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Contact List for Rulemaking Questions or Concerns

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

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

Office of Administrative Hearings
Rules Division
Capehart-Crocker House
424 North Blount Street
Raleigh, North Carolina 27601-2817

contact: Molly Masich, Codifier of Rules molly.masich@ncmail.net (919) 733-3367
Dana Vojtiko, Publications Coordinator dana.vojtiko@ncmail.net (919) 733-2679
Julie Edwards, Editorial Assistant julie.edwards@ncmail.net (919) 733-2696
Felicia Williams, Editorial Assistant felicia.s.williams@ncmail.net (919) 733-3361

**Rule Review and Legal Issues**

Rules Review Commission
1307 Glenwood Ave., Suite 159
Raleigh, North Carolina 27605
(919) 733-9415 FAX

contact: Joe DeLuca Jr., Commission Counsel joe.deluca@ncmail.net (919) 715-8655
Bobby Bryan, Commission Counsel bobby.bryan@ncmail.net (919) 733-0928
Angela Person, Administrative Assistant angela.person@ncmail.net (919) 733-2721

**Fiscal Notes & Economic Analysis**

Office of State Budget and Management
116 West Jones Street
Raleigh, North Carolina 27603-8005
(919) 733-0640 FAX

contact: William Crumbley, Economic Analyst william.crumbley@ncmail.net (919) 807-4740

**Governor’s Review**

Reuben Young reuben.young@ncmail.net
Legal Counsel to the Governor (919) 733-5811
116 West Jones Street(919)
Raleigh, North Carolina 27603

**Legislative Process Concerning Rule-making**

Joint Legislative Administrative Procedure Oversight Committee
545 Legislative Office Building
300 North Salisbury Street
Raleigh, North Carolina 27611
(919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney karenc@ncleg.net
Jeff Hudson, Staff Attorney jeffreyh@ncleg.net

**County and Municipality Government Questions or Notification**

NC Association of County Commissioners
215 North Dawson Street
Raleigh, North Carolina 27603
(919) 715-2893

contact: Jim Blackburn jimburner@ncacc.org
Rebecca Troutman rebeccat@ncacc.org

NC League of Municipalities
215 North Dawson Street
Raleigh, North Carolina 27603
(919) 715-4000

contact: Anita Watkins awatkins@nclm.org

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## FILING DEADLINES

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EXPLANATION OF THE PUBLICATION SCHEDULE

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

### GENERAL

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

1. temporary rules;
2. notices of rule-making proceedings;
3. text of proposed rules;
4. text of permanent rules approved by the Rules Review Commission;
5. notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
6. Executive Orders of the Governor;
7. final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
8. orders of the Tax Review Board issued under G.S. 105-241.2; and
9. other information the Codifier of Rules determines to be helpful to the public.

### COMPUTING TIME

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

### FILING DEADLINES

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

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

### NOTICE OF TEXT

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

**END OF REQUIRED COMMENT PERIOD**

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

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

**FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:** This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.
EXECUTIVE ORDER NO. 141
PROCLAMATION OF A STATE OF DISASTER
FOR BERTIE AND ONSLOW COUNTIES

WHEREAS, I have determined that a State of Disaster, as defined in N.C.G.S. §§166A-6, exists in the State of North Carolina, specifically Bertie and Onslow counties, as a result of tornadoes and severe weather on May 8-11, 2008;

WHEREAS, on May 11, 2008, Bertie and Onslow counties proclaimed a local State of Emergency;

WHEREAS, pursuant to N.C.G.S. §166A-6, the criteria of a Type I disaster are met including the following: (1) receipt of the preliminary damage assessment from the Secretary of Crime Control and Public Safety; (2) Bertie and Onslow counties declared a local state of emergency pursuant to N.C.G.S §§166A-8 and forwarded a written copy of the declaration to the Governor; (3) the preliminary damage assessment meets or exceeds the criteria established for the Small Business Disaster Loan Program pursuant to 13 C.F.R. Part 123; and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, IT IS ORDERED:
Section 1. Pursuant to N.C.G.S. §§166A-6, a State of Disaster is hereby declared for Bertie and Onslow counties.

Section 2. State and local government entities and agencies are hereby ordered to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 3. Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, is hereby delegated all power and authority granted to me and required of me by Chapter 166A of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in North Carolina.

Section 4. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. §143B-476.

Section 5. I authorize this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of disaster prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 6. This Type I Disaster Declaration shall expire 30 days after issuance of the state of disaster and Type I disaster proclamation for Bertie and Onslow counties issued on May 20, 2008, unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first
issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior
to the issuance of any renewal of a Type I disaster declaration.

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 the twentieth day of May
in the year of our Lord two thousand and eight, and of the Independence of the United States of
America the two hundred and thirty-second.

[Signature]
Michael F. Easley
Governor

ATTEST:

[Signature]
Elaine F. Marshall
Secretary of State
NOTICE OF EXTENDED COMMENT PERIOD

Proposed Reclassification of Horsepasture River
Rule 15A NCAC 02B .0303 Little Tennessee River Basin and Savannah River Drainage Area and
15A NCAC 02B .0225 Outstanding Resource Waters

A Notice of Text was previously published in the 22:19 issue of the NC Register for this proposed reclassification, and it included notice of a public hearing, which was held on April 22, 2008, as well as a comment period, which is to end on June 2, 2008. Subsequent to that notice, the Division of Water Quality (DWQ) received a request for additional time in order to analyze existing data. Based on this request, DWQ will extend the comment period for 30 days in order to provide further opportunity for comments on the proposed reclassification to be submitted. Comments received during the April 1, 2008 – June 2, 2008 comment period will remain in the hearing record.

The EMC is very interested in all comments pertaining to the proposed reclassification. All persons interested and potentially affected by the proposal are strongly encouraged to make comments on the proposed reclassification. The EMC may not adopt a rule that differs substantially from the published text of the proposed rule, unless the EMC publishes the text of the proposed different rule and accepts comments on the new text (see General Statute 150B 21.2 (g)). Written comments may be submitted to Elizabeth Kountis of the Water Quality Planning Section of the Division of Water Quality at the postal address, e-mail address, or fax number listed in this notice. The comment period ends July 1, 2008, and this proposed reclassification is scheduled to appear on the agenda of the September 2008 EMC meeting.

Address: Elizabeth Kountis
DENR/Division of Water Quality, Planning Section
1617 Mail Service Center
Raleigh, NC 27699-1617
Phone (optional) (919)733-5083 extension 369
Fax (optional): (919)715-5637
E-Mail (optional): elizabeth.kountis@ncmail.net
SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY

RW HOLDING, LLC

Pursuant to N.C.G.S. § 130A-310.34, RW Holdings, LLC has filed with the North Carolina Department of Environment and Natural Resources (“DENR”) a Notice of Intent to Redevelop a Brownfields Property (“Property”) in Greensboro, Guilford County, North Carolina. The Property, which is the former site of the R. W. McCollum Company’s operations, consists of approximately 6.5 acres and is located at 107 W. Meadowview Road. Environmental contamination exists on the Property in groundwater. RW Holding, LLC has committed itself to redevelop the Brownfields Property as a tanker trailer cleaning and repair facility, a trucking dispatch terminal, office space and, possibly, truck wash and diesel repair facilities, or other commercial uses if DENR approves same. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and RW Holding, LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Reference Desk of the Greensboro Public Library, 219 North Church Street, Greensboro, NC 27402 by contacting Business Librarian Martha Thomas Larson at (336) 373-4559, (336) 335-5416 (fax) or martha.thomas@greensboro-nc.gov; or at the offices of the NC Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents) by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net or at (919) 508-8411.

Written public comments may be submitted to DENR within 30 days after the date this Notice is published in a newspaper of general circulation serving the area in which the Property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 21 days after the period for written public comments begins. Thus, if RW Holding, LLC, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the Property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods of submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on June 17, 2008. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Brownfields Program Manager
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605
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.

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Tobacco Trust Fund Commission intends to amend the rules cited as 02 NCAC 57 .0204, .0207, .0209, .0304, .0306, .0308 and repeal the rules cited as 02 NCAC 57 .0206 and .0305.

Proposed Effective Date: October 1, 2008

Public Hearing:
Date: July 1, 2008
Time: 10:00 a.m.
Location: NCDA & CS, Hall of Fame Room, 2 West Edenton Street, Raleigh, NC 27601

Reason for Proposed Action:
02 NCAC 57 .0204 & .0304 – A flexible grant cycle more effectively matches available funds with agricultural risk. Amendment to allow TTFC to establish grant cycles and also clarifies the process for submission of grants.
02 NCAC 57 .0206 & .0305 – Repeals the out of cycle criteria which becomes unnecessary once the grant cycle is flexible. A flexible grant cycle to be set by the TTFC is desirable to better match the available funds with agricultural needs.
02 NCAC 57 .0207 & .0306 – Allows staff to notify grant recipients regarding incomplete applications and clarifies Grant Review Committee role.
02 NCAC 57 .0209 & .0308 – Establishes reporting requirements for grants.

Procedure by which a person can object to the agency on a proposed rule: An individual may object to the agency on the proposed rules by submitting written comments on the proposed rules. They may also object by attending the public hearing and personally voice their objections during that time.

Comments may be submitted to: William Upchurch, Executive Director, 1080 Mail Service Center, Raleigh, NC 27699-1080, phone (919) 733-2160, fax (919) 733-2510, email tobaccotrustfund@ncmail.net

Comment period ends: August 15, 2008

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. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:
☐ State
☐ Local
☒ Substantive ($53,000,000)
☐ None

CHAPTER 57 - TOBACCO TRUST FUND COMMISSION

SECTION .0200 - COMPENSATORY PROGRAM GRANTS

02 NCAC 57 .0204 APPLICATIONS FOR GRANTS
(a) The Commission shall designate specific dates for submission of grant applications based on the amount of funds available. Grant application submission dates will be announced by the Commission at least 30 days before the date applications are due.
(b) Grant proposals shall be typed or printed and an original and four (4) copies timely submitted to the Commission at Post Office Box 27647, Raleigh, North Carolina 27611 by hand delivery, by a designated delivery service authorized pursuant to G.S. 1A-1, Rule 4, or by U.S. Mail. Applications shall be deemed timely submitted if delivered by hand to the Commission's physical office and signed for by Commission staff before 5:00 p.m. on the submission date; or by designated delivery service, whereby the parcel bears a shipping date on or before the submission date; or by placing into the U.S. Mail, addressed to 1080 Mail Service Center, Raleigh, NC 27699, and postmarked on or before the submission date. Applicants may also provide an electronic courtesy copy in a format such as a formatted diskette or via email using Microsoft Word or Adobe Acrobat. For grant applications submitted in the Year 2002, completed grant proposals postmarked later than October 1, 2002, will be considered in the subsequent funding year. For all grant proposals submitted after 2002, completed grant proposals postmarked later than August 1 of any funding year will be considered in the subsequent funding year.
(c) To be eligible for consideration for funding, applicants shall complete the Tobacco Trust Fund Grant Application Form which shall contain the following information:
(1) Names, mailing addresses, telephone numbers, and signatures; signatures and driver’s license number or federal identification number of the applicant;  
(2) If the applicant is an organization, consortium, cooperative or other entity representing multiple eligible beneficiaries, a description of the applying organization including history, mission statement, fiscal information, audit statements (if available), organizational goals and members of the Board of Directors. If the applicant involves more than one organization, person or entity, it shall identify participating organizations, persons or entities and define their roles in completing the Compensatory Program;  
(3) A description of the Compensatory Program, its goals and objectives, and the manner in which it will accomplish its goals and objectives, including how the applicant will quantify actual losses due to the Master Settlement Agreement that are not compensated by payments from the National Tobacco Grower Settlement Trust;  
(4) A detailed statement of the projected cost of the Compensatory Program, including any administrative costs and including expected funding from any other source;  
(5) A description of how the project will be completed including time lines;  
(6) A description of the accounts that will be set up and used and an assurance that all accounts can be audited by the Commission or the State Auditor;  
(7) An explanation of how the project’s results will be evaluated;  
(8) At least two references who may be contacted by the Commission;  
(9) Any other information required by G.S. 143, Article 75 or these Rules in order to make a decision on the grant proposal;  
(10) An explanation of how the project will enhance North Carolina’s tobacco-related economy for the common good; and  
(11) A list and history of the applicant’s past projects funded by grants or awards.  

d) As a condition of applying for a compensatory program or of receiving a grant for a compensatory program, applicants or grantees must allow the Commission or the Commission staff to make site visits at the Commission’s convenience.

Authority G.S. 143-718.

02 NCAC 57 .0207 REVIEW OF PROPOSALS  
(a) The Executive Director of the Commission and his or her staff or designee shall screen applications to see if they are complete. The Executive Director—Commission staff shall notify applicants if the grant application is incomplete.  
(b) Applications that have been deemed complete will be forwarded to one or more Compensatory Program Grant Review Committees of the Commission. Compensatory Program Grant Review Committee members shall include Commissioners and may include invited outsiders who have particular expertise in technical areas. Comprise the Commission.  
(c) During the review and evaluation of proposals, the Compensatory Program Grant Review Committees may solicit information from persons who have expertise in technical or specialized areas or request that the Commission staff or designee make reports on any site visits that may be required for full consideration of the grant proposal. The Compensatory Program Grant Review Committees will make recommendations to the Commission. Scoring and rating of proposals may be determined by using any consistent rating methodology, including adjectival, numerical or ordinal rankings.  
(d) The Commission will receive the suggestions of the Grant Review Committees and will evaluate proposals based on the beneficial impact of the request on the State's tobacco-related economy. In making this evaluation the Commission may consider who will benefit from the grant, how many will benefit from the grant, the cost of administering the grant and whether the grant will benefit tobacco dependent economies of the State in a measurable manner. Proposals will be given a preference for statewide impact and for containing a delivery mechanism to intended beneficiaries.  
(e) No grant may be awarded for a project that is unlawful.

Authority G.S. 143-718.

02 NCAC 57 .0208 OUT OF CYCLE AWARD OF GRANTS  
The Commission may consider and award grants for compensatory programs out of cycle if the following conditions are met:  
(1) The requested program will respond to a serious and unforeseen threat to the public health, safety or welfare; or  
(2) The requested program is required in response to a recent change in federal or State budgetary policy; or  
(3) The requested program is in response to a disaster as that term is defined in G.S. 166, Article 1; or  
(4) The Commission determines that awarding a grant or grants out of cycle is in the public interest.

Authority G.S. 143-718.
Commission which final report shall include an evaluation of the success of the program.
(b) A representative of the Commission shall review the progress reports for completeness which shall include a showing of how the project is meeting its stated goals and performance standards. If the representative finds that the report is deficient in showing how the project is meeting its stated goals and performance standards, the grantee will be notified of the deficiency and must provide a changed and corrected report within 30 working days. If a corrected or changed report is not received in the specified time the Commission may withhold the next grant payment.

Authority G.S. 143-718.

SECTION .0300 – QUALIFIED AGRICULTURAL PROGRAM GRANTS

02 NCAC 57 .0304 APPLICATIONS FOR GRANTS
(a) The Commission shall designate specific dates for submission of grant applications based on the amount of funds available. Grant application submission dates shall be announced by the Commission at least 30 days before the date applications are due.
(b) Grants proposals shall be typed or printed and an original and four copies must be submitted to the Commission at Post Office Box 27647, Raleigh, North Carolina 27611 or by hand-delivery to the Commission before 5:00 p.m. on the submission date; or by designated delivery service, which package bears a shipping date on or before the submission date; or by placing into the U.S. Mail, delivery, by a designated delivery service authorized pursuant to G.S. 1A-1, Rule 4, or by U.S Mail. Applications shall be deemed timely submitted if delivered by hand to the Commission's physical office and signed for by Commission staff before 5:00 p.m. on the submission date; or by designated delivery service, which package bears a shipping date on or before the submission date; or by placing into the U.S. Mail, addressed to 1080 Mail Service Center, Raleigh, NC 27699 and postmarked on or before the submission date. Applicants may also provide an electronic courtesy copy formatted in Microsoft Word or Adobe Acrobat to the Commission. For grant applications submitted in the Year 2002, completed grant proposals postmarked later than October 1, 2002, will be considered in the subsequent funding year. All grant proposals submitted after 2002, completed grant proposals postmarked later than August 1 of any funding year will be considered in the subsequent funding year.
(c) To be eligible for consideration for funding, applicants shall complete the Tobacco Trust Fund Grant Application Form which shall contain the following information:
(1) Names, mailing addresses, telephone numbers, and signatures of the Board of Directors. If the applicant involves more than one person, organization or entity, the applicant shall identify participating persons, organizations or entities and define their roles in completing the grant;
(2) A description of the applying organization including history, mission statement, fiscal information, audit statements (if available), organizational goals and a list of the members of the Board of Directors. If the applicant involves more than one person, organization or entity, the applicant shall identify participating persons, organizations or entities and define their roles in completing the grant;
(3) A description of the Qualified Agricultural Program, its objectives and the manner in which it will accomplish the requirement that the Qualified Agricultural Program foster the vitality and solvency of the tobacco-related segment of the State's agricultural economy;
(4) A detailed statement of the projected cost of the Qualified Agricultural Program, including any administrative costs and including expected funding from any other source;
(5) A description of how the project will be completed including time lines;
(6) A description of the accounts that will be set up and used and an assurance that all accounts can be audited by the Commission or the State auditor;
(7) An explanation of how the project's results will be evaluated;
(8) At least two references which the Commission may contact;
(9) Any other information required by G.S. 143, Article 75 or by these Rules in order to make a decision on the grant proposal; and
(10) An explanation of how the project will enhance North Carolina's tobacco-related economy for the common good.
(d) As a condition of applying for the grant or of receiving a grant, applicants or grantees must allow the Commission or the Commission to make site visits at the Commission's convenience.

Authority G.S. 143-718.

02 NCAC 57 .0305 OUT OF CYCLE CONSIDERATION OF GRANTS

The Commission may consider and award grants out of cycle if the following conditions are met:
(1) The grant will respond to a serious and unforeseen threat to the public health, safety or welfare; or
(2) The grant is in response to a disaster as that term is defined in G.S. 166, Article 1; or
(3) The grant will respond to a serious and unforeseen threat to the public health, safety or welfare; or
(4) The grant will respond to a disaster as that term is defined in G.S. 166, Article 1; or
(5) The grant will respond to a serious and unforeseen threat to the public health, safety or welfare; or
(6) The grant will respond to a disaster as that term is defined in G.S. 166, Article 1; or
(7) The grant will respond to a serious and unforeseen threat to the public health, safety or welfare; or
(8) The grant will respond to a disaster as that term is defined in G.S. 166, Article 1; or
(9) The grant will respond to a serious and unforeseen threat to the public health, safety or welfare; or
(10) The grant will respond to a disaster as that term is defined in G.S. 166, Article 1; or
(11) A list and history of the applicant's past projects funded by grants or awards.

Authority G.S. 143-718.

02 NCAC 57 .0306 REVIEW OF PROPOSALS
(a) The Executive Director of the Commission and his or her staff or designee shall screen applications to see if they are complete. The Executive Director Commission staff shall notify applicants if the grant application is incomplete.
(b) Applications that have been deemed complete will be forwarded to one or more Grant Review Committees of the
Commission. Grant Review Committee members shall include 
Commissioners and may include invited outsiders who have 
particular expertise in technical areas or request 
that the Commission staff or designee make reports on any site 
visits that may be required for full consideration of the grant 
proposal. The Grant Review Committees will make 
recommendations to the Commission based on its review and 
evaluation. Scoring and ranking of proposals may be 
determined by using any consistent rating methodology, 
including adjectival, numerical or ordinal rankings. 
(d) The Commission will evaluate grant proposals and 
recommendations made to it by the Review Committees based 
on the beneficial impact of the grant request on the solvency and 
vitality of the tobacco-related segment of the State's agricultural 
economy.
(e) In making this evaluation the Commission may consider 
who will benefit from the grant, how many will benefit from the 
grant, how the grant project will alleviate or avoid 
unemployment, stabilize local tax bases, encourage the 
economic stability of participants in the State's agricultural 
economy or encourage the optimal use of natural resources in 
the tobacco-related segment of the State's agricultural economy. 
Proposals will be given a preference for statewide impact, for 
containing a delivery mechanism to intended beneficiaries, for 
providing alternate markets for tobacco or for providing for 
diversification of the tobacco crop or the tobacco grower. 
(f) No grant shall be awarded that is unlawful.

