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Contact List for Rulemaking Questions or Concerns

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**Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.**
Office of Administrative Hearings
Rules Division
1711 New Hope Church Road (919) 431-3000
Raleigh, North Carolina 27609 (919) 431-3104 FAX

contact: Molly Masich, Codifier of Rules molly.masich@oah.nc.gov (919) 431-3071
Dana McGhee, Publications Coordinator dana.mcghee@oah.nc.gov (919) 431-3075
Lindsay Woy, Editorial Assistant lindsay.woy@oah.nc.gov (919) 431-3078
Cathy Matthews-Thayer, Editorial Assistant cathy.thayer@oah.nc.gov (919) 431-3006

**Rule Review and Legal Issues**
Rules Review Commission
1711 New Hope Church Road (919) 431-3000
Raleigh, North Carolina 27609 (919) 431-3104 FAX

contact: Amber Cronk May, Commission Counsel amber.may@oah.nc.gov (919) 431-3074
Amanda Reeder, Commission Counsel amanda.reeder@oah.nc.gov (919) 431-3079
Jason Thomas, Commission Counsel jason.thomas@oah.nc.gov (919) 431-3081
Alexander Burgos, Paralegal alexander.burgos@oah.nc.gov (919) 431-3080
Julie Brincefield, Administrative Assistant julie.brincefield@oah.nc.gov (919) 431-3073

**Fiscal Notes & Economic Analysis**
Office of State Budget and Management
116 West Jones Street (919) 807-4700
Raleigh, North Carolina 27603-8005 (919) 733-0640 FAX
Contact: Carrie Hollis, Economic Analyst osbmruleanalysis@osbm.nc.gov (919) 807-4757

NC Association of County Commissioners
215 North Dawson Street (919) 715-2893
Raleigh, North Carolina 27603
contact: Amy Bason amy.bason@ncacc.org

NC League of Municipalities (919) 715-4000
150 Fayetteville Street, Suite 300
Raleigh, North Carolina 27601
contact: Sarah Collins scollins@nclm.org

**Legislative Process Concerning Rule-making**
545 Legislative Office Building
300 North Salisbury Street (919) 733-2578
Raleigh, North Carolina 27611 (919) 715-5460 FAX

Jason Moran-Bates, Staff Attorney
Jeremy Ray, Staff Attorney
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This document is prepared by the Office of Administrative Hearings as a public service and is not to be deemed binding or controlling.
EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

ROY COOPER
GOVERNOR

December 6, 2018

EXECUTIVE ORDER NO. 82

PROMOTING HEALTH AND WELLNESS BY CLARIFYING PROTECTIONS AFFORDED TO PREGNANT STATE EMPLOYEES

WHEREAS, North Carolina state government is made stronger by the talent, diligence, experience, and integrity of its workforce; and

WHEREAS, North Carolina state government strives to retain its existing workforce and recruit new employees that can best provide services to North Carolinians; and

WHEREAS, initiatives that seek to improve employee wellness and health are vital to recruitment and retention efforts; and

WHEREAS, research suggests that workplace adjustments for pregnant workers promote physical and mental health; reduce the risk of poor birth outcomes; and increase workplace productivity, retention, and morale; and

WHEREAS, the North Carolina Office of State Human Resources ("OSHR") issues and implements policies and procedures that protect pregnant state employees (collectively "OSHR Policies"); and

WHEREAS, the undersigned is committed to promoting policies that support pregnant workers to ensure their safety and prevent discrimination, harassment, and retaliation in state government employment.

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

Section 1. Purpose

It shall be the policy of the Office of the Governor and State Agencies, as defined herein, to extend workplace protections and modifications to pregnant, State Agency employees upon request, unless doing so would impose significant burdens or costs.

Section 2. Definitions

a. "State Agency": Any North Carolina department, agency, board, commission, or committee for which the Governor has oversight responsibility.

b. "Contractor": An individual or group of individuals, however organized, that provides goods and services pursuant to a contract with a State Agency.

c. "Subcontractor": An individual or group of individuals, however organized, that contracts with a Contractor as defined in Section 2.b of this Executive Order.

d. "Pregnant": Concerning pregnancy, childbirth, or a related medical condition.
e. “Eligible State Employee”: A State Agency employee who is pregnant.

f. “Workplace Adjustments”: Changes in the work environment or in the way things are customarily done that enable pregnant employees to perform their jobs’ essential functions or enjoy equal benefits and privileges of employment. Workplace Adjustments may include, but are not limited to, the following temporary accommodations: (i) a change in workstation and seating equipment, and/or relocation of workplace materials and equipment to make them more accessible; (ii) more frequent and/or longer breaks; (iii) periodic rest; (iv) assistance with manual labor; (v) modified work schedules, including the option to work from home; (vi) modified work assignments; (vii) adjustment of uniforms or dress codes; (viii) provision of properly sized safety gear; (ix) temporary transfer; (x) reasonable break time and access to appropriate, non-bathroom lactation accommodations for rest and/or to express breast milk; (xi) access to food and drink and permitting meals and beverages at workstations; (xii) changes in lighting and noise levels; and (xiii) closer parking and/or access to mobile assistance devices.

Notwithstanding Section 2.g of this Executive Order, it is the undersigned’s intent to ensure that Eligible State Employees are provided the widest range of pregnancy protections, including Workplace Adjustments, upon compliance with Section 5 of this Executive Order.

g. “Undue Hardship”: A significant difficulty or expense imposed upon an employer as a result of offering or providing Workplace Adjustments. When determining whether a difficulty or expense constitutes an Undue Hardship, an employer may consider the following factors: (i) the nature and cost of the Workplace Adjustments; (ii) overall financial resources; (iii) the number of employees and the number, type, and location of facilities; and (iv) the impact of Workplace Adjustments on the employer’s expenses, resources, or operation(s).

Section 3. OSHR Responsibility

a. OSHR shall work with State Agencies to ensure Eligible State Employees and all relevant State Agency management and staff receive information about and understand the obligations and protections established by the OSHR Policies and this Executive Order.

b. OSHR shall prepare and distribute updated equal employment opportunity plan guidelines (“the Guidelines”) to State Agencies. The Guidelines will set forth what information State Agencies will be required to collect regarding their efforts to educate management and staff of their obligations and employee rights under the OSHR Policies and this Executive Order. The Guidelines will also require that the information collected be included in State Agencies’ equal employment opportunity plans (“EEO Plans”). The Guidelines will be disseminated as soon as practicable to ensure the collection and reporting of meaningful data in the EEO Plans due March 1, 2019, and every year thereafter. OSHR shall compile this data and provide it to the Governor’s Office for review.

c. Consistent with existing state law, OSHR shall take any additional steps necessary to prevent and stop discrimination, retaliation, and harassment against Eligible State Employees, including, where necessary, amending OSHR Policies in accordance with this Executive Order and providing Eligible State Employees a means of challenging adverse Workplace Adjustment determinations.

