish in the aggregate, except in waters identified in Paragraphs ~~(b), (c), (f), (g), (h), (i), and (j)~~ (d), and (g) through (l) of this Rule.

(b) The minimum size limit for these fish is 20 inches, except in waters identified in Paragraphs ~~(b), (c), (d), (e), (f), (g), (h), (i), and (j)~~ (d) through (l) of this Rule.

(c) There is no closed season, except for waters identified in Paragraphs ~~(g), (h), (i), (j), and (k)~~ (i) through (m) of this Rule.

~~(b)(d)~~ In the Dan River upstream from its confluence with Bannister River to the dam at Union Street in Danville, VA and in John H. Kerr Reservoir, the daily creel limit on ~~Striped Bass~~ striped bass and its hybrids is two in the aggregate and the minimum size limit is 20 inches from October 1 through May 31. From June 1 through September 30, the daily creel limit on ~~Striped Bass~~ striped bass and its hybrids is four in the aggregate with no minimum size limit.

~~(e)(e)~~ In Lake Gaston and Roanoke Rapids Reservoir, the minimum size limit for ~~Striped Bass~~ striped bass and its hybrids is 20 inches from October 1 through May 31. There is no minimum size limit for these fish from June 1 through September 30.

~~(d)(f)~~ In Lake Norman, Hyco Lake, Moss Lake, Mountain Island Reservoir, Oak Hollow Lake, Lake Thom-A-Lex, Lake Townsend, and Salem Lake the minimum size limit for ~~Striped Bass~~ striped bass and its hybrids is 16 inches.

~~(e)(g)~~ In Lake Chatuge in Clay County, the daily creel limit is 15 in the aggregate. There is no minimum size limit, but only two may be greater than 22 inches.

~~(f)(h)~~ In Lake Mattamuskeet, and in the Pee Dee River and its tributaries downstream from the Blewett Falls Dam to the South Carolina state line, the daily creel limit for ~~Striped Bass~~ striped bass and its hybrids is three fish in the aggregate, and the minimum size limit is 18 inches.

~~(g)(i)~~ In the inland fishing waters of Neuse, Pungo, and Tar Pamlico rivers and their tributaries extending upstream to the first impoundment of the main course on the river or its tributaries, and in all other inland fishing waters east of Interstate 95 not specified in Paragraphs ~~(f), (h), (i), and (j)~~ and (j) through (l) of this Rule,

the daily creel limit for ~~Striped Bass~~ striped bass and its hybrids is two fish in the aggregate. The minimum size limit is 26 inches. In these waters, the season for taking and possessing ~~Striped Bass~~ striped bass is closed from May 1 through September 30.

~~(h)(j)~~ In the inland fishing waters of the Cape Fear River and its tributaries downstream of Buckhorn Dam and in the ponds associated with Martin Marietta Park in Craven County, the season for taking and possessing ~~Striped Bass~~ striped bass is closed year-round.

~~(i)(k)~~ In the inland and joint fishing waters of the Roanoke River Striped Bass Management Area, as ~~established in 15A NCAC 03R-0201 and~~ identified in 15A NCAC 10C ~~0110, 0110(a)(2),~~ which includes the Roanoke, Cashie, Middle, and Eastmost rivers and their tributaries, the open season for taking and possessing ~~Striped Bass~~ striped bass and its hybrids is March 1 through April 30 from the joint-coastal fishing waters boundary at Albemarle Sound upstream to Roanoke Rapids Lake dam. During the open season, the daily creel limit for ~~Striped Bass~~ striped bass and its hybrids is two fish in the aggregate, and the minimum size limit is 18 inches. No fish between 22 inches and 27 inches in length shall be possessed in the daily creel limit. Only one fish larger than 27 inches may be possessed in the daily creel limit.

~~(j)(l)~~ In designated inland and joint fishing waters of ~~Roanoke Sound, Croatan Sound, the Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries),~~ Sound Management Area, as identified in 15A NCAC 10C .0110(a)(1), the ~~Striped Bass~~ striped bass fishing season, size limits, and creel limits are the same as those established by rules or proclamations of the Marine Fisheries Commission in adjacent ~~joint or~~ coastal fishing waters.

~~(k)(m)~~ In accordance with G.S. 113-292, the Executive Director may, by proclamation, suspend, or extend the hook-and-line season for ~~Striped Bass~~ striped bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0318 WHITE BASS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 10C .0319 WHITE PERCH

(a) There is no daily creel limit for ~~White Perch, white perch~~.

(b) There is no minimum size limit.

(c) There is no closed season.

(d) In and west of Haywood, Buncombe, and Rutherford counties, it is unlawful to transport, possess, or release live ~~White Perch, white perch~~.

(e) White perch may be taken when captured in a cast net being used to collect nongame fishes for bait or personal consumption in all impounded waters west of I-95 and in the Tar River Reservoir (Nash County).

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0321 SMALLMOUTH BASS

(a) The daily creel limit for ~~Smallmouth Bass~~ smallmouth bass is five fish, except in waters identified in Paragraphs ~~(b), (c), and (d)~~ through (f) of this Rule.

~~(b)~~ There is no minimum size limit for ~~Smallmouth Bass~~, smallmouth bass, but only two of them may be less than 14 inches except in waters identified in Paragraphs ~~(b), (c), and (d)~~ through (f) of this Rule.

~~(c)~~ There is no closed season.

~~(b)(d)~~ In Lake Santeetlah in Graham County, there is no daily creel limit for ~~Largemouth Bass~~ largemouth bass and ~~Smallmouth Bass~~ smallmouth bass less than 14 inches. The daily creel limit for ~~Largemouth Bass~~ largemouth bass and ~~Smallmouth Bass~~ smallmouth bass greater than 14 inches is five fish in aggregate.

~~(e)(e)~~ In Lake Chatuge in Clay County, the daily creel limit for ~~Largemouth Bass, Smallmouth Bass, Alabama Bass, and Spotted Bass~~ largemouth bass, smallmouth bass, Alabama bass, and spotted bass is 10 fish in aggregate. There is no minimum size limit for ~~Smallmouth Bass~~, smallmouth bass.

~~(d)(f)~~ In the Alleghany County portion of New River downstream of Fields Dam (Grayson County, Virginia), the daily creel limit for ~~Largemouth Bass, Smallmouth Bass, and Spotted Bass~~ largemouth bass, smallmouth bass, and spotted bass is five fish in aggregate. There is no minimum size limit for ~~Smallmouth Bass, smallmouth bass~~, but no fish between 14 and 22 inches in length may be possessed and only one ~~Largemouth Bass, Smallmouth Bass, or Spotted Bass~~ largemouth bass, smallmouth bass, or spotted bass greater than 22 inches may be possessed.

Authority G.S. 113-134; 113-292.

15A NCAC 10C .0322 ALABAMA BASS AND SPOTTED BASS

(a) There is no daily creel limit for Alabama ~~Bass or Spotted Bass~~, bass or spotted bass, except for waters identified in Paragraphs ~~(b)(d)~~ and ~~(e)(e)~~ of this Rule.

~~(b)~~ There is no minimum size ~~limit~~ limit.

~~(c)~~ There is no ~~or~~ closed season.

~~(b)(d)~~ In Lake Chatuge in Clay County, the daily creel limit for ~~Largemouth Bass, Smallmouth Bass, Alabama Bass, and Spotted Bass~~ largemouth bass, smallmouth bass, Alabama bass, and spotted bass is 10 fish in aggregate.

~~(e)(e)~~ In the Alleghany County portion of New River downstream of Fields Dam (Grayson County, Virginia), the daily creel limit for ~~Largemouth Bass, Smallmouth Bass, and Spotted Bass~~ largemouth bass, smallmouth bass, and spotted bass is five fish in aggregate. There is no minimum size limit for ~~Spotted Bass, spotted bass~~, but no fish between 14 and 22 inches in length may be possessed and only one ~~Largemouth Bass, Smallmouth Bass, or Spotted Bass~~ largemouth bass, smallmouth bass, or spotted bass greater than 22 inches may be possessed.

Authority G.S. 113-134; 113-292.

15A NCAC 10C .0323 REDEYE BASS

(a) The daily creel limit for ~~Redeye Bass~~ redeye bass is five fish.

~~(b)~~ There is no minimum size limit for ~~Redeye Bass~~, redeye bass, but only two of them may be less than 14 inches.

~~(c)~~ There is no closed season.

Authority G.S. 113-134; 113-292.

15A NCAC 10C .0324 CATFISH BULLHEADS

(a) The daily creel limit for ~~Black Bullhead, Brown Bullhead, Flat Bullhead, Snail Bullhead, White Catfish, and Yellow Bullhead~~ black bullhead, brown bullhead, flat bullhead, snail bullhead, white catfish, and yellow bullhead is 10 fish in aggregate.

~~(b)~~ There is no minimum size ~~limit~~ limit.

~~(c)~~ There is no ~~or~~ closed ~~season~~, ~~season~~ for ~~Black Bullhead, Brown Bullhead, Flat Bullhead, Snail Bullhead, White Catfish, and Yellow Bullhead~~.

Authority G.S. 113-134; 113-292.

15A NCAC 10C .0325 SEA TROUT

(a) The daily creel limit for sea trout (spotted or speckled) is four fish.

~~(b)~~ The minimum size limit is 14 inches.

~~(c)~~ There is no closed season.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0326 RED DRUM

(a) The daily creel limit for red drum (also known as channel bass, red fish or puppy drum) is one fish.

~~(b)~~ The minimum size limit is 18 inches and no fish over 27 inches may be possessed in the daily creel limit.

~~(c)~~ There is no closed season.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

**SECTION .0400 – JURISDICTION OF AGENCIES;
CLASSIFICATION OF WATERS NONGAME FISH IN
INLAND FISHING WATERS**

15A NCAC 10C .0401 MANNER OF TAKING NONGAME FISHES

(a) Except as permitted by the rules in this Section, ~~it is unlawful no person shall~~ to take nongame fishes from the inland fishing waters of North Carolina in any manner other than with hook and line, grabbling, or special device with a special device fishing license, license, or inland fishing license.

~~(b)~~ Nongame fishes may be taken ~~from inland fishing waters by hook and line, grabbling, or special device with a special device fishing license~~ at any time without restriction as to size limits or creel limits, except as designated specified in this Rule. Section.

~~(c)~~ Special devices ~~may only be used to take nongame fishes with a special device fishing license shall only be used~~ in those counties and waters with open season designated in Rule .0407 of this Section. 15A NCAC 10C .0407.

~~(d)~~ Archery equipment ~~may used with either a hunting license or inland fishing license may only be used to take nongame fishes year-round in all inland fishing waters, except:~~

- (1) ~~for the take of catfish on in the~~ for the take of catfish on in the Pee Dee River downstream of Blewett Falls Dam to the South Carolina state line and in all ~~tributaries, tributaries, where only catfish can be taken;~~

- (2) in impounded waters located on the Sandhills Game Land; and
- (3) in public mountain trout waters.

(e) Set hooks, jug hooks, and trotlines may be used to take nongame fishes as designated in 15A NCAC 10C .0206.

(f) The season for taking nongame fishes by hook and line in designated public mountain trout waters is the same as the trout fishing season. Trout seasons are designated in 15A NCAC 10C .0316.

~~(g) Freshwater mussels, including the Asiatic clam (Corbicula fluminea), may be taken only from impounded waters, except mussels shall not be taken in:~~

- ~~(1) Lake Waccamaw in Columbus County; and~~
- ~~(2) University Lake in Orange County.~~

The daily possession limit for freshwater mussels is 200 in the aggregate, except there is no daily possession limit for the Asiatic clam (Corbicula fluminea).