Authority G.S. 143-718.

02 NCAC 57 .0308 REPORTING
(a) Grantees shall submit written progress reports at six month 
intervals or upon completion of the project, whichever is sooner. Written reports shall describe the status of 
the grant projects, progress toward achieving project objectives, 
notable occurrences and any significant problems encountered and steps taken to overcome the problems. Upon completion of 
the project, the grantee must make a final written report to the 
Commission which final report shall include an evaluation of the 
success of the project.
(b) A representative of the Commission shall review the 
progress reports for completeness which shall include a showing of 
how the project is meeting its stated goals and performance 
standards. If the representative finds that the report is deficient in 
showing how the project is meeting its stated goals and performance standards, the grantee will be notified of the deficiency and must provide a changed and corrected report 
within 30 working days. If a corrected or changed report is not 
received within the specified time, the Commission may 
withhold the next payment under the grant.

Authority G.S. 143-718.

Notice is hereby given in accordance with G.S. 150B-21.2 that 
the Department of Correction intends to adopt the rules cited as 
05 NCAC 01F .0101 - .0102, .0201.

Proposed Effective Date: November 1, 2008

Public Hearing:
Date: July 16, 2008
Time: 2:30 p.m.
Location: DOC – Controller's Office Conference Room; 2020 
Yonkers Road, Raleigh, NC 27604

Reason for Proposed Action: Establishing the Department of 
Correction’s main business location; establishing the 
Department of Correction’s cost of copies for public records; 
and establishing the procedures for submitting a rule-making 
petition to the Department of Correction, along with the 
Department’s procedures for considering a rule-making petition, 
as required by G.S. 150B-20.

Procedure by which a person can object to the agency on a 
proposed rule: Anyone who wishes to object to the proposed 
rules shall send a written objection to: Joan Elizabeth Taylor, 
Department of Correction – Controller's Office, 2020 Yonkers 
Road, MSC 4220, Raleigh, NC 27699-4220

Comments may be submitted to: Joan Elizabeth Taylor, 2020 Yonkers Road, MSC 4220, Raleigh, NC 27699-4220, phone 
(919) 716-3368, Fax (919) 716-3979, email jtaylor@doc.state.nc.us.

Comment period ends: September 2, 2008

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. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions 
concerning the submission of objections to the Commission, 
please call a Commission staff attorney at 919-733-2721.

Fiscal Impact: A copy of the fiscal note can be obtained from 
the agency.

☐ State
☐ Local
☒ Substantive ($≤$3,000,000)
☐ None

CHAPTER 01 – DEPARTMENTAL RULES

SUBCHAPTER 01F – GENERAL ADMINISTRATION
SECTION .0100 – GENERAL

05 NCAC 01F .0101 LOCATION
(a) The principal place of business for the Department of Correction (DOC) is located at 214 West Jones Street, Raleigh, North Carolina. The mailing address is 4201 Mail Service Center, Raleigh, NC 27699-4201.
(b) DOC information may be obtained from the agency's website at: www.doc.state.nc.us.
(c) DOC business office hours for the public are 8:00 a.m. to 5:00 p.m. Monday through Friday.
Authority G.S. 143B-10; 143B-260; 143B-261.1.

05 NCAC 01F .0102 COST OF COPIES
(a) Copies of any documents on file with the Department of Correction (DOC) that are public records are available in the following forms at the following costs:
1. loose-leaf documents at a cost of ten cents ($.10) per page;
2. diskette/CD Rom at a cost of twenty-five cents ($.25) each;
3. digital video disk (DVD) at a cost of fifty cents ($.50) each; and
4. documents available in an electronic format transmitted via email at no charge.
(b) Certified copies of any public document on file with DOC are available at a cost of one dollar ($1.00) per certification in addition to the loose-leaf copying costs. Diskette certification is not available.
(c) A service charge may be applied, based on the actual costs to DOC, for requests requiring an extensive use of information technology resources, use of DOC staff or supervisory time (requests which cause DOC to incur additional costs beyond the normal course of business) based on the following rates:
1. information technology staff time shall be charged at a rate of thirty-nine dollars ($39.00) per hour;
2. administrative staff time shall be charged at a rate of twelve dollars ($12.00) per hour; and
3. supervisory time shall be charged at a rate of twenty dollars ($20.00) per hour.
(d) Postage shall be paid by requestor.
Authority G.S. 150B-18; 150B-19; 150B-20; 150B-21.

SECTION .0200 – PETITION FOR RULEMAKING

05 NCAC 01F .0201 FILING A PETITION FOR RULE-MAKING
(a) Any person may petition the Department of Correction (DOC) to adopt a new rule, or amend or repeal an existing rule by submitting a rule-making petition to DOC. The petition shall be addressed to: The North Carolina Department of Correction Controller's Office 2020 Yonkers Road; MSC 4220 Raleigh, North Carolina 27699-4220.
(b) The petition shall be labeled "Petition for Rule-making" and must include the following information:
1. the name(s) and address(es) of the petitioners;
2. a citation to any rule for which an amendment or repeal is requested;
3. a draft of the proposed text of the requested rule or amended rule;
4. an explanation of why the new rule or amendment or repeal of an existing rule is requested;
5. the effect of the new rule, amendment, or repeal on the procedures of DOC;
6. a fiscal note on the impact of the proposed rule on existing practices in the area involved, including cost factors and basis of analysis; and
7. any other information the person submitting the petition considers relevant.
(c) The Secretary or his/her designee shall consider all the information submitted with a petition, along with any other relevant information, and shall make a decision regarding a petition within 30 days from the date the petition was received.
(d) If a petition is denied, the Secretary or his/her designee shall notify the petitioner in writing, stating the reason(s) for the denial. If a petition is granted, DOC shall notify the petitioner of the decision and shall initiate rule-making proceedings in accordance with the requirements of Article 2A of the Administrative Procedures Act.
Authority G.S. 132-6.2; 143B-10; 150B-18; 150B-19; 150B-20; 150B-21.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rule cited as 10A NCAC 41A .0502.

Proposed Effective Date: November 1, 2008

Public Hearing:
Date: July 14, 2008
Time: 2:00 p.m.
Location: Cardinal Room, Bldg. 5605 Six Forks Road, Raleigh, NC

Reason for Proposed Action: In June 2007, a North Carolina Medicaid Special bulletin was published, revising the reimbursement schedule for administration of childhood immunizations. The new fee schedule was effective July 1, 2007. The requested permanent changes to 10A NCAC 41A .0502C(1) are proposed to ensure that our rules are consistent with the current guidelines from the state's Medicaid program. In addition, in December of 2007 a temporary rule, reflecting the requested change, was adopted. Previously, the Division of Medical Assistance administration fees were consistent with those of the Health Care Financing Administration, but currently they are not.
Procedure by which a person can object to the agency on a proposed rule: Objections may be submitted in writing to Chris G. Hoke, JD, the rule-making coordinator, during the public comment period. Additionally, objections may be made verbally and/or in writing at the public hearing for this rule.

Comments may be submitted to: Chris G. Hoke, JD, 1915 MSC, Raleigh, NC 27699-1915, phone (919) 707-5006, email chris.hoke@ncmail.net

Comment period ends: August 15, 2008

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. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact: A copy of the fiscal note can be obtained from the agency.

☐ State
☒ Local
☐ Substantive (<$3,000,000)
☐ None

Fiscal Note posted at:

CHAPTER 41 – HEALTH: EPIDEMIOLOGY

SUBCHAPTER 41A – COMMUNICABLE DISEASE CONTROL

SECTION .0500 – PURCHASE OF VACCINE

10A NCAC 41A .0502 VACCINE FOR PROVIDERS OTHER THAN LOCAL HEALTH DEPARTMENTS

(a) The Division of Public Health shall provide vaccines required by law free of charge to the following providers for administration to individuals who need vaccines to meet the requirement of G.S. 130A-152, 130-155.1 and 10A NCAC 41A .0401:

(1) Community, migrant, and rural health centers;
(2) Colleges and universities for students; and
(3) Physicians and other health care providers.

(b) Upon request of the Division, required vaccines may be distributed by local health departments operating as agents of the State to providers listed in Subparagraphs (a)(1), (2) and (3) of this Rule.

(c) Providers authorized in Paragraph (a) of this Rule shall be eligible to receive free vaccines from the Division only if they sign an agreement with the Division. This agreement will be prepared by the Division of Public Health and will require the provider to:

(1) Charge vaccine administration fees at no more for a single dose of vaccine than the rate rates established by the Health Care Financing Administration (HCFA). Charge no more than double the HCFA rate as a reasonable fee for the administration of two or more vaccines given at a single visit. State's Medicaid program. The rate established by HCFA is published in the Federal Register (59FR50235), and is incorporated herein by reference along with any subsequent amendments and editions. The HCFA rate State's Medicaid rates may be inspected at the Division of Public Health. Copies may also be obtained from the Division of Public Health at no charge;

(2) Provide all vaccines needed during a visit unless a specific contraindication exists to one or more of the vaccine;

(3) Charge no office fee in addition to an administration fee for an immunization-only visit;

(4) Agree not to charge an administration fee to an individual who states that they are unable to pay;

(5) Impose no condition as a prerequisite to receiving vaccine;

(6) The providers shall submit a monthly doses administered report by the tenth of each month electronically through the North Carolina Immunization Registry or on a form provided by the Immunization Section.

(7) Report adverse vaccine reactions through the Vaccine Adverse Event Reporting System (VAERS);

(8) Provide the latest edition of the applicable Important Information Statement (IIS), or Vaccine Information Statement (VIS) to the parent, guardian, or person standing in loco parentis for each dose of vaccine administered; document this action within the patient's permanent medical record; retain the documentation for a period of 10 years following the end of the calendar year in which the vaccine dose was administered, or for 10 years following the recipient's age of majority, whichever is longer; upon request, furnish copies of the documentation to the local health department or the Division. Keep a record of the vaccine manufacturer, lot number, and date of administration for each dose of vaccine administered;
(9) Allow periodic inspection of their vaccine supplies and records by the Division of Public Health and
(10) Comply with the rules of this Section.

d) A provider who fails to submit timely and accurate reports as required each month shall have vaccine shipments withheld until that month's report is received by the Immunization Section.
Authority G.S. 130A-433.

CHAPTER 16 – ACTUARIAL SERVICES DIVISION
SECTION .0400 – CREDIT LIFE ACCIDENT AND HEALTH RATE DEVIATION

11 NCAC 16 .0403  CALCULATION PROCEDURE AND DATA REQUIREMENTS FOR RATE DEVIATIONS

An insurer requesting a rate deviation shall submit to the Department of Insurance the following information, the results of each calculation as follows and the corresponding data required to perform each calculation in accordance with this Rule, clearly identified for each case for which the insurer is requesting a rate deviation:

(1) Identification of the class of business and plan of insurance associated with the case.
(2) Identification of the single or multiple account case. For a multiple account case, identification of each case.
(3) For the case, calculate the incurred loss ratio at the current North Carolina approved rate as defined in Rule .0401(15) of this Section.
(4) For the case, calculate the credibility factor using the credibility formula as defined in 11 NCAC 16 .0401(6).
(5) Multiply Item (3) of this Rule by Item (4) of this Rule.
(6) For the class of business, calculate the class of business incurred loss ratio at current North Carolina approved rate as defined in 11 NCAC 16 .0401(16).
(7) For the class of business, calculate the credibility factor using the credibility formula as defined in 11 NCAC 16 .0401(6).
(8) Multiply Item (7) of this Rule by the quantity one minus Item (4) of this Rule, e.g. Item (7) of this Rule x [1 - Item (4) of this Rule].
(9) Multiply Item (6) of this Rule by Item (8) of this Rule.
(10) Multiply the quantity one minus Item (4) of this Rule by the quantity one minus Item (7) of this Rule, e.g. [1 - Item (4) of this Rule] x [1 - Item (7) of this Rule].
(11) Multiply .60 by Item (10) of this Rule.
(12) Add Items (5), (9) and (11) of this Rule.
(13) Calculate the expense ratio as defined in 11 NCAC 16 .0401(9).
(14) Calculate the benchmark loss ratio as defined in 11 NCAC 16 .0401(11).
(15) The rate adjustment factor is equal to Item (12) of this Rule divided by Item (14) of this Rule; however, if the rate adjustment factor is greater than or equal to 0.95 and less than or equal to 1.05, then the rate adjustment factor shall be set equal to the number one.

Fiscal Impact:
☐ State
☒ Local

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to amend the rules cited as 11 NCAC 16 .0403; 18 .0118.

Proposed Effective Date: October 1, 2008

Public Hearing:
Date: July 8, 2008
Time: 10:00 a.m.
Location: 4009 Dobbs Building, 430 N. Salisbury St., Raleigh, NC 27603

Reason for Proposed Action: Technical corrections to comply with up-to-date actuarial standards.

Procedure by which a person can object to the agency on a proposed rule: The Department of Insurance will accept written objections to these rules until the expiration of the comment period on August 15, 2008.

Comments may be submitted to: Ellen K. Sprenkel, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone (919) 733-4529, email esprenkel@ncdoi.net

Comment period ends: August 15, 2008
(16) The maximum approved rate in effect for a period of 12 months is equal to the current North Carolina approved rate for the case multiplied by Item (15) of this Rule.

Authority G.S. 58-2-40; 58-57-35(a); 58-57-70.

CHAPTER 18 – MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

11 NCAC 18.0118 MAXIMUM NET RETENTION STANDARD

(a) The specific maximum net retention limit for any MEWA, associated with the period of time that the excess insurance coverage is in force, shall be calculated in the following manner:

(1) Determine the total expected dollar value of claims.
(2) Determine the total surplus at the beginning of the period of time that the excess insurance coverage is scheduled to be in force.
(3) Multiply Subparagraph (a)(1) of this Rule by five one percent and add that product to Subparagraph (a)(2) of this Rule.
(4) Multiply the result of the calculation in Subparagraph (a)(3) of this Rule times itself.
(5) Multiply Subparagraph (a)(1) of this Rule by the number 3.4.
(6) Divide the product of the calculation in Subparagraph (a)(4) of this Rule by the product of the calculation in Subparagraph (a)(5) of this Rule.

(b) The specific maximum net retention limit shall not exceed the lesser of:

(1) The amount in Subparagraph (a)(6) of this Rule;
(2) Twenty-five thousand dollars ($25,000); or
(3) The specific maximum net retention limit determined by or for the MEWA in accordance with sound actuarial principles.

(c) The aggregate maximum net retention shall not exceed the lesser of:

(1) One hundred twenty-five percent of Subparagraph (a)(1) of this Rule; or
(2) The aggregate maximum net retention limit determined by or for the MEWA in accordance with sound actuarial principles.

(d) The Commissioner may approve a specific maximum net retention limit or an aggregate maximum net retention limit or both in excess of those calculated pursuant to this Rule, upon application to the Commissioner and the Commissioner's determination that the increase would not inhibit the ability of the MEWA to perform its present and future contractual obligations to policyholders and participants under the MEWA's plan.

Authority G.S. 58-2-40; 58-49-40(c).
Beginning on July 1, 2008, local health departments will use these rules, either as they stand, or as a baseline for more protective standards, to regulate proper well construction and abandonment in order to assure that groundwater resources of the state are protected and provide for safe water supplies for North Carolina's growing population.

Procedure by which a person can object to the agency on a proposed rule: A person may submit objections concerning the proposed revisions to Subchapter 2C (15A NCAC 2C) to the Aquifer Protection Section of the NCDENR-Division of Water Quality. Such correspondence should be brought to the attention of: Michael Cunningham, NCDENR/DWQ – Aquifer Protection Section, 1636 Mail Service Center, Raleigh, NC 27699-1636, phone (919)715-0588, email mike.cunningham@ncmail.net. Oral comments may be made during the public hearings. An appointed Hearing Officer may limit the length of time you are allowed to speak at a public hearing so that all who wish to speak at a public hearing may do so. Written copies of oral statements made at public hearings are requested to be submitted to the Hearing Officer at the hearing. All written comments must be submitted by August 15, 2008. An objection lodged at public hearing to the Subchapter 2C .0100 rules must be submitted in writing.

Comments may be submitted to: Michael Cunningham, NCDENR/DWQ – Aquifer Protection Section, 1636 Mail Service Center, Raleigh, NC 27699-1636, fax (919)715-0588, email mike.cunningham@ncmail.net.

Comment period ends: August 15, 2008

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. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- State – 15A NCAC 02C .0113
- Local – 15A NCAC 02C .0105, .0107, .0109
- Substantive (53,000,000) – 15A NCAC 02C .0100
  (Cumulative over Section)

Fiscal Note posted at:

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

15A NCAC 02C .0102 DEFINITIONS
The terms used in this Subchapter shall be as defined in G.S. 87-85 and as follows. As used herein, unless the context otherwise requires:

1. "Abandon" means to discontinue the use of a well according to the requirements of 15A NCAC 02C .0113 of this Section.

2. "Access port" means an opening in the well casing or well head installed for the primary purpose of determining the position of the water level in the well, well or to facilitate disinfection.

3. "Agent" means any person who by mutual and legal agreement with a well owner has authority to act in his behalf in executing applications for permits. The agent may be either general agent or a limited agent authorized to do one particular act.

4. "Annular Space" means the space between the casing and the walls of the borehole or outer casing, or the space between a liner pipe and well casing.


6. "Casing" means pipe or tubing constructed of specified materials and having specified dimensions and weights as specified in the rules of this Subchapter, that is installed in a borehole, during or after completion of the borehole, to support the side of the hole and thereby prevent caving, to allow completion of a well, to prevent formation material from entering the well, to prevent the loss of drilling fluids into permeable formations, and to prevent entry of contamination.

7. "Clay" means a substance comprised of natural, inorganic, finely ground crystalline mineral fragments which, when mixed with water, forms a pasty, moldable mass that preserves its shape when air dried.

8. "Commission" means the North Carolina Environmental Management Commission or its successor, unless otherwise indicated.

9. "Consolidated rock" means rock that is firm and coherent, solidified or cemented, such as granite, gneiss, limestone, slate or sandstone, that has not been decomposed by weathering.

10. "Contaminate" and "Contamination" means the introduction of foreign materials of such nature, quality, and quantity into the groundwater as to exceed the groundwater...
quality standards specified in 15A NCAC 02L (Classifications and Water Quality Standards Applicable to the Groundwaters of North Carolina).

[Note: As specified in 15A NCAC 02L .0202(b)(3), where naturally occurring substances exceed the established standard, the standard shall be the naturally occurring concentration as determined by the Director.]

(10) "Department" means the Department of Environment and Natural Resources.

(11) "Designed capacity" shall mean means that capacity that is equal to the yield that is specified by the well owner or his agent prior to construction of the well.

(12) "Director" means the Director of the Division of Water Quality, Quality or the Director's delegate.

(13) "Division" means the Division of Water Quality.

(14) "Domestic use" means water used for drinking, bathing, or other household purposes, livestock, or gardens.

(15) "Formation Material" means naturally occurring material generated during the drilling process that is composed of sands, silts, clays or fragments of rock and which is not in a dissolved state.

(16) "GPM" and "GPD" mean gallons per minute and gallons per day, respectively.

(17) "Grout" shall mean and include the following:

(a) "Neat cement grout" means a mixture of not more than six gallons of clear, potable water to one 94 pound bag of portland cement. Up to five percent, by weight, of bentonite clay may be used to improve flow and reduce shrinkage.

(b) "Sand cement grout" means a mixture of not more than two parts sand and one part cement and not more than six gallons of clear, potable water per 94 pound bag of portland cement.