Section 4. State Agencies’ Responsibility

a. Absent an Undue Hardship, State Agencies shall provide Workplace Adjustments to Eligible State Employees upon request.

b. Notwithstanding Section 4.a of this Executive Order, a State Agency may require documentation from an Eligible State Employee’s health care provider certifying the necessity of Workplace Adjustments.

c. State Agencies must post written notice of the rights afforded to Eligible State Employees under the OSHR Policies and this Executive Order. This notice must be physically displayed in a conspicuous area in each office maintained by a State Agency.

d. A State Agency may not force an Eligible State Employee to accept Workplace Adjustments.
e. State Agencies shall collect and compile information regarding their efforts to educate their management and staff of their obligations and employee rights under the OSHR Policies and this Executive Order. This information will be provided to OSHR in the EEO Plans due March 1, 2019, and every year thereafter, and shall include, at minimum, the following: (i) the number of notices in each of the State Agency’s offices that educate management and staff of their obligations and employee rights under the OSHR Policies and this Executive Order; (ii) the content of those notices; and (iii) information regarding any additional education initiative(s) carried out by the State Agency, specifically the nature of the initiative (form and/or medium), the information conveyed, and the estimated number of management and staff who were able to obtain information from or otherwise had access to the initiative(s).

f. State Agencies shall take any additional steps necessary to prevent discrimination, retaliation, and harassment against Eligible State Employees.

g. Consistent with existing state law, State Agencies shall take any additional actions necessary to foster Contractor and Subcontractor compliance with OSHR Policies and this Executive Order, including, but not limited to, adopting measures that would identify whether and under what circumstances Contractors and Subcontractors may be barred from consideration from future State Agency contracts and subcontracts for failing to adopt policies consistent with this Executive Order.

Section 5. Eligible State Employees’ Responsibility

Eligible State Employees shall notify their supervisors if Workplace Adjustments are needed and may be required to provide certification from a health care provider.

Section 6. Miscellaneous

a. Notwithstanding Section 4.g of this Executive Order, this Executive Order does not apply to counties, municipalities, political subdivisions, local government agencies, or private entities.

b. State entities not subject to the undersigned’s oversight are encouraged but not required to comply with Sections 3 and 4 of this Executive Order.

c. Unless otherwise provided, this Executive Order supersedes and rescinds any previous Executive Order to the extent that they conflict.


e. This Executive Order is effective immediately and shall remain in effect until amended or rescinded by future Executive Order of the Governor.

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 6th day of December in the year of our Lord two thousand and eighteen.

\[Signature\]
Governor

ATTEST:

\[Signature\]
Elaine F. Marshall
Secretary of State
State of North Carolina

ROY COOPER
GOVERNOR

December 7, 2018
EXECUTIVE ORDER NO. 83
DECLARATION OF A STATE OF EMERGENCY
BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA

WHEREAS, the State of North Carolina is under imminent threat of a severe winter storm; and

WHEREAS, it is expected that the winter storm will cause significant impacts to public and private property and may seriously disrupt essential utility services and systems; and

WHEREAS, it is expected that the people of North Carolina in the winter storm’s path will be exposed to a substantial risk of injury or death; and

WHEREAS, the potential impacts from the winter storm constitute a state of emergency as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19); and

WHEREAS, certain measures are necessary to ensure the protection and safety of North Carolina residents and coordinate the emergency response among state and local entities and officials; and

WHEREAS, N.C. Gen. Stat. §§ 166A-19.10 and 166A-19.20 authorize the Governor to declare a state of emergency and exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies.

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

Section 1.
I hereby declare that a state of emergency, as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19), exists in the State of North Carolina.

The emergency area, as defined in N.C. Gen. Stat. §§ 166A-19.3(7) and 166A-19.20(b), is the State of North Carolina. (“the Emergency Area”).

Section 2.
I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this declaration and the provisions of the North Carolina Emergency Operations Plan (“the Plan”).
Section 3.

I delegate to Erik A. Hooks, the Secretary of the North Carolina Department of Public Safety, or his designee, all power and authority granted to and required of me by Article 1A of Chapter 166A of the North Carolina General Statutes for the purpose of implementing the Plan and deploying the State Emergency Response Team to take the appropriate actions necessary to promote and secure the safety and protection of the populace in North Carolina.

Section 4.

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

Section 5.

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

Section 6.

I hereby order that this declaration be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the state of emergency would prevent or impede this; and (3) distributed to others as necessary to ensure proper implementation of this declaration.

Section 7.

This declaration does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C. Gen. Stat. § 166A-19.30(c).

Section 8.


Section 9.

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

IN WITNESS WHEREOF: I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 7th day of December in the year of our Lord two thousand and eighteen.

[Signature]
Roy Cooper
Governor

ATTEST:

[Signature]
Elaine F. Marshall
Secretary of State
EXECUTIVE ORDERS

State of North Carolina

ROY COOPER
GOVERNOR

December 7, 2018

EXECUTIVE ORDER NO. 84

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

WHEREAS, the potential impacts of the severe winter storm will require the transportation of vehicles bearing equipment and supplies for utility restoration and debris removal; carrying essentials such as food and medicine; transporting livestock, poultry, and feed for livestock and poultry; and transporting crops ready to be harvested through North Carolina highways; and

WHEREAS, I have declared that a state of emergency as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19) exists due to the potential impacts from this storm; and

WHEREAS, the emergency area as defined in N.C. Gen. Stat. §§ 166A-19.3(7) and 166A-19.20(b) is the entire State of North Carolina; and

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

WHEREAS, the prompt restoration of utility services is essential to the safety and well-being of the State’s residents; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(3), the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that vehicles engaging in debris removal, bearing equipment and supplies for utility restoration, and carrying essentials are exempt from the registration requirements of N.C. Gen. Stat. §§ 20-86.1 and 20-382; the fuel tax requirements of N.C. Gen. Stat. §§ 105-449.45, 105-449.47, and 105-449.49, and the size and weight requirements of N.C. Gen. Stat. §§ 20-116, 20-118, and 20-119; and

WHEREAS, I have found that the State’s residents may suffer losses and will likely suffer imminent further widespread damage within the meaning of N.C. Gen. Stat. §§ 166A-19.3(3) and 166A-19.21(b); and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.70(g), upon the recommendation of the North Carolina Commissioner of Agriculture and the existence of an imminent threat of severe economic loss of livestock, poultry, or crops ready to be harvested, the Governor shall direct the North Carolina Department of Public Safety (“DPS”) to temporarily suspend weighing vehicles used to transport livestock, poultry or crops ready to be harvested; and

WHEREAS, 49 C.F.R. § 390.23 allows the Governor of a state to suspend the rules and regulations under 49 C.F.R. Parts 390-399 for up to thirty (30) days if the Governor determines that an emergency condition exists; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.70, the Governor may declare that the health, safety, or economic well-being of persons or property requires that the maximum hours of service for drivers prescribed by N.C. Gen. Stat. § 20-381 should be waived for (1) persons transporting essential fuels,
food, water, medical supplies, and feed for livestock and poultry, (2) persons transporting livestock, poultry, and crops ready to be harvested and (3) vehicles used in the restoration of utility services.