~~(h) Blue crabs shall have a minimum carapace width of five inches (point to point) and it is unlawful to possess more than 50 crabs per person per day or to exceed 100 crabs per vessel per day.~~

~~(i) While boating on or fishing in the following inland fishing waters, no person shall take river herring (alewife and blueback herring) that are greater than six inches in length, or possess such herring regardless of origin in:~~

- ~~(1) Roanoke River downstream of Roanoke Rapids Dam;~~
- ~~(2) Tar River downstream of Rocky Mount Mill Dam;~~
- ~~(3) Neuse River downstream of Falls Lake Dam;~~
- ~~(4) Cape Fear River downstream of Buckhorn Dam;~~
- ~~(5) Pee Dee River downstream of Blewett Falls Dam;~~
- ~~(6) Lumber River, including Drowning Creek;~~
- ~~(7) all the tributaries to the rivers listed above; and~~
- ~~(8) all other inland fishing waters east of I-95.~~

~~(j) In waters that are stocked and managed for catfish and located on game lands, on Commission owned property, or on the property of a cooperator, including waters within the Community Fishing Program, it is unlawful to take channel or blue catfish by means other than hook and line; the daily creel limit for channel catfish is seven. Waters where this creel limit applies shall be posted on site with signs indicating the creel limit.~~

~~(k) The daily creel limit for blue catfish greater than 32 inches is one fish in the following waters:~~

- ~~(1) Lake Norman;~~
- ~~(2) Mountain Island Lake;~~
- ~~(3) Lake Wylie;~~
- ~~(4) Badin Lake;~~
- ~~(5) Lake Tillery;~~
- ~~(6) John H. Kerr Reservoir (North Carolina portion);~~
- ~~(7) Dan River (Downstream of the Union Street Dam in Danville, VA);~~
- ~~(8) Lake Gaston (North Carolina portion); and~~
- ~~(9) Roanoke Rapids Reservoir.~~

~~(l) The daily creel limit is five catfish in aggregate on the Pee Dee River downstream of Blewett Falls Dam to the South Carolina state line and all tributaries.~~

~~(m) The daily creel limit for American eels taken from or possessed, regardless of origin, while boating on or fishing in inland fishing waters is 25, and the minimum size limit is 9 inches. Eels greater than 9 inches in length and with a minimum body depth greater than 1/2 inch may be cut for use as bait.~~

~~(n) Grass carp shall not be taken or possessed on Lake James, Lookout Shoals Lake, Mountain Island Reservoir, and Lake Wylie, except that one fish per day may be taken with archery equipment.~~

~~(o) Grass carp shall not be taken or possessed on Lake Norman and the North Carolina portion of John H. Kerr Reservoir, except for scientific study by permit issued by the Wildlife Resources Commission.~~

~~(p) In inland fishing waters, gray trout (weakfish) recreational seasons, size limits, and creel limits are the same as those established by Marine Fisheries Commission rule or proclamations issued by the Fisheries Director in adjacent joint or coastal fishing waters.~~

~~(q) No person while fishing shall remove the head or tail or otherwise change the appearance of any nongame fish specified in Paragraphs (h), (i), (k), (m), and (p) of this Rule having a size limit so as to render it impractical to measure its total original length, except as provided in Paragraph (m) of this Rule. No person while fishing shall change the appearance of any nongame fish specified in Paragraphs (g), (h), (j), (k), (l), (m), (n), (o), and (p) of this Rule having a daily creel limit so as to obscure its identification or render it impractical to count the number of fish in possession, except as provided in Paragraph (m) of this Rule.~~

~~(r) Nongame fishes taken by hook and line, grabbling, or by special device with a special device fishing license may be sold, sold unless otherwise specified in this Section, with the following exceptions:~~

- ~~(1) alewife and blueback herring, excluding those less than six inches in length collected from Kerr Reservoir (Granville, Vance, and Warren counties);~~
- ~~(2) blue crab; and~~
- ~~(3) bowfin.~~

~~(s) Margined madtom and tadpole madtom shall not be taken or possessed from inland fishing waters.~~

Authority G.S. 113-134; 113-272; 113-292.

15A NCAC 10C .0402 TAKING NONGAME FISHES BY SPECIAL DEVICE FOR BAIT OR PERSONAL CONSUMPTION

(a) The use of equipment specified in this Rule requires a valid license that provides basic inland fishing privileges.

~~(a)(b) It is unlawful to take nongame fish for bait or personal consumption in the inland waters of North Carolina using equipment other than:~~

- ~~(1) a net of dip net design not greater than six feet across;~~
- ~~(2) a seine of not greater than 12 feet in length (except in Lake Waccamaw in Columbus County where there is no length limitation) and with a bar mesh measure of not more than one-fourth inch;~~
- ~~(3) a cast net;~~

- (4) a bow net for the seasons and waters in which the use of bow nets is authorized in 15A NCAC 10C .0407;
- (5) a dip net when used in conjunction with a licensed hand-crank electrofisher;
- (6) a gig (except in Public Mountain Trout Waters);
- (7) up to three traps for the seasons and waters in which the use of traps is authorized in 15A NCAC 10C .0407;
- (8) up to two eel pots;
- (9) a spear gun for the seasons and waters in which the use of a spear gun is authorized in 15A NCAC 10C .0407;
- (10) minnow traps not exceeding 12 inches in diameter and 24 inches in length, with funnel openings not exceeding one inch in diameter, from which all fish and animals are removed daily, and that are labeled with the user's Wildlife Resources Commission customer number or name and address;
- (11) a hand-held line with a single bait attached;
- (12) a single, multiple-bait line for taking crabs not to exceed 100 feet in length, marked on each end with a solid float no less than five inches in diameter, bearing legible and indelible identification of the user's name and address, and under the immediate control and attendance of the person using the device, with a limit of one line per person and no more than one line per vessel; or
- (13) a collapsible crab trap with the largest open dimension not greater than 18 inches and that by design is collapsed at all times when in the water, except when it is being retrieved or lowered to the bottom, with a limit of one trap per person.

~~(b) The use of equipment under this Rule requires a valid license that provides basic inland fishing privileges.~~

(c) It is unlawful to sell nongame fishes or aquatic animals taken under this Rule.

(d) Game fishes taken shall be returned unharmed to the water, except for the following: ~~white perch may be taken when captured in a cast net being used to collect nongame fishes for bait or personal consumption in all impounded waters west of I-95 and in the Tar River Reservoir (Nash County).~~

- (1) American and hickory shad may be taken when captured with dip nets and bow nets from March 1 through April 30 subject to the size and creel limits specified in 15A NCAC 10C .0313.
- (2) white perch may be taken when captured in a cast net being used to collect nongame fishes for bait or personal consumption in all impounded waters west of I-95 and in the Tar River Reservoir (Nash County) subject to the size and creel limits specified in 15A NCAC 10C .0319.

(e) No person shall take or possess during one day more than 200 nongame fish, in aggregate, for bait or personal ~~consumption~~ subject to the consumption, accounting for species specific size

and creel limits identified in ~~15A NCAC 10C .0401~~ Section .0400 of this Subchapter.

(f) Any fishes taken for bait purposes are included within the daily possession limit for that species.

(g) It is unlawful to take nongame fish for bait from the following waters:

- (1) Public Mountain Trout Waters (except in impounded waters of power reservoirs and municipally-owned water supply reservoirs);
- (2) Bear Creek in Chatham County;
- (3) Deep River in Chatham, Lee, and Moore counties and downstream of Coleridge Dam in Randolph County;
- (4) Fork Creek in Randolph County; and
- (5) Rocky River in Chatham County.

~~(i) No person while fishing shall remove the head or tail or otherwise change the appearance of any nongame fish having a size limit identified in 15A NCAC 10C .0401 so as to render it impractical to measure its total original length, except as provided in 15A NCAC 10C .0401(m). No person while fishing shall change the appearance of any nongame fish having a daily creel limit identified in 15A NCAC 10C .0401 so as to obscure its identification or render it impractical to count the number of fish in possession, except as provided in 15A NCAC 10C .0401(m).~~

Authority G.S. 113-134; 113-272; 113-272.3; 113-292.

15A NCAC 10C .0404 SPECIAL DEVICES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 10C .0405 POSSESSION OF LICENSES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 10C .0406 TRAWLS AND DREDGES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 10C .0407 PERMITTED SPECIAL DEVICES AND OPEN SEASONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 10C .0409 TAKING AND POSSESSION OF NONGAME FISHES

(a) Individuals shall only take up to the daily creel limit of those species of nongame fish having a specified creel limit.

- (b) Individuals shall only possess, on those waters being fished:
- (1) the specified daily creel limit for the species;
 - (2) fish conforming to the size limit of the species; and
 - (3) the daily creel limit while fishing or afield.

(c) Individuals shall only possess up to three days creel limit at any place.

- (d) No person, while fishing or afield, shall:
- (1) remove the head or tail or otherwise change the appearance of any nongame fish specified in Section .0400 as having a size limit, so as to render it impractical to measure its total original length, except as provided in 15A NCAC 10C .0410.

- (2) change the appearance of any nongame fish that has a species-specific daily creel limit in Section .0400, as to obscure its identification or render it impractical to count the number of fish in possession, except for American Eel as provided in 15A NCAC 10C .0410.

Authority G.S. 113-134; 113-292.

15A NCAC 10C .0410 AMERICAN EEL

- (a) The daily creel limit for American eels taken from or possessed, regardless of origin, while boating on or fishing in inland fishing waters is 25.
- (b) The minimum size limit is nine inches.
- (c) There is no closed season.
- (d) Eels greater than nine inches in length and with a minimum body depth greater than ½ inch may be cut for use as bait.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0411 ATLANTIC CROAKER

- (a) The daily creel limit for Atlantic croaker is 50 fish.
- (b) There is no minimum size limit.
- (c) There is no closed season.
- (d) Atlantic croaker shall not be sold.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0412 BLACK DRUM

- (a) The daily creel limit for black drum is 10 fish.
- (b) The minimum size limit is 14 inches and no fish over 25 inches may be possessed in the daily creel limit.
- (c) There is no closed season.
- (d) Black drum shall not be sold.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0413 BLUE CRAB

- (a) Blue crabs shall have a minimum carapace width of five inches (point to point).
- (b) It is unlawful to possess more than 50 crabs per person per day, or to exceed 100 crabs per vessel per day.
- (c) There is no closed season.
- (d) Blue crabs shall not be sold.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0414 BLUEFISH

- (a) The daily creel limit for bluefish is three.
- (b) There is no size limit.
- (c) There is no closed season.
- (d) Bluefish shall not be sold.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0415 BOWFIN

- (a) There is no daily creel limit for bowfin.
- (b) There is no minimum size limit.
- (c) There is no closed season.

- (d) Bowfin shall not be sold.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0416 BLUE CATFISH, CHANNEL CATFISH, AND FLATHEAD CATFISH

- (a) There is no daily creel limit for blue, channel, and flathead catfish, except for waters identified in Paragraphs (e), (f), and (g) of this Rule.
- (b) There is no minimum size limit.
- (c) There is no closed season.
- (d) In waters that are stocked and managed for catfish and located on game lands, on Commission-owned property, or on the property of a cooperator, including waters within the Community Fishing Program, no person shall take channel or blue catfish by means other than hook and line.
- (e) In waters that are stocked and managed for catfish and located on game lands, on Commission-owned property, or on the property of a cooperator, including waters within the Community Fishing Program, the daily creel limit for channel catfish is seven on waters posted with signs indicating the creel limit.
- (f) The daily creel limit for blue catfish greater than 32 inches is one fish in the following waters:

- (1) Lake Norman;
- (2) Mountain Island Lake;
- (3) Lake Wylie;
- (4) Badin Lake;
- (5) Lake Tillery;
- (6) John H. Kerr Reservoir (North Carolina portion);
- (7) Dan River (Downstream of the Union Street Dam in Danville, VA);
- (8) Lake Gaston (North Carolina portion); and
- (9) Roanoke Rapids Reservoir.

- (g) The daily creel limit is five catfish in aggregate on the Pee Dee River downstream of Blewett Falls Dam to the South Carolina state line and all tributaries.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0417 COBIA

- (a) The daily creel limit for cobia is one fish.
- (b) The minimum size limit is 36 inches.
- (c) The season for taking and possessing cobia is May 1 to December 31.
- (d) Cobia shall not be sold.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0418 FRESHWATER MUSSELS

- (a) Freshwater mussels, including the Asiatic clam (Corbicula fluminea), may only be taken from impounded waters, except mussels shall not be taken in:
 - (1) Lake Waccamaw in Columbus County; and
 - (2) University Lake in Orange County.
- (b) The daily possession limit for freshwater mussels is 200 in the aggregate, except there is no daily possession limit for the Asiatic clam (Corbicula fluminea).
- (c) There is no minimum size limit.

(d) There is no closed season.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0419 GRASS CARP

(a) There is no daily creel limit for grass carp, except for waters identified in Paragraphs (d) and (e) of this Rule.

(b) There is no minimum size limit.

(c) There is no closed season.

(d) Grass carp shall not be taken or possessed except that one fish per day may be taken with archery equipment on the following waters:

- (1) Lake James;
- (2) Lookout Shoals Lake;
- (3) Mountain Island Reservoir; and
- (4) Lake Wylie.

(e) Grass carp shall not be taken or possessed except for scientific study by permit issued by the Wildlife Resources Commission on the following waters:

- (1) Lake Gaston (S.L. 2009-261);
- (2) Roanoke Rapids Reservoir (S.L. 2009-261);
- (3) Lake Norman; and
- (4) the North Carolina portion of John H. Kerr Reservoir.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0420 KING MACKEREL

(a) The daily creel limit for king mackerel is three fish.

(b) The minimum size limit is 24 inches.

(c) There is no closed season.

(d) King mackerel shall not be sold.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0421 MARGINED MADTOM AND TADPOLE MADTOM

Margined madtom and tadpole madtom shall not be taken or possessed.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0422 STRIPED MULLET AND WHITE MULLET

(a) The daily creel limit for striped mullet and white mullet is 200 fish in aggregate.

(b) There is no minimum size limit.

(c) There is no closed season.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0423 ALEWIFE AND BLUEBACK HERRING

(a) There is no daily creel limit for alewife or blueback herring (river herring), except for waters identified in Paragraph (e) of this Rule.

(b) There is no minimum size limit, except for waters identified in Paragraph (d) of this Rule.

(c) There is no closed season.

(d) While boating on or fishing in the following inland fishing waters, no person shall take alewife and blueback herring that are greater than six inches in length, or possess such herring regardless of origin in:

- (1) Roanoke River downstream of Roanoke Rapids Dam;
- (2) Tar River downstream of Rocky Mount Mill Dam;
- (3) Neuse River downstream of Falls Lake Dam;
- (4) Cape Fear River downstream of Buckhorn Dam;
- (5) Pee Dee River downstream of Blewett Falls Dam;
- (6) Lumber River, including Drowning Creek;
- (7) all the tributaries to the rivers listed above; and
- (8) all other inland fishing waters east of I-95.