(c) "Concrete grout" means a mixture of not more than two parts gravel to one part cement and not more than six gallons of clear, potable water per 94 pound bag of portland cement. One hundred percent of the gravel must pass through a one-half inch mesh screen.

(d) "Gravel cement grout, sand cement grout or rock cutting cement grout" means a mixture of not more than two parts gravel and sand or rock cuttings to one part cement and not more than six gallons of clear, potable water per 94 pound bag of portland cement.

(e) "Bentonite grout" means the mixture of no less than one and one-half pounds of commercial bentonite with sufficient clear, potable water to produce a grout weighing no less than 9.4 pounds per gallon of mixture. Non-organic, non-toxic substances may be added to improve particle distribution and pumppability. Bentonite grout may only be used in those instances where specifically approved in this Section and only as recommended by the manufacturer.

(f) "Specialty grout" means a mixture of non-organic, non-toxic materials with characteristics of expansion, chemical resistance, rate or heat of hydration, viscosity, density or temperature sensitivity applicable to specific grouting requirements. Specialty grouts may not be used without prior approval by the Director. Approval of the use of specialty grouts shall be based on a demonstration that the mixture will not adversely impact human health or the environment.

(18) "Liner pipe" means pipe that is installed inside a completed and cased well for the purpose of preventing the entrance of contamination into the well or for repairing ruptured, corroded or punctured casing or screens.

(19) "Monitoring well" means any well constructed for the primary purpose of obtaining samples of groundwater or other liquids for examination or testing, or for the observation or measurement of groundwater levels. This definition excludes lysimeters, tensiometers, and other devices used to investigate the characteristics of the unsaturated zone but includes piezometers, a type of monitor well characteristic of the unsaturated zone but excludes piezometers, a type of monitor well. This definition excludes those instances where specifically defined as a specialty grout.

(20) "Owner" means any person who holds the fee or other property rights in the well being constructed. A well is real property and its construction on land rests ownership in the land owner in the absence of contrary agreement in writing.

[Note: Absent a contrary agreement in writing, the Department will presume that the well owner and the land owner are the same person.]

(21) "Pitless adapters" or "pitless units" are devices specifically manufactured to the standards specified under 15A NCAC 2C .0107(i)(5) of...
this Section 15A NCAC 02C .0107(j)(5) for the purpose of allowing a subsurface lateral connection between a well and plumbing appurtenances.

(22) "Public water system" means a water system as defined in 15A NCAC 18C (Rules Governing Public Water Supplies).

(23) "Recovery well" means any well constructed for the purpose of removing contaminated groundwater or other liquids from the subsurface.

(24) "Saline" means having a chloride concentration of more than 250 milligrams per liter.

(25) "Secretary" means the Secretary of the Department of Environment and Natural Resources or the Secretary's delegate.

(26) "Site" means all contiguous property under the same ownership or all contiguous property wherein wells are under the same ownership, the land or water area where any facility, activity or situation is physically located, including adjacent or nearby land used in connection with the facility, activity or situation.

(27) "Specific capacity" means the yield of the well expressed in gallons per minute per foot of draw-down of the water level (gpm/ft.dd), (gpm/ft.dd) per unit of time.

(28) "Static water level" means the level at which the water stands in the well when the well is not being pumped and is expressed as the distance from a fixed reference point to the water level in the well.

(29) "Suspended solids" means the weight of those solid particles in a sample which are retained by a standard glass microfiber filter, with pore openings of one and one-half microns, when dried at a temperature of 103 to 105 degrees Fahrenheit.

(30) "Turbidity" means the cloudiness in water, due to the presence of suspended particles such as clay and silt, that may create esthetic problems or analytical difficulties for determining contamination. Turbidity, measured in Nephelometric Turbidity Units (NTU), is based on a comparison of the cloudiness in the water with that in a specially prepared standard.

(31) "Vent" means an opening in the well casing or well head, installed for the purpose of allowing changes in the water level in a well due to natural atmospheric changes or to pumping. A vent can also serve as an access port.

(32) "Water supply well" means any well intended or usable as a source of water supply, G.S. 87-85 notwithstanding.

(33) "Well" means any excavation that is cored, bored, drilled, jetted, dug or otherwise constructed for the purpose of locating, testing, developing, draining or recharging any groundwater reservoirs or aquifer, or that may control, divert, or otherwise cause the movement of water from or into any aquifer.

(34) "Well contractor" means a person who undertakes to perform a well contractor activity or who undertakes to personally supervise or personally manage the performance of a well contractor activity on the person's own behalf or for any person, firm, or corporation. As used herein, "well contractor" shall be deemed to include a person who constructs, repairs, or abandons a well that is located on land owned or leased by that person.

(35) "Well system" means two or more cross-connected wells, wells connected to the same distribution or collection system or, if not connected to a distribution or collection system, two or more wells serving the same site.

(36) "Yield" means the amount of water or other fluid that can be extracted from a well under a given set of conditions.

Authority G.S. 87-85; 87-87; 143-214.2; 143-215.3.

15A NCAC 02C .0103 PUMP INSTALLER REGISTRATION

Pump Installer Registration:

(a) (1) All persons, firms, or corporations engaged in the business of installing or repairing pumps or other equipment in wells or pumping equipment shall register bi-annually with the Department. Department by completing and submitting to the Department a registration form provided by the Department for this purpose.

(b) Registration shall be accomplished. After initial registration, each pump installer shall renew registration during the period from April 1 to April 30 of every odd-numbered year,
by completing and submitting to the Department a registration form provided by the Department for this purpose.

(c)(1) Upon receipt of a properly completed application form, the Department shall issue a certificate of registration to the applicant, the applicant will be issued a certificate of registration.

(d) Certification as a well contractor in accordance with 15A NCAC 27 shall be deemed to constitute registration in accordance with this Rule.

Authority G.S. 87-87.

15A NCAC 02C .0105 PERMITS

(a) It is the finding of the Commission that the entire geographical area of the state is vulnerable to groundwater pollution from improperly located, constructed, operated, altered, or abandoned non-water supply wells and water supply wells not constructed in accordance with the standards set forth in 15A NCAC 2C .0107 of this Section. Therefore, in order to ensure reasonable protection of the groundwater resources, prior permission from the Division Department shall be obtained for the construction of the types of wells enumerated in Paragraph (b) of this Rule.

(b) No person shall locate or construct any of the following wells until a permit has been issued by the Director, Department:

1. any water-well or well system with a design capacity of 100,000 gallons per day (gpd) or greater;
2. any well added to an existing system where the total design capacity of such existing well system and added well will equal or exceed 100,000 gpd;
3. any monitoring well, well or monitoring well system, including temporary wells, constructed to assess the impact of an activity not permitted by the state, when if installed on property other than that on which the unpermitted activity took place;
4. any recovery well;
5. any well for recharge or injection purposes;
6. any well with a design deviation from the standards specified under the rules of this Subchapter;
7. any well with a design deviation from the standards specified under the rules of this Subchapter, including wells for which a variance is required.

(c) The Director may delegate, through a Memorandum of Agreement, to another governmental agency, the authority to permit wells that are an integral part of a facility requiring a permit from the agency. Provided, however, that the permittee comply with all provisions of this Subchapter, including construction standards and the reporting requirements as specified in 15A NCAC 2C .0114. In the absence of such agreement, all wells specified in Paragraph (b) of this Rule require a well construction permit in addition to any other permits.

(d) The Department shall issue permits for all water wells in accordance with 15A NCAC 02C .0300, including private drinking water wells with a designed capacity greater than 100,000 gallons per day and private drinking water wells for which a variance is required.

(e)(f) An application for a permit shall be submitted by the owner or his agent. In the event that the permit applicant is not the owner of the property on which the well or well system is to be constructed, the permit application must contain written approval from the property owner and a statement that the applicant assumes total responsibility for ensuring that the well(s) will be located, constructed, maintained and abandoned in accordance with the requirements of this Subchapter.

(g) The application shall be submitted to the Division, Department on forms furnished by the Division, Department, and shall include the following:

1. the owner's name (facility name);
2. the owner's mailing address (facility address);
3. description of the well type and activity requiring a permit;
4. facility site location (map);
5. a map of the facility and general site area, site to scale, showing the locations of:
   A. all property boundaries, at least one of which is referenced to a minimum of two landmarks such as identified roads, intersections, streams or lakes within 500 feet of proposed well or well system;
   B. all existing wells, identified by type of use, within 500 feet of proposed well or well system;
   C. the proposed well or well system;
   D. any test borings within 500 feet of proposed well or well system; and
   E. all sources of known or potential groundwater contamination (such as septic tank systems; pesticide, chemical or fuel storage areas; animal feedlots; landfills or other waste disposal areas) within 500 feet of the proposed well site; well.
6. the well drilling contractor's name and state certification number, if known; and
7. construction diagram of the proposed well(s) including specifications describing all materials to be used, methods of construction and means for assuring the integrity and quality of the finished well(s).

(h) For water supply wells or well systems with a designed capacity of 100,000 gpd or greater the application shall include, in addition to the information required in Paragraph (g)(f) of this Rule:

1. the number, yield and location of existing wells in the system;
2. the design capacity of the proposed well(s);
for wells to be screened in multiple zones or aquifers, measurement of the static water level and measurements of pH, specific conductance, and concentrations of sodium, potassium, calcium, magnesium, sulfate, chloride, and carbonates from each aquifer or zone from which water is proposed to be withdrawn;

(4) a copy of any water use permit required pursuant to G.S. 143-215.15; and

(5) any other well construction information or site specific information deemed necessary by the Director for the protection of human health and the environment.

(3) For those monitoring wells with a design deviation from the specifications of 15A NCAC 2C .0108 of this Section, in addition to the information required in Subparagraph (e)(1) Paragraph (g) of this Rule:

(Δ)(1) a description of the subsurface conditions sufficient to evaluate the site. Data from test borings, wells, wells, and pumping tests, etc., tests may be required as necessary;

(Ω)(2) a description of the quantity, character and origin of the contamination;

(η)(3) justification for the necessity of the design deviation; and

(Ω)(4) any other well construction information or site specific information deemed necessary by the Director for the protection of human health and the environment.

(4) For those recovery wells with a design deviation from the specifications in 15A NCAC 2C .0108 of this Section, in addition to the information required in Subparagraph (e)(1) and Parts (c)(3)(A), (B) and (C) Paragraphs (g) and (i) of this Rule, the application shall describe the disposition of any fluids recovered if the disposal of those fluids will have an impact on any existing wells other than those installed for the express purpose of measuring the effectiveness of the recovery well(s).

(5) In the event of an emergency, monitoring wells or recovery wells may be constructed after verbal approval is provided by the Director or delegate. After-the-fact applications shall be submitted by the driller well contractor or owner within ten days after construction begins. The application shall include construction details of the monitoring well(s) or recovery well(s) and include the name of the person who gave verbal approval and the time and date that approval was given.

(6) It shall be the responsibility of the owner of the well or his agent to see that a permit is secured prior to the beginning of construction of any well for which a permit is required under the rules of this Subchapter.

Authority G.S. 87-87; 143-215.1.

15A NCAC 02C .0107 STANDARDS OF CONSTRUCTION: WATER-SUPPLY WELLS

(a) Location.

(1) The well shall not be located in an area generally subject to flooding. Areas which have a propensity for flooding include those with concave slope, alluvial or colluvial soils, gullies, depressions, and drainage ways;

(2) A water supply well shall not be located within a wetland as defined in 15A NCAC 02B .0202 or any area where surface water or runoff will accumulate around the well.

(3) The minimum horizontal separation between a well, intended for a single family residence or other non-public water system, water supply well and potential sources of groundwater contamination, which exists for which a permit has been issued or which exists at the time the well is constructed, shall be as follows unless otherwise specified:

(A) Septic tank and drainfield

(B) Other subsurface ground absorption waste disposal system

(C) Industrial or municipal sludge spreading residuals disposal or wastewater-irrigation sites

(D) Water-tight sewage or liquid-waste collection or transfer facility constructed to water main standards in accordance with 15A NCAC 02T .0305(g)(2) or 15A NCAC 18A .1950(e), as applicable

(E) Other sewage and liquid-waste collection or transfer facility

(F) Cesspools and privies

(G) Animal feedlots or manure piles

(H) Fertilizer, pesticide, herbicide or other chemical storage areas

(I) Non-hazardous waste storage, treatment or disposal lagoons

(J) Sanitary landfills, municipal solid waste landfill facilities, incinerators, construction and demolition (C&D) landfills and other disposal sites except Land Clearing and Inert Debris landfills

(K) Other non-hazardous solid waste landfills, such as Land Clearing and Inert Debris (LCID) landfills

(L) Animal barns, watering troughs, or animal feeding areas

(M) Building foundations, excluding the foundation of a structure housing the well head

(N) Surface water bodies which act as sources of groundwater recharge, such as ponds,
lakes and reservoirs  50 ft.

(O) All other surface water bodies, such as brooks, creeks, streams, rivers, sounds, bays and tidal estuaries  25 ft.

(P) Chemical or petroleum fuel underground storage tanks regulated under 15A NCAC 02N:

(i) with secondary containment  50 ft.
(ii) without secondary containment  100 ft.

(Q) Above ground or underground storage tanks which contain petroleum fuels used for heating equipment, boilers or furnaces, except tanks used solely for storage of propane, natural gas, or liquefied petroleum gas  50 ft.

(R) Underground tanks used solely for storage of liquefied petroleum gas, propane, or natural gas  25 ft.

(S) Gravesites  50 feet

(T) All other potential sources of groundwater contamination  50 ft.

(3) For a well serving a single-family dwelling where lot size or other fixed conditions preclude the separation distances specified in Subparagraph (a)(2) of this Rule, the required horizontal separation distances shall be the maximum possible but shall in no case be less than the following:

(A) Septic tank and drainfield, including drainfield repair areas, except saprolite systems as defined in 15A NCAC 18A .1956(6)  50 ft.

(B) Water-tight sewage or liquid-waste collection or transfer facility constructed to water main standards in accordance with 15A NCAC 02T .0305(g)(2) or 15A NCAC 18A .1950(e), as applicable  25 ft.

(C) Animal barns, watering troughs, or animal feeding areas  50 ft.

(D) Cesspool or privies  50 ft.

Minimum separation distances for all other potential sources of groundwater contamination shall be those specified in Subparagraph (a)(2) of this Rule.

(4) A well or well system, serving more than one single-family dwelling but with a designed capacity of less than 100,000 gpd, must meet the separation requirements specified in Subparagraph (a)(2) of this Rule.

(4) An additional to the minimum separation distances specified in Subparagraph (a)(2) of this Rule, a well or well system with a designed capacity of 100,000 gpd or greater must be located a sufficient distance from known or anticipated sources of groundwater contamination so as to prevent a violation of applicable groundwater quality standards, resulting from the movement of contaminants, in response to the operation of the well or well system at the proposed rate and schedule of pumping.

(5) Actual separation distances must conform with the most stringent of applicable federal, state or local requirements.

(6) Wells drilled for public water supply systems regulated by the Division of Environmental Health shall meet the siting and all other requirements of that Division.

[b: Note: More stringent separation distances and siting requirements may be specified in other federal, state, or local regulations]

(b) Source of water.

(1) The source of water for any well intended for domestic use shall not be from a water bearing zone or aquifer that is known to be contaminated;

(2) In designated areas described in 15A NCAC 02C .0117 of this Section, the source shall be greater than 35 feet below land surface;

(3) In designated areas described in 15A NCAC 02C .0116 of this Section, the source may be less than 20 feet below land surface, but in no case less than 10 feet below land surface; and

(4) For wells constructed with separation distances less than those specified in Subparagraph (a)(2) of this Rule based on lot size of other fixed conditions as specified in Subparagraph (a)(3) of this Rule, the source shall be greater than 35 feet below land surface except in areas described in Rule .0116 of this Section;

(4) In all other areas the source shall be at least 20 feet below land surface.

(c) Drilling Fluids and Additives. Drilling Fluids and Additives shall not contain organic or toxic substances or include water obtained from surface water bodies or water from a non-potable supply and may be comprised only of:

(1) the formation material encountered during drilling;

(2) materials manufactured specifically for the purpose of borehole conditioning or water well construction.

(d) Casing.

(1) If steel casing is used, then:

(A) The casing shall be new, seamless or electric-resistance welded galvanized or black steel pipe. Galvanizing shall be done in accordance with requirements of ASTM A-120, ASTM A53/A53M-07.
(B) The casing, threads and couplings shall meet or exceed the specifications of ASTM A53, A120 or A589; ASTM A53/A53M-07 or A589/A589M-06;

(C) The minimum wall thickness for a given diameter shall equal or exceed that specified in Table 1;

TABLE 1: MINIMUM WALL THICKNESS FOR STEEL CASING:

<table>
<thead>
<tr>
<th>Nominal Diameter (in.)/(inches)</th>
<th>Wall Thickness (in.)/(inches)</th>
</tr>
</thead>
<tbody>
<tr>
<td>For 3-1/2&quot;3.5 inch or smaller pipe, schedule 40 is required</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>0.142</td>
</tr>
<tr>
<td>5</td>
<td>0.156</td>
</tr>
<tr>
<td>5.1/2 5.5</td>
<td>0.164</td>
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<td>10</td>
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<td>12</td>
<td>0.330</td>
</tr>
<tr>
<td>14 and larger</td>
<td>0.375</td>
</tr>
</tbody>
</table>

(D) Stainless steel casing, threads, and couplings shall conform in specifications to the general requirements in ASTM A530 ASTM A530/A530M-04b and also shall conform to the specific requirements in the ASTM standard that best describes the chemical makeup of the stainless steel casing that is intended for use in the construction of the well;

(E) Stainless steel casing shall have a minimum wall thickness that is equivalent to standard schedule number 10S; and

(F) Steel casing shall be equipped with a drive shoe if the casing is driven in a consolidated rock formation. The drive shoe shall be made of forged, high carbon, tempered seamless steel and shall have a beveled, hardened cutting edge. A drive shoe shall not be required for wells in which a cement or concrete grout surrounds and extends the entire length of the casing.

(2) If Thermoplastic Casing is used, then:

(A) the casing shall be new;

(B) the casing and joints shall meet or exceed all the specifications of ASTM F480-81 ASTM F480-06b, except that the outside diameters shall not be restricted to those listed in F480; ASTM F480-06b; and

(C) the maximum depth of installation for a given SDR or Schedule number shall not exceed that listed in Table 2 unless the well drilling contractor can provide the Division, Department, upon request, with written documentation from the manufacturer of the casing stating that the casing may safely be used at the depth at which it is to be installed.

TABLE 2: Maximum allowable depths (in feet) of Installation of Thermoplastic Water Well Casing

<table>
<thead>
<tr>
<th>Nominal Diameter (inches)</th>
<th>Schedule number</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>265</td>
</tr>
<tr>
<td>2.5</td>
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<td>265</td>
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<td>16</td>
<td>265</td>
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Schedule

<table>
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<th>635</th>
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<th>315</th>
<th>253</th>
<th>180</th>
<th>130</th>
<th>85</th>
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2251
<table>
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<tr>
<th>SDR Number</th>
<th>All Diameters (in inches)</th>
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<tr>
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<tr>
<td>SDR 13.5</td>
<td>735</td>
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</tbody>
</table>

**TABLE 2: Maximum allowable depths (in feet) of Installation of Thermoplastic Water Well Casing**

<table>
<thead>
<tr>
<th>Nominal Diameter (inches)</th>
<th>Maximum Depth (in feet) for Schedule 40</th>
<th>Maximum Depth (in feet) for Schedule 80</th>
</tr>
</thead>
<tbody>
<tr>
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<td>255</td>
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(D) Thermoplastic casing with wall thickness less than that corresponding to SDR 21 or Schedule 40 shall not be used.

(D) The top of the casing shall be terminated by the drilling contractor at least twelve inches above land surface.

(E) For wells in which the casing will extend into consolidated rock, thermoplastic casing shall be equipped with a coupling, or other device approved by the manufacturer of the casing, that is sufficient to protect the physical integrity of the thermoplastic casing during the processes of seating and grouting the casing and subsequent drilling operations.