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

Section 1.

For purposes of this Executive Order, the emergency area is the State of North Carolina ("the Emergency Area").

Section 2.

DPS, in conjunction with the North Carolina Department of Transportation ("DOT"), shall waive the maximum hours of service for drivers prescribed by DPS pursuant to N.C. Gen. Stat. § 20-381.

Section 3.


Pursuant to N.C. Gen. Stat. § 20-118.1, DPS shall temporarily suspend weighing vehicles used to transport livestock, poultry, crops ready to be harvested, and feed for livestock and poultry in the Emergency Area.

Section 4.

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

a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.

b. When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.

c. When a vehicle and vehicle combination exceed twelve (12) feet in width and the total overall vehicle combination’s length exceeds seventy-five (75) feet from bumper to bumper.

d. Vehicles and vehicle combinations subject to exemptions or permits by authority of this Executive Order shall not be exempt from the requirement of having: (1) a yellow banner on the front and rear that is seven (7) feet long and eighteen (18) inches wide and bears the legend “Oversized Load” in ten (10) inch black letters that are 1.5 inches wide; and (2) red flags measuring eighteen (18) inches square on all sides at the widest point of the load. In addition, when operating between sunset and sunrise, a certified escort shall be required for loads exceeding eight (8) feet 6 inches in width.

Section 5.

Vehicles referenced under Sections 3 and 4 of this Executive Order shall be exempt from the following registration requirements:

a. The requirement to obtain a temporary trip permit and pay the associated $50.00 fee listed in N.C. Gen. Stat. § 105-449.49 is waived for such vehicles.

b. The requirement of filing a quarterly fuel tax return is waived as the exemption set forth in N.C. Gen. Stat. § 105-449.45(b)(1) applies.

c. The registration requirements under N.C. Gen. Stat. § 20-382.1 concerning intrastate for-hire authority and N.C. Gen. Stat. § 20-382 concerning interstate for-hire authority are waived; however, vehicles shall maintain the required limits of insurance.

d. Non-participants in North Carolina’s International Registration Plan and International Fuel Tax Agreement will be permitted to enter North Carolina in accordance with the exemptions identified in this Executive Order.

Section 6.

The size and weight exemption(s) for vehicles will be allowed on all DOT designated routes, except those routes designated as light traffic roads under N.C. Gen. Stat. § 20-118. This Executive Order shall not be in effect on bridges posted pursuant to N.C. Gen. Stat. § 136-72.
Section 7.

The waiver of regulations under Title 49 of the Code of Federal Regulations ("Federal Motor Carrier Safety Regulations") does not apply to the Commercial Drivers' License and Insurance Requirements. This waiver shall be in effect for thirty (30) days or the duration of the emergency, whichever is less.

Section 8.

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 2 through 7 of this Executive Order in a manner that does not endanger North Carolina motorists.

Section 9.

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish that their loads are bearing equipment and supplies for utility restoration, being used for debris removal, carrying essentials in commerce, carrying feed for livestock and poultry, or transporting livestock, poultry, or crops ready to be harvested in the State of North Carolina.

Section 10.

This Executive Order does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C. Gen. Stat. § 166A-19.30(c).

Section 11.


Section 12.

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

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 7th day of December in the year of our Lord two thousand and eighteen.

Ray Cooper
Governor

ATTEST:

Elaine F. Marshall
Secretary of State
IN ADDITION

North Carolina Department of Labor
Division of Occupational Safety and Health
1101 Mail Service Center
Raleigh, NC 27699-1101

(919) 707-7806

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

In consideration of G.S. 150B-21.5(c) the Occupational Safety and Health Division of the Department of Labor hereby gives notice that:

- Rule changes have been submitted to update the North Carolina Administrative Code at 13 NCAC 07F .0101 to incorporate by reference the occupational safety and health related provisions of Title 29 of the Code of Federal Regulations Parts 1910 promulgated as of August 9, 2018, and


This update encompasses the following recent verbatim adoption:

- Occupational Safety and Health Standards, Limited Extension of Select Compliance Dates for Occupational Exposure to Beryllium in General Industry, 29 CFR § 1910 (83 FR 39351, August 9, 2018)

The final rule, published in the Federal Register on August 9, 2018 (83 FR 39351), confirms the effective date of the final rule published August 9, 2018, which extends the compliance date for certain ancillary requirements of the general industry beryllium standard to December 12, 2018. This standard protects workers from the hazards of beryllium exposure. The December 12, 2018 compliance date affects only certain ancillary provisions of 29 CFR 1910, Subpart Z—Toxic and Hazardous Substances. The ancillary provisions include, but are not limited to, methods of compliance, beryllium work areas, regulated areas, personal protective clothing and equipment, hygiene areas and practices, housekeeping, communication of hazards, and recordkeeping. Since no significant comments were received, OSHA’s final rule was effective August 9, 2018.

For additional information, please contact:

Bureau of Education, Training and Technical Assistance
Occupational Safety and Health Division
North Carolina Department of Labor
1101 Mail Service Center
Raleigh, North Carolina 27699-1101

For additional information regarding North Carolina’s process of adopting federal OSHA Standards verbatim, please contact:

Jill F. Cramer, Agency Rulemaking Coordinator
North Carolina Department of Labor
Legal Affairs Division
1101 Mail Service Center
Raleigh, North Carolina 27699-1101
NORTH CAROLINA RATE BUREAU

PUBLIC NOTICE

Notice is hereby given pursuant to North Carolina General Statute 58-36-120 that, on December 19, 2018, the North Carolina Rate Bureau ("Rate Bureau") filed for an increase in rates as to Homeowners insurance policies under its jurisdiction. The Rate Bureau is publishing notice of the Filing in two newspapers with statewide distribution and the North Carolina Register. Information regarding the filing is also posted on the Rate Bureau website (www.nrb.org/nrb) and the North Carolina Department of Insurance website (www.ncdoi.com). The Commissioner of Insurance may or may not schedule and conduct a hearing with respect to this Filing. This Filing only relates to Homeowners insurance policies under the jurisdiction of the Rate Bureau and does not affect Dwelling Fire and Extended Coverage or Mobile Homeowners insurance policies or rates not part of the Homeowner Policy Program.
TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Alarm Systems Licensing Board intends to amend the rule cited as 14B NCAC 17 .0203.