(e) It shall be unlawful to transport, possess, or release live alewife or blueback herring, in the waters of the Little Tennessee River in and upstream of Lake Santeetlah and Cedar Cliff Lake, including all the tributaries and impoundments thereof, and on adjacent shorelines, docks, access ramps, and bridge crossings.

(f) Alewife and blueback herring, excluding those less than six inches in length collected from Kerr Reservoir (Granville, Vance, and Warren counties), may not be sold.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0424 SHARKS

Sharks shall not be taken or possessed.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0425 SHEEPSHEAD

(a) The daily creel limit for sheepshead is 10 fish.

(b) The minimum size limit is 10 inches.

(c) There is no closed season.

(d) Sheepshead shall not be sold.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0426 SPANISH MACKEREL

(a) The daily creel limit for Spanish mackerel is 15 fish.

(b) The minimum size limit is 12 inches.

(c) There is no closed season.

(d) Spanish mackerel shall not be sold.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0427 SPOT

(a) The daily creel limit for spot is 50 fish.

(b) There is no minimum size limit.

(c) There is no closed season.

(d) Spot shall not be sold.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0428 TARPON

Tarpon shall not be taken or possessed.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0429 WEAKFISH (GRAY TROUT)

- (a) The daily creel limit for weakfish (gray trout) is one fish.
- (b) The minimum size limit is 12 inches.
- (c) There is no closed season.
- (d) Weakfish shall not be sold.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

15A NCAC 10C .0430 OTHER FISHES

- (a) For any nongame fish species not specifically listed in this Section, there is no daily creel limit.
- (b) There is no size limit.
- (c) There is no closed season.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

SECTION .0700 - FISHES IN JOINT FISHING WATERS

15A NCAC 10C .0701 INLAND GAME FISHES DESIGNATED IN JOINT FISHING WATERS

(a) For the purposes of this rule, the following fishes are classified and designated as inland game fishes in joint fishing waters:

- (1) Alabama bass, largemouth bass, redeye bass, smallmouth bass, and spotted bass;
- (2) black crappie and white crappie;
- (3) chain pickerel (jack), muskellunge, and redfin pickerel;
- (4) kokanee salmon;
- (5) mountain trout, all species including but not limited to brook trout, brown trout, and rainbow trout;
- (6) Roanoke bass and rock bass (redeye);
- (7) sauger and walleye; and
- (8) sunfish, including bluegill (bream), flier, pumpkinseed, redbreast (robin), redear (shellcracker), warmouth, and all other species of the sunfish family (Centrarchidae) not specifically listed in this Rule.

(b) Inland game fishes shall not be taken by any method other than with hook and line, except that landing nets may be used to land fishes caught on hook and line.

(c) Size, creel limits, and seasons for inland game fishes in joint fishing waters shall be the same as those designated in Section .0300 of this Subchapter for inland fishing waters.

(d) Inland game fishes taken incidental to commercial fishing operations shall be immediately returned to the water unharmed.

(e) Inland game fishes taken from joint fishing waters shall not be sold.

(f) Individuals shall only take up to the daily creel limit of those species of inland game fish having a specified creel limit.

(g) Individuals shall only possess, on those waters being fished:

- (1) the specified daily creel limit for the species;
- (2) fish conforming to the size limit for the species; and
- (3) the daily creel limit while fishing or afield.

(h) Individuals shall only possess up to three days creel limit at any place.

(i) No person, while fishing or afield, shall:

- (1) unnecessarily destroy any inland game fish taken from public fishing waters;
- (2) remove the head or tail or otherwise change the appearance of any game fish having a size limit so to render it impracticable to measure its total original length; or
- (3) change the appearance of any game fish having a daily creel limit so to obscure its identification or render it impracticable to count the number of fish in possession.

Authority G.S. 113-134; 113-135; 113-135.1; 113-292.

15A NCAC 10C .0702 TAKING AND POSSESSION OF OTHER FISHES BY HOOK AND LINE IN JOINT FISHING WATERS

(a) This Rule applies to fish taken by hook and line in joint fishing waters, excluding the species listed in 15A NCAC 10C .0701.

(b) Landing nets may be used to land fishes caught on hook and line.

(c) Set hooks, jug hooks, and trotlines may be used as designated in 15A NCAC 10C .0206 to take fishes in joint fishing waters.

(d) Size, creel limits, and seasons for fishes taken by hook and line in joint fishing waters shall be the same as those designated in Sections .0300 and .0400 of this Subchapter for inland fishing waters with the following exceptions:

- (1) In the joint fishing waters of the Tar-Pamlico River, Pungo River, and their tributaries, the daily creel limit for American and Hickory Shad is 10 in the aggregate.
- (2) In the joint fishing waters of the Cape Fear River and its tributaries, the daily creel limit for American and Hickory Shad is 10 in the aggregate, only five of which may be American Shad.
- (3) In the joint fishing waters of the Central Southern Management Area, as identified in 15A NCAC 03R .0201, size, creel limits, and seasons for striped bass and its hybrids are listed in 15A NCAC 10C .0107.
- (4) In the joint fishing waters of the Roanoke River Striped Bass Management Area, as identified in 15A NCAC 10C .0110(a)(2), which includes the Roanoke, Cashie, Middle, and Eastmost rivers and their tributaries, the open season for taking and possessing Striped Bass and its hybrids is March 1 through April 30 from the joint-coastal fishing waters boundary at Albemarle Sound upstream to Roanoke Rapids Lake dam. During the open season, the daily creel limit for Striped Bass and its hybrids is two fish in the aggregate, and the minimum size limit is 18 inches. No fish between 22 inches and 27 inches in length shall be possessed in the daily creel limit. Only one fish larger than 27 inches may be possessed in the daily creel limit.
- (5) In designated inland and joint fishing waters of the Albemarle Sound Management Area, as

identified in 15A NCAC 10C .0110(a)(1), the Striped Bass fishing season, size limits, and creel limits are the same as those established by rules or proclamations of the Marine Fisheries Commission in adjacent coastal fishing waters.

(e) Fishes taken by hook and line in joint fishing waters may be sold except those fishes for which the sale is prohibited as designated in Sections .0300 and .0400 of this Subchapter for inland fishing waters.

(f) For fishes taken by hook and line in joint fishing waters, individuals shall only take up to the daily creel limit of fish having a specified creel limit.

(g) Individuals shall only possess, on those waters being fished:

- (1) the specified daily creel limit for the species;
- (2) fish conforming to the size limit of the species; and
- (3) the daily creel limit while fishing or afield.

(h) Individuals shall only possess up to three days creel limit at any place.

(i) No person, while fishing or afield, shall:

- (1) remove the head or tail or otherwise change the appearance of any fish taken by hook and line specified in Sections .0300 or .0400 of this Subchapter as having a size limit, so to render it impractical to measure its total original length, except for American Eel as provided in 15A NCAC 10C .0410.
- (2) change the appearance of any fish taken by hook and line that has a species specific daily creel limit in Sections .0300 or .0400 of this Subchapter, as to obscure its identification or render it impractical to count the number of fish in possession, except for American Eel as provided in 15A NCAC 10C .0410.

Authority G.S. 113-134; 113-135; 113-135.1; 113-292.

SECTION .0800 – GAME FISH IN COASTAL FISHING WATERS

15A NCAC 10C .0801 INLAND GAME FISHES DESIGNATED IN COASTAL FISHING WATERS

(a) For the purposes of this Rule, only the following fishes are classified and designated as inland game fishes in coastal fishing waters:

- (1) Alabama bass, largemouth bass, redeye bass, smallmouth bass, and spotted bass;
- (2) black crappie and white crappie;
- (3) chain pickerel (jack), muskellunge, and redfin pickerel;
- (4) kokanee salmon;
- (5) mountain trout, all species including but not limited to brook trout, brown trout, and rainbow trout;
- (6) Roanoke bass and rock bass (redeye);
- (7) sauger and walleye; and
- (8) sunfish, including bluegill (bream), flier, pumpkinseed, redbreast (robin), redear (shellcracker), warmouth, and all other species

of the sunfish family (Centrarchidae) not specifically listed in this Rule.

(b) Inland game fishes shall not be taken by any method other than with hook and line, except that landing nets may be used to land fishes caught on hook and line.

(c) Size, creel limits, and seasons for inland game fishes in coastal fishing waters shall be the same as those in inland waters designated in Section .0300 of this Subchapter.

(d) Inland game fishes taken incidental to commercial fishing operations shall be immediately returned to the water unharmed.

(e) Inland game fishes taken from coastal fishing waters shall not be sold.

(f) Individuals shall only take up to the daily creel limit of those species of inland game fish having a specified creel limit.

(g) Individuals shall only possess, on those waters being fished:

- (1) the specified daily creel limit for the species;
- (2) fish conforming to the size limit for the species; and
- (3) the daily creel limit while fishing or afield.

(h) Individuals shall only possess up to three days creel limit at any place.

(i) No person, while fishing or afield, shall:

- (1) unnecessarily destroy any inland game fish taken from public fishing waters;
- (2) remove the head or tail or otherwise change the appearance of any game fish having a size limit so to render it impracticable to measure its total original length; or
- (3) change the appearance of any game fish having a daily creel limit so to obscure its identification or render it impracticable to count the number of fish in possession.

Authority G.S. 113-134; 113-135; 113-135.1; 113-292.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to adopt the rule cited as 15A NCAC 10F .0378, amend the rules cited as 15A NCAC 10F .0317, .0323, .0327, .0333, .0336, .0354, and repeal the rules cited as 15A NCAC 10F .0312 and .0318.

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

Link to agency website pursuant to G.S. 150B-19.1(c): <https://www.ncwildlife.org/Proposed-Regulations>

Proposed Effective Date: June 1, 2022

Public Hearing:

Date: February 7, 2022

Time: 2:00 p.m.

Location: Register online here: https://ncwildlife-org.zoomgov.com/webinar/register/WN_Y9QFs1phS4aoXivOh09rTA

Join by phone toll free (833 568 8864) using Webinar ID: 160 989 2638

Reason for Proposed Action:

15A NCAC 10F .0312 - After review from law enforcement, no wake zones in the area have proved to be impractical, unenforceable, and unnecessary. There have been no recorded boater safety hazards and none are expected moving forward.

15A NCAC 10F .0317 - A no wake zone is being proposed on a portion of Lake Tillery at Morrow Mountain State Park, within 50 yards of the shoreline. There are proposed technical amendments to the Rule to itemize all public and private Boating Access Areas in Stanly County on Badin Lake [10F .0317(a)(1)(B)(C)], Lake Tillery [10F .0317 (a)(2)(D)(E)], and Tuckertown Reservoir [10F .0317(a)(3)]. A technical amendment will identify the location of the existing Badin Swim Area [10F .0317(b)]

15A NCAC 10F .0318 - Amendments for the Warren County no-wake zones on Lake Gaston will be incorporated into 15A NCAC 10F .0336 Northampton and Warren counties allowing for this rule to be repealed.

15A NCAC 10F .0323 - No wake zones are being proposed 50 yards northwest and southeast of the Mills Creek pedestrian bridge on Mills Creek at Lake James State Park on Lake James in Burke County to mitigate hazards to boater safety.

15A NCAC 10F .0327 - Technical amendments are being proposed to accurately describe WRC Boating Access Areas.

15A NCAC 10F .0333 - No wake zones are being proposed at Brown's Cove on Lake Wylie in Mecklenburg County to mitigate hazards to boater safety.

15A NCAC 10F .0336 - Proposed amendments incorporate requirements on Lake Gaston in Warren County currently codified in 15A NCAC 10F .0318 (proposed for repeal).

15A NCAC 10F .0354 - No wake zones are being proposed at Barber Lake to mitigate hazards to boater safety.

15A NCAC 10F .0378 - No wake zones are being proposed at an abandoned trestle is in a narrow channel where Deep Creek meets Roanoke Rapids Lake. There are also proposed WRC Boating Access Areas.

Comments may be submitted to: Rulemaking Coordinator, 1701 Mail Service Center, Raleigh, NC 27699; email regulations@ncwildlife.org

Comment period ends: March 21, 2022

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

Commission, please call a Commission staff attorney at 984-236-1850.

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

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

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0312 HENDERSON COUNTY

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0317 STANLY COUNTY

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

- (1) Badin Lake, within 50 yards northeast and southwest of the section of railroad trestle designed for vessel traffic, northwest of the Old Whitney Boating Access Area near the Stanly-Montgomery County line;
(A) within 50 yards northeast and southwest of the section of the railroad trestle designed for vessel traffic, northwest of the Old Whitney Boating Access Area near the Stanly-Montgomery County line;
(B) Old Whitney Boating Access Area on Old Whitney Road in New London; and
(C) Badin Lake Boat Ramp, 293 NC Highway 740 in Badin.
(2) Lake Tillery.
(A) Turner Beach Cove shore to shore, south of a point at 35.22529 N, 80.09318 W; and
(B) The the waters within 50 yards of the fuel docks at the Boathouse and Marina at 712 Berry Hill Drive in Norwood; Norwood;
(C) the waters within 50 yards of the shoreline at Morrow Mountain State Park, from a point north of the Morrow Mountain Boathouse at a point at 35.38256 N, 80.06221 W, to a point south of the Morrow Mountain Boat Launch at 35.37919 N, 80.06114 W;

- (D) Norwood Boating Access Area, 307-A Lakeshore Drive in Norwood; and
- (E) Stony Mountain Boating Access Area, 22682-A Lake Tillery Road in Albemarle.