(F) Thermoplastic casing shall not be driven into consolidated rock.

(3) In constructing any well, all water-bearing zones that are known to contain polluted, contaminated, saline, or other non-potable water shall be adequately cased and cemented off so that pollution contamination of overlying and underlying groundwater zones shall not occur.

(4) Every well shall be cased so that the bottom of the casing extends to a minimum depth as follows:

(A) Wells located within the area described in 15A NCAC 02C Rule .0117 of this Section shall be cased from land surface to a depth of at least 35 feet.

(B) Wells located within the area described in 15A NCAC 02C Rule .0116 of this Section shall be cased from land surface to a depth of at least 10 feet.

(C) Wells constructed with separation distances less than those specified in Subparagraph (a)(2) of this Rule based on lot size of other fixed conditions as specified in Subparagraph (a)(3) of this Rule shall be cased from land surface to a depth of at least 35 feet except in areas described in Rule .0116 of this Section.

(D) Wells located in any other area shall be cased from land surface to a depth of at least 20 feet.

(5) The top of the casing shall be terminated by the drilling well contractor at least 12 inches above land surface, surface, regardless of the method of well construction and type of pump to be installed.

(6) The casing in wells constructed to obtain water from a consolidated rock formation shall meet the requirements specified in Subparagraphs (d)(1) through (d)(5) of this Rule and shall be:

(A) adequate to prevent any formational material from entering the well in excess of the levels specified in Paragraph (h) of this Rule; and

(B) firmly seated at least five feet into the rock.

(7) The casing in wells constructed to obtain water from an unconsolidated rock formation (such as gravel, sand or shells) shall extend at least one foot into the top of the water-bearing formation.

(8) Upon completion of the well, the well shall be sufficiently free of obstacles including formation material as necessary to allow for the installation and proper operation of pumps and associated equipment.

(9) Prior to removing his equipment from the site, the well contractor shall seal the top of the casing with a water-tight cap or well seal to preclude the entrance of contaminants into the well.

(e) Allowable Grouts.

(1) One of the following grouts shall be used wherever grout is required by a rule of this Section. Where a particular type of grout is specified by a Rule of this Section, no other type of grout shall be used.

(A) Neat cement grout shall consist of a mixture of not more than six gallons of clear, potable water to one 94 pound bag of Portland cement. Up to five percent, by weight, of bentonite may be used to improve flow and reduce shrinkage. If bentonite is used, additional water may be added at a rate not to exceed 0.6 gallons of water for each pound of bentonite.

(B) Sand cement grout shall consist of a mixture of not more than two parts sand and one part cement and not more than six gallons of clear, potable water per 94 pound bag of Portland cement.

(C) Concrete grout shall consist of a mixture of not more than two parts gravel or rock cuttings to one part cement and not more than six gallons...
of clear, potable water per 94 pound bag of Portland cement. One hundred percent of the gravel or rock cuttings must be able to pass through a one-half inch mesh screen.

(D) Bentonite slurry grout shall consist of a mixture of not more than 20 gallons of clear, potable water to one 50 pound bag of commercial sodium bentonite. Non-organic, non-toxic substances may be added to bentonite slurry grout mixtures to improve particle distribution and pumpability. Bentonite slurry grout may only be used in accordance with the manufacturer's written instructions.

(E) Bentonite chips or pellets shall consist of pre-screened sodium bentonite chips or compressed sodium bentonite pellets with largest dimension of at least one-fourth (1/4) inch but not greater than one-fifth (1/5) of the width of the annular space into which they are to be placed. Bentonite chips or pellets shall be hydrated in place. Bentonite chips or pellets may only be used in accordance with the manufacturer's written instructions.

(F) Specialty grout shall consist of a mixture of non-organic, non-toxic materials with characteristics of expansion, chemical-resistance, rate or heat of hydration, viscosity, density or temperature-sensitivity applicable to specific grouting requirements. Specialty grouts may not be used without prior approval by the Secretary. Approval of the use of specialty grouts shall be based on a demonstration that the finished grout has a permeability less than $10^{-6}$ centimeters per second and will not adversely impact human health or the environment.

(2) With the exception of bentonite chips or pellets, the liquid and solid components of all grout mixtures shall be thoroughly blended prior to emplacement below land surface.

(3) No fly ash, other coal combustion byproducts, or other wastes may be used in any grout.

Grouting.

(1) Casing shall be grouted to a minimum depth of twenty feet below land surface except that:

(A) In those areas designated by the Director to meet the criteria of 15A NCAC 02C .0116 of this Section, grout shall extend to a depth of two feet above the screen or, for open end wells, to the bottom of the casing, but in no case less than 10 feet.

(B) In those areas designated in 15A NCAC 02C .0117 of this Section, grout shall extend to a minimum of 35 feet below land surface.

(C) The casing shall be grouted as necessary to seal off, from the producing zone(s), all aquifers or zones with water containing organic or other contaminants of such type and quantity as to render water from those aquifers or zones unsafe or harmful or unsuitable for human consumption and general use.

(2) For large diameter wells cased with concrete pipe or ceramic tile of a pipe diameter equal to or greater than 20 inches, the following shall apply:

(A) The diameter of the bore hole shall be at least six inches larger than the outside diameter of the casing;

(B) The annular space around the casing shall be filled with a cement-type grout to a depth of at least 20 feet, excepting those designated areas specified in 15A NCAC 02C .0116 and 15A NCAC 02C .0117 of this Section. The grout shall be placed in accordance with the requirements of this Paragraph.

(3) Bentonite slurry grout may be used in that portion of the borehole that is at least three feet below land surface. That portion of the borehole above the bentonite grout, up to land surface, shall be filled with a concrete or cement-type grout, or bentonite chips or pellets that are hydrated in place.

(4) Grout shall be placed around the casing by one of the following methods:

(A) Pressure. Grout shall be pumped or forced under pressure through the bottom of the casing until it fills the annular area space around the casing and overflows at the surface; or

(B) Pumping. Grout shall be pumped into place through a hose or pipe extended to the bottom of the annular space which can be raised as the grout
PROPOSED RULES

(5) If a rule of this Section requires grouting of the casing to a depth greater than 20 feet below land surface, the pumping or pressure method shall be used to grout that portion of the borehole deeper than 20 feet below land surface.

(6)(7) If an outer casing is installed, it shall be grouted by either the pumping or pressure method.

(8) Bentonite chips or pellets shall be used in compliance with all manufacturer's instructions including pre-screening the material to eliminate fine-grained particles, installation rates, hydration methods, tamping, and other measures to prevent bridging.

(9) Bentonite grout shall not be used to seal zones of water with a chloride concentration of 1,500 parts per million or greater.

(10) The well shall be grouted within five working seven days after the casing is set.

(11) No additives which will accelerate the process of hydration shall be used in grout for thermoplastic well casing.

(12) Where grouting is required by the provisions of this Section, the grout shall extend outward in all directions from the casing wall to a minimum thickness equal to either one-third of the diameter of the outside dimension of the casing or two inches, whichever is greater; excepting, however, that large diameter bored wells shall meet the requirements of Subparagraph (e)(2) of this Rule, in wells with casing diameters of 20 inches or greater, the grout shall extend outward in all directions from the casing wall a minimum of three inches.

(g)(h) Well Screens.

(1) The well, if constructed to obtain water from an unconsolidated rock formation, shall be equipped with a screen that will prevent the entrance of formation material into the well after the well has been developed and completed by the well contractor.

(2) The well screen shall be of a design to permit the optimum development of the aquifer with minimum head loss consistent with the intended use of the well. The openings shall be designed to prevent clogging and shall be free of rough edges, irregularities or other defects that may accelerate or contribute to corrosion or clogging.

(3) Multi-screen wells shall not connect aquifers or zones which have differences in water quality which would result in contamination of any aquifer or zone.

(g) Gravel-and Sand-Packed Wells.

(1) In constructing a gravel-or sand-packed well:

(A) The packing material shall be composed of quartz, granite, or similar mineral or rock material and shall be clean, of uniform size, water-washed and free from clay, silt, or other deleterious material.

(B) The size of the packing material shall be determined from a grain size analysis of the formation material and shall be of a size sufficient to prohibit the entrance of formation material into the well in concentrations above those permitted by Paragraph (h) of this Rule.

(C) The packing material shall be placed in the annular space around the screens and casing by a fluid circulation method, preferably through a conductor pipe method to ensure accurate placement and avoid bridging.

(D) The packing material shall be disinfected.

(E) Centering guides must shall be installed within five feet of the top packing material to ensure even distribution of the packing material in the borehole.

(2) The packing material shall not connect aquifers or zones which have differences in water quality that would result in deterioration contamination of the water quality in any aquifer or zone.

(h) Well Development.

(i)(A) All water supply wells shall be developed by the well driller; contractor. Development shall include removal of formation materials, mud, drilling fluids and additives such that the water contains no more than:

(1)(A) five milliliters per liter of settleable solids; and
(2) (B) 10 NTUs of turbidity as suspended solids.

(3) Development shall not require efforts to reduce or eliminate the presence of dissolved constituents which are indigenous to the ground water quality in that area. Typical dissolved constituents include, but are not limited to, aluminum, calcium, chloride, iron, magnesium, manganese, sodium and sulphate.

(ii) Well Head Completion.

(1) Access Port. Every water supply well and such other wells as may be specified by the Commission shall be equipped with a usable access port or air line. The access port shall be at least one half inch inside diameter opening so that the position of the water level can be determined at any time. Such port shall be installed and maintained in such manner as to prevent entrance of water or foreign material.

(2) Well Contractor Identification Plate.

(A) An identification plate, showing the drilling well contractor and certification number and the information specified in Part (i)(2)(E) of this Rule, shall be installed on the well within 72 hours after completion of the drilling.

(B) The identification plate shall be constructed of a durable weatherproof, rustproof metal, or equivalent material approved by the Director, other material approved by the Department as equivalent.

(C) The identification plate shall be securely permanently attached to either the aboveground portion of the well casing, surface grout pad or enclosure floor, where it is readily visible and in a manner that does not obscure the information on the identification plate.

(D) The identification plate shall not be removed by any person.

(E) The identification plate shall be stamped or otherwise imprinted with permanent legible markings to show the:

(i) total depth of well;

(ii) casing depth (ft. feet) and inside diameter (in. inches);

(iii) screened intervals of screened wells;

(iv) packing interval of gravel-or sand-packed wells;

(v) yield, in gallons per minute (gpm), or specific capacity in gallons per minute per foot of drawdown (gpm/ft.-dd);

(vi) static water level and date measured; and

(vii) date well completed; and

(viii) the well construction permit number or numbers, if such a permit is required.

(3) Pump Installer Identification Plate.

(A) An identification plate, showing the name and registration number or well contractor certification number of the pump installation contractor, and the information specified in Part (i)(3)(D) of this Rule, shall be securely permanently attached to either the aboveground portion of the well casing, surface grout pad or the enclosure floor, if present, where it is readily visible and in a manner that does not obscure the information on the identification plate within 72 hours after completion of the pump installation;

(B) The identification plate shall be constructed of a durable waterproof, rustproof metal, or equivalent material approved by the Director, other material approved by the Department as equivalent;

(C) The identification plate shall not be removed by any person; and

(D) The identification plate shall be stamped or otherwise imprinted with permanent legible markings to show the:

(i) date the pump was installed;

(ii) the depth of the pump intake; and

(iii) the horsepower rating of the pump.

(4) Valved flow. Every artesian well that flows under natural artesian pressure shall be equipped with a valve so that the flow can be completely stopped. Well owners shall be responsible for the installation, operation and maintenance of the valve.

(5) Pitless adapters or pitless units shall be allowed as a method of well head completion under the following conditions:

(A) The pitless device shall be manufactured specifically for the purpose of water well construction;

(B) Design, installation and performance standards shall be those specified in PAS-1 (Pitless Adapter Standard No. 1)-PAS-97(04) as adopted by the
15A NCAC 02C .0108 STANDARDS OF CONSTRUCTION: WELLS OTHER THAN WATER SUPPLY

(a) No well shall be located, constructed, operated, or repaired in any manner that may adversely impact the quality of groundwater.

(b) Injection wells shall conform to the standards set forth in Section .0200 of this Subchapter.

(c) Monitoring wells and recovery wells shall be located, designed, constructed, operated and abandoned with materials and by methods which are compatible with the chemical and physical properties of the contaminants involved, specific site conditions and specific subsurface conditions. Specific construction standards will be itemized in the construction permit, if such a permit is required, but the following general requirements will apply:

1. The well shall not penetrate to a depth greater than the depth to be monitored or the depth from which contaminants are to be recovered.
2. The well shall not hydraulically connect: (A) separate aquifers; and (B) those portions of a single aquifer where known or suspected contamination would occur in separate and definable layers within the aquifer.
3. The well construction materials shall be compatible with the depth of the well and the contaminants to be monitored or recovered.
4. The well shall be constructed in such a manner that water or contaminants from the land surface cannot migrate along the borehole annulus into any packing material or well screen area.
5. Packing material placed around the screen shall extend at least one foot above the top of the screen. Unless the depth of the screen necessitates a thinner seal; a one foot thick seal, comprised of bentonitic clay or other material approved by the Director, shall be emplaced directly above and in contact with the packing material.
6. Grout shall be placed in the annular space between the outermost casing and the borehole wall from the land surface to the top of the bentonite clay seal above any well screen or to the bottom of the casing for open end wells. To provide stability for the well casing, the uppermost three feet of grout below land surface must be a concrete or cement-type grout.
7. All wells shall be secured, with a locking well cap, to reasonably ensure against unauthorized access and use.
8. All wells shall be afforded reasonable protection against damage during construction and use.
9. Any wells that would flow under natural artesian conditions shall be valved so that the flow can be regulated.
10. The well casing shall be terminated no less than 12 inches above land surface datum unless both of the following conditions are met:
   (A) site specific conditions directly related to business activities, such as vehicle traffic, would endanger the physical integrity of the well; and
   (B) the well head is completed in such a manner so as to preclude surficial contaminants from entering the well.
11. Each well shall have securely affixed an identification plate constructed of a durable material and shall contain the following information:
   (A) drilling contractor, or pump installation contractor, name and applicable certification or registration numbers;
   (B) date well completed;
   (C) total depth of well;
   (D) a warning that the well is not for water supply and that the groundwater may contain hazardous materials; and
   (E) depth(s) to the top(s) and bottom(s) of the screen(s).
12. Each well shall be developed such that the level of turbidity or settleable solids does not preclude accurate chemical analyses of any fluid samples collected.

(d) Monitoring well and recovery well boreholes shall not penetrate to a depth greater than the depth to be monitored or the depth from which contaminants are to be recovered. Any portion of the borehole that extends to a depth greater than the depth to

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be monitored or the depth from which contaminants are to be recovered shall be grouted completely to prevent vertical migration of contaminants.

(e) The well shall not hydraulically connect:
   (A) separate aquifers; or
   (B) those portions of a single aquifer where known or suspected contamination would occur in separate and definable layers within the aquifer.

(f) The well construction materials shall be compatible with the depth of the well and any contaminants to be monitored or recovered.

(g) The well shall be constructed in such a manner that water or contaminants from the land surface cannot migrate along the borehole annulus into any packing material or well screen area.

(h) In non-water supply wells, packing material placed around the screen shall extend at least one foot above the top of the screen. Unless the depth of the screen necessitates a thinner seal, a one foot thick seal, comprised of chip or pellet bentonite or other material approved by the Department as equivalent, shall be emplaced directly above and in contact with the packing material.

(i) In non-water supply wells, grout shall be placed in the annular space between the outermost casing and the borehole wall from the land surface to the top of the bentonite seal above any well screen or to the bottom of the casing for open end wells. The grout and method of emplacement of the grout shall comply with Paragraphs (e) and (f) of Rule .0107 of this Section except that the upper three feet of grout shall be concrete or cement grout.

(j) If the well penetrates any water-bearing zone that is known to contain contaminated or saline water, the well shall be grouted within one day after the casing is set but in no case shall any well remain ungrouted for more than seven days after the casing is set.

(k) All non-water supply wells, including temporary wells, shall be secured with a locking well cap to ensure against unauthorized access and use.

(l) All non-water supply wells shall be equipped with a steel outer well casing or flush-mount cover, set in concrete, and other measures sufficient to protect the well from damage by normal site activities.

(m) Any well that would flow under natural artesian conditions shall be valved so that the flow can be regulated.

(n) In non-water supply wells, the well casing shall be terminated no less than 12 inches above land surface unless all of the following conditions are met:
   (1) site-specific conditions directly related to business activities, such as vehicle traffic, would endanger the physical integrity of the well; and
   (2) the well head is completed in such a manner so as to preclude surficial contaminants from entering the well.

(o) Each non-water supply well shall have permanently affixed an identification plate. The identification plate shall be constructed of a durable waterproof, rustproof metal, or other material approved by the Department as equivalent and shall contain the following information:
   (1) well contractor name and certification number;
   (2) date well completed;
   (3) total depth of well;
   (4) a warning that the well is not for water supply and that the groundwater may contain hazardous materials;
   (5) depth(s) to the top(s) and bottom(s) of the screen(s); and
   (6) the well identification number or name assigned by the well owner.

(p) Each non-water supply well shall be developed such that the level of turbidity or settleable solids does not preclude accurate chemical analyses of any fluid samples collected or adversely affect the operation of any pumps or pumping equipment.

(q) Wells constructed for the purpose of monitoring or testing for the presence of liquids associated with tanks regulated under 15A NCAC 02N (Criteria and Standards Applicable to Underground Storage Tanks) shall be constructed in accordance with 15A NCAC 02N .0504.

(r) Wells constructed for the purpose of monitoring for the presence of vapors associated with tanks regulated under 15A NCAC 02N shall:
   (1) be constructed in such a manner as to prevent the entrance of surficial contaminants or water into or alongside the well casing; and
   (2) be provided with a lockable cap in order to reasonably ensure against unauthorized access and use.

(s) Temporary wells and all other non-water supply wells shall be constructed in such a manner as to preclude the vertical migration of contaminants within and along the borehole channel.

(t) For monitoring sand-or gravel packed wells, centering guides must be evenly distributed in the borehole, shall be installed within five feet of the top packing material to ensure even distribution of the packing material in the borehole.

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15A NCAC 02C .0109 PUMPS AND PUMPING EQUIPMENT

(a) The pumping capacity of the pump shall be consistent with the intended use and yield characteristics of the well.

(b) The pump and related equipment for the well shall be conveniently located to permit easy access and removal for repair and maintenance.

(c) The base plate of a pump placed directly over the well shall be designed to form a watertight seal with the well casing or pump foundation.

(d) In installations where the pump is not located directly over the well, the annular space between the casing and pump intake or discharge piping shall be closed with a watertight seal, preferably designed specifically for this purpose.

(e) The well shall be properly vented at the well head shall be equipped with a screened vent to allow for the pressure changes within the well except when a suction lift type pump or single-pipe jet pump is used, used or if the well flows under natural pressure. For wells located within the 100-year floodplain, the
vent flood elevation and reinforced or attached to a structure to
prevent damage by floodwaters or the vent opening shall be
downturned and equipped with a check valve to prevent the
entrance of floodwaters but allow venting of the well when not
flooded.

(f) A hose bibb shall be installed at the well head by the
person installing the pump in any private drinking water well
shall install a threadless sampling tap at the wellhead for
obtaining water samples. Samples except:

(1) In the case of suction pump or offset jet pump
installations the hose bibb threadless sampling
tap shall be installed on the return (pressure)
side of the jet-pump piping, and

(2) In the case of pitless adapter installations, the
threadless sampling tap shall be located
immediately upstream of the water storage
tank.

The threadless sampling tap shall be turned downward, located a
minimum of twelve inches above land surface, floor, or well
pad, and positioned such that a water sample can be obtained
without interference from any part of the wellhead.

(g) A priming tee shall be installed at the well head in
conjunction with offset jet pump installations.

(h) Joints of any suction line installed underground between the
well and pump shall be tight under system pressure.

(i) The drop piping and electrical wiring used in connection
with the pump shall meet all applicable underwriters
specifications.