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

Proposed Effective Date: May 1, 2019

Public Hearing:
Date: January 30, 2019
Time: 2:00 p.m.
Location: Alarm Systems Licensing Board, 3101 Industrial Dr., Suite 104, Raleigh, NC 27609

Reason for Proposed Action: The Board is fee funded and is not supported by the General Fund of the State of North Carolina. The Board has seen a fund balance decrease of approximately $50,000 in the last year; therefore, it is necessary to increase the licensing fee in order to cover costs. The Board is increasing the licensing application fee from three hundred seventy-five dollars ($375.00) to five hundred dollars ($500.00), an amount allowed pursuant to N.C.G.S. 74D-7. The Board has approximately 400 licenses; therefore, the $125 increase to the licensing fee will result in approximately $50,000 increased revenue.

Comments may be submitted to: Phil Stephenson, Field Services Supervisor, 3101 Industrial Drive, Suite 104, Raleigh, NC 27609, phone (919) 788-5320, fax (919) 715-0370, email Phillip.Stephenson@ncdps.gov

Comment period ends: March 18, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

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

CHAPTER 17 - ALARM SYSTEMS LICENSING BOARD

SECTION .0200 – PROVISIONS FOR LICENSEES

14B NCAC 17 .0203 FEES FOR LICENSEES
(a) Application license fees shall be as follows:
   (1) one hundred fifty dollars ($150.00) non-refundable initial application fee;
   (2) three hundred seventy-five dollar ($375.00) five hundred dollar ($500.00) biennial fee for a new or renewal license;
   (3) one hundred fifty dollars ($150.00) branch office license fee;
   (4) one hundred dollars ($100.00) late renewal fee to be paid in addition to the renewal fee if the license has not been renewed on or before the expiration date.

(b) Fees shall be paid as follows:
   (1) if the application is submitted by hand delivery, U.S. Mail, or delivery services, payment shall be by check or money order made payable to the Alarm Systems Licensing Board; or
   (2) if the application if submitted online, payment shall be by credit card, e-check or other form of electronic funds.

Authority G.S. 74D-7.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .2701, .2704, .2705 and 15A NCAC 07J .0409.

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

Proposed Effective Date: June 1, 2019
Public Hearing:
Date: February 28, 2019
Time: 1:15 p.m.
Location: Carteret County Historical Society Museum, 1008 Arendell Street, Morehead City, NC 28557

Reason for Proposed Action:
15A NCAC 07H .2701, .2704, .2705: Session Law 2018-136 Section 5.13 directs the CRC to adopt rules to revise the Commission's general permit for the construction of riprap sills for wetland enhancement in estuarine and public trust waters in order to make the general permit consistent with the US Army Corps of Engineers regional general permit for living shorelines.

15A NCAC 07H .0409: These amendments address procedural matters, clarifications and inconsistencies with other CRC development rules.

Comments may be submitted to: Braxton Davis, 400 Commerce Avenue, Morehead City, NC 28557

Comment period ends: March 18, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).
☑ State funds affected 15A NCAC 07H .2701, .2704, .2705
☐ Environmental permitting of DOT affected
☐ Analysis submitted to Board of Transportation
☐ Local funds affected
☐ Substantial economic impact (≥$1,000,000)
☑ Approved by OSBM
☑ No fiscal note required by G.S. 150B-21.4 15A NCAC 07J .0409

CHAPTER 07 - COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .2700 – GENERAL PERMIT FOR THE CONSTRUCTION OF RIPRAP SILLS FOR WETLAND ENHANCEMENT IN ESTUARINE AND PUBLIC TRUST WATERS

ENHANCEMENT IN ESTUARINE AND PUBLIC TRUST WATERS

15A NCAC 07H .2701 PURPOSE
A general permit pursuant to this Section shall allow for the construction of riprap marsh sills for wetland enhancement and shoreline stabilization in estuarine and public trust waters as set out in Subchapter 15A NCAC 07J.1100 and according to the rules in this Section. Marsh sills are generally shore-parallel structures built in conjunction with existing, created, or restored wetlands. This general permit shall not apply within the Ocean Hazard System AECs or waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area.

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

15A NCAC 07H .2704 GENERAL CONDITIONS
(a) Structures authorized by a permit issued pursuant to this Section shall be riprap or stone marsh sills conforming to the standards in these Rules.
(b) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources (DENR) Environmental Quality (DEQ) to make periodic inspections at any time deemed necessary in order to insure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed in these Rules.
(c) The placement of riprap or stone marsh sills authorized in these Rules shall not interfere with the established or traditional rights of navigation of the waters by the public.
(d) This permit shall not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality, air quality, coastal wetlands, cultural or historic sites, wildlife, fisheries resources, or public trust rights.
(e) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.
(f) Development carried out under this permit shall be consistent with all local requirements, AEC Guidelines as set out in Subchapter 15A NCAC 07H .0200, and local land use plans current at the time of authorization.

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

15A NCAC 07H .2705 SPECIFIC CONDITIONS
(a) A general permit issued pursuant to this Section shall be applicable only for the construction of riprap or stone marsh sill structures built in conjunction with existing, created or restored wetlands. Planted wetland vegetation shall consist only of native species.
(b) This general permit shall not apply within the Ocean Hazard System Areas of Environmental Concern (AEC) or waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the

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PROPOSED RULES

presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area.

On shorelines where no fill is proposed, the landward edge of the sill shall be positioned no more than a five drop down opening every 100 feet and may be staggered or overlapped or left open as long as the five-foot drop down or separation between sections is maintained. Overlapping sections shall not overlap more than 10 feet. Deviation from these drop down opening requirements shall be allowable following coordination with the N.C. Division of Marine Fisheries and the National Marine Fisheries Service, N.C. Division of Coastal Management.

The height of sills shall not exceed six inches above mean normal high water, normal water level, or the height of the adjacent wetland substrate, whichever is greater. Sills shall not be constructed within any native submerged aquatic vegetation or waters.

Sills shall not be constructed within any native submerged aquatic vegetation. If submerged aquatic vegetation is present within a project area, a submerged aquatic vegetation survey should be completed during the growing season of April 1 through September 30. All sills shall have a minimum setback of 10 feet from any native submerged aquatic vegetation.

Sills shall not be constructed within any habitat that includes oyster reefs or shell banks. All sills shall have a minimum setback of 10 feet from any oysters, oyster beds, or shell banks.

No excavation of the shallow water bottom or any wetland is authorized by this general permit.

No more than 100 square feet of wetlands may be filled as a result of the authorized activity.

Backfilling of sill structures may be utilized only for the purpose of creating a suitable substrate for the establishment or reestablishment of wetlands. Only clean sand fill material may be utilized.

The riprap sill material shall consist of clean rock, marl, oyster shell, or masonry materials such as granite or broken concrete. Concrete or other materials that are approved by the N.C. Division of Coastal Management, Riprap Sill material shall be free of loose sediment or any pollutant, including exposed rebar. The structures sill material shall be of sufficient size and slope to prevent its movement from the site approved alignment by wave or current action.