- (3) Tuckertown Reservoir, within 50 yards of the NC Highway 49 Boat Ramp at 36824 NC Highway 49 in New London.

~~(b) Speed Limit Near Ramps. No person shall operate a vessel at greater than no wake speed within 50 yards of any public boat launching ramp while on the waters of a regulated area described in Paragraph (a) of this Rule.~~

~~(c) Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area on the waters of a regulated area described in Paragraph (a) of this Rule. the waters of the Badin Swim Area.~~

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

~~(e) Placement of Markers. The North Carolina Wildlife Resources Commission shall be the designated agency for placement and maintenance of the markers implementing Subparagraph (a)(1) of this Rule. The Board of Commissioners of Stanly County shall be the designated agency for placement of markers implementing Parts (a)(2)(A) and (B) of this Rule.~~

~~(e)(d) Placement of Markers.~~

- (1) The North Carolina Wildlife Resources Commission shall be the designated agency for placement and maintenance of the markers implementing Parts (a)(1)(A), (B), (C), (a)(2)(D), (E), and Subparagraph (a)(3) of this Rule.
- (2) The Board of Commissioners of Stanly County shall be the designated agency for placement of markers implementing Parts (a)(2)(A), (B) and Paragraph (b) of this Rule.
- (3) Morrow Mountain State Park shall be the designated agency for placement of markers implementing Part (a)(2)(C) of this Rule.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0318 WARREN COUNTY

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0323 BURKE COUNTY

(a) Regulated Areas. This Rule applies ~~only~~ to the following waters ~~or portions of waters~~ in Burke County:

- (1) ~~Lake Hickory;~~ Hickory.
- (2) ~~Lake James, delineated by markers consistent with Paragraph (e) of this Rule, at the following locations:~~ Lake James at the following locations:
 - (A) Holiday Shores Subdivision;
 - (B) Lake James Campground;
 - (C) Laurel Pointe Subdivision;
 - (D) ~~The the~~ waters of Boyd Moore Cove shore to shore, north of a line from a

point on the northwest shore at 35.76667 N, 81.82337 W to a point on the southeast shore at 35.76558 N, 81.82245 W;

- (E) East Shores development;
- (F) ~~Eastern shore of Lake James at Mallard Cove;~~ Mallard Cove shore to shore, southwest of a point at 35.74437 N, 81.87053 W;

- (G) ~~That the~~ portion of Lake James shore to shore, beginning 385 yards northeast of the NC Highway 126 bridge at a line from a point on the north shore at 35.74652 N, 81.88231 W to a point on the south shore at 35.74440 N, 81.88017 W, and ending at a line 550 yards southwest of the NC Highway 126 bridge and 50 yards south of the Canal Bridge Boating Access Area dock from a point on the northwest shore at 35.74163 N, 81.88943 W to a point on the southeast shore at 35.73869 N, 81.88652 W;

- (H) ~~The the~~ waters within 50 yards of the end of the South Pointe Subdivision peninsula from a point east of the peninsula at 35.76399 N, 81.83768 W, and surrounding the peninsula from a point east of the peninsula at 35.76399 N, 81.83768 W, and surrounding the peninsula to a point west of the peninsula at 35.76307 N, 81.83648 W; ~~and~~

- (I) ~~The the~~ waters of Sherman's Hollow Cove shore to shore, and contiguous with those waters beginning at a point on the west shore of the mouth of Sherman's Hollow Cove at 35.76423 N, 81.82748 W, extending northeast within 50 yards of Linville Point to a point on the northeast shore of Linville Point at 35.76596 N, 81.82432 ~~W, W;~~ and

- (J) the waters of Mills Creek at Lake James State Park, shore to shore from a point 50 yards northwest of the Cove bridge at 35.76469 N, 81.87703 W to a point 50 yards southeast of the bridge at 35.76406 N, 81.87637 W.

- (3) Lake Rhodhiss.

(b) Speed Limit. No person shall operate a vessel at greater than no-wake speed within ~~50 yards of any designated public boat launching ramp, bridge, marina, boat storage structure, boat service area, dock, or pier; or while on designated waters of the areas described in Paragraph (a) of this Rule.~~ the regulated areas described in Paragraph (a) of this Rule.

(c) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a marked

mooring area on the regulated areas described in Paragraph (a) of this Rule.

~~(d) Restricted Swimming Areas. Swimming Area. No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area on the regulated areas described in Paragraph (a) of this Rule. person operating or responsible for the operation of a vessel shall permit it to enter the waters of Paddy's Creek Swim Area at Lake James State Park Road in Nebo.~~

~~(e) Placement of Markers. The Board of Commissioners of Burke County is the designated agency for placement of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.~~

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

- (1) the Board of Commissioners of Burke County, for the regulated areas designated in Parts (a)(2)(A) through (I) of this Rule; and
- (2) Lake James State Park for the regulated areas designated in Part (a)(2)(J) and Paragraph (d) of this Rule.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0327 MONTGOMERY COUNTY

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

- (1) Badin Lake.
 - ~~(A)~~ the cove west of Lakeshore Drive and east of Strand Drive, southeast of a line at the mouth of the cove from a point on the east shore at 35.49242 N, 80.09241 W to a point on the west shore at 35.49242 N, 80.09241 W;
 - ~~(B)(A)~~ Lake Forest Drive Cove shore to shore, west of a point 50 yards east of the fueling site at the marina at 35.48739 N, 80.10918 W;
 - ~~(C)(B)~~ Garr Creek shore to shore, north of a line beginning at a point on the east shore at 35.47952 N, 80.13633 W to a point on the west shore at 35.47946 N, 80.13932 W;
 - ~~(D)(C)~~ the channel between Beyer's Island and the mainland, shore to shore beginning at a line from a point on Beyer's Island at 35.49102 N, 80.10221 W to a point on the mainland at 35.49230 N, 80.10241 W, ending at a line westward, from a point on Beyer's Island at 35.48988 N, 80.10573 W to a point on the mainland at 35.49077 N, 80.10702 W; and
 - ~~(E)(D)~~ within 50 yards of the fueling station at the Old North State Marina at the

entrance to a cove within the Uwharrie Point ~~community.~~ community;

- ~~(E)~~ within 50 yards of the Circle Drive Boating Access Area, at 724 Shoreline Drive in New London;
- ~~(F)~~ within 50 yards of Lakemont Boating Access Area, at 241 Lakemont Road in New London; and
- ~~(G)~~ within 50 yards of the Cove Boat Ramp at 400 Cove Road in New London.

(2) Lake Tillery.

- (A) the waters within 50 yards of the boat ramp in the south end of Woodrun Cove at 35.33113 N, 80.06277 W;
- (B) Carolina Forest Cove shore to shore and the waters within 50 yards of the boat ramps and boat slips at the end of Arroyo Drive in Carolina Forest Community, from a point on the south shore at 35.36276 N, 80.05386 W, northeast to a point on the north shore at 35.36405 N, 80.05304 W; and
- (C) Lilly's Bridge Boating Access Area shore to shore, from line 25 feet north of the SR 1110 bridge otherwise known as Lillys Bridge Road at a point on the east shore at 35.23223 N, 80.06166 W, to a point on the west shore at 35.23289 N, 80.06318 W, to a line 200 feet southwest of the Lilly's Bridge Boating Access Area, from a point on the east shore at 35.23067 N; 80.06262 W, to a point on the west shore at 35.23156 N; 80.06437 W. 80.06437 W; and
- ~~(D)~~ within 50 yards of Swift Island Boating Access Area at 4917 NC Highway 24/27 in Mount Gilead.

(3) Tuckertown Reservoir. Pee Dee River, within 50 yards of the Clarks Creek Boating Access Area at 177 Tillery Dam Road in Mount Gilead.

~~(b) Speed Limit Near Shore Facilities. No person shall operate a vessel at greater than no wake speed within 50 yards of any marked boat launching area, dock, pier, bridge, marina, boat storage structure, or boat service area on the waters of the regulated areas described in Paragraph (a) of this Rule~~

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

~~(d)(c)~~ Badin Lake Swimming Area. No person operating or responsible for the operation of a vessel shall permit it to enter the marked swimming area on Badin Lake at the Pinehaven Village beach area at 370 Pinehaven Drive in New London, within 50 feet of the shoreline between points at 35.49927 N, 80.11428 W; and 35.49934 N, 80.11437 W.

~~(e) Placement of Markers. The Board of Commissioners of Montgomery County shall be the designated agency for placement of the markers implementing Parts (a)(1)(A), (B), (C),~~

~~(D), (E), (2)(A) and (B), and Subparagraph (a)(3) of this Rule. The North Carolina Wildlife Resources Commission is the designated agency for placement and maintenance of the markers implementing Part (a)(2)(C) of this Rule. The Board of Commissioners of Montgomery County shall be the designated agency for placement and maintenance of the ropes and markers implementing Paragraph (d) of this Rule.~~

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

- (1) The Board of Commissioners of Montgomery County for placement of the markers implementing Parts (a)(1)(A), (B), (C), (D), and (a)(2)(A), and (B) of this Rule;
- (2) The North Carolina Wildlife Resources Commission placement and maintenance of the markers implementing Parts (a)(1)(E), (F), (a)(2)(C), (D), and Subparagraph (a)(4) of this Rule;
- (3) The Board of Commissioners of Montgomery County shall be the designated agency for placement and maintenance of the ropes and markers implementing Paragraph (c) of this Rule; and
- (4) The U.S. Forest Service for placement and maintenance of the markers implementing Part (a)(1)(G) of this Rule.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0333 MECKLENBURG AND GASTON COUNTIES

(a) Regulated Areas. This Rule shall apply to the following waters of Lake Wylie in Mecklenburg and Gaston Counties:

- (1) McDowell Park. The waters of the coves adjoining McDowell Park and the Southwest Nature Preserve in Mecklenburg County shore to shore, east of the mouth of the cove at a line from a point on the south shore at 35.10272 N, 81.03026 W to a point on the north shore at 35.10556 N, 80.02964 W;
- (2) Gaston County Wildlife Club Cove. The waters of the cove west of the Gaston County Wildlife Club on South Point Road in Belmont, north of a line at the mouth of the cove from a point on the east shore at 35.15628 N, 81.01427 W to a point on the west shore at 35.15628 N, 81.01615 W;
- (3) Buster Boyd Bridge. The waters from a point 250 feet east of the Buster Boyd Bridge on N.C. Highway 49 in Mecklenburg County at 35.10293 N, 81.03932 W, to a point 150 feet west of the Buster Boyd Bridge at 35.10242 N, 81.04089 W;
- (4) N.C. Highway 27 bridge. The waters shore to shore, from a point 50 yards north of the N.C. Highway 27 bridge in Mecklenburg and Gaston

counties at 35.29849 N, 81.00346 W to a point 190 yards south of the N.C. Highway 27 bridge at 35.29635 N, 81.00424 W;

- (5) Brown's Cove. The area beginning at the mouth of Brown's Cove in Mecklenburg County shore to shore, at a point at 35.16453 N, 81.00474 W, west to a point at 35.16480 N, 81.00309 W;
- (6) Paradise Point Cove. The waters of Paradise Point Cove in Gaston County between Paradise Circle and Lake Front Drive, west of a line from a point on the south shore at 35.18853 N, 81.04036 W to a point on the north shore at 35.18991 N, 81.04136 W;
- (7) Withers Cove. The waters from a point 50 feet southeast of the Withers Bridge on SR 1116, otherwise known as Shopton Road W. in Mecklenburg County at 35.14576 N, 81.00187 W, to a point 50 feet northwest of the bridge at 35.14599 N, 81.00222 W;
- (8) Sadler Island. The waters shore to shore beginning at a line from a point on the west shore of Lake Wylie in Gaston County at 35.27481 N, 81.0138 W east to a point on the east shore of the Lake in Mecklenburg County at 35.27423 N, 81.01111 W, extending south on the Lake west of Sadler Island to a line from a point on the west shore of the Lake in Gaston County at 35.27079 N, 81.01525 W, east to a point on the west side of Sadler Island in Mecklenburg County at 35.27051 N, 81.01396 W, and the waters shore to shore east of Sadler Island in Mecklenburg County from a point at 35.27441 N, 81.01185 W, south-southwest to a line from a point on the south shore of Sadler Island at 35.26635 N, 81.01432 W, south to a point on the Lake shore at 35.26494 N, 81.01368 W;
- (9) Other bridges. The areas within 50 feet of any bridge in North Carolina that crosses the waters of Lake Wylie that is not otherwise specifically mentioned in this Paragraph; and
- (10) Yachtsman on Lake Wylie Community. The waters within 50 yards of the community piers near the terminus of Waterside Drive in Mecklenburg County, and northward to include the waters east of the island that is west of Point Lookout Road, ending at a line from a point on the northern end of the island at 35.12226 N, 81.03306 W, east to a point on the shore at 35.12253 N, ~~81.03190 W.~~ 81.03190 W; and
- (11) Brown's Cove. The waters of Brown's Cove beginning at a line from a point on the east shore at 35.16892 N, 80.99702 W to a point on the west shore at 35.16948 N, 80.99783 W, northeast to a line from a point on the south shore at 35.16913 N, 80.99556 W to a point on the north shore at 35.17043 N, 80.99684 W.