(j) Contaminated water shall not be used for priming the pump.

(k) If the wellhead is equipped with a threaded hose bibb in
addition to the threadless sampling tap, the hose bibb shall be
fitted with a backflow preventer or vacuum breaker.

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15A NCAC 02C .0110 WELL TESTS FOR YIELD

(a) Every water supply domestic well shall be tested for
capacity by a method and for a period of time as specified in this
Rule, one of the following methods:

(b) The permittee may be required as a permit condition to test
any well for capacity by a method stipulated in the
permit.

(c) Standard methods for testing domestic well capacities
include:

(1) Pump Method

(A) select a permanent measuring point,
such as the top of the casing;

(B) measure and record the static water
level below or above the measuring
point prior to starting the pump;

(C) measure and record the discharge rate
at intervals of 10 minutes or less;

(D) measure and record water levels using
a steel or electric tape at intervals of
10 minutes or less;

(E) continue the test for a period of at
least one hour; and

(F) make measurements within an
accuracy of plus or minus one inch.

(2) Bailer Method

(A) select a permanent measuring point,
such as the top of the casing;

(B) measure and record the static water
level below or above the measuring
point prior to starting the bailing
procedure;

(C) bail the water out of the well as
rapidly as possible for a period of at
least one hour; determine and record
the bailing rate in gallons per minute
at the end of the bailing period; and

(D) measure and record the water level
immediately after stopping bailing
process.

(3) Air Rotary Drill Method

(A) measure and record the amount of
water being injected into the well
during drilling operations;

(B) measure and record the discharge rate
in gallons per minute at intervals of
one hour or less during drilling
operations;

(C) after completion of the drilling,
continue to blow the water out of the
well for at least 30 minutes and
measure and record the discharge rate
in gallons per minute at intervals of
10 minutes or less during the period;

(D) measure and record the water level
immediately after discharge ceases.

(4) Air Lift Method

Measurements shall be made through a pipe placed in the well. The
pipe shall have a minimum inside diameter of
at least five-tenths of an inch and shall extend
from top of the well head to a point inside the
well that is below the bottom of the air line.

(A) Measurements shall be made through
a pipe placed in the well;

(B) The pipe shall have a minimum inside
diameter of at least five-tenths of an
inch and shall extend from top of the
well head to a point inside the well
that is below the bottom of the air
line;

(C) Measure and record the static water
level prior to starting the air
compressor;

(D) Measure and record the discharge rate
at intervals of 10 minutes or less;

(E) Measure and record the pumping
level using a steel or electric tape at
intervals of 10 minutes or less; and

(F) Continue the test for a period of at
least one hour.
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(b)(d) Public, Industrial and Irrigation Wells. Every public, industrial and/or irrigation well or well serving a public water supply system upon completion, shall be tested for capacity by the drilling well contractor (except when the owner specifies another agent) by the following or equivalent method:

1. The water level in the well to be pumped and any observation wells shall be measured and recorded prior to starting the test.

2. The well shall be tested by a pump of sufficient size and lift capacity to satisfactorily test the yield of the well, consistent with the well diameter and purpose.

3. The pump shall be equipped with sufficient throttling devices to reduce the discharge rate to approximately 25 percent of the maximum capacity of the pump.

4. The test shall be conducted for a period of at least 24 hours without interruption. Interruption and shall be continued for a period of at least four hours after the pumping water level stabilizes (ceases to decline). When the total water requirements for wells other than public, community or municipal supply wells not serving a public water supply system are less than 100,000 gpd, the well shall be tested for a period and in a manner to satisfactorily show the capacity of the well, or that the capacity of the well is sufficient to meet the intended purpose.

5. The pump discharge shall be set at a constant rate or rates that can be maintained throughout the testing period. If the well is tested at two or more pumping rates (a step-drawdown test), pumping at each pumping rate shall continue to the point that the pumping water level shall be stabilized (declines no more than 0.1 feet per hour for a period of at least four hours for each pumping rate).

6. The pump discharge rate shall be measured by an orifice meter, flowmeter, weir, or equivalent metering device. The metering device shall have an accuracy within plus or minus five percent.

7. The discharge rate of the pump and time shall be measured and recorded at intervals of 10 minutes or less during the first two hours of the pumping period for each pumping rate. If the pumping rate is relatively constant after the first two hours of pumping, discharge measurements and recording may be made at longer time intervals but not to exceed one hour.

8. The water level in each well and time shall be measured and recorded at intervals of five minutes or less during the first hour of pumping and at intervals of 10 minutes or less during the second hour of pumping. After the second hour of pumping, the water level in each well shall be measured at such intervals that the lowering of the pumping water level does not exceed three inches between measurements.

9. A reference point for water level measurements (preferably the top of the casing) shall be selected and recorded for the pumping well and each observation well to be measured during the test. All water level measurements shall be made from the selected reference points.

10. All water level measurements shall be made with a steel or electric tape or equivalent measuring device.

11. All water level measurements shall be made within an accuracy of plus or minus one inch.

12. After the completion of the pumping period, measurements of the water level recovery rate, rate in the pumped well, well shall be made for a period of at least two hours in the same manner as the drawdown.

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15A NCAC 02C .0111 DISINFECTION OF WATER SUPPLY WELLS

(a) Any person constructing, repairing, testing, or performing maintenance, or installing a pump in a water supply well shall disinfect the well upon completion of construction, repairs, testing, maintenance, or pump installation. All water supply wells shall be disinfected upon completion of construction, maintenance, repairs, pump installation, and testing as follows:

(b) Any person disinfecting a well shall perform disinfection in accordance with the following procedures:

1. Chlorination.

   (A) Chlorine-Hypochlorite shall be placed in the well in sufficient quantities to produce a chlorine residual of at least 100 parts per million (ppm) in the well. A chlorine solution may be prepared by dissolving high test calcium hypochlorite (trade names include HTH, Chlor-tabs, etc.) in water. Do not use stabilized Stabilized chlorine tablets or hypochlorite products containing fungicides, algaecides, or other disinfectants. Disinfectants shall not be used. Chlorine test strips or other quantitative test methods shall be used to confirm the concentration of the chlorine residual. Follow manufacturers directions with storing, transporting, and using calcium hypochlorite products.

   [Note: About three ounces of hypochlorite containing 65 percent to 75 percent available chlorine is needed per 100 gallons of water for at least a 100 ppm chlorine residual. As
The water in the well shall be agitated or circulated to ensure thorough dispersion of the chlorine.

The well casing, pump column and any other equipment above the water level in the well shall be thoroughly rinsed with the chlorine solution as a part of the disinfecting process.

The chlorine solution shall stand in the well for a period of at least 24 hours.

The well shall be pumped until there is no detectable total chlorine residual in water pumped from the well the system is clear of the chlorine before the system well is placed in use.

Other materials and methods of disinfection, at least as effective as those in Item (1) of this Rule, may be used upon prior approval by the Director. Department.

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15A NCAC 02C .0113 ABANDONMENT OF WELLS

(a) Any well which is temporarily removed from service has been temporarily abandoned, shall be temporarily abandoned in accordance with one of the following procedures:

(1) Upon temporary removal from service or prior to being put into service, the well shall be sealed with a water-tight cap or seal compatible with the casing and installed so that it cannot be removed easily by hand, without the use of hand tools or power tools.

(2) The well shall be maintained whereby it is not a source or channel of contamination during temporary abandonment.

(3) Every temporarily abandoned well shall be protected with a casing.

(b) Dewatering wells shall be permanently abandoned in accordance with the requirements of 15A NCAC 02C .0113(b) within 30 days of completion of the dewatering activity.

(c) The well owner shall not place new potential sources of groundwater contamination closer to the well than the separation distances specified in Rule .0107(a)(2) or .0107(a)(3) of this Section, as applicable.

(d) All materials used in the maintenance, replacement, or repair of any well shall meet the requirements for new installation.

(e) Broken, punctured or otherwise defective or unserviceable casing, screens, fixtures, seals, or any part of the well head shall be repaired or replaced, or the well shall be permanently abandoned pursuant to the requirements of 15A NCAC 02C .0113 Rule .0113(b) of this Section.

(f) Boys National Science Foundation NSF International (NSF) approved PVC pipe rated at 160 PSI may be used for liner casing-pipe. The annular space around the liner casing shall be at least five-eighths inches and shall be completely filled with cement-a cement-type grout. The well liner shall be completely grouted within 10 working days after collection of water samples or completion of other testing to confirm proper placement of the liner or within 10 working days after the liner has been installed, installed if no sampling or testing is performed.

(g) All well repairs shall be completed with the wellhead, or the top of the pitless unit, if so equipped, terminating at least 12 inches above land surface. Any grout excavated or removed as a result of the well repair shall be replaced in accordance with Rule .0107(f) of this Section.

Authority G.S. 87-87; 87-88.
accordance with 15A NCAC 2C .0107(e) of this Section shall be removed or properly grouted.

(2) Any casing installed after January 1, 1972 and not grouted in accordance with Rule .0107(f) of this Section shall be removed or grouted prior to abandonment.

(3) Any casing installed prior to January 1, 1972 and not grouted in accordance with Rule .0107(f) of this Section shall be either:
(A) removed or grouted prior to abandonment; or
(B) the uppermost three feet of casing shall be removed and the surrounding materials excavated down to the top of the remaining well casing, including the material extending to a width of at least 12 inches outside of the well casing. Cement-type grout or bentonite slurry grout shall be pumped into any open annular space around the remaining casing.

(B)(4) The entire depth of the well shall be sounded before it is sealed to ensure freedom from obstructions that may interfere with sealing operations.

(G)(5) Using a hypochlorite solution (such as HTH), disinfect the well. Except in the case of temporary wells and monitoring wells, the well shall be disinfected in accordance with 15A NCAC 2C .0111. Rule 0111(b)(1)(A) through .0111(b)(1)(C) of this Section if the well is contaminated with coliform or pathogenic microorganisms. Do not use a common commercial household liquid bleach, as this is too weak a solution to ensure proper disinfection.

(6) Wells constructed prior to January 1, 1972 in which the casing has not been removed or grouted shall be completely filled with cement or bentonite slurry grout. Following filling of the well and removal of the upper three feet of casing in accordance with Part (3)(B) of this Paragraph, a six-inch thick concrete or cement grout plug shall be placed on top of the remaining casing such that it covers the entire excavated area above the top of the casing, including the area extending to a width of at least 12 inches outside the well casing. The remainder of the excavation above the concrete or cement plug shall be filled with grout or soil.

(7) In the case of gravel-packed wells in which the casing and screens have not been removed, neat-cement, or bentonite grout bentonite slurry grout shall be injected into the well completely filling it from the bottom of the casing to the top.

(E)(8) Wells, other than "bored" wells. Wells constructed in unconsolidated formations shall be completely filled with cement grout, or bentonite grout by introducing it through a pipe extending to the bottom of the well which can be raised as the well is filled.

(E)(9) Wells constructed in consolidated rock formations or that penetrate zones of consolidated rock may be filled with cement grout, bentonite grout, sand, gravel or drill cuttings opposite the zones of consolidated rock. The top of the cement grout, bentonite grout, any sand, gravel or cutting fill shall terminate at least 10 feet below the top of the consolidated rock or five feet below the bottom of casing. Cement grout or bentonite grout shall be placed beginning 10 feet below the top of the consolidated rock or five feet below the bottom of casing and extend five feet above the top of consolidated rock. The remainder of the well above the upper zone of consolidated rock shall be filled with cement grout or bentonite grout up to land surface. For any well in which the depth of casing or the depth of the bedrock is not known or cannot be confirmed, then the entire length of the well shall be filled with cement grout or bentonite grout up to land surface.

(G)(10) Temporary wells, wells, or monitor wells; wells or test borings:
(A)(i) less than 20 feet in depth and which do not penetrate the water table shall be abandoned by filling the entire well up to land surface with cement grout, dry clay, bentonite grout, or material excavated during drilling of the well and then compacted in place; and

(B)(ii) greater than 20 feet in depth or that penetrate the water table shall be abandoned by completely filling with a bentonite or cement - type grout.

(2) For bored wells or hand dug wells, constructed into unconsolidated material:
(A) For wells that do not have standing water in them at any time during the year:
(i) Remove all plumbing or piping entering the well, along with any obstructions in the well;
(ii) Remove as much of the well casing as possible and then fill the entire well up to land surface with cement grout, concrete grout, bentonite grout, dry clay, or material excavated during drilling of the well and then compacted in place.
(B) For wells that do have standing water in them during all or part of the year:

(i) Remove all plumbing or piping into the well, along with any obstructions inside the well; and

(ii) Remove as much of the well tile casing as possible, but no less than to a depth of three feet below land surface;

(iii) Remove all soil or other subsurface material present down to the top of the remaining well casing and extending to a width of at least 12 inches outside of the well casing on all sides;

(iv) Using a hypochlorite solution (such as HTH), disinfect the well in accordance with 15A NCAC 2C .0111 of this Subchapter. Do not use a common commercial household liquid bleach, as this is too weak a solution to ensure proper disinfection;

(v) Fill the well up to the top of the remaining casing with cement grout, concrete grout, bentonite grout, dry clay, or material excavated during drilling of the well and then compacted in place;

(vi) Pour a one foot thick concrete grout or cement grout plug that fills the entire excavated area above the top of the casing, including the area extending on all sides of the casing out to a width of at least 12 inches on all sides; and

(vii) Complete the abandonment process by filling the remainder of the well above the concrete or cement plug with additional concrete grout, cement grout, or soil.

(c) For bored wells or hand dug wells, constructed into unconsolidated material:

(1) The well shall be disinfected in accordance with Rule .0111(b)(1)(A) through .0111(b)(1)(C) of this Section if the well is contaminated with coliform or pathogenic microorganisms.

(2) All plumbing or piping in the well and any other obstructions inside the well shall be removed from the well.

(3) The uppermost three feet of well casing shall be removed from the well.

(4) All soil or other subsurface material present down to the top of the remaining well casing shall be removed, including the material extending to a width of at least 12 inches outside of the well casing;

(5) The well shall be filled to the top of the remaining casing with grout, dry clay, or material excavated during drilling of the well. If dry clay or material excavated during construction of the well is used, it shall be emplaced in lifts no more than five feet thick, each compacted in place prior to emplacement of the next lift.

(6) A six-inch thick concrete grout plug shall be placed on top of the remaining casing such that it covers the entire excavated area above the top of the casing, including the area extending to a width of at least 12 inches outside the well casing; and

(7) The remainder of the well above the concrete plug shall be filled with grout or soil.

(d)(e) Any well which acts as a source or channel of contamination shall be repaired or permanently abandoned within 30 days of receipt of notice from the department. The drilling well contractor shall permanently abandon any well in which the casing has not been installed or from which the casing has been removed, prior to removing his equipment from the site.

(f)(e) The owner shall be responsible for permanent abandonment of a well except that:

(1) the well driller contractor is responsible for well abandonment if abandonment is required because the driller well contractor improperly locates, constructs, repairs or completes the well; or

(2) the person who installs, repairs or removes the well pump is responsible for well abandonment if that abandonment is required because of improper well pump installation, repair or removal.

Authority G.S. 87-87; 87-88.

15A NCAC 02C .0114 DATA AND RECORDS REQUIRED

(a) Well Cuttings.

(1) Samples of formation cuttings shall be collected by the well contractor and furnished to the Division from any well when such samples are requested by the Division prior to completion of the drilling or boring activities.

(2) Samples or representative cuttings shall be obtained for depth intervals of 10 feet or less beginning at the land surface. Representative cuttings shall also be collected at depths of each significant change in formation.

(3) Samples of cuttings shall be placed in containers furnished by the Division and such containers shall be filled, sealed and properly labeled with indelible-type markers, showing the well owner, well number if applicable, and depth interval the sample represents.

(4) Each set of samples shall be placed in a suitable container(s) showing the location,
owner, well number if applicable, driller, well contractor, depth interval, and date.

(5) Samples shall be retained by the driller well contractor until delivery instructions are received from the Division or for a period of at least 60 days after the well record form (GW-1), indicating said samples are available, has been received by the Division.

(6) The furnishing of samples to any person or agency other than the Division shall does not constitute compliance with the department's request and shall not relieve the driller well contractor of his obligation to the Division.

(b) Reports.

(1) Any person completing or abandoning any well shall submit to the Division a record of the construction or abandonment. For public water supply wells, a copy of each completion or abandonment record shall also be submitted to the Health Department responsible for the county in which the well is located. The record shall be on forms provided by the Division and shall include certification that construction or abandonment was completed as required by these Rules in this Section, the owner's name and address, well location, latitude and longitude of the well with a position accuracy of 100 feet, diameter, depth, yield, and any other information the Division may reasonably require, require as necessary to depict the location and construction details of the well.

(2) The certified record of completion or abandonment shall be submitted within a period of thirty days after completion or abandonment.

(3) The furnishing of records to any person or agency other than the Division shall does not constitute compliance with the reporting requirement and shall not relieve the driller well contractor of his obligation to the Department Division.

Authority G.S. 87-87; 87-88.

15A NCAC 02C .0116 DESIGNATED AREAS: WATER SUPPLY WELLS CASED TO LESS THAN 20 FEET

(a) In some areas the best or only source of potable water supply exists between ten and twenty feet below the surface of the land. In consideration of this, the Director may designate areas of the state where water supply wells may be cased to a depth less than twenty feet. To make this determination, the Director will find:

(1) that the only or best source of drinking water exists between a depth of ten and twenty feet below the surface of the land;
(2) that utilization of said source of water is in the best interest of the public.

(b) The following areas are so designated:

(1) in Currituck County in an area between the sound and a line beginning at the end of SR 1130 near Currituck Sound, thence north to the end of NC 136 at the intersection with the sound;
(2) on the Outer Banks from the northern corporate limit of Nags Head on Bodie Island, south to Ocracoke Inlet;
(3) all areas lying between the Intracoastal Waterway and the ocean from New River Inlet south to New Topsail Inlet;
(4) all areas lying between the Intracoastal Waterway and the ocean from the Cape Fear River south to the South Carolina line.

(c) In all other areas, the source of water shall be at least 20 feet below land surface, except when adequate quantities of potable water cannot be obtained below a depth of twenty feet, and at sites not within areas designated in Subparagraphs (b) or (c) of this Rule the source of water may be obtained from unconsolidated rock formations at depths less than twenty feet provided that:

(1) the well driller contractor can show to the satisfaction of the Division, Department, that sufficient water of acceptable quality for the intended use is not available to a minimum depth of fifty feet; and
(2) the proposed source of water is the maximum feasible depth above fifty feet, but in no case less than ten feet; and
(3) the regional office of the department shall be notified prior to the construction of a well obtaining water from a depth between 10 and 20 feet below land surface.