If one or more contiguous acres of property is to be graded, excavated or filled, an erosion and sedimentation control plan shall be filed with the Division of Energy, Mineral, and Land
Resources, or appropriate government having jurisdiction. The plan must be approved prior to commencing the land disturbing activity.

(aa) In order to ensure that no adverse impacts occur to important fisheries resources, the Division of Marine Fisheries shall review and concur with the location and design of the proposed project prior to the issuance of this general permit.

(bb) Prior to the issuance of this general permit, Division staff shall coordinate with the Department of Administration’s State Property Office to determine whether or not an easement shall be required for the proposed activity.

(cc) Following issuance of this general permit, the permittee shall contact the N.C. Division of Water Quality and the U.S. Army Corps of Engineers to determine any additional permit requirements. Any such required permits, or a certification from the appropriate agency(s) that no additional permits are required, shall be obtained and provided to the Division of Coastal Management prior to the initiation of any development activities authorized by this permit.

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

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 .0400 - FINAL APPROVAL AND ENFORCEMENT

15A NCAC 07J .0409 CIVIL PENALTIES

(a) Purpose and Scope. These Rules provide the procedures and standards governing the assessment, remission, settlement and appeal of civil penalties assessed by the Coastal Resources Commission and the Director pursuant to G.S. 113A-126(d).

(b) Definitions. The terms used herein shall be as defined in G.S. 113A-103 and as follows:

1. “Act” means the Coastal Area Management Act of 1974, G.S. 113A-100 through 134, plus amendments.
2. “Delegate” means the Director or other employees of the Division of Coastal Management, or local permit officers to whom the Commission has delegated authority to act in its stead pursuant to this Rule.
3. “Director” means the Director, Division of Coastal Management.
4. “Respondent” means the person to whom a notice of violation has been issued or against whom a penalty has been assessed.
5. “Person” is defined in the Coastal Area Management Act, G.S. 113A-103(9).

(c) Civil penalties may be assessed against any person who commits a violation as provided for in G.S. 113A-126(d)(1) and (2).

(d) Investigative costs. Pursuant to G.S. 113A-126(d)(4a) the Commission or Director may also assess a respondent for the costs incurred by the Division for investigation, inspection, and monitoring associated with assessment the civil penalty. Investigative costs shall be in addition to any civil penalty assessed. For a minor development violation, investigative costs shall not exceed one-half of the amount of the civil penalty assessed or one thousand dollars ($1,000), whichever is less. For a major development violation, investigative costs shall not exceed one-half of the amount of the civil penalty assessed or two thousand five hundred dollars ($2,500), whichever is less. The Division shall determine the amount of investigative costs to assess based upon factors including the amount of staff time required for site visits, investigation, enforcement action, interagency coordination, and for monitoring restoration of the site.

(e) Notice of Violation. The Commission hereby authorizes employees of the Division of Coastal Management to issue in the name of the Commission notices of violation to any person engaged in an activity which constitutes a violation for which a civil penalty may be assessed. Such notices shall set forth the nature of the alleged violation, shall order that the illegal activity be ceased and affected resources be restored in accordance with 15A NCAC 07J .0410. The notice shall specify the time by which the restoration shall be completed as ordered by the Division. The notice shall be delivered personally or by registered or certified mail, return receipt requested.

(f) Civil Penalty Assessment.

1. The Commission hereby delegates to the Director the authority to assess civil penalties according to the procedures set forth in Paragraph (g) of this Rule.
2. The Director shall issue a Notice of Assessment within 45 days from the date of the Notice of Violation. If restoration of affected resources is required, the Director may issue a Notice of Assessment within 60 days after the Division determines that restoration of the adversely impacted resources is complete.
3. The notice of assessment shall specify the reason for assessment, how the assessment was calculated, and shall inform the respondent of the right to appeal the assessment by filing a petition for a contested case hearing with the Office of Administrative Hearings pursuant to G.S. 150B-23. The notice shall be delivered personally or by registered or certified mail, return receipt requested.

(g) Amount of Assessment.

1. Civil penalties shall not exceed the maximum amounts established by G.S. 113A-126(d).
2. If any respondent willfully continues to violate by action or inaction any rule or order of the Commission after the date specified in a notice of violation, each day the violation continues or is repeated shall be considered a separate violation as provided in G.S. 113A-126(d)(2).
(3) In determining the amount of the penalty, the Commission or Director shall consider the factors contained in G.S. 113A-126(d)(4).

(4) Pursuant to Subparagraph (g)(3) of this Rule, penalties for major development violations, including violations of permit conditions, shall be assessed in accordance with the following criteria.

(A) Major development which could have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed a penalty equal to two times the relevant CAMA permit application fee, plus investigative costs.

(B) Major development which could not have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed an amount equal to the relevant CAMA permit application fee, plus a penalty pursuant to Schedule A of this Rule, plus investigative costs. If a violation affects more than one area of environmental concern (AEC) or coastal resource as listed within Schedule A of this Rule, the penalties for each affected AEC shall be combined. Any structure or part of a structure that is constructed in violation of existing Commission rules shall be removed or modified as necessary to bring the structure into compliance with the Commission's rules.

**SCHEDULE A**

Major Development Violations

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<thead>
<tr>
<th>Size of Violation (sq. ft.)</th>
<th>≤ 100</th>
<th>101-500</th>
<th>501-1,000</th>
<th>1001-3000</th>
<th>3001-5000</th>
<th>5001-8000</th>
<th>8001-11,000</th>
<th>11,001-15,000</th>
<th>15,001-20,000</th>
<th>20,001-25,000</th>
<th>&gt;25,000</th>
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<tr>
<td><strong>ESTUARINE WATERS OR PUBLIC TRUST AREAS (1)</strong></td>
<td></td>
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<td></td>
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<td></td>
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<tr>
<td>Primary Nursery Areas</td>
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<td>$350</td>
<td>$850</td>
<td>$1,350</td>
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<td>$350</td>
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<td>Primary or Frontal Dune</td>
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<td>$2,300</td>
<td>$3,500</td>
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<td>$2,750</td>
<td>$750</td>
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<td><strong>PUBLIC WATER SUPPLIES (5)</strong></td>
<td>$250</td>
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<td>$450</td>
<td>$850</td>
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<td>$2,450</td>
<td>$3,650</td>
<td>$5,250</td>
<td>$7,250</td>
<td>$9,250</td>
<td>$10,000</td>
</tr>
</tbody>
</table>

**PROPOSED RULES**
(1) Includes the Atlantic Ocean from the normal high water mark to three miles offshore.

(2) Wetlands that are jurisdictional by the Federal Clean Water Act.

(3) If the AEC physically overlaps another AEC, use the greater penalty schedule.

(4) Includes the Ocean Erodible, High Hazard Flood Area, Inlet Hazard Area, and Unvegetated Beach Area.