(b) Speed Limit Near Ramps. No person shall operate a vessel at greater than no-wake speed within 50 yards of any public boat-

launching ramp, dock, pier, marina, boat storage structure, or boat service area.

(c) Speed Limit Near Marked Swimming or Mooring Areas. No person shall operate a vessel at greater than no-wake speed within 50 yards of any marked mooring area or marked swimming area.

(d) Placement and Maintenance of Markers. The Lake Wylie Marine Commission shall be the designated agency for placement and maintenance of markers implementing this Rule.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0336 NORTHAMPTON AND WARREN COUNTIES

(a) Regulated Area. ~~This Rule shall apply to the waters of Lake Gaston in Northampton and Warren counties. No person shall operate a vessel at greater than no-wake speed in the following waters of Lake Gaston and the Roanoke River in Northampton and Warren counties.~~

(1) Lake Gaston:

(A) the cove on the north shore of Lake Gaston in Northampton County east of SR 1252 otherwise known as Vincent Lane, shore to shore from a point on the north shore at 36.51660 N, 77.82226 W to a point on the south shore at 36.51578 N, 77.82269 W;

(B) Jimmies Creek in Northampton County shore to shore, north of a line from a point on the east shore at 36.52450 N, 77.82600 W to a point on the west shore at 36.52445 N, 77.82810 W;

(C) within 50 yards of the Henrico Boating Access Area in Northampton County, 142 Wildlife Landing Road, Henrico, N.C.;

(D) within 50 yards of the Vulture Boating Access Area in Northampton County, 773 Old Gaston Road, Gaston, N.C.;

(E) within 50 yards east and west of the N.C. Highway 903 Eaton Ferry Road Bridge in Warren County;

(F) within 50 yards of the Hawtree Creek Boating Access Area in Warren County, 1200 Peete Farm Road, Warrenton, N.C.;

(G) within 50 yards of the Salmons Landing Boating Access area in Warren County, 129 Salmon Landing Road, Littleton, N.C.;

(H) within 50 yards of the Wildwood Point boat ramp in Warren County, 184 N. Oak Drive, Littleton, N.C.;

(I) within 50 yards of the Lizard Creek boat ramp in Warren County, 417 Lizard Creek Road, Littleton, N.C.;

(J) Songbird Creek in Warren County within 50 yards of the culvert under

N.C. Highway 903 at 36.53260 N, 77.97330 W; and

(K) Sixpound Creek in Warren County within 50 yards of the culvert under SR 1704 otherwise known as Nocarva Road at 36.52950 N, 78.07283 W;

(L) Lizard Creek in Warren County within 50 yards of the culvert under SR 1362 otherwise known as Lizard Creek Road at 36.52501 N, 77.91187 W;

(M) within 50 yards of the Waters View Restaurant adjacent to the northwest end of the N.C. Highway 903 bridge in Warren County;

(N) the cove west of the Pointe at Lake Gaston at the southwest end of the N.C. Highway 903 bridge in Warren County, south of a point at 36.50937 N, 77.96644 W;

(O) Camp Willow Run Canoe and Sail Cove in Warren County, beginning at a line shore to shore from a point on the southwest shore at 36.49355 N, 77.91795 W, to a point on the north shore at 36.49534 N, 77.91508 W; and

(P) the cove on Hubquarter Creek in Warren County, shore to shore beginning at a line from a point on the northeast shore at 36.50030 N, 78.00474 W to a point on the southwest shore at 36.49947 N, 78.00553 W.

(2) Roanoke River. No person shall operate a vessel at greater than no-wake speed in Roanoke River in Northampton County within 50 yards of the Gaston Boating Access Area, 601 Roanoke Rapids Road, Gaston, N.C.

(b) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a marked mooring area on the waters of Lake Gaston within Northampton and Warren counties.

(c) ~~Speed Limit Near Shore Facilities. No person shall operate a vessel at greater than no wake speed within 50 yards of any marked boat launching area, dock, pier, bridge, marina, boat storage structure, or boat service area on the waters of the regulated areas described in Paragraph (a) of this Rule.~~

(d) ~~Speed Limit in specific waters. No person shall operate a vessel at greater than no wake speed within the following bodies of water:~~

(1) ~~the cove on the north shore of Lake Gaston in Northampton County east of SR 1252 otherwise known as Vincent Lane, shore to shore from a point on the north shore at 36.51660 N, 77.82226 W to a point on the south shore at 36.51578 N, 77.82269 W;~~

(2) ~~Big Stone House Creek in Warren County within 50 yards of the culvert under N.C. Highway 903 at 36.48789 N, 77.95009 W;~~

- (3) ~~Songbird Creek in Warren County within 50 yards of the culvert under N.C. Highway 903 at 36.53260 N, 77.97330 W;~~
- (4) ~~Sixpound Creek in Warren County within 50 yards of the culvert under SR 1704 otherwise known as Nocarva Road at 36.52950 N, 78.07283 W;~~
- (5) ~~Lizard Creek in Warren County within 50 yards of the culvert under SR 1362 otherwise known as Lizard Creek Road at 36.52501 N, 77.91187 W; and~~
- (6) ~~Jimmies Creek in Northampton County shore to shore, north of a line from a point on the east shore at 36.52450 N, 77.82600 W to a point on the west shore at 36.52445 N, 77.82810 W.~~

~~(e) Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area on the waters of Lake Gaston in Northampton and Warren counties.~~

~~(f)(c) Placement of Markers. The Boards of Commissioners of Northampton County and Warren County shall be the designated agencies for placement of the markers implementing this Rule, subject to the approval of the United States Coast Guard and United States Army Corps of Engineers.~~

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0354 PITT COUNTY

(a) Regulated Areas. This Rule shall apply to the waters described in this Paragraph:

- (1) the waters of Tar River, known as Hardee Creek, shore to shore, west of a line at its confluence with the main course of Tar River from a point on the north shore at 35.59878 N, 77.31168 W to a point on the south shore at 35.59813 N, 77.31157 W; ~~and~~
- (2) the portion of Tranters Creek east of a line from a point on the north shore at 35.56961 N, 77.09159 W to a point on the south shore at 35.56888 N, 77.09118 W and north of a line from a point on the east shore at 35.56714 N, 77.08941 W to a point on the west shore at 35.56689 N, ~~77.09029 W;~~ 77.09029 W; and
- (3) the waters of Barber Creek at Wildwood Park in the City of Greenville shore to shore, north of its confluence with Tar River at a point at 35.60719 N, 77.32890 W.

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

~~(e) Placement of Markers. The Board of Commissioners of Pitt County shall be the designated agency for placement and maintenance of markers implementing this Rule, subject to the approval of the United States Coast Guard and United States Army Corps of Engineers.~~

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

- (1) The Board of Commissioners of Pitt County for those waters listed in Subparagraphs (a)(1) and (a)(2) of this Rule; and
- (2) The City of Greenville for the waters listed in Subparagraph (a)(3) of this Rule.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0378 HALIFAX COUNTY

(a) Regulated Areas. This Rule shall apply to the following waters in Halifax County:

- (1) Roanoke Rapids Lake.
 - (A) within 50 yards north and south of the abandoned railroad trestle at the location where Deep Creek meets Roanoke Raids Lake in Roanoke Rapids, northwest of Windsong Drive;
 - (B) within 50 yards of the Thelma Boating Access Area, 1011 Van Warren Road, Roanoke Rapids; and
 - (C) within 50 yards of the Fifth Street Landing Boating Access Area, 1919 W. Fifth Street, Roanoke Rapids.
- (2) Roanoke River.
 - (A) Within 50 yards of the Weldon Boating Access Area, 1090 Rockfish Lane, Weldon; and
 - (B) within 50 yards of the Edwards Ferry Boating Access Area, 89 U.S. Highway 258, Scotland Neck.
- (3) Lake Gaston within 50 yards of Summit Boating Access Area at 432 Bluebird Lane, Littleton.

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

(c) Placement of Markers. The North Carolina Wildlife Resources Commission shall be the designated agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and United States Army Corps of Engineers.

Authority G.S. 75A-3; 75A-15.

**TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS
CHAPTER 48 – BOARD OF PHYSICAL THERAPY EXAMINERS**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Physical Therapy Examiners intends to amend the rules cited as 21 NCAC 48B .0102; 48F .0101; 48G .0105, .0203, .0504 and repeal the rules cited as 21 NCAC 48E .0104; and 48F .0103.

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

Link to agency website pursuant to G.S. 150B-19.1(c): <https://www.ncptboard.org/>

Proposed Effective Date: August 1, 2022

Public Hearing:

Date: March 9, 2022

Time: 10:00 a.m.

Location: Offices of NC Board of PT Examiners, 8300 Health Park Suite 233, Raleigh, NC 27615

Reason for Proposed Action: The NC Board of Physical Therapy Examiners proposes to amend rules in 21 NCAC 48B, 48F and 48G, and repeal rules in 48E and 48F. The changes to the aforementioned rules are being requested to make the rules consistent with current practice and policy by the NCBPTE.

Comments may be submitted to: Deborah Ragan, 8300 Health Park Suite 233, Raleigh, NC 27615; phone (919) 490-6393; email dragan@ncptboard.org

Comment period ends: March 21, 2022

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

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

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

SUBCHAPTER 48B - TYPES OF LICENSES

21 NCAC 48B .0102 LICENSES BY ENDORSEMENT

- (a) Endorsement. Each application for endorsement shall be considered on an individual basis.
(b) Examination Required. Only those persons initially licensed in another state by virtue of examination shall be considered for endorsement. Only the following examinations shall be considered:

- (1) For Physical Therapists:

(A) Therapists licensed on the basis of a PT exam shall present total scores that meet the North Carolina passing level as set forth in 21 NCAC 48D .0105. .0105, in a format approved by the Board. If scores and information are not available from the other state, the applicant shall have the scores issued through the testing agency. If scores are no longer available or destroyed, the Board shall accept a notarized copy of exam scores from another state. If the total score on the examination is unsatisfactory, the exam shall be repeated. The cost of the examination shall be paid by the applicant.

(B) If licensed in another state by an examination compiled by that Board, the applicant shall supply information for the Board to attempt to obtain the examination in order to determine if it meets the requirements set forth in 21 NCAC 48D .0105. If it cannot be determined that the examination was equal to the North Carolina examination or if the scores received on an acceptable examination did not meet the North Carolina passing requirement, the applicant shall take the PT exam. The cost of the examination shall be paid by the applicant.

(C) A physical therapist currently licensed in another state whose license in that state was granted on the basis of the American Registry of Physical Therapists Examination shall be considered for endorsement.

(2) For Physical Therapist Assistants: Only those physical therapist assistants licensed in another state by a PTA exam shall be considered for endorsement. The examination score shall meet the North Carolina passing level as set forth in 21 NCAC 48D .0105. If not, the applicant shall be required to take the PTA exam and pay the cost of the examination.

(c) Active License. An applicant for licensure by endorsement shall submit verification of licensure in effect on the date the application for North Carolina licensure was filed with the Board in accordance with 21 NCAC 48E .0105.

(d) Jurisprudence Exercise. All applicants for licensure by endorsement shall furnish proof of completion of the Jurisprudence Exercise 1 as set forth in 21 NCAC 48G .0105(7).

Authority G.S. 90-270.92; 90-270.98(b); 90-270.100.

SUBCHAPTER 48E - APPLICATION FOR LICENSURE

SECTION .0100 - REQUIREMENTS

21 NCAC 48E .0104 EXAMINATION SCORES

Persons seeking licensure by endorsement shall have their examination scores sent to the executive director on a form authenticated by the reporting Board.

Authority G.S. 90-270.92; 90-270.98(b).

SUBCHAPTER 48F - CERTIFICATES: FEES: INVESTIGATIONS: RECORD OF LICENSEES

SECTION .0100 - CERTIFICATES: FEES: INVESTIGATIONS: RECORD OF LICENSEES

21 NCAC 48F .0101 LICENSURE CERTIFICATE

(a) Names:

- (1) A licensee's name will appear on the certificate as the name of the individual at the time of licensure, except in the case of a person taking the examination who is married during the time between the examination and the actual date of licensure. This person may elect to use her maiden name or her married name, if the marriage takes place prior to the date of licensure.
(2) If a name is changed after the date of licensure, the licensee may request a new certificate to reflect the name change and pay the cost for a duplicate certificate.
(3) The licensee shall use the name that is on the license certificate in the workplace.

(b) Date. The date of licensure shall be the day on which the person is given final approval of licensure by the Board.

(c) Replacements. Persons needing a replacement or a duplicate copy of a certificate will be charged a fee for it.

Authority G.S. 90-270.92; 90-270.98; 90-270.100.

21 NCAC 48F .0103 INVESTIGATIONS

Any complaint alleging violations of the North Carolina Physical Therapy Practice Act must be made in writing, signed by the person submitting the complaint, and include the complainant's address and telephone number. Complaints must be sent to the Executive Director.

Authority G.S. 90-270.92; 90-270.102; 90-270.103.

SUBCHAPTER 48G - RETENTION OF LICENSE

SECTION .0400 - FINAL APPROVAL AND ENFORCEMENT

21 NCAC 48G .0105 DEFINITIONS

As used in this Subchapter, the following definitions apply:

- (1) "Approved provider" means an entity that has been approved by the Board to provide continuing competence activities for licensees as provided in the rules in this Section.