Authority G.S. 87-87.
PROPOSED RULES

15A NCAC 02C .0117 DESIGNATED AREAS: WATER SUPPLY WELLS CASED TO MINIMUM DEPTH OF 35 FEET

(a) Water supply wells drilled or constructed in the following areas or within 400 feet of the following areas underlain by metavolcanic rocks identified on the 1985 State Geologic Map as bedded argillites of the Carolina Slate Belt shall be cased to a minimum depth of 35 feet. These areas are generally described as follows:

1. Anson County generally west of a line beginning at the intersection of the runs of the Pee Dee River and Buffalo Creek, thence generally northeast to SR 1627, thence generally south along SR 1627 to the intersection with SR 1632, thence generally west along SR 1632 to the intersection with US 52, thence generally south along US 52 to the intersection with SR 1418, thence generally southwest along SR 1418 to the intersection of NC 218, thence south along NC 218 to the intersection with US 74, thence generally west along US 74 to the intersection of SR 1251, thence generally southwest along SR 1251 to the intersection with SR 1240, thence generally southeast along SR 1240 to the intersection with SR 1252, thence generally south along SR 1252 to the intersection with SR 1003, thence generally west along SR 1003 to the Union County line;

2. Cabarrus County generally east of a line beginning at the intersection of SR 1113 and the Union County line, thence generally northeast along SR 1113 to the intersection with SR 1114, thence generally east along SR 1114 to the Stanly County line, thence generally northeast along the county line to the intersection with SR 1100, thence generally northeast along SR 1100 to the intersection of with SR 2622, thence generally southeast along SR 2622 to the intersection with SR 2617, thence generally northeast along SR 2617 to the intersection with SR 2611, thence generally north along SR 2611 to the intersection with NC 73, thence generally east along NC 73 to the intersection with SR 2453, thence generally northeast along SR 2453 to the intersection with SR 2444, thence generally northeast along SR 2444 to the Rowan County line;

3. Davidson County generally east of a line starting at the intersection of the runs of Abbots Creek and the Yadkin River in High Rock Lake, thence generally north along Abbots Creek to NC 8 bridge, thence generally north along NC 8 to the intersection with Interstate 85, thence generally northeast along Interstate 85 to the intersection with US 64, thence generally southeast along US 64 to the Randolph County line;

4. Montgomery County generally west of a line beginning at the intersection of SR 1134 with the Randolph County line, thence generally south along SR 1134 to the intersection with SR 1303, thence generally south along SR 1303 to the intersection with NC 109, thence generally southeast along NC 109 to the intersection with SR 1150, thence generally south along SR 1150 to the intersection with NC 73, thence generally southeast along NC 73 to the intersection with SR 1112, thence generally east along SR 1112 to the intersection with SR 1130, thence generally northeast along SR 1130 to the intersection with SR 1132, thence generally southeast along SR 1132 to the intersection with SR 1174, thence generally east along SR 1174 to the intersection with NC 109, thence generally north along NC 109 to the intersection with SR 1546, generally southeast along SR 1546 to the intersection of SR 1543, generally south along SR 1543 to the intersection with NC 73, NC 731, generally west along NC 73–NC 731 to the intersection with SR 1118, generally southwest along SR 1118 to the intersection with SR 1116, thence generally west along SR 1116 to the intersection with NC 109, thence generally south along NC 109 to the intersection with the Richmond County line;

5. Randolph County generally west of a line beginning at the intersection of US 64 with the Davidson County line, thence generally east along US 64 to the intersection with NC 49, thence generally southwest along NC 49 to the intersection with SR 1107, thence generally south along SR 1107 to the intersection with SR 1105, thence southeast along SR 1105 to the intersection with the Montgomery County line;

6. Rowan County generally east of a line beginning at the intersection of SR 2352 with the Cabarrus County line, thence generally northeast along SR 2352 to the intersection with SR 2353, thence generally north along SR 2353 to the intersection with SR 2259, thence generally northeast along SR 2259 to the intersection with SR 2142 with the Cabarrus County line, thence north along SR 2142 to the intersection with SR 2162, thence generally northeast along SR 2162 to the intersection with the run of the Yadkin River in High Rock Lake;

7. Union County generally east of a line beginning at the intersection of SR 1117 with the South Carolina-North Carolina State line, thence generally north along SR 1117 to the intersection with SR 1111, thence generally northwest along SR 1111 to the intersection
(b) The Director Secretary may grant a variance from any construction standard under the rules of this Section. Any variance will be in writing, and may be granted upon oral or written application to the Director Secretary, by the person responsible for the construction of the well for which the variance is sought, if the Director Secretary finds facts to support the following conclusions:

1. that the use of the well will not endanger human health and welfare or the groundwater;  
2. that construction in accordance with the standards was not technically feasible in such a manner as to afford a reasonable water supply at a reasonable cost.

(b) The Director Secretary may require the variance applicant to submit such information as he deems necessary to make a decision to grant or deny the variance. The Director Secretary may impose such conditions on a variance or the use of a well for which a variance is granted as he deems necessary to protect human health and welfare and the groundwater resources. The findings of fact supporting any variance under this Rule shall be in writing and made part of the variance.

(c) The Director Secretary shall respond in writing to a request for a variance within 30 days from the receipt of the variance request.

(d) A variance applicant who is dissatisfied with the decision of the Director Secretary may commence a contested case by filing a petition under G.S. 150B-23 within 60 days after receipt of the decision.

Authority G.S. 87-87; 87-88; 150B-23.

15A NCAC 02C .0119 DELEGATION

(a) The Director Secretary is delegated the authority to grant permission for well construction under G.S. 87-87.
Reason for Proposed Action:
15A NCAC 07H .0306 – The proposed rule change amends language in this rule pertaining to setbacks for oceanfront development. In addition, the amended language establishes setback requirements based on building size, and creates the opportunity for communities to receive a static line exception from the Coastal Resource Commission for new construction on previously undevelopable lots as well as redevelopment on lots located adjacent to large-scale beach nourishment projects.
15A NCAC 07J .1201 -.1206 Section .1200 represents new rules that are is necessary to define the process of requesting a static line exception, the review and approval of the request, the necessity and frequency for progress reports in order to keep the static line exception active, and how such an exception shall expire or be revoked.

Procedure by which a person can object to the agency on a proposed rule: Objections may be filed in writing and addressed to the Director, NC Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.

Comments may be submitted to: Jim Gregson, 400 Commerce Avenue, Morehead City, NC 28557, phone (252)808-2808, fax (252)247-3330.

Comment period ends: August 15, 2008

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. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:
☐ State
☐ Local
☒ Substantive ($3,000,000)
☐ None

CHAPTER 07 - COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0300 - OCEAN HAZARD AREAS

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 CRC’s Rules shall be located according to whichever of the following is applicable:
(1) If neither a primary nor frontal dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the erosion setback line. The erosion setback line shall be set at a distance of 30 times the long-term annual erosion rate from the first line of stable natural vegetation or measurement line, where applicable. In areas where the rate is less than two feet per year, the setback line shall be 60 feet from the vegetation line or measurement line, where applicable.
(1) The ocean hazard setback for development shall be measured in a landward direction from the vegetation line, the static vegetation line or the measurement line, whichever is applicable. The setback distance shall be determined by both the size of development and the shoreline erosion rate as defined in 15A NCAC 07H .0304. Development size shall be defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. The calculation of total floor area shall be based on the following criteria:
(A) The total square footage of heated or air-conditioned living space;
(B) The total square footage of parking elevated above ground level;
(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; and
(D) 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.
(2) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback distance. This shall include roof overhangs and elevated portions that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean
(J) Parking lots greater than or equal to 5,000 square feet shall require a setback factor of 120 feet or 60 times the shoreline erosion rate, whichever is greater; and

(K) Notwithstanding any other setback requirement of 15A NCAC 07H .0306(a)(2), a building or other structure greater than or equal to 5,000 square feet in a community meeting the criteria set forth in 15A NCAC 07H .0306(a)(8) as well as the requirements in 15A NCAC 07J .1200 shall require a minimum setback factor of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater, shall be measured landward from either the static vegetation line or the vegetation line, whichever is farther landward.

(2)(3) If a primary dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the crest of the primary dune or the long-term erosion setback line, ocean hazard setback, whichever is farthest from the first line of stable natural vegetation line, static vegetation line or measurement line, where whichever is applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located seaward oceanward of the primary dune. In such cases, the development shall may be located landward of the long-term erosion ocean hazard setback line and but shall not be located on or in front oceanward of a frontal dune. The words "existing lots" in this Rule shall mean a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.

(3)(4) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot on which the development is proposed, the development shall be set landward of the frontal dune or landward of the long-term erosion ocean hazard setback line, whichever is farthest from the first line of stable natural vegetation line, static vegetation line or measurement line, where whichever is applicable.

(4) Because large structures located immediately along the Atlantic Ocean present increased risk of loss of life and property, increased potential
for eventual loss or damage to the public beach area and other important natural features along the oceanfront, increased potential for higher public costs for federal flood insurance, erosion control, storm protection, disaster relief and provision of public services such as water and sewer, and increased difficulty and expense of relocation in the event of future shoreline loss, a greater oceanfront setback is required for these structures than is the case with smaller structures. Therefore, in addition to meeting the criteria in this Rule for setback landward of the primary or frontal dune or both the primary and frontal dunes, for all multi-family residential structures (including motels, hotels, condominiums and moteliniums) of more than 5,000 square feet total floor area, and for any non-residential structure with a total area of more than 5,000 square feet, the erosion setback line shall be twice the erosion setback as established in Subparagraph (a)(1) of this Rule, provided that in no case shall this distance be less than 120 feet. In areas where the rate is more than 3.5 feet per year, this setback line shall be set at a distance of 20 times the long-term annual erosion rate plus 105 feet.

(5) If neither a primary nor frontal dune exist in the AEC on or landward of the lot on which development is proposed, the structure shall be landward of the ocean hazard setback.

(5)(6) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the principal structure total floor area and both shall meet the setback requirements established in Paragraph (a) of this Rule and Rule .0309(a) of this Section. 15A NCAC 07H .0309(a). The enclosure of existing roof covered porches shall be exempt from this requirement if the footprint is not expanded, modifications to existing foundations are not required and the existing porch is located landward of the vegetation line or measurement line which ever is applicable. New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.

(6)(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. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.

(8) Beach fill as defined in this Section represents a temporary response to coastal erosion, and compatible beach fill as defined in 15A NCAC 07H .0312 can be expected to erode at least as fast as, if not faster than, the pre-project beach. Furthermore, there is no assurance of future funding or beach-compatible sediment for continued beach fill projects and project maintenance. Therefore, development setbacks measured from an established vegetation line in areas that have received beach fill may, over time, be located so as to be closer to the shoreline and more vulnerable to natural hazards along the oceanfront. Therefore, development setbacks in areas that have received large-scale beach fill shall be measured landward from the static vegetation line as defined in this Section. If development landward of the large-scale beach fill project does not 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 Subparagraph (a)(1) of this Rule, a local government or community may petition the Coastal Resources Commission for a "static line exception" in accordance with 15A NCAC 07J .1200 to allow development of property that lies both within the jurisdictional boundary of the petitioner as well as the boundaries of the large-scale beach fill project. If the request is approved, the Coastal Resources Commission may allow development under the following conditions:

(A) The local government or community provides evidence of a long-term commitment to beach fill as required under 15A NCAC 07J .1201;

(B) A minimum of five years has passed since the onset of the initial large-scale beach fill construction associated with the static vegetation line as defined in 15A NCAC 07H .0305;

(C) Development shall meet all setback requirements from the vegetation line defined in this Rule;

(D) Total floor area of a building shall be no greater than 2,500 square feet;

(E) Development setbacks shall be calculated from the shoreline erosion rate in place at the time of permit issuance;

(F) 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, may extend oceanward of the landward-most adjacent building or structure. When the configuration of a lot 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.

(G) With the exception of swimming pools, the development defined in 15A NCAC 07H .0309(a) may be allowed oceanward of the static vegetation line;

(H) Development shall not be eligible for the exception defined in 15A NCAC 07H .0309(b); and

(I) Issuance, revocation, and expiration of the static line exception shall occur under the conditions defined in 15A NCAC 07J .1200.

(b) In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon which 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, and any disturbance of any other dunes shall be allowed only to the extent allowed by Rule 0308(b) of this Section. 15A NCAC 07H .0308(b).

(c) Development shall not cause irreversible damage to documented historic architectural or archaeological resources documented by the Division of Archives and History, the National Historical Registry, the local land-use plan, or other sources.

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

(e) 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 general management objective for ocean hazard areas set forth in Rule 0303 of this Section. 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) 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) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written acknowledgment from the applicant to DCM 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. By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

(j) All relocation of structures shall require permit approval. Structures relocated with public funds shall comply with the applicable setback line as well as other applicable AEC rules. Structures including septic tanks and other essential accessories relocated entirely with non-public funds shall be relocated to the maximum feasible distance landward of the present location; septic tanks may not be located seaward oceanward of the primary structure. In these cases, all other applicable local and state rules shall be met.

(k) 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 07H .0308(a)(2)(B). 15A NCAC 07H .0308(a)(2)(B). The structure(s) shall be relocated or dismantled within two 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 renourishment takes place within two 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. This condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under Rule 0308(a)(2) of this Section. 15A NCAC 07H .0308(a)(2).

Authority G.S. 113A-107; 113A-113(b)(6); 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 VEGETATION LINE EXCEPTION PROCEDURES

15A NCAC 07J .1201 REQUESTING THE STATIC LINE EXCEPTION

(a) Any local government or permit holder of a large-scale beach fill project, herein referred to as the petitioner, that is subject to a static vegetation line pursuant to 15A NCAC 07H .0305, may petition the Coastal Resources Commission for an exception to the static line in accordance with the provisions of this Section.

(b) A petitioner shall be eligible to submit a request for a static vegetation line exception after five years have passed since the completion of construction of the initial large-scale beach fill project as defined in 15A NCAC 07H .0305 that required the creation of a static vegetation line. For a static 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 vegetation line, whichever is most recent, shall be used in lieu of the completion of construction date.

(c) A static 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 or line segments within the jurisdiction of the petitioner are associated with different large-scale beach fill projects, then the static line exception defined in 15A NCAC 07H .0305 and the procedures outlined in this Section shall be considered separately for each large-scale beach fill project.

(d) A static line exception request shall be made in writing by the petitioner responsible for the management and maintenance of the long-term, large-scale beach fill project(s). For the purpose of this Rule, long-term refers to a period of no less than 30 years from the date of the static line exception request. A complete static line exception request shall include the following:

1. A summary of all beach fill projects in the area for which the exception is being requested, including the initial large-scale beach fill project associated with the static 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.

2. 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. 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.

3. Documentation, including maps, geophysical and geological data, to delineate the 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 Part 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 bases necessary to fund the large-scale beach fill project over its design life.

(e) A static line exception request 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 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) The Coastal Resources Commission shall consider a static line exception request 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 REQUEST

(a) The Division of Coastal Management shall prepare a written report of the static line exception request to be presented to the Coastal Resources Commission. This report shall include:

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 petitioner requesting the static line exception an opportunity to review the report 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 PROCEEDURES FOR APPROVING THE STATIC LINE EXCEPTION

(a) At the meeting that the static line exception is considered by the Coastal Resources Commission, the following shall occur:

1. The Division of Coastal Management shall orally present the report described in 15A NCAC 07J .1202.

2. A representative for the petitioner may provide written or oral comments relevant to the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

3. Additional parties may provide written or oral comments relevant to the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

(b) The Coastal Resources Commission shall authorize a static line exception request following affirmative findings on each of the conditions contained in 15A NCAC 07H .0306(a)(8)(A).
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 is a final agency decision and is subject to judicial review in accordance with G.S. 113A-123 and G.S. 150B-23.

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

15A NCAC 07J .1204 REVIEW OF THE LONG-TERM BEACH-FILL PROJECT AND APPROVED STATIC LINE EXCEPTIONS

(a) Progress Reports. The petitioner that received the static line exception shall provide a progress report to the Coastal Resources Commission at intervals no greater than every five years from the date the static line exception is authorized. The progress report shall address the three conditions defined in 15A NCAC 07H .0306(a)(8)(A) and 15A NCAC 07J .1201(d) provided that said changes are designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work;

(b) The Coastal Resources Commission shall review a static line exception authorized under 15A NCAC 07J .1203 at intervals no greater than every five years from the initial authorization in order to renew its findings for each of the conditions defined in 15A NCAC 07H .0306(a)(8)(A). The Coastal Resources Commission shall also consider the following conditions:

1. Design changes to the initial long-term beach fill project defined in 15A NCAC 07J .1201(d)(2) provided that said changes are designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said 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 .1202(d)(2), including design changes defined in this Rule provided that said changes have been designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work; and

3. Changes in the financial resources or funding bases necessary to fund the long-term beach fill project defined in 15A NCAC 07H .0306(a)(8)(A). 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 bases necessary to fund said changes.

(c) The Division of Coastal Management shall prepare a written 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. The written summary shall include a recommendation from the Division of Coastal Management on whether the conditions defined in 15A NCAC 07H .0306(a)(8)(A) as well as this Rule have been met. The petitioner submitting the progress report shall be provided an opportunity to review the written summary 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.

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.

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

15A NCAC 07J .1205 REVOCATION AND EXPIRATION OF THE STATIC LINE EXCEPTION

(a) The static line exception shall be revoked immediately if the Coastal Resources Commission determines, during the review of the petitioner’s progress report identified in 15A NCAC 07J .1204, that any of the conditions under which the static line exception is authorized, as defined in this Section, no longer exist.

(b) The static line exception shall expire immediately at the end of the design life of the long-term beach fill project defined in 15A NCAC 07H .0306(a)(8)(A) and 15A NCAC 07J .1201(d) including subsequent design changes to said 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 within five years from either the static line exception or the previous progress report, the static line exception 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 is considered a final agency decision and is subject to judicial review in accordance with G.S. 113A-123 and G.S. 150B-23.
A list of static vegetation lines in place for petitioners and the conditions under which the static vegetation lines exist, including the date(s) the static line was defined, shall be maintained by the Division of Coastal Management. A list of static line exceptions in place for petitioners and the conditions under which the exceptions exist, including the date the exception was granted, the dates the progress reports were received, the design life of the long-term beach fill project and the potential expiration dates for the static line exception, shall be maintained by the Division of Coastal Management. Both the static vegetation line list and the static line exception 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.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10B .0302, 0303.

Proposed Effective Date: November 1, 2008

Public Hearing:
Date: July 14, 2008
Time: 7:00 p.m.
Location: Graham County Courthouse, 1 Court Square, Graham, NC 27253

Reason for Proposed Action: These rules are enacted consistent with provisions of Session Law 2006-125.

Procedure by which a person can object to the agency on a proposed rule: Any person who wishes to object to a proposed rule may do so by writing (or emailing) the person specified in connection with a given rule within the public comment period set up for this rule. For this rule, the contact person is Kate Pipkin.

Comments may be submitted to: Kate Pipkin, 1722 Mail Service Center, Raleigh, NC 27699-1722

Comment period ends: August 15, 2008

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. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:
☐ State
☐ Local
☒ Substantive ($53,000,000)
☐ None

CHAPTER 10 – WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B – HUNTING AND TRAPPING

SECTION .0300 – TRAPPING

15A NCAC 10B .0302 OPEN SEASONS
(a) General. Subject to the restrictions set out in Paragraph (b) of this Rule, the following seasons for taking fur-bearing animals as defined in G.S. 113-129(7a), coyotes, and groundhogs shall apply as indicated, all dates being inclusive:

(1) November 1 through the last day of February except for that part of the state described in Subparagraph (2) of this Paragraph.

(2) December 1 through the last day of February in and east of Hertford, Bertie, Martin, Pitt, Greene, Lenoir, Duplin, Pender and New Hanover counties.

(3) Trapping coyotes is allowed during times and with methods described by local laws in counties where local laws have established fox trapping seasons even when those seasons fall outside the regular trapping seasons described above.

(4) Nutria may be trapped east of I-77 at any time.

(b) Restrictions. It is unlawful to trap raccoon in and west of Madison, Buncombe, Henderson and Polk counties.

(c) County-specific seasons. There is an open season for trapping gray and red foxes in Alamance County from November 1 through the last day of February.

Note: Where local laws govern trapping, or are in conflict with these regulations, the local law shall prevail.
**PROPOSED RULES**

*Authority G.S. 113-134; 113-291.2; S.L. 2006-125.*

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**Notice** is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rules cited as 15A NCAC 18A .2606, .3606.

**Proposed Effective Date:**
15A NCAC 18A .2606 – July 1, 2009
15A NCAC 18A .3606 – January 1, 2009

**Public Hearing:**
Date: July 9, 2008
Time: 10:00 a.m.
Location: 2728 Capital Boulevard, Room 1a201, Raleigh, NC

**Reason for Proposed Action:**
15A NCAC 18A .2606 - Change grading points
15A NCAC 18A .3606 – Change grading points and remove language regarding certificate points

**Procedure by which a person can object to the agency on a proposed rule:** Any objections to these rules may be submitted in writing via mail, delivery service, hand deliver or email to: Kristina V. Nixon, R.S., DENR Division of Environmental Health, P.O. Box 722, Edenton, NC 27932, phone (252)724-0177, email kristi.nixon@ncmail.net.