(6) Includes Coastal Complex Natural Areas, Coastal Areas Sustaining Remnant Species, Unique Geological Formations, Significant Coastal Archaeological Resources, and Significant Coastal Historical Architectural Resources.

(C) Assessments for violations by public agencies (i.e. towns, counties and state agencies) shall be determined in accordance with Parts (g)(4)(A) and (B) of this Rule.

(D) Willful and intentional violations. The penalty assessed under Parts (g)(4)(A) and (B) of this Rule shall be doubled for willful and intentional violations except that the doubled penalties assessed under this Subparagraph shall not exceed ten thousand dollars ($10,000) or be less than two thousand dollars ($2,000) for each separate violation. A violation shall be considered to be willful and intentional when:

(i) The person received written instructions from one of the Commission's delegates that a permit would be required for the development and subsequently undertook development without a permit; or

(ii) The person received written instructions from one of the Commission's delegates that the proposed development was not permissible under the Commission's rules, or received denial of a permit application for the proposed activity, and subsequently undertook the development without a permit; or

(iii) The person committed previous violations of the Commission's rules; or

(iv) The person refused or failed to restore a damaged area as ordered by one of the Commission's delegates. If necessary, the Commission or Division shall seek a court order to require restoration.

(E) Assessments against contractors. Any contractor or subcontractor or person or group functioning as a contractor shall be subject to a notice of violation and assessment of a civil penalty in accordance with Paragraph (f) of this Rule. Such penalty shall be in addition to that assessed against the landowner.

When a penalty is being doubled pursuant to Part (g)(4)(D) Part (D) of this Subparagraph and the element of willfulness is present only on the part of the contractor, the landowner shall be assessed the standard penalty and the contractor shall be assessed the doubled penalty.

(F) Continuing violations.

(i) Pursuant to G.S. 113A-126(d)(2), each day that the violation continues after the date specified in the notice of violation for the unauthorized activity to cease or restoration to be completed shall be considered a separate violation and shall be assessed an additional penalty.

(ii) Refusal or failure to restore a damaged area as ordered shall be considered a continuing violation and shall be assessed an additional penalty. When resources continue to be affected by the violation, the amount of the penalty shall be determined according to Part (g)(4)(B) of this Rule. Part (B) of this Subparagraph. The continuing penalty period shall be calculated from the...
date specified in the notice of violation for the unauthorized activity to cease or restoration to be completed and run until:
(I) the Division's order is satisfied, or
(II) the respondent enters into good faith negotiations with the Division, or
(III) the respondent contests the Division's order in a judicial proceeding by raising a justiciable issue of law or fact therein.

The continuing penalty period shall resume if the respondent terminates negotiations without reaching an agreement with the Division, fails to comply with court ordered restoration, or fails to meet a deadline for restoration that was negotiated with the Division.

(5) Pursuant to Subparagraph (g)(3) of this Rule, civil penalties for minor development violations, including violations of permit conditions, shall be assessed in accordance with the following criteria:

(A) Minor development which could have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed a penalty equal to two times the relevant CAMA permit application fee, plus investigative costs.

(B) Minor development which could not have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed an amount equal to the relevant CAMA permit application fee, plus a penalty pursuant to Schedule B of this Rule, plus investigative costs. If a violation affects more than one area of environmental concern (AEC) or coastal resource as listed within Schedule B of this Rule, the penalties for each affected AEC shall be combined. Any structure or part of a structure that is constructed in violation of existing Commission rules shall be removed or modified as necessary to bring the structure into compliance with the Commission's rules.

SCHEDULE B
Minor Development Violations

<table>
<thead>
<tr>
<th>AREA OF ENVIRONMENTAL CONCERN AFFECTED</th>
<th>≤ 100</th>
<th>101-500</th>
<th>501-1000</th>
<th>1001-3000</th>
<th>3001-5000</th>
<th>5001-8000</th>
<th>8001-11,000</th>
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<th>15,001-20,000</th>
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<td>$325</td>
<td>$375</td>
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<td>$625</td>
<td>$750</td>
<td>$875</td>
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<td>ORW- Adjacent Areas</td>
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<td>$175</td>
<td>$225</td>
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<td>$350</td>
<td>$425</td>
<td>$375</td>
<td>$250</td>
<td>$125</td>
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<tr>
<th>OCEAN HAZARD SYSTEM (1)(2)</th>
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<tbody>
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<td>Primary or Frontal Dune</td>
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<td>$150</td>
<td>$175</td>
<td>$225</td>
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<td>$425</td>
<td>$375</td>
<td>$250</td>
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<table>
<thead>
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<th>PUBLIC WATER SUPPLIES (3)</th>
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<th></th>
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<tr>
<td>NATURAL AND CULTURAL RESOURCE AREAS</td>
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<td></td>
<td></td>
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<td>$450</td>
<td>$525</td>
<td>$625</td>
<td>$750</td>
<td>$875</td>
<td>$1,000</td>
</tr>
</tbody>
</table>
(1) Includes the Ocean Erodible, High Hazard Flood Area, Inlet Hazard Area, and Unvegetated Beach Area.

(2) If the AEC physically overlaps another AEC, use the greater penalty schedule.


(4) Includes Coastal Complex Natural Areas, Coastal Areas Sustaining Remnant Species, Unique Geological Formations, Significant Coastal Archaeological Resources, and Significant Coastal Historical Architectural Resources.

(C) Violations by public agencies (e.g. towns, counties and state agencies) shall be handled by the local permit officer or one of the Commission's delegates within their respective jurisdictions except that in no case shall a local permit officer handle a violation committed by the local government they represent. Penalties shall be assessed in accordance with Parts (g)(5)(A) and (B) of this Rule.

(D) Willful and intentional violations. The penalty assessed under Parts (g)(5)(A) and (B) of this Rule shall be doubled for willful and intentional violations except that the doubled penalties assessed under this Subparagraph shall not exceed one thousand dollars ($1,000.00) for each separate violation. A violation shall be considered to be willful and intentional when:

(i) The person received written instructions from the local permit officer or one of the Commission's delegates that a permit would be required for the development and subsequently undertook development without a permit; or

(ii) The person received written instructions from the local permit officer or one of the Commission's delegates that the proposed development was not permissible under the Commission's rules, or received denial of a permit application for the proposed activity, and subsequently undertook the development without a permit; or

(iii) The person committed previous violations of the Commission's rules; or

(iv) The person refused or failed to restore a damaged area as ordered by the local permit officer or one of the Commission's delegates. If necessary, a court order shall be sought to require restoration.

(E) Assessments against contractors. Any contractor or subcontractor or person or group functioning as a contractor shall be subject to a notice of violation and assessment of a civil penalty in accordance with Paragraph (f) of this Rule. Such penalty shall be in addition to that assessed against the landowner. When a penalty is being doubled pursuant to Part (g)(5)(D) of this Subparagraph and the element of willfulness is present only on the part of the contractor, the landowner shall be assessed the standard penalty and the contractor shall be assessed the doubled penalty.