- (2) "Clinical Practice" means physical therapy consultation or patient care or client management or the supervision thereof.
(3) "Contact Hour" means at least 50 60 consecutive minutes of engagement in a continuing competence activity. 0.5 contact hour means at least 30 consecutive minutes of engagement in a continuing competence activity. Two segments of at least 25 consecutive minutes each is equivalent to one contact hour. Breaks and meals are not included in contact hours.
(4) "Continuing Competence" means the licensee's ongoing activities to augment knowledge, skills, behaviors, and abilities related to the practice of physical therapy.
(5) "Continuing Education" means courses of study designed to provide learning experiences for physical therapy licensees.
(6) "Documentation" means evidence of completion of continuing competence activities.
(7) "Jurisprudence Exercise" is an online set of questions concerning the Physical Therapy Practice Act, Board rules and Position Statements posted on the Board's website at http://www.ncptboard.org.
(8) "Licensee" means a physical therapist or physical therapist assistant licensed in North Carolina.
(9) "Peer-reviewed" means judged by an independent panel of experts having special knowledge or skills in a particular field of study.
(10) "Point" means a unit of continuing competence.
(11) "Registered" means enrollment in a continuing competence activity.
(12) "Reporting period" means a 25 month period commencing on January 1 during which the licensee must complete all continuing competence requirements. Points earned by a licensee may be counted toward completion during one reporting period only.

Authority G.S. 90-270.92.

SECTION .0200 - LAPSED LICENSES

21 NCAC 48G .0203 REVIVAL OF LAPSED LICENSE

(a) A license that has been lapsed less than one year may be revived by payment of the revival of lapsed license fee and the current year's renewal fee and by completion of the revival form.

(b) A license that has lapsed more than one year but less than five years may be revived by completion of the revival form, and:

- (1) completing 30 units (if reviving a physical therapist license) or 20 units (if reviving a physical therapist assistant license) of continuing competence as provided in the rules in this Subchapter;

- (2) payment of the revival of lapsed license fee; and
- (3) payment of the current year's renewal fee.
- (c) A license that has lapsed more than five years may be revived by completion of the application forms; and
 - (1) passing the "PT exam" (if trained as a physical therapist) or the "PTA exam" (if trained as a physical therapist assistant);
 - (2) compiling at least 500 hours within the period of one year in the following manner: between 50 and 200 class hours of course work (ie, refresher course, continuing education, pertinent college courses) approved by the Board as designed to demonstrate proficiency in current physical therapy theory and practice, and the remaining hours working as an aide under the supervision of a licensed physical therapist; or
- ~~(d)(3) endorsement~~ Endorsement of a current license in another state as provided by 21 NCAC 48B .0102.

Authority G.S. 90-270.92; 90-270.99; 90-270.100.

SECTION .0500 - CONTESTED CASE HEARINGS

21 NCAC 48G .0504 COMPLAINTS AND INVESTIGATIONS

- (a) In order to file a complaint with the ~~Board~~, Board alleging violations of the North Carolina Physical Therapy Practice Act, the following information shall be submitted to the Board in writing, or by filing a complaint online at the Board's website www.ncptboard.org.
 - (1) the name and address of person alleged to have violated the Physical Therapy Practice Act;
 - (2) a statement of conduct that is the basis of the complaint; and
 - (3) the name, address, signature and telephone number of complainant.
- (b) Upon receipt of a written complaint alleging misconduct that may subject a licensee to disciplinary action, or upon the receipt of the information that a violation of the Physical Therapy Practice Act may have occurred, the Board shall investigate the matter to determine whether probable cause exists to institute disciplinary proceedings.
- (c) The Executive Director of the Board and a member appointed by the Chair shall serve as an investigative committee. This investigative committee may be assisted by:
 - (1) the Board's attorney;
 - (2) an investigator; or
 - (3) a consultant, who is not a NC PT/PTA licensee, retained by the investigative committee who possesses expertise that will assist the investigative committee in its investigation.
- (d) The investigative committee shall investigate the complaint or information set forth in Paragraphs (a) and (b) of this Rule. In conducting its investigation, the Board Chair (or Executive Director, if designated by the Chair) may issue subpoenas in the investigative committee's name for the production of documents pursuant to the provisions of Rule .0512 of this Section. The investigative committee shall determine whether there is probable

- cause to believe that the licensee has violated any statute or Board rule that justifies a disciplinary hearing. If the investigative committee determines probable cause does not exist, the complaint shall be dismissed, and the complainant shall be notified of the investigative committee's action and its reasons. If the investigative committee determines that probable cause exists, the investigative committee shall offer to confer with the licensee in an attempt to settle the matter through informal means. If the investigative committee and the licensee reach an agreement on the disposition of the matter under investigation, the investigative committee shall cause to be drafted a proposed settlement agreement that shall include findings of fact, conclusions of law, and a consent order for presentation to and consideration by the Board. The settlement agreement shall be presented to and approved by the licensee before it is presented to the Board for consideration and approval.
- (e) Prior to a decision rendered by the Board, any materials generated or obtained by the Board in conducting an investigation shall be considered confidential investigation records not subject to the Public Records Act, G.S. 132. However, copies of the materials may be provided to a licensee subject to disciplinary action, or to the licensee's attorney, so long as identifying information concerning the treatment or delivery of professional services to a patient who has not consented to its public disclosure shall be redacted.
- (f) If the investigative committee and the licensee are not able to settle the matter under investigation by informal means, the licensee may request a contested case hearing pursuant to Rule .0502 of this Section or the Board shall give notice of a disciplinary or contested case hearing.
- (g) If probable cause is found, but it is determined that license suspension or revocation is not warranted, the investigative committee shall recommend that the Board place the licensee on probation, or issue a warning to the licensee. In making this determination, the investigative committee shall consider such factors as harm to the public; nature of the conduct; and prior record of discipline. The investigative committee shall mail or email a copy of its recommendation to the licensee or the licensee's attorney.
- (h) Within 20 days after receipt of the recommendation, the licensee may refuse the probation or warning and request a contested case hearing pursuant to this Rule. The refusal and request shall be filed with the Board. The legal counsel for the Board shall thereafter prepare, file, and serve a Notice of Hearing.
- (i) In the alternative, within 20 days after receipt of the recommendation, the licensee may request an informal meeting with the Board to discuss the basis of the investigative committee's recommendation and present reasons why the Board should not follow the investigative committee's recommendation. There shall be no sworn testimony presented, nor shall there be a formal record of the proceedings.
- (j) If the licensee does not request a contested case hearing or an informal meeting with the Board, the Board shall still determine whether to accept the investigative committee's recommendation.
- (k) Participation by a current Board member in the investigation of a complaint shall disqualify that Board member from participating in the decision making process of a contested case hearing.

(l) Subsequent to the issuance of a notice of hearing, the attorney prosecuting the contested case for the Board may not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any party, including the members of the Board assigned to make a decision or to make findings of fact and conclusions of law in the contested case, except on notice and opportunity for all parties to participate. However, the attorney prosecuting the matter for the Board may continue to communicate concerning the contested case with the members of

the investigative committee who investigated the matter, with persons not parties to the contested case who may be called as witnesses including the person who filed the complaint, and with the Board members about other matters.

Authority G.S. 90-270.92; 150B-38; 150B-39; 150B-40.

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: Department of Health and Human Services, Division of Health Benefits

Rule Citation: 10A NCAC 22Q .0101-.0106; 22R .0101-.0105

Effective Date: December 29, 2021

Date Approved by the Rules Review Commission: December 16, 2021

Reason for Action: G.S. 150B-21.1(a)(17) To maximize receipt of federal funds for Medicaid or NC Health Choice programs within existing State appropriations, to reduce Medicaid or NC Health Choice expenditures, and to reduce Medicaid and NC Health Choice fraud and abuse. These rules explain the mechanism for obtaining Disproportionate Share Hospital (DSH) funds for certified public expenditures from CMS and their distribution to replace supplemental payments for NC public and private hospitals providing services to Medicaid members and uninsured patients. Most supplemental payments are not permitted in managed care which launched on July 1, 2021. The process for certifying DSH and calculating distribution of those funds to qualifying hospitals is essential for ensuring maximum receipt of federal Medicaid funds. Given the financial strain placed on hospitals due to the ongoing COVID-19 pandemic and Delta variant infections, financial distribution to the hospitals is vital to their continued operations and to the public health at large. These rules will enable prompt delivery of fiscal support to hospitals throughout the State.

CHAPTER 22 - MEDICAL ASSISTANCE ELIGIBILITY

SUBCHAPTER 22Q – DISTRIBUTION OF FEDERAL DISPROPORTIONATE SHARE ADJUSTMENT RECEIPTS ARISING FROM CERTIFIED PUBLIC EXPENDITURES

10A NCAC 22Q .0101 SCOPE

This Subchapter establishes the requirements for the distribution of federal disproportionate share adjustment receipts as established by 42 CFR 447.298 arising from certified public expenditures.

History Note: Authority G.S. 108A-54; 143C-9-9; Temporary Adoption Eff. December 29, 2021.

10A NCAC 22Q .0102 DEFINITIONS

(a) "Certifying Hospitals" means an institution that meets all of the following criteria:

- (1) meets the definition in G.S. 131E-176(13);
- (2) is licensed by the State of North Carolina; and
- (3) certifies as a public agency that its expenditures are eligible for Federal Financial Participation in accordance with 42 CFR 433.51(b), which is incorporated by reference, including subsequent amendments and editions. This document may be accessed at <https://www.ecfr.gov> at no charge.

(b) "Department" means the North Carolina Department of Health and Human Services.

(c) "Outpatient services" means those services as defined by 42 CFR 440.20(a), which is hereby incorporated by reference, including subsequent amendments and editions. This document can be accessed at <https://www.ecfr.gov> at no charge.

(d) "Uninsured patient" means medical care recipients who do not have health insurance, Medicaid or Medicare, or other third-party coverage. State or local government payments made to a hospital for services provided to indigent patients shall not be considered a source of third-party coverage.

(e) "Hospital Uncompensated Care Fund" means the fund established by G.S. 143C-9-9 and governed by 10A NCAC 22R.

(f) "Payment period" means the 12-month term ending September 30th of each year.

History Note: Authority G.S. 108A-54; 143C-9-9; Temporary Adoption Eff. December 29, 2021.

10A NCAC 22Q .0103 DISTRIBUTIONS

After distributions are made pursuant to the enacted State budget and the "Basic Disproportionate Share Hospital (DSH) Payment" section of the North Carolina Medicaid State Plan, Attachment 4.19-A, which is incorporated by reference, including subsequent amendments and editions, and may be accessed free of charge at <https://medicaid.ncdhhs.gov/media/973/download?attachment>, the Department shall make distributions of the remaining DSH funds in the following order to:

- (1) Certifying hospitals; and
- (2) The Hospital Uncompensated Care Fund.

History Note: Authority G.S. 108A-54; 143C-9-9; Temporary Adoption Eff. December 29, 2021.

10A NCAC 22Q .0104 CERTIFYING HOSPITAL DISTRIBUTION

The Department shall distribute available funds to certifying hospitals in two parts:

- (1) An amount equal to 10 percent of expenditures certified by the hospital pursuant to 42 CFR 433.51; and
- (2) An amount equal to the hospital's proportionate share, calculated pursuant to Rule .0106 of this

Section, of the available funds based on the hospital's share of outpatient costs for uninsured patients as a percentage of the Statewide aggregate of outpatient costs for uninsured patients. To be eligible for a proportionate share, a hospital shall file with the Department 90 days prior to the date of payment as determined by the Department, a form prescribed by the Department attesting to the hospital's:

- (a) Qualification for disproportionate share status under the "Disproportionate Share Hospital (DSH) Payment" section of the North Carolina Medicaid State Plan, Attachment 4.19-A;
- (b) Unreimbursed charges and payments for outpatient services provided to uninsured patients; and
- (c) Aggregate Medicaid outpatient cost-to-charge ratio.

History Note: Authority G.S. 108A-54; 143C-9-9; Temporary Adoption Eff. December 29, 2021.

10A NCAC 22Q .0105 CERTIFYING HOSPITALS' OUTPATIENT COSTS

- (a) A certifying hospital's outpatient costs for uninsured patients will be determined by multiplying the hospital's outpatient cost-to-charge ratio in Rule .0104(2)(c) of this Section by the hospital's outpatient charges for uninsured patients from Rule .0104(2)(b) of this Section.
- (b) From the product calculated in Paragraph (a) of this Rule, the Department will then subtract payments that the hospital received from uninsured patients for outpatient services in Rule .0104(2)(b) of this Section.
- (c) The Department will bring the uncompensated care cost data forward to the end of the payment period by applying the applicable Centers for Medicare and Medicaid Services' Prospective Payment System Hospital Input Price Indices, which are available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketData>.

History Note: Authority G.S. 108A-54; 143C-9-9; Temporary Adoption Eff. December 29, 2021.