Comments may be submitted to: Kristina V. Nixon, R.S., DENR Division of Environmental Health, P.O. Box 722, Edenton, NC 27932, phone (252)724-0177, email kristi.nixon@ncmail.net.

Comment period ends: August 15, 2008

**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. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact:**
☐ State
☐ Local
☒ Substantive ($3,000,000)
☐ None

**CHAPTER 18 - ENVIRONMENTAL HEALTH**

**SUBCHAPTER 18A – SANITATION**

**SECTION .2600 – THE SANITATION OF FOOD SERVICE ESTABLISHMENTS**

15A NCAC 18A .2606 **GRADING**
(a) The sanitation grading of all restaurants, food stands, drink stands and meat markets shall be based on a system of scoring wherein all establishments receiving a score of at least 90 percent shall be awarded Grade A; all establishments receiving a score of at least 80 percent and less than 90 percent shall be awarded Grade B; all establishments receiving a score of at least 70 percent and less than 80 percent shall be awarded a Grade C. Permits shall be revoked for establishments receiving a score of less than 70 percent. The Sanitation Inspection of Restaurants or other Food Handling Establishments shall be used to document points assessed for violation of the rules of this Section as follows:

(1) Violation of Rules .2608, .2612, .2615 or .2622, Rule .2616, of this Section related to personnel with infectious or communicable diseases restricted food from approved sources, free of spoilage, adulteration or contamination shall equal no more than 3 percent.

(2) Violation of Rules .2608, .2609, .2610, .2611, .2612, .2613, .2614, .2622, Rule .2616 or .2625 of this Section related to proper employee tobacco or beverage use potentially hazardous food temperatures or time requirements for food during storage, preparation, display, service or transportation shall equal no more than 3 percent.

(3) Violation of Rules .2608, .2609, .2610, .2611, .2612, .2613, .2614, .2622 and .2625 of this Section related to hands clean and properly washed food storage, thawing, and preparation, cooking, handling, display, service, or transportation in a manner to prevent contamination, adulteration, or spoilage shall equal no more than 4 percent.

(4) Violation of Rule .2609 .2611 of this Section related to minimal bare hand contact with foods serving food shall equal no more than 3 percent.

(5) Violation of Rule .2609 .2625 of this Section related to lavatory facilities provided accurate thermometer availability shall equal no more than 3 percent.

(6) Violation of Rule .2610 Rules .2608, .2612, .2615, and .2622, of this Section related to food obtained from approved source written notice to customers about use of clean plates for return trips to buffet shall equal no more than 4 percent.

(7) Violation of Rule .2609 .2610 of this Section related to food received at proper temperature properly labeling or storage of dry food shall equal no more than 3 percent.
(8) Violation of Rules .2608, and .2615 Rule .2616 of this Section related to food in good condition, safe, and unadulterated personnel with infections or communicable diseases restricted shall equal no more than 3 ½ percent.

(9) Violation of Rule .2609 and .2612, of this Section related to shellstock tags retained proper handwashing or good hygienic practices shall equal no more than 2 ½ percent.

(10) Violation of Rule Rules .2608, .2616, .2610, .2612, .2614, .2615 and .2622 of this Section related to food protected during storage, handling, display, service & transportation clean clothes or hair restraints shall equal no more than 3 ½ percent.

(11) Violation of Rules .2618 or .2619, .2617, .2618, .2619, and .2622 of this Section related to food contact surfaces cleaned or and sanitized, by approved methods, and sanitizers sanitizing solution required shall equal no more than 3 ½ percent.

(12) Violation of Rules .2618, or .2619, .2608, and .2611 of this Section related to proper handling of returned, previously served, and adulterated food approved utensil washing facilities of sufficient size, with accurate thermometers or test methods available or used shall equal no more than 2 ½ percent.

(13) Violation of Rules .2617, .2618, or .2623 Rule .2609, of this Section related proper cooking time and temperature to food contact surfaces shall equal no more than 4 3 percent.

(14) Violation of Rules .2601, .2608, .2617 or .2621 Rule .2609 of this Section related to proper cooling food service equipment NSF or equal or approved utensils shall equal no more than 4 2 percent.

(15) Violation Rule .2618 .2609 of this Section related to proper reheating air drying clean equipment or utensils shall equal no more than 3 percent.

(16) Violation of Rule .2620 .2609 of this Section related to the proper hot holding temperatures storage of single service utensils shall equal no more than 4 2 percent.

(17) Violation of Rules .2617 or .2622 .2609, and .2612 of this Section related to proper cold holding temperatures non-food contact surfaces clean or in good repair shall equal no more than 4 2 percent.

(18) Violation of Rules .2618 or .2623 Rule .2609 of this Section related to time as a public health control; approved procedures available source of water supply, hot or cold water under pressure, or meets water temperature requirements shall equal no more than 4 2 percent.

Global: (19) Violation of Rules .2624, or .2625 .2618, and .2633 of this Section related to toxic substances properly identified, stored, used lavatory, or toilet facilities approved, accessible, or in good repair shall equal no more than 2 4 percent.

(20) Violation of Rule .2624 .2612 of this Section related to consumer advisory provided cross connections or other potential sources of contamination shall equal no more than 2 ½ percent.

(21) Violation of Rules .2609, .2624, or .2625 .2618, .2622, and .2623 of this Section related to source in accordance with 15A NCAC 18A.1700; hot and cold water under pressure and meets temperature requirements lavatory facilities or toilet facilities with self closing doors, fixtures or rooms clean, mixing faucet, soap, towels, dryer, or sign shall equal no more than 3 2 percent.

(22) Violation of Rules .2612, .2613, or .2626 Rule .2609 of this Section related to refrigeration and freezer capacity sufficient wastewater discharged into approved, properly operating wastewater treatment and disposal system other by-products disposed off properly shall equal no more than 1 ½ percent.

(23) Violation of Rule .2626 .2609 of this Section related to proper cooling methods used garbage cans, containerized systems properly maintained, cleaning facilities provided or contract maintained for cleaning shall equal no more than 2 percent.

(24) Violation of Rule .2630 .2609 of this Section related to proper thawing methods used animal or pest presence shall equal no more than 1 4 percent.

(25) Violation of Rule .2630 .2609 of this Section related to thermometers provided and accurate self closing doors or screened windows shall equal no more than 1 2 percent.

(26) Violation of Rule .2633 .2610 of this Section related to dry food stored properly and labeled accordingly pest breeding places or rodent harborage shall equal no more than 1 percent.

(27) Violation of Rules .2613, .2624, .2627, or .2628, Rules .2612 and .2615 of this Section related to original labeled container for storage of milk & shellfish floors, walls, or ceilings properly constructed shall equal no more than 1 2 percent.

(28) Violation of Rules .2613, .2624, .2627, or .2628 Rule .2633 of this Section related to insects, rodents, and animals not present floors, walls, or ceilings clean or in good repair shall equal no more than 2 4 percent.

(29) Violation of Rule .2630 .2616 of this Section related to clean clothes, hair restraints lighting or ventilation that meets illumination or shield requirements shall equal no more than 1 percent.
(30) Violation of Rule .2617, Rules .2618, and .2633 of this Section related to linens, clothes and aprons clean, properly used and stored; ventilation clean in good repair shall equal no more than 1 percent.

(31) Violation of Rule .2609 of this Section related to washing fruits and vegetables storage or labeling of toxic substances shall equal no more than 1.5 percent.

(32) Violation of Rules .2612, .2613, .2617, .2618, and .2620 of this Section related to not used for domestic purposes outside premise; clean, usable, in good repair shall equal no more than 1 percent.

(33) Violation of Rule .2633 Rules .2620, and .2622 of this Section related to in-use utensils properly stored, storage space not used for domestic purpose shall equal no more than 1 percent.

(34) Violation of Rule .2623 Rules .2620, and .2622 of this Section related to utensils and equipment properly stored, air-dried, handled properly; linens properly handled; mops, hoses, and other items shall equal no more than 1 percent.

(35) Violation of Rules .2612, .2618, and .2620 of this Section related to single use/single service articles properly stored, handled, used shall equal no more than 1 percent.

(36) Violation of Rule .2617 of this Section related to food contact & non-food contact surfaces easily cleanable & in good repair shall equal no more than 1 percent.

(37) Violation of Rule .2618 of this Section related to approved warewashing facilities of sufficient size shall equal no more than 1 percent.

(38) Violation of Rules .2618, and .2619 of this Section related to warewashing facilities maintained, test strips used shall equal no more than 1 percent.

(39) Violation of Rules .2612, .2613, .2617, .2618, .2620, and .2621 of this Section related to food service equipment and utensils approved shall equal no more than 1 percent.

(40) Violation of Rules .2617, and .2618 of this Section related to non-food surfaces clean shall equal no more than 1 percent.

(41) Violation of Rule .2626 of this Section related to wastewater discharged into approved, properly operating wastewater treatment & disposal system, other by-products disposed of properly shall equal no more than 3 percent.

(42) Violation of Rule .2623 of this Section related to no cross connections shall equal no more than 2.3 percent.

(43) Violation of Rules .2624, and .2625 of this Section related to toilet & lavatory facilities: supplied, properly constructed, clean, good repair, signs provided shall equal no more than 2 percent.

(44) Violation of Rule .2626 of this Section related to garbage properly handled and disposed; containers properly maintained shall equal no more than 1 percent.

(45) Violation of Rules .2627 and .2628 of this Section related to floors, walls, ceilings, properly constructed, clean, in good repair shall equal no more than 1 percent.

(46) Violation of Rules .2630, and .2631 of this Section related to meets illumination requirements; shielded; lighting & ventilation clean in good repair shall equal no more than 1 percent.

(47) Violation of Rules .2632, and .2633 of this Section related to storage space clean, storage above floor, approved storage for brooms, mops, hoses, and other items shall equal no more than 1 percent.

(48) Violation of Rule .2633 of this Section related to doors self-closing where required; all windows screened shall equal no more than 1 percent.

(49) Violation of Rule .2606 of this Section related to food safety training shall equal no more than 2 percent.

One half of the percent value may be assessed for any rule violation in this Section based on the severity or recurring nature of the violation.

(b) The grading of restaurants, food stands, drink stands and meat markets shall be based on the standards of operation and construction as set forth in Rules .2607 through .2644 of this Section. An establishment shall receive a credit of two points on its score for each inspection if a manager or other employee responsible for operation of that establishment and who is employed full time in that particular establishment must, in the past three years, have successfully completed a course in food safety training for each inspection through the Division of Environmental Health. The course shall include a minimum of 12 contact hours and provide instruction in the following subject areas:

areas shall be provided:

(1) basic food safety;
(2) requirements for food handling personnel;
(3) basic HACCP;
(4) purchasing and receiving food;
(5) food storage;
(6) food preparation and service;
(7) facilities and equipment;
(8) cleaning and sanitizing;
(9) pest management program; and
(10) regulatory agencies and inspections.
Evidence that a person has completed such a program and examination shall be maintained at the establishment and provided to the Environmental Health Specialist upon request. An establishment shall score at least 70 percent on an inspection in order to be eligible for this credit.

(c) The posted numerical grade shall not be changed as a result of a food sampling inspection. If a food service establishment does not have a manager or other employee who meets the food service sanitation program requirements because the person terminates employment with the food service establishment, the owner or operator shall have 90 days after the termination date to comply with the food service sanitation program requirements in Paragraph (b) of this Rule;

(d) Risk Category I establishments, defined in 10A NCAC 46 .0213, are exempt from the food service sanitation program requirements of Paragraph (b) of this Rule.

(e) The posted grade card shall be black on a white background. All graphics, letters, and numbers for the grade card shall be approved by the State. The alphabetical and numerical sanitation score shall be 1.5 inches in height. No other public displays representing sanitation level of the establishment may be posted by the local health department, except for sanitation awards issued by the local health department. Sanitation awards shall be in a different color and size from the grade card and must be clearly labeled as an award.

(f) Nothing herein shall affect the right of a permit holder to a reinspection pursuant to Rule .2604 of this Section.

(g) Nothing herein shall prohibit the Department from immediately suspending or revoking a permit pursuant to G.S. 130A-23(d).

Authority G.S. 130A-248.

SECTION .3600 – RULES GOVERNING THE SANITATION OF RESIDENT CAMPS

15A NCAC 18A .3606 GRADING

(a) The sanitation grading of all resident camps shall be based on a system of scoring wherein all resident camps receiving a score of at least 90 percent shall be awarded Grade A; all resident camps receiving a score of at least 80 percent and less than 90 percent shall be awarded Grade B; all resident camps receiving a score of at least 70 percent and less than 80 percent shall be awarded Grade C. Permits shall be revoked for establishments receiving a score of less than 70 percent. The Sanitation Inspection of Resident Camps shall be used to document points assessed for violation of the Rules of this Section as follows:

(1) Violation of Rule .3608 of this Section regarding site factors for camp facilities and activities and actual or potential health hazards shall be assessed a value of one point.

(2) Violation of Rule .3609 of this Section regarding water supply, hot and cold water heating facilities in food preparation, utensil and hand washing, and areas required for cleaning shall be assessed a value of three points.

(3) Violation of Rule .3609(d) of this Section regarding cross-connections shall be assessed a value of three points.

(4) Violation of Rule .3610 of this Section regarding wastewater disposal shall be assessed a value of four points.

(5) Violation of Rule .3611 of this Section regarding solid waste storage and cleaning facilities shall be assessed a value of two points.

(6) Violation of Rule .3612 of this Section regarding swimming pools shall be assessed a value of one point.

(7) Violation of Rule .3613(1) and (2) of this Section regarding camp building floors walls and ceilings construction, cleanliness and repair shall be assessed a value of one point.

(8) Violation of Rule .3613(3) of this Section regarding lighting and ventilation adequacy and repair shall be assessed a value of one point.

(9) Violation of Rule .3614(a) and (c) of this Section regarding sleeping quarters and lodging arrangement, cleanliness and repair shall be assessed a value of two points.

(10) Violation of Rule .3614(b) of this Section regarding effective vermin exclusion shall be assessed a value of two points.

(11) Violation of Rule .3614(d) of this Section regarding storage and handling of clean and dirty linen and clothing shall be assessed a value of one point.

(12) Violation of Rule .3615(a), (b), (c) and (d) of this Section regarding approval, accessibility, adequateness, cleanliness and repair of lavatories, bathing and toilet facilities shall be assessed a value of two points.

(13) Violation of Rule .3615(e) of this Section regarding cleanliness, repair of laundry facilities and handling of clean and soiled laundry shall be assessed a value of one point.

(14) Violation of Rule .3616 of this Section regarding approval and cleanliness of drinking water facilities shall be assessed a value of two points.

(15) Violation of Rule .3617(a) and (d) of this Section regarding storage and handling of pesticides and potentially hazardous materials shall be assessed a value of two points.

(16) Violation of Rule .3617(b) and (e) of this Section regarding cleanliness of the premises and repair of protective enclosures shall be assessed a value of one point.

(17) Violation of Rule .3617(c) of this Section regarding location of animal stables and approved manure storage and removal shall be assessed a value of two points.

(18) Violation of Rule .3618(a) of this Section regarding size and construction of food service
facilities and dining halls shall be assessed a value of one point.

(19) Violation of Rule .3618(b) of this Section regarding catering of camp food service shall be assessed a value of two points.

(20) Violation of Rule .3619 of this Section regarding field sanitation standards and procedures shall be assessed a value of three points.

(21) Violation of Rule .3620(a) and (c) of this Section regarding food service employee clothing, hair restraints and use of tobacco shall be assessed a value of one point.

(22) Violation of Rule .3620(b) or (e) of this Section regarding employee handwashing shall be assessed a value of four points.

(23) Violation of Rule .3620(d) of this Section regarding exclusion of persons with a communicable or infectious disease that can be transmitted by food shall be assessed a value of three points.

(24) Violation of Rule .3621 of this Section regarding food source, wholesomeness, handling, service and transportation shall be assessed a value of four points.

(25) Violation of Rule .3622(a) through (f) of this Section regarding food protection during service and storage shall be assessed a value of three points.

(26) Violation of Rule .3622(g) of this Section regarding storage of dry foods shall be assessed a value of one point.

(27) Violation of Rule .3623 of this Section regarding milk and milk products shall be assessed a value of two points.

(28) Violation of Rule .3624 of this Section regarding the source, storage and handling of ice shall be assessed a value of two points.

(29) Violation of Rule .3625 of this Section regarding shellfish and crustacea meat shall be assessed a value of two points.

(30) Violation of Rule .3626(a), (b), and (c) of this Section regarding refrigeration and thawing of foods shall be assessed a value of two points.

(31) Violation of Rule .3626(d) of this Section regarding the protection of food from cross contamination by use of sanitized or gloved hands or utensils, sanitized surfaces and washing of produce shall be assessed a value of three two points.

(32) Violation of Rule 3626(e) through (m) of this Section regarding time and temperature requirements of foods during storage, preparation, cooking, display, service, and transportation shall be assessed a value of four points.

(33) Violation of Rule 3626 (n) of this Section regarding food thermometers shall be assessed a value of two points.

(34) Violation of Rule .3627 of this Section regarding re-service of foods shall be assessed a value of two points.

(35) Violation of Rule .3628 of this Section regarding equipment and utensil construction, repair and cleanliness shall be assessed a value of three points.

(36) Violation of Rule .3629(a) through (c), (e), (f), (k) and (n) of this Section regarding washing, rinsing and sanitizing of utensils and equipment shall be assessed a value of four points.

(37) Violation of Rule .3629(d), (g) through (j), (l), and (o) of this Section regarding approved dishwashing facilities and methods shall be assessed a value of three points.

(38) Violation of Rule .3629(m) regarding the hot water heating facilities for food service needs shall be assessed a value of three points.

(39) Violation of Rule .3630 in this Section regarding storage and handling of utensils and equipment shall be assessed a value of two points.

(40) Violation of Rule .3631 of this Section regarding food service area storage spaces shall be assessed a value of one point.

(41) Violation of Rule .3632 of this Section regarding food service area lighting shall be assessed a value of one point.

(42) Violation of Rule .3633 of this Section regarding food service ventilation shall be assessed a value of one point.

(43) Violation of Rule .3634 of this Section regarding approved and properly located hand washing lavatory facilities in food service areas shall be assessed a value of three points.

(44) Violation of Rule .3635 of this Section regarding the food service area toilet facilities shall be assessed a value of one point.

(45) Violation of Rule .3636 of this Section regarding food service area floor construction, cleanliness and repair shall be assessed a value of one point.

(46) Violation of Rule .3637 of this Section regarding food service area wall and ceiling construction, cleanliness and repair shall be assessed a value of one point.

(47) Violation of Rule .3638(a) through (c) of this Section regarding use of trip kitchens, residential style educational kitchens and domestic kitchens shall be assessed a value of one point.

(48) Violation of Rule .3638(d) through (g) of this Section regarding toxic materials, food service laundry, mop and broom storage shall be assessed a value of one point.

(49) Violation of Rule .3638(h) and (i) of this Section regarding live animals and pest control
measures in food service areas shall be assessed a value of two points.

(50) Violation of this Rule related to food safety training shall equal no more than one point.

(b) The grading of resident camps shall be based on the standards of operation and construction as set forth in Rules .3608 through .3638 of this Section. A manager or other employee responsible for operation of that establishment and who is employed full time in that particular establishment must, in the past three years, have successfully completed a food service sanitation program approved by the Department and passed an American National Standards Institute (ANSI) accredited examination. An initial food service sanitation program shall include a minimum of six contact hours and a food service recertification program shall include a minimum of three contact hours. Request for approval of food service sanitation programs and recertification programs shall be submitted in writing to the Division of Environmental Health. Instruction in the following subject areas shall be provided:

(1) basic food safety;
(2) requirements for food handling personnel;
(3) basic HACCP;
(4) purchasing and receiving food;
(5) food storage;
(6) food preparation and service;
(7) facilities and equipment;
(8) cleaning and sanitizing;
(9) pest management program; and
(10) regulatory agencies and inspections.