(F) Continuing violations.

(i) Pursuant to G.S. 113A-126(d)(2), each day that the violation continues after the date specified in the notice of violation for the unauthorized activity to cease and restoration to be completed shall be considered a separate violation and shall be assessed an additional penalty.

(ii) Refusal or failure to restore a damaged area as ordered shall be considered a continuing violation and shall be assessed an additional penalty. The amount of the penalty shall be determined according to Part (g)(5)(B) of this Rule. The continuing penalty period shall be calculated from the date specified in the notice of violation for the unauthorized activity to cease and restoration to be completed and run until:
(I) the Commission delegate's order is satisfied, or
(II) the respondent enters into good faith negotiations with the local permit officer or the Division, or
(III) the respondent contests the local permit officer's or the Division's order in a judicial proceeding by raising a justiciable issue of law or fact therein.

The continuing penalty period shall resume if the respondent terminates negotiations without reaching an agreement with the local permit officer or the Division, fails to comply with court ordered restoration, or fails to meet a deadline for restoration that was negotiated with the local permit officer or the Division.

(h) Hearings and Final Assessment. Final decisions in contested case hearings concerning assessments shall be made by the Commission. The final decision shall be based on evidence in the official record of the contested case hearing, the administrative law judge's recommended decision, any exceptions filed by the parties and oral arguments. Oral arguments shall be limited to the facts in the official record.

(i) Referral. If any civil penalty as finally assessed is not paid, the Director on behalf of the Commission shall request the Attorney General to commence an action to recover the amount of the assessment.

(j) Reports to the Commission. Action taken by the Director shall be reported to the Commission at the next meeting. Such reports shall include information on the following:

1. respondent(s) against whom penalties have been assessed;
2. respondent(s) who have paid a penalty, requested remission, or requested an administrative hearing;
3. respondent(s) who have failed to pay; and
4. cases referred to the Attorney General for collection.

(k) Settlements. The Commission hereby delegates to the Director the authority to enter into a settlement of a civil penalty appeal at any time prior to decision in an administrative contested case hearing. Such settlements shall not require the approval of the Commission and shall not be considered a final Commission decision for purposes of G.S. 113A-123.

(l) Any settlement agreement proposed subsequent to a final Commission decision in the contested case shall be submitted to the Commission for approval.

Authority G.S. 113A-124; 113A-126(d).

**TITLE 20 – DEPARTMENT OF STATE TREASURER**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Supplemental Retirement Board of Trustees and the Department of State Treasurer intends to adopt the rules cited as 20 NCAC 11 .0101 and .0102.


**Proposed Effective Date:** June 1, 2019

**Instructions on How to Demand a Public Hearing:** (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than January 30, 2019 to Laura Rowe, Rulemaking Coordinator, Department of State Treasurer, 3200 Atlantic Avenue, Raleigh, NC 27604.

**Reason for Proposed Action:** The Supplemental Retirement Board and the Department of State Treasurer do not receive any appropriations to operate the NC 401(k) Plan, the NC 457 Plan, or the NC 403(b) Program. Instead, to the knowledge of the Department, the operational expenses of the Board and the Department have historically been funded through an administrative fee charged to participants who opt to enroll in the Supplemental Retirement Plans. The Board and the Department will use the administrative fee receipts to fund the administration of the Plans, including Departmental personnel costs and investment consulting and auditing fees.

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

Comment period ends: March 18, 2019

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- [x] State funds affected
PROPOSED RULES

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

CHAPTER 08 – BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Certified Public Accountant Examiners intends to amend the rule cited as 21 NCAC 08F .0105.

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

Proposed Effective Date: January 1, 2020

Public Hearing:
Date: February 18, 2019
Time: 10:00 a.m.
Location: NC State Board of CPA Examiners, 1101 Oberlin Road, Suite 104, Raleigh, NC 27605

Reason for Proposed Action: 21 NCAC 08F .0105 explains how many times a Uniform CPA Examination (Exam) candidate can take the same section of the Exam. The Exam vendor is changing when an Exam candidate may retake the same section of the Uniform CPA Examination.

Comments may be submitted to: Robert N. Brooks, NC State Board of CPA Examiners, 1101 Oberlin Road, Suite 104, Raleigh, NC 27605; phone (919) 733-1425; fax (919) 733-4209; email rbrooks@nccpaboard.gov

Comment period ends: March 18, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

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

SUBCHAPTER 08F - REQUIREMENTS FOR CERTIFIED PUBLIC ACCOUNTANT EXAMINATION AND

CHAPTER 11 – SUPPLEMENTAL RETIREMENT PLANS

SECTION .0100 – ADMINISTRATIVE FEES

20 NCAC 11 .0101 ADMINISTRATIVE FEES: NC 401(K) AND NC 457 PLANS
(a) The Board and the Department shall charge an administrative fee at an annual rate of 0.025 percent of the assets in each account in the Supplemental Retirement Income Plan of North Carolina and in each account in the North Carolina Public Employee Deferred Compensation Plan.
(b) The Board and the Department may waive the administrative fee in Paragraph (a) of this Rule for a period of up to 12 months based upon the following factors:
   1. The balance of the administrative expense account for the plans;
   2. Department projections of future expenses to administer the plans; and
   3. Department projections of future receipts available for the administration of the plans.
(c) The Board and the Department shall provide notice of a fee waiver on the plans’ website and on participants’ quarterly statements.

Authority G.S. 135-91(e); 143B-426.24(h2).

20 NCAC 11 .0102 ADMINISTRATIVE FEES: NC 403(B) PROGRAM
(a) The Board and the Department shall charge an administrative fee at an annual rate of 0.050 percent of the assets in each account in the North Carolina Public School Teachers’ and Professional Educators’ Investment Plan.
(b) The Board may waive the administrative fee in Paragraph (a) of this Rule for a period of up to 12 months based upon the following factors:
   1. The balance of the administrative expense account for the plan;
   2. Department projections of future expenses to administer the plan; and
   3. Department projections of future receipts available for the administration of the plan.
(c) The Board and the Department shall provide notice of a fee waiver on the plan’s website and on participants’ quarterly statements.

Authority G.S. 115C-341.2(c).

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

No fiscal note required by G.S. 150B-21.4

No fiscal note required by G.S. 150B-21.4

No fiscal note required by G.S. 150B-21.4

1501
CERTIFICATE APPLICANTS

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 08F .0105  CONDITIONING REQUIREMENTS

(a) Passing Grades. A candidate shall pass all sections of the examination with a grade of 75 or higher on each section.

(b) Military Service. A candidate who is on active military service shall not have the time on active military service counted against Subparagraph (c)(1) of this Rule unless the candidate applies to take the examination during the active military service, in which case each month a candidate sits shall be counted toward Subparagraph (c)(1) of this Rule.