10A NCAC 22Q .0106 CERTIFYING HOSPITAL'S PROPORTIONATE SHARE

The Department shall calculate the certifying hospital's proportionate share of outpatient costs as follows:

- (1) Adding the certifying hospitals' outpatient costs and each of the eligible hospitals' (as defined in 10A NCAC 22R .0103) eligible outpatient costs under 10A NCAC 22R .0104. The sum represents the total of the outpatient costs.
- (2) The sum of all certifying hospitals' outpatient costs under Rule .0105 of this Section shall be divided by the total outpatient costs in Item (1)

of this Rule. The quotient represents the certifying hospitals' proportionate share, expressed as a decimal.

- (3) The amount of available funds shall be multiplied by the certifying hospitals' proportionate share in Item (2) of this Rule. The product represents the funds available for distribution to individual certifying hospitals.
- (4) A certifying hospital shall be eligible for a payment from funds available for distribution in Item (3) of this Rule. In each payment period, a certifying hospital shall receive a proportional payment of the available funds based on the certifying hospital's share of outpatient costs for uninsured patients as a percentage of the aggregate of outpatient costs for uninsured patients for certifying hospitals.
- (5) Hospitals receiving payments pursuant to this Subchapter shall be subject to the audit and reporting requirements of the North Carolina Medicaid State Plan, Attachment 4.19-A.

History Note: Authority G.S. 108A-54; 108A-55(c); 143C-9-9; Temporary Adoption Eff. December 29, 2021.

SUBCHAPTER 22R – DISTRIBUTION OF HOSPITAL UNCOMPENSATED CARE FUND

10A NCAC 22R .0101 SCOPE

This Subchapter establishes the requirements for the distribution of funds allocated to the Hospital Uncompensated Care Fund pursuant to G.S. 143C-9-9 after distributions of available funds have been made pursuant to 10A NCAC 22Q.

History Note: Authority G.S. 108A-54; 143C-9-9; Temporary Adoption Eff. December 29, 2021.

10A NCAC 22R .0102 DEFINITIONS

- (a) "Department" means the North Carolina Department of Health and Human Services.
- (b) "Eligible hospital" means an institution that meets the requirements of Rule .0103 of this Section.
- (c) "Eligible hospital cost" means the values calculated pursuant to Rule .0104 of this Section.
- (d) "Outpatient services" means the medical care and items as defined by 42 CFR 440.20(a), which is incorporated by reference in 10A NCAC 22Q .0102.
- (e) "Uninsured patient" means a recipient of medical care who has no health insurance, Medicaid or Medicare, or other third-party coverage. State and local government payments made to a hospital for services provided to indigent patients shall not be considered third-party coverage.
- (f) "Payment period" means the 12-month term ending September 30th of each year.

History Note: Authority G.S. 108A-54; 143C-9-9; Temporary Adoption Eff. December 29, 2021.

10A NCAC 22R .0103 ELIGIBLE HOSPITAL

An institution licensed by the State of North Carolina that meets the definition in G.S. 131E-176 (13) is eligible for reimbursement from the Hospital Uncompensated Care Fund if it:

- (1) is not a public agency qualified to certify expenditures in accordance 42 CFR 433.51(b), which is incorporated by reference in 10A NCAC 22Q .0102;
- (2) received payment for more than 50 percent of their Medicaid inpatient discharges under the North Carolina Medicaid State Plan, Attachment 4.19-A discharge Diagnosis Related Groups methodology for the most recent payment period;
- (3) files with the Department 90-days prior to the date of payment under this Subchapter forms prescribed by the Department attesting to the hospital's:
 - (a) qualification for disproportionate share status of the "Disproportionate Share Hospital (DSH) Payment" section of the North Carolina Medicaid State Plan, Attachment 4.19-A;
 - (b) unreimbursed charges and payments for outpatient services provided to uninsured patients; and
 - (c) aggregate Medicaid outpatient cost-to-charge.

History Note: Authority G.S. 108A-54; 143C-9-9; Temporary Adoption Eff. December 29, 2021.

10A NCAC 22R .0104 ELIGIBLE OUTPATIENT COSTS

(a) An eligible hospital's eligible outpatient costs for uninsured patients will be determined by multiplying the hospital's outpatient cost-to-charge ratio in Rule .0103(3)(c) of this Section by the hospital's outpatient charges for uninsured patients from Rule .0103(3)(b) of this Section.

(b) From the product calculated in Paragraph (a) of this Rule, the Department will then subtract payments that the hospital received from uninsured patients for outpatient services from Rule .0103(3)(b) of this Section.

(c) The Department will bring the uncompensated care cost data forward to the end of the payment period by applying the applicable Centers for Medicare and Medicaid Services' Prospective Payment System Hospital Input Price Indices, which are available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketData>.

History Note: Authority G.S. 108A-54; 143C-9-9; Temporary Adoption Eff. December 29, 2021.

10A NCAC 22R .0105 DISTRIBUTION OF AVAILABLE FUNDS

(a) An eligible hospital satisfying the requirements of Rule .0103 of this Section shall be eligible for a payment from funds available under this Subchapter. In a payment period, an eligible hospital

shall receive a proportional payment of the available funds based on the eligible hospital's share of outpatient costs for uninsured patients as a percentage of the aggregate of outpatient costs for uninsured patients for all eligible hospitals.

(b) Based on the availability of funds, payments authorized by this Rule shall be made at least annually on a frequency determined by the Department in consultation with certifying hospitals.

(c) To confirm the hospital's eligibility to receive payments pursuant to this Subchapter and the accuracy of the hospital's attestation to unreimbursed charges for outpatient services provided to uninsured patients and the hospital's Medicaid outpatient cost-to-charge ratios, the Department may audit a hospital receiving more than two million dollars (\$2,000,000) for compliance with the requirements of this Subchapter. Upon completion of the audit, the following shall occur when applicable:

- (1) If a hospital received payments pursuant to Paragraph (a) of this Rule in excess of the percentage determined by the audit, the excess payments shall be refunded to the Department.
- (2) The Department shall distribute any refunded amounts to eligible hospitals within 12 months of receipt using the distribution method set forth Paragraph (a) of this Rule.
- (3) No additional payment shall be made to eligible hospitals in connection with the audit except for the redistribution of amounts refunded after an audit conducted by the Division of Health Benefits.

History Note: Authority G.S. 108A-54; 143C-9-9; Temporary Adoption Eff. December 29, 2021.

TITLE 12 – DEPARTMENT OF JUSTICE

Rule-making Agency: *Sherriff's Education and Training Standards Commission*

Rule Citation: *12 NCAC 10B .0301*

Effective Date: *January 1, 2022*

Date Approved by the Rules Review Commission: *December 16, 2021*

Reason for Action: *The effective date of a recent act of the General Assembly or of the U.S. Congress. Session Law 2021-138, Senate Bill 300, NCGS 17E-7(c) is amended to require the administration of a psychological screening examination prior to the justice officer's initial certification or prior to the justice officer performing any action requiring certification by the Commission. This change becomes effective 1/1/2022.*

CHAPTER 10 - SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SUBCHAPTER 10B - N.C. SHERIFFS' EDUCATION AND

TRAINING STANDARDS COMMISSION

SECTION .0300 – MINIMUM STANDARDS FOR EMPLOYMENT AND CERTIFICATION AS A JUSTICE OFFICER

12 NCAC 10B .0301 MINIMUM STANDARDS FOR JUSTICE OFFICERS

(a) Every Justice Officer employed or certified in North Carolina shall:

- (1) be a citizen of the United States;
- (2) be 21 years of age for all deputies and detention officers and be at least 18 years of age for all telecommunicators;
- (3) be a high school graduate, or the equivalent (GED);
- (4) have been fingerprinted by the employing agency;
- (5) have had a medical examination as required by 12 NCAC 10B .0304;
- (6) have been administered a psychological screening examination as described by G.S. 17E-7.

~~(A) If a face-to-face, in person interview is not practicable, the face-to-face may be virtual as long as both the audio and video allow for a professional clinical evaluation in a clinical environment.~~

~~(B) The psychological screening examination shall be given prior to the initial certification or prior to the justice officer performing any action requiring certification by the Commission.~~

~~(C) The This psychological screening shall be valid for a period of one year prior to the justice's officer's initial appointment and applies to any justice officer seeking initial or probationary certification effective January 1, 2022 or later.~~

~~(6)(7)~~ have produced a negative result on a drug screen administered according to the following specifications:

- (A) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other initial and confirmatory tests as may be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs [<http://workplace.samhsa.gov/>]; [<https://www.samhsa.gov/workplace/>];

- (B) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen;
- (C) the drugs whose use shall be tested for shall include cannabis, cocaine, phencyclidine (PCP), opiates, and amphetamines or their metabolites;
- (D) the test threshold values established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs are incorporated by reference, including subsequent amendments and editions. Copies of this information may be obtained from the National Institute on Drug Abuse, 5600 Fisher Lane, Rockville, Maryland 20857 <http://www.drugabuse.gov/> at no cost;
- (E) the test results shall be dated no more than 60 days before employment or appointment, whichever is earlier;
- (F) the laboratory conducting the test shall be certified for federal workplace drug testing programs, and shall adhere to applicable federal rules, regulations, and guidelines pertaining to the handling, testing, storage, and preservation of samples; and
- (G) each drug test laboratory report shall be reviewed by a medical review officer (MRO), who shall be a licensed physician;

~~(7)(8)~~ make the following notifications:

- (A) within five business days, notify the Standards Division and the appointing department head in writing of all criminal offenses with which the officer is charged. This shall include all criminal offenses except minor traffic offenses. A minor traffic offense means any offense under G.S. 20 or similar laws of other jurisdictions; except those Chapter 20 offenses defined as either a Class A or B Misdemeanor in 12 NCAC 10B .0103(10). The initial notification required must specify the nature of the offense, the date of offense, and the arresting agency. Within five business days, notify the Standards Division of all Domestic Violence Orders (G.S. 50B) and Civil No Contact Orders (G.S. 50C) that are issued by a judicial official against the justice officer and that provide an opportunity for both parties to be present;
- (B) within 20 days of the date the case was disposed, notify the appointing department head of the adjudication of

these criminal charges, Domestic Violence Orders (G.S. 50B), and Civil No Contact Orders (G.S. 50C). The department head, provided he or she has knowledge of the officer's charges, Domestic Violence Orders (G.S. 50B), and Civil No Contact Orders (G.S. 50C), shall also notify the Division within 30 days of the date the case or order was disposed of in court.

(C) within 30 days of the date the case was disposed, notify the Standards Division of the adjudication of these criminal charges, Domestic Violence Orders (G.S. 50B), and Civil No Contact Orders (G.S. 50C);

(D) the required notifications of adjudication shall specify the nature of the offense, the court in which the case was handled, and the date of disposition and shall include a certified copy of the final disposition from the Clerk of Court in the county of adjudication;

(E) receipt by the Standards Division of timely notification of the initial offenses charged and of adjudication of those offenses, from either the officer or the department head, shall be sufficient notice for compliance with this Subparagraph;

~~(8)~~(9) be of good moral character as defined in: In re Willis, 288 N.C. 1, 215 S.E.2d 771 (1975),

appeal dismissed 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E.2d 854 (1940); In re Legg, 325 N.C. 658, 386 S.E.2d 174 (1989); In re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); In re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E.2d 647 (1983); and later court decisions that cite these cases as authority;

~~(9)~~(10) have a background investigation conducted by the employing agency, including a personal interview prior to employment as required by Rules .0305 and .0306 of this Section;

~~(40)~~(11) not have committed or been convicted of a crime or crimes specified in 12 NCAC 10B .0307.

(b) The requirements of this Rule shall apply to all applications for certification and shall also apply at all times during which the justice officer is certified by the Commission.

History Note: Authority G.S. 17E-7;

Eff. January 1, 1989;

Amended Eff. January 1, 2018; February 1, 2014; January 1, 2006; January 1, 2005; August 1, 2002; January 1, 1996; January 1, 1994; January 1, 1993; January 1, 1992; July 1, 1990; January 1, 1990;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018;

Temporary Amendment Eff. January 1, 2022.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission December 16, 2021 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 984-236-1850. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jeanette Doran (Chair)
Robert A. Bryan, Jr. (2nd Vice Chair)
Margaret Currin
Jeff Hyde
Robert A. Rucho

Appointed by House

Andrew P. Atkins (1st Vice Chair)
Wayne R. Boyles, III
Barbara A. Jackson
Randy Overton
Paul Powell

COMMISSION COUNSEL

Amber Cronk May	984-236-1936
Brian Liebman	984-236-1948
Lawrence Duke	984-236-1938

RULES REVIEW COMMISSION MEETING DATES

January 20, 2022	March 17, 2022
February 17, 2022	April 21, 2022

RULES REVIEW COMMISSION MEETING

MINUTES

December 16, 2021

The Rules Review Commission met on Thursday, December 16, 2021, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via WebEx.

Commissioners Andrew Atkins, Bobby Bryan, Jeanette Doran, Margaret Currin, Randy Overton, and Bob Rucho were present in the Commission Room. Commissioners present via WebEx were Wayne R. Boyles III, Jeff Hyde, Barbara Jackson, and Paul Powell.

Staff members present were Alexander Burgos; Commission Counsel Brian Liebman and Amber May.

The meeting was called to order at 9:02 a.m. with Chair Doran presiding.

The Chair read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearance of conflicts of interest.

The Chair notified the Commissioners that the following items on the agenda would be taken up out of order at the end of the agenda: Temporary rules for Department of Health and Human Services, Board of Examiners of Electrical Contractors, and Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors.