(c) Evidence that a person has completed such a program and examination shall be maintained at the establishment and provided to the Environmental Health Specialist upon request. An establishment shall score at least 70 percent on an inspection in order to be eligible for this credit.

(d) The posted grade card shall be black on a white background. All graphics, letters and numbers for the grade card shall be approved by the State. The alphabetical and numerical sanitation score shall be 1.5 inches in height. No other public displays representing sanitation level of the establishment shall be posted by the local health department, except for sanitation awards issued by the local health department. Sanitation awards shall be in a different color and size from the grade card and must be labeled as an award.

(e) Nothing in this Rule shall affect the right of a camp manager to a reinspection pursuant to Rule .3605 of this Section.

(f) Nothing in this Rule shall prohibit the Department from immediately suspending or revoking a permit pursuant to G.S. 130A-23(d).

Authority G.S. 130A-23; 130A-235; 130A-248; 130A-249.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Dental Examiners intends to adopt the rule cited as 21 NCAC 16I .0104; 16R .0106; 16T .0102.

Proposed Effective Date: October 1, 2008

Public Hearing:
Date: July 10, 2008
Time: 7:00 p.m.
Location: Dental Board office, 507 Airport Boulevard, Ste. 105, Morrisville, NC 27560

Reason for Proposed Action:
21 NCAC 16B .0310 – The Board proposes to adopt to require individuals who have failed certain portions of a Board approved examination to undergo remediation. The Board's present remediation rule, 21 NCAC 16B .0406, applies only to individuals who fail portions of examinations that are actually conducted by the Dental board, as opposed to examinations given by other testing agencies.

21 NCAC 16I .0104 – The Board proposes to amend to give one hour of continuing education credit annually to hygienists who perform at least five hours of dental hygiene on a volunteer basis.

21 NCAC 16R .0106 – The Board proposes to amend to give up to two hours of continuing education credit annually to dentists who provide dental services on a volunteer basis. The credit is to be given on a ratio of 1:5, with one hour credit given for every five hours of volunteer work.

21 NCAC 16T .0102 – The Board proposes to amend to clarify that dentists must produce a patient's radiographs within 30 days of receiving a request for the record and that the dentist may not make production of the radiographs contingent upon payment of services or dental treatment.

Procedure by which a person can object to the agency on a proposed rule: Objections to the rule may be made in writing directed to Bobby D. White, Chief Operations Officer, 507 Airport Blvd. Ste 105, Morrisville, NC 27560. Objections will also be received at the public hearing.

Comments may be submitted to: Bobby D. White, 507 Airport Boulevard, Ste. 105 Morrisville, NC 27560

Comment period ends: August 15, 2008

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. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions
concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

☒ State
☐ Local
☐ Substantive (<$3,000,000)
☐ None

SUBCHAPTER 16B – LICENSURE DENTISTS

SECTION .0300 – APPLICATION FOR LICENSURE

21 NCAC 16B .0310 REEXAMINATION
(a) Any applicant who has failed the clinical portion of a Board approved examination three times, regardless of having passed the written portion of the examination, shall successfully complete a Board approved course of study in clinical dentistry encompassing at least one academic year. The course of study shall be in the area(s) of deficiency exhibited on the examination and shall provide additional experience and expertise in clinical dentistry for the applicant. The applicant must send evidence of the additional study, along with the application, before being admitted for reexamination.

(b) Any applicant who has passed the written examination but has failed the clinical examination must also re-take the written examination unless the applicant successfully passes the clinical examination within one year after passing the written examination. The Board will not accept scores from the written portion of the examination that are more than one year old.

(c) Any applicant who has failed the written portion of the examination may retake the written portion of the examination two additional times during the twelve month period from the date of the initial examination. The applicant must wait a minimum of 72 hours before attempting to retake a written examination.

(d) Any applicant who has failed the written portion of the examination three times shall successfully complete an additional Board approved course of study in the area(s) of deficiency exhibited on the examination. Such applicant must send evidence of the additional study, along with the application, before being admitted for reexamination.

Authority G.S. 90-225.1.

SUBCHAPTER 16R – CONTINUING EDUCATION REQUIREMENTS: DENTISTS

SECTION .0100 – CONTINUING EDUCATION

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

21 NCAC 16R .0104 REPORTING CONTINUING EDUCATION
(a) The number of hours completed to satisfy the continuing education requirement shall be indicated on the renewal application form submitted to the Board and certified by the hygienist. Upon request by the Board or its authorized agent, the hygienist shall provide official documentation of attendance at courses indicated. Such documentation shall be provided by the organization offering or sponsoring the course. Documentation must include:

(1) the title;
(2) the number of hours of instruction;
(3) the date of the course attended;
(4) the name(s) of the course instructor(s); and
(5) the name of the organization offering or sponsoring the course.

(b) All records, reports and certificates relative to continuing education hours must be maintained by the licensee for at least two years and shall be produced upon request of the Board or its authorized agent.

(c) Dental hygienists shall receive four hours credit per year for continuing education when engaged in the following:

(1) service on a full-time basis on the faculty of an educational institution with direct involvement in education, training, or research in dental or dental auxiliary programs; or
(2) affiliation with a federal, state or county government agency whose operation is directly related to dentistry or dental auxiliaries.

Verification of credit hours shall be maintained in the manner specified in this Rule.

(d) Evidence of service or affiliation with an agency as specified in Paragraph (c) of this Rule shall be in the form of verification of affiliation or employment which is documented by a director or an official acting in a supervisory capacity.

(e) Hygienists who work at least 20 hours per week in an institution or entity described in (c)(1) or (2) of this Rule shall receive two hours credit per year for continuing education.

(f) Hygienists may receive one hour of continuing education credits per year for performing at least five hours of dental hygiene on a volunteer basis at any state, city or county operated site approved by the Dental Board. Credit will not be given for less than five hours of volunteer work.

Authority G.S. 90-225.1.
documentation of a disabiling condition that interferes with the
dentist's ability to complete the required hours shall be provided
to the Board. The Board may grant or deny requests for variance
in continuing education hours based on a disabiling condition on
a case by case basis, taking into consideration the particular
disabling condition involved and its affect on the dentist's ability
to complete the required hours. In considering the request, the
Board may require additional documentation substantiating any
specified disability.

(b) In those instances where continuing education is waived and
the exempt individual wishes to resume practice, the Board shall
require continuing education courses in accordance with Rule
.0103 of this Section when reclassifying the licensee. The Board
may require those licensees who have not practiced dentistry for
a year or more to undergo a bench test prior to allowing the
licensee to resume practice when there is indication of inability
to practice dentistry.

(c) Dentists shall receive 10 hours credit per year for continuing
education when engaged in any of the following:

(1) service on a full-time basis on the faculty of an
educational institution with direct involvement
in education, training, or research in dental or
dental auxiliary programs; or

(2) affiliation with a federal, state or county
government agency whose operation is
directly related to dentistry or dental
auxiliaries. Verification of credit hours shall
be maintained in the manner specified in Rule
.0105 of this Section.

(d) Dentists who work at least 20 hours per week in an
institution or entity described in (c) (1) or (2) of this Rule shall
receive five hours credit per year for continuing education.

(e) Dentists may receive up to two hours of continuing
education credits per year for providing dental services on a
volunteer basis at any state, city or county operated site
approved by the Dental Board. Credit will be given at ratio of
1:5, with one hour credit given for every five hours of volunteer
work.

Authority G.S. 90-31.1; 90-38.

SUBCHAPTER 16T – PATIENT RECORDS

SECTION .0100 – PATIENT RECORDS

21 NCAC 16T .0102 TRANSFER OF RECORDS
UPON REQUEST

A dentist shall, upon request by the patient of record, provide
original or copies of radiographs and a summary of the treatment
record to the patient or to a licensed dentist identified by the
patient. A fee may be charged for duplication of radiographs
and diagnostic materials. The treatment summary and
radiographs shall be provided within 30 days of the request and
shall not be contingent upon current, past or future dental
treatment or payment of services.

Authority G.S. 90-28; 90-48.

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CHAPTER 38 – BOARD OF OCCUPATIONAL THERAPISTS

Notice is hereby given in accordance with G.S. 150B-21.2 that
the Board of Occupational Therapy intends to amend the rules
cited as 21 NCAC 38 .0201, .0304.

Proposed Effective Date: November 1, 2008

Public Hearing:
Date: July 21, 2008
Time: 1:00 p.m.
Location: Wachovia Capitol Center, 13th Floor Conference
Room, 150 Fayetteville St., Raleigh, NC 27601

Reason for Proposed Action: These amendments are being
submitted to better implement and interpret the North Carolina
Occupational Therapy Practice Act.

Procedure by which a person can object to the agency on a
proposed rule: Any person may object to either of these
proposed amendments by submitting a written statement to
Charles P. Wilkins at P.O. Box 2280, Raleigh, NC 27602,
postmarked on or before September 7, 2008.

Comments may be submitted to: Charles P. Wilkins, P.O. Box
2280, Raleigh, NC 27602; phone (919) 833-2732, fax (919) 833-
1059, email cwilkins@bws-law.com.

Comment period ends: September 7, 2008

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. If the Rules Review Commission
receives written and signed objections in accordance with G.S.
150B-21.3(h2) from 10 or more persons clearly requesting
review by the legislature and the Rules Review Commission
approves the rule, the rule will become effective as provided in
G.S. 150B-21.3(b1). The Commission will receive written
objections until 5:00 p.m. on the day following the day the
Commission approves the rule. The Commission will receive
those objections by mail, delivery service, hand delivery, or
facsimile transmission. If you have any further questions
concerning the submission of objections to the Commission,
please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:
☐ State
☐ Local
☐ Substantive ($3,000,000)
☒ None

SECTION .0200 – APPLICATION FOR LICENSE

21 NCAC 38 .0201 APPLICATION PROCESS

(a) Each applicant, including those trained outside the United
States or its territories, for an occupational therapist or
occupational therapy assistant license shall complete an
application form provided by the Board. This form shall be submitted to the Board and shall be accompanied by:

1. one head and shoulders photograph (passport type), taken within the past six months, of the applicant of acceptable quality for identification, two inches by two inches in size;
2. the proper fees, as required by 21 NCAC 38 .0204;
3. evidence from the National Board for Certification of Occupational Therapy (NBCOT) of successful completion of the certification examination administered by it. Evidence of successful completion of the NBCOT certification examination shall be accepted as proof of graduation from an accredited curriculum and successful completion of field work requirements;
4. two signed statements on forms provided by the Board attesting to the applicant's good moral character; and
5. successful completion of a jurisprudence exam administered by the Board.

(b) An applicant previously licensed in any state or country re-entering the field of occupational therapy after not practicing occupational therapy for more than 24 months shall complete 90 days of supervised field work and shall provide to the Board:

1. a written plan for 90 days of supervised fieldwork within 10 days of securing employment; and
2. monthly documentation confirming that the supervised fieldwork is being provided.

Authority G.S. 90-270.69(4); 90-270.70.

SECTION .0300 – LICENSING

21 NCAC 38 .0304 GROUNDS FOR LICENSE DENIAL OR DISCIPLINE

(a) In addition to the conduct set forth in G.S. 90-270.76, the Board may deny, suspend, or revoke a license, or impose probationary conditions on a license, upon any of the following grounds:

1. writing a check given to the Board in payment of required fees which is returned unpaid;
2. allowing an unlicensed occupational therapist or occupational therapy assistant to practice under the licensee's supervision or control;
3. making any false statement or giving any false information in connection with an application for a license or renewal of a license or any investigation by the Board or the Board's designee;
4. committing a crime the circumstances of which relate to the occupational therapy profession;
5. violating any federal or state statute or rule which relates to the occupational therapy profession;
6. practicing occupational therapy while the licensee's ability to practice was impaired by alcohol or other drugs or a physical or mental disability or disease;
7. engaging in sexual misconduct. For the purposes of this Paragraph, sexual misconduct includes:
   A. Engaging in or soliciting sexual relationships, whether consensual or non-consensual, while an Occupational Therapist or Occupational Therapy Assistant/patient relationship exists with that person;
   B. Making sexual advances, requesting sexual favors or engaging in physical contact of a sexual nature with patients or clients;
8. obtaining or attempting to obtain payment by fraud or deceit;
9. violating any Order of the Board;
10. failing to properly make the disclosures required by 21 NCAC 38 .0305;
11. abandoning or neglecting a patient or client under and in need of immediate professional care, without making reasonable arrangements for the continuation of such care;
12. recording or communicating false or misleading data, measurements or notes regarding a patient;
13. delegating responsibilities to a person when the licensee delegating knows or has reason to know that the competency of that person is impaired by physical or psychological ailments, or by alcohol or other pharmacological agents, prescribed or not;
14. practicing or offering to practice beyond the scope permitted by law;
15. accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;
16. performing, without supervision, professional services which the licensee is authorized to perform only under the supervision of a licensed professional;
17. harassing, abusing, or intimidating a patient either physically or verbally;
18. failure to exercise supervision over persons who are authorized to practice only under the supervision of the licensed professional;
19. promoting an unnecessary device, treatment intervention or service for the financial gain of the practitioner or of a third party;
20. delegating professional responsibilities to a person when the licensee delegating the responsibilities knows or has reason to know that the person is not qualified by training, by
experience, or by licensure to perform the responsibilities;
(21) billing or charging for services or treatments not performed; or
(22) making treatment recommendations based on the extent of third party benefits instead of the patient's condition.

(b) A licensee has been incompetent in practice under G.S. 90-270.76(a)(5) if the licensee has engaged in conduct which evidences a lack of ability, fitness or knowledge to apply principles or skills of the profession of occupational therapy.

(c) When a person licensed to practice occupational therapy is also licensed in another jurisdiction and that other jurisdiction takes disciplinary action against the licensee, the North Carolina Board of Occupational Therapy may summarily impose the same or lesser disciplinary action upon receipt of the other jurisdiction's actions. The licensee may request a hearing. At the hearing the issues shall be limited to:

(1) whether the person against whom action was taken by the other jurisdiction and the North Carolina licensee are the same person;
(2) whether the conduct found by the other jurisdiction also violates the North Carolina Occupational Therapy Practice Act; and
(3) whether the sanction imposed by the other jurisdiction is lawful under North Carolina law.

Authority G.S. 90-270.69(4); 90-270.76.

CHAPTER 02 – COMMUNITY COLLEGES

SUBCHAPTER 02C – COLLEGES: ORGANIZATION AND OPERATIONS

SECTION .0100 – TRUSTEES AND COLLEGES

23 NCAC 02C .0110 ACCOUNTABILITY AND AUDIT RESPONSIBILITIES

(a) The purpose of establishing accountability and audit responsibilities is to ensure collaboration among local trustees, presidents, the State Board of Community Colleges and the System Office in fulfilling responsibilities relating to accountability for college operations, timely and up-to-date training so that well-informed decisions can be made; and minimizing audit and risk management issues for the colleges.

(b) Each local board of trustees shall include responsibilities for accountability and audit in their bylaws.

(c) Local trustees assigned accountability and audit responsibilities shall review the following documents listed in

Procedure by which a person can object to the agency on a proposed rule: Written objections shall be addressed to President, NC Community College System Office, 5001 MSC, Raleigh, NC 27699-5001 within the comment period, and must be post marked by 11:59 p.m. on the day of the comment period.

Comments may be submitted to: Q. Shante Martin, 200 West Jones Street, 5001 MSC, Raleigh NC 27699-5001; phone (919) 807-6961; fax (919) 807-7171; email martins@nccommunitycolleges.edu

Comment period ends: August 15, 2008

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. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

<table>
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<th></th>
<th>State</th>
<th>Local</th>
<th>Substantive (&lt;$3,000,000)</th>
<th>None</th>
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Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Community Colleges intends to adopt the rule cited as 23 NCAC 02C .0110.

Proposed Effective Date: October 1, 2008

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): To demand a public hearing please send the written demand to Q. Shante Martin, NC community College System, 200 West Jones Street, MSC 5001, Raleigh, NC 27699-5001 or by e-mailing the demand to martins@nccommunitycolleges.edu. Demands must be received within 15 days of the publication of the proposed rule in the North Carolina Register.

Reason for Proposed Action: The purpose of establishing accountability and audit responsibilities is to ensure collaborations among local trustees, presidents, the State Board of Community Colleges and the System Office in fulfilling responsibilities relating to accountability for college operations, timely and up-to-date training so that well-informed decisions can be made; and minimizing audit and risk management issues for the colleges.
Subparagraphs (1) through (22) of this Paragraph and identify any potential risks and/or concerns to their respective colleges:

1. Strategic Plan/Institutional Effectiveness Plan (G.S. 115D-31.3/SACS)
2. Performance Measures Report (to include Critical Success Factors) (G.S. 115D-31.3 and 23 NCAC 02E .0205(b), (c), and (d))
3. Internal Audit Plan (Accountability Credibility Plan for Continuing Education) (23 NCAC 02E .0305)
5. FTE/Enrollment Management (Annual Statistical Reports)
6. Captive/Co-Opted Instruction (23 NCAC 02E .0403)
7. Education Services for Minors (Huskins/Concurrent Enrollment/Joint High School Programs) G.S. 115D-5(b) and (23 NCAC 02C .0305)
8. Instructional Service Agreements with other Colleges (23 NCAC 02E .0604)
9. Optional Fees Schedule (23 NCAC 02D .0201(c))
10. Tuition and/or Registration Fee Waivers (G.S. 115D, G.S. 115B, and 23 NCAC 02D .0202 and 02D .0203)
11. Certification/Licensure Program Compliance (23 NCAC 02C .0301(b), 02D .0325, and 02E .0405)
12. College Personnel Policies (23 NCAC 02C .0210)
13. Evaluation of President (23 NCAC 02C .0209)
16. Information Technology Plan (State ITS Office)
17. Basic Skills Plan (U.S. Dept. of Ed.)
18. Program Review Summary (for establishment and disestablishment of programs) (23 NCAC 02E .0205(a))
20. Facilities Master Plan (to include study of existing programs, expansion to create capacity for new programs, resource needs and matching facility needs) (SACS)
21. Facilities Utilization Report (UNC-GA)
22. Board Assessments/Evaluations (NCACCT)

(d) Local trustees assigned accountability and audit responsibilities shall report the potential risks and/or concerns that are identified in the documents listed in Subparagraphs (c)(1) through (c)(22) of this Rule to the full local board of trustees with specific procedures and/or actions for the resolution of the identified risks and/or concerns. The report and procedures and/or actions for resolution shall be detailed in each local board of trustees meeting minutes.

(e) Local trustees assigned accountability and audit responsibilities shall review the following audit reports listed in Subparagraphs (1) through (3) of this Paragraph and report any audit concerns/exceptions to the full local board of trustees with specific procedures and/or actions for the resolution of the audit concerns/exceptions. The report and procedures and/or actions for resolution shall be detailed in each local board of trustees meeting minutes:

1. State of North Carolina Audits – Financial and Operational (State Auditor's Office and Office of the State Controller)
2. Equipment Audits (State Auditor's Office)
3. Federal Audits – Reviews and Results (U.S. Dept. of Ed.)

(f) The Audit Services unit of the System Office shall review internal processes and procedures for the documents listed in Subparagraphs (c)(1) through (c)(22) of this Rule and for the audit reports listed in Subparagraphs (d)(1) through (d)(3) of this Rule. After reviewing internal processes and procedures, the Audit Services unit of the System Office shall provide feedback to the State Board of Community Colleges' Accountability and Audit and Policy Committees for action as needed to ensure that appropriate internal controls are maintained.

(g) Verification of local board and System Office accountability and audit reviews shall be included in college Program Audits and System Office performance audits.

(h) Each local board of trustees shall implement the accountability and audit responsibilities of this section as of the date this Rule is adopted.

Authority G.S. 115-5.
**CONTESTED CASE DECISIONS**

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at http://www.ncoah.com/hearings.

**OFFICE OF ADMINISTRATIVE HEARINGS**

**Chief Administrative Law Judge**  
JULIAN MANN, III

**Senior Administrative Law Judge**  
FRED G. MORRISON JR.

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A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions.

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