APPROVAL OF MINUTES

The Chair asked for any discussion, comments, or corrections concerning the minutes of the November 18, 2021, meeting. There were none and the minutes were approved as distributed.

Upon the call of the Chair, the minutes were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

FOLLOW UP MATTERS

Criminal Justice Education and Training Standards Commission

12 NCAC 09B .0202, .0209, .0210, .0211, .0212, .0213, .0214, .0226, .0232, .0233, .0237, .0238, .0242, .0244, .0417; 09G .0414, .0415, and .0416 – The rules were returned at the request of the agency. No action was required by the Commission.

LOG OF FILINGS (PERMANENT RULES)

Soil and Water Conservation Commission

Upon the call of the Chair, the period of review was extended as requested by the agency to address technical changes by roll-call vote ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Medical Care Commission

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

DHHS - Division of Health Service Regulation

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Criminal Justice Education and Training Standards Commission

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Private Protective Services Board

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Environmental Management Commission

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

15A NCAC 02L .0202 - Upon the call of the Chair, the period of review was extended as requested by the agency to address technical changes by roll-call vote ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Marine Fisheries Commission

The rules were withdrawn at the request of the agency. No action was required by the Commission.

Board of Chiropractic Examiners

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Licensing Board for General Contractors

Prior to the review of the rules from the Licensing Board for General Contractors, Commissioner Boyles recused himself and did not participate in any discussion or vote concerning the rules because in Rule 21 NCAC 12A .0202, page 4, lines 4-10, has as their subject matter, railroad construction standards. He has a client who has a railroad that he represents in federal matters. Although this Rule pertains to State standards, he has abstained from voting for the potential of a conflict of interest.

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Board of Landscape Architects

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Medical Board

Prior to the review of the rules from the Medical Board, Commissioner Atkins recused himself and did not participate in any discussion or vote concerning the rules because of a conflict.

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Board of Pharmacy

Upon the call of the Chair, the period of review was extended as requested by the agency to allow the Board an opportunity to review comments received from the public by roll-call vote ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

LOG OF FILINGS (TEMPORARY RULES)

Department of Health and Human Service

Upon the call of the Chair, 10A NCAC 22Q .0101, .0102, .0103, .0104, .0105, .0106; 22R .0101, .0102, .0103, .0104, and .0105 were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

Curtis B. Venable with Ott, Cone, and Redpath, P.A., addressed the Commission.

Anthony Okunak with the North Carolina Healthcare Association addressed the Commission.

Sheriffs' Education and Training Standards Commission

12 NCAC 10B .0301 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

12 NCAC 10B .0704 was withdrawn at the request of the agency. No action was required by the Commission.

Board of Examiners of Electrical Contractors

Upon the call of the Chair, the Commission objected to 21 NCAC 18B .0308 by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

The Commission objected to 21 NCAC 18B .0308 in accordance with G.S. 150B-21.1(b) for lack of statutory authority. Specifically, the Commission found that the State Board of Examiners of Electrical Contractors did not have authority under G.S. 87-1.1 to limit the percentage of plumbing, heating, or fire sprinkler contracting work in any bid submitted pursuant to that statute.

Reed Fountain, the rulemaking coordinator with the agency, addressed the Commission.

Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors

Upon the call of the Chair, the Commission objected to 21 NCAC 50 .0415 by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

The Commission objected to 21 NCAC 50 .0415 for lack of statutory authority. Specifically, the Commission found that the State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors did not have authority under G.S. 87-1.1 to limit the percentage of electrical contracting work in any bid submitted pursuant to that statute.

Reed Fountain, the rulemaking coordinator with the agency, addressed the Commission.

COMMISSION BUSINESS

Upon the call of the Chair, the RRC voted to designate Amber May as the new rulemaking coordinator for the Commission by roll-call vote ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

The Chair announced that the Rules Division is set to launch the new E-filing system on January 18, 2022.

The Chair asked for any questions or concerns regarding the 2022 RRC meeting dates. There were none and the dates were approved as distributed.

The meeting adjourned at 10:19 a.m.

The next regularly scheduled meeting of the Commission is Thursday, January 20, 2022, at 9:00 a.m.

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:
Jeanette Doran, Chair

Rules Review Commission Meeting December 16, 2021
Held Via WebEx

Name	Agency
Maria Bruner	DOJ
John Barr	DEQ
Calvin Kirven	Landscape Contractors
Elizabeth Robinson	Retail Merchants
Helen Landi	DOT
Kerri Johnson	Chewy.com
Jessica Adama	Telepharm.com
Paul Drake	PPDFSU
C Baker	DHHS
Anna Choi	General Contractors
Carrie Hollis	OSBM
Elizabeth Grady	DHHS
Diane Konopka	SHETS
Mike Ranck	EMC
Atul Bhikha	DHHS
Bridget Shelton	DEQ
Lara Klibansky	DENR
Hannah Jernigan	DOT
Laura Rowe	Treasurer
Shalisa Jones	DHHS
Curtis Venable	Ott Cone & Redpath, P.A.
C.Frank Wiesner	General Contractors
Christian Waters	WRC
Megan Lamphere	DHHS
Michael Briggs	WRC
Ademola Are	Pillpack.com
Reed Fountain	Plumbing, Heating and Fire
Ashley Pekrul	WRC
Micheala Mitchell	DHHS
Lisa Pittman	DHHS
Kathy Rawls	DENR
Catherine Blum	EMC
Shawn Maier	DOJ
Nadine Pfeiffer	DSHR
Alicia Palombo	
Charminique Williams	CJETS
Kim Harron	DHHS
Jennifer Everett	DEQ
Clint Pinyan	Pharmacy
Gabrielle Chianese	DENR

December 16, 2021

Rules Review Commission
Meeting
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Name	Agency
Amy Overton	.
Jim Flowers	DHHS
Shazia Keller	DHHS
CHRIS MILLIS	NCHA
Anthony Okunak	NCHA

LIST OF APPROVED TEMPORARY RULES

December 16, 2021 Meeting

HEALTH AND HUMAN SERVICE, DEPARTMENT OF

<u>Scope</u>	10A NCAC	22Q	.0101
<u>Definitions</u>	10A NCAC	22Q	.0102
<u>Distributions</u>	10A NCAC	22Q	.0103
<u>Certifying Hospital Distribution</u>	10A NCAC	22Q	.0104
<u>Certifying Hospitals' Outpatient Costs</u>	10A NCAC	22Q	.0105
<u>Certifying Hospitals' Proportionate Share</u>	10A NCAC	22Q	.0106
<u>Scope</u>	10A NCAC	22R	.0101
<u>Definitions</u>	10A NCAC	22R	.0102
<u>Eligible Hospital</u>	10A NCAC	22R	.0103
<u>Eligible Outpatient Costs</u>	10A NCAC	22R	.0104
<u>Distribution of Available Funds</u>	10A NCAC	22R	.0105

SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Minimum Standards for Justice Officers</u>	12 NCAC	10B	.0301
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LIST OF APPROVED PERMANENT RULES

December 16, 2021 Meeting

MEDICAL CARE COMMISSION

<u>Qualification of Food Service Supervisor</u>	10A NCAC	13F	.0405
<u>Food Service Orientation</u>	10A NCAC	13F	.0509
<u>Availability of Corrective Action and Survey Reports</u>	10A NCAC	13F	.1213
<u>Food Service Orientation</u>	10A NCAC	13G	.0509
<u>Availability of Corrective Action and Survey Reports</u>	10A NCAC	13G	.1214

HHS - HEALTH SERVICE REGULATION, DIVISION OF

<u>Definitions</u>	10A NCAC	14C	.1601
<u>Performance Standards</u>	10A NCAC	14C	.1603
<u>Definitions</u>	10A NCAC	14C	.1701
<u>Definitions</u>	10A NCAC	14C	.1901
<u>Performance Standards</u>	10A NCAC	14C	.1903
<u>Definitions</u>	10A NCAC	14C	.2301
<u>Performance Standards</u>	10A NCAC	14C	.2303
<u>Definitions</u>	10A NCAC	14C	.2401
<u>Performance Standards</u>	10A NCAC	14C	.2403
<u>Definitions</u>	10A NCAC	14C	.2501
<u>Performance Standards</u>	10A NCAC	14C	.2503
<u>Definitions</u>	10A NCAC	14C	.2601
<u>Performance Standards</u>	10A NCAC	14C	.2603
<u>Definitions</u>	10A NCAC	14C	.2701
<u>Performance Standards</u>	10A NCAC	14C	.2703
<u>Definitions</u>	10A NCAC	14C	.3701
<u>Performance Standards</u>	10A NCAC	14C	.3703

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Period of Suspension: Revocation: or Denial</u>	12 NCAC	09A	.0205
<u>Basic Training - Juvenile Court Counselors and Chief Cour...</u>	12 NCAC	09B	.0235
<u>Terms and Conditions of Specialized Instructor Certification</u>	12 NCAC	09B	.0305
<u>Period of Suspension: Revocation: or Denial</u>	12 NCAC	09G	.0505

PRIVATE PROTECTIVE SERVICES BOARD

<u>Application for Licenses and Trainee Permits</u>	14B NCAC	16	.0201
<u>Renewal of Armed Security Guard Firearm Registration Permit</u>	14B NCAC	16	.0806
<u>Renewal of a Firearms Trainer Certificate</u>	14B NCAC	16	.0904
<u>Required Continuing Education Hours</u>	14B NCAC	16	.1202
<u>Accreditation Standards</u>	14B NCAC	16	.1203

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Definitions</u>	15A NCAC	02E	.0106
<u>Delegation</u>	15A NCAC	02E	.0107
<u>Application; Processing Fees</u>	15A NCAC	02E	.0301
<u>Declaration and Delineation of Central Coastal Plain Capa...</u>	15A NCAC	02E	.0501
<u>Withdrawal Permits</u>	15A NCAC	02E	.0502
<u>Prescribed Water Use Reductions in Cretaceous Aquifer Zones</u>	15A NCAC	02E	.0503
<u>Requirements for Entry and Inspection</u>	15A NCAC	02E	.0504
<u>Acceptable Withdrawal Methods that do not Require a Permit</u>	15A NCAC	02E	.0505
<u>Central Coastal Plain Capacity Use Area Status Report</u>	15A NCAC	02E	.0506
<u>Definitions</u>	15A NCAC	02E	.0507
<u>Scope</u>	15A NCAC	02E	.0601
<u>Definitions</u>	15A NCAC	02E	.0602
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<u>Annual Reporting of Water Use Data</u>	15A NCAC	02E	.0604
<u>Water Use Reduction Reporting. New Water Withdrawal Repor...</u>	15A NCAC	02E	.0605
<u>Water Shortage Response Planning Requirements</u>	15A NCAC	02E	.0606
<u>Publicly and Privately Owned Water System Water Shortage ...</u>	15A NCAC	02E	.0607
<u>State Agency Water Shortage Response Planning Requirements</u>	15A NCAC	02E	.0608
<u>Local Government Water Shortage Response Planning Require...</u>	15A NCAC	02E	.0609
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<u>Agricultural and Horticultural Water Shortage Response Pl...</u>	15A NCAC	02E	.0611
<u>Default Water Shortage Response Planning Measures</u>	15A NCAC	02E	.0612
<u>Default Water Use Reduction Measures During NCDMAC</u>	15A NCAC	02E	.0613
<u>Default Water Use Reduction Measures During NCDMAC ...</u>	15A NCAC	02E	.0614
<u>Water Reuse During Droughts and Water Emergencies</u>	15A NCAC	02E	.0615

CHIROPRACTIC EXAMINERS, BOARD OF

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<u>Licensure; Renewal of License</u>	21 NCAC	10	.0204
<u>Renewal of License</u>	21 NCAC	10	.0205
<u>Certification of Radiologic Technologists</u>	21 NCAC	10	.0206
<u>Certified Chiropractic Assistants</u>	21 NCAC	10	.0213
<u>Designation of Specialties</u>	21 NCAC	10	.0304

GENERAL CONTRACTORS, LICENSING BOARD FOR

<u>Classification</u>	21 NCAC	12A	.0202
<u>License Granted</u>	21 NCAC	12A	.0501
<u>Denial or Withdrawal of Provider Approval</u>	21 NCAC	12B	.0203
<u>Approval and Renewal of Elective Course</u>	21 NCAC	12B	.0302
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<u>Fees</u>	21 NCAC	26	.0105
<u>Definitions</u>	21 NCAC	26	.0107
<u>Board Listing of Individuals and Firm Names</u>	21 NCAC	26	.0201
<u>Name of Firm</u>	21 NCAC	26	.0206
<u>Unprofessional Conduct</u>	21 NCAC	26	.0209
<u>Dishonest Practice</u>	21 NCAC	26	.0210
<u>Scope of Practice</u>	21 NCAC	26	.0212
<u>License by Comity</u>	21 NCAC	26	.0303
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<u>Continuing Education Requests for Approval</u>	21 NCAC	26	.0311
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<u>Individual Licenses</u>	21 NCAC	26	.0313
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<u>Out-of-State Entities</u>	21 NCAC	26	.0315
<u>Complaints and Disciplinary Review Process</u>	21 NCAC	26	.0510

MEDICAL BOARD

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<u>Continuing Medical Education</u>	21 NCAC	32S	.0216