(c) A candidate is subject to the following conditioning requirements:

1. a candidate shall obtain a passing grade on all sections of the examination within an 18-month period;
2. a candidate may sit for any section of the examination individually;
3. a candidate may sit for each retake a section of the examination up to four times during a one-year period but not more than one time in a three-month testing window as defined by the examination vendor(s); once the candidate’s grade for any previous attempt of that same section has been released; and
4. credit awarded by the Board for passage of a section of the examination is valid for an 18-month period beginning on the date the section is taken.

Authority G.S. 93-12(3); 93-12(5).

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CHAPTER 39 – ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the On-Site Wastewater Contractors and Inspectors Certification Board intends to adopt the rules cited as 21 NCAC 39 .0103; .0802; .0803; .0901-.0903 and amend the rule cited as 21 NCAC 39 .1005.

Link to agency website pursuant to G.S. 150B-19.1(c): www.ncowcicb.info

Proposed Effective Date: July 1, 2019

Public Hearing:
Date: January 31, 2019
Time: 10:00 a.m.
Location: Emeralds View, 1426 Peter Mabe Road, Danbury, NC 27016

Reason for Proposed Action:

Comments may be submitted to: Connie S. Stephens, NC On-Site Wastewater Contractors and Inspectors Certification Board, P.O. Box 132, Lawsonville, NC 27022, phone (336) 202-3126, email csstephens@ncowcicb.info

Comment period ends: March 18, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

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

SECTION .0100 - DUTIES AND DEFINITIONS

21 NCAC 39 .0103  ANNUAL REPORTS

(a) On or before October 31 of each year, the Board shall prepare and file reports required pursuant to G.S. 93B-2. The Board shall file reports in the manner requested by receiving agency or committee.

(b) The Board shall maintain an escrow account at the financial institution used regularly for deposits and checks. Fees tendered during a period of suspension under G.S. 93B-2(d) shall be deposited into this escrow account.

Authority G.S. 93B-2.
SECTION .0800 – ONSITE WASTEWATER CONTRACTOR OR INSPECTORS CODE OF ETHICS

21 NCAC 39 .0802 COOPERATION WITH BOARD INQUIRY
A certificate holder shall respond to any inquiry made by the Board within 21 days from the date the inquiry was received by the certificate holder.

Authority G.S. 90A-74(6).

21 NCAC 39 .0803 DELEGATING TO THIRD-PARTY SERVICE PROVIDERS
(a) If a certificate holder delegates service requested by a client to another certificate holder, he or she must give notice to the client on or before the date of service that said work is being delegated to another certificate holder.
(b) The certificate holder who delegates service as indicated above shall be jointly and severally responsible for all aspects of the service provided to the client.

Authority G.S. 90A-74(6).

SECTION .0900 – RULEMAKING PROCEDURES

21 NCAC 39 .0901 PETITION FOR RULE-MAKING
Any person submitting a petition to adopt, amend, or repeal a rule by the Board shall address a petition to the Chairman at the Board office as follows: Post Office Box 132, Lawsonville, North Carolina 27022.

(1) The petition shall contain the following:
   (a) for petitions to adopt or amend a rule, a draft of the proposed rule or amendment;
   (b) a statement of the effect of the requested rule change; and
   (c) the name and address of the petitioner.

(2) The petition may contain the following:
   (a) the reason for the proposal;
   (b) the effect of the new rule on existing rules; or
   (c) any data supporting the rule proposal.

Authority G.S. 150B-20; 90A-74.

21 NCAC 39 .0902 REQUEST FOR DECLARATORY RULING
All requests for a declaratory ruling shall contain the following information:

(1) the name, address, and telephone number of the person making the request;
(2) the statute or rule to which the request relates; and
(3) a statement describing the manner in which the person has been or may be aggrieved by the statute or rule.

If a hearing is desired, the request shall so state and shall include the reason a hearing is desired.

Authority G.S. 150B-4(a); 90A-74.

21 NCAC 39 .0903 REFUSAL TO ISSUE DECLARATORY RULING
The Board shall refuse to issue a declaratory ruling under the following circumstances:

(1) when the Board has issued a decision in a contested case with substantially similar facts;
(2) when the facts underlying the request for a ruling on a rule were considered at the time of the adoption of the rule in question; or
(3) when the subject matter of the request is involved in pending litigation in North Carolina.

Authority G.S. 150B-4; 90A-74.

SECTION .1000 - NC ON-SITE WASTEWATER INSPECTOR STANDARDS OF PRACTICE

21 NCAC 39 .1005 ON-SITE WASTEWATER SYSTEM COMPONENTS
(a) When inspecting an on-site wastewater system the inspector shall inspect and describe the following in a report described in Rule .1002 of this Chapter:

(1) Any any part of the system located more than five feet from the primary structure that is part of the operations permit;
(2) Septic septic tanks;
(3) Pump pump tanks;
(4) Distribution distribution devices;
(5) Disposal disposal fields;
(6) Treatment treatment units;
(7) Control control panels;
(8) Any any other components required as part of on-site wastewater system permit, including drainage; and
(9) Any any vegetation and grading with respect only to their effect on the condition of the system or system components.

(b) The inspector shall:

(1) Uncover uncover tank lids and distribution devices so as to gain access, unless blocked as described in Rule .1004(b)(5) of this Section. The distribution box may remain covered if the inspector has an alternate method of observing its condition;
(2) Probe probe system components where deterioration is suspected;
(3) Report report the methods used to inspect the on-site wastewater system;
(4) Open open readily accessible and readily openable components as defined in Rule .1001 of this Chapter; components; and
(5) Report report signs of abnormal or harmful water entry into or out of the system or components; and
(6) conduct the inspection using the rules promulgated under Article 11 of Chapter 130A.
in effect at the time of the initial construction or renovation of the system, whichever occurs later, and any subsequent installation or replacement of any system or component of the system.

(c) The inspector shall not be required to:

1. Conduct dosing volume calculations;
2. Evaluate soil conditions beyond saturation or ponding;
3. Evaluate the presence or condition of buried fuel storage tanks;
4. Evaluate the system for proper sizing, design, or use of proper approved materials pursuant to Article 11 of Chapter 130A and the rules promulgated therefrom; or
5. Perform a hydraulic load test on the system.

Authority G.S. 90A-72; 90A-74.

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CHAPTER 58 – REAL ESTATE COMMISSION

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Real Estate Commission intends to amend the rules cited as 21 NCAC 58A .0601, .1905; 58H .0203,.0209,.0214,.0302 and readopt without substantive changes the rules cited as 21 NCAC 58A .0108,.0506,.0612 and .0202.

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

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

Proposed Effective Date: July 1, 2019

Public Hearing:
Date: March 13, 2019
Time: 9:00 a.m.
Location: 1313 Navaho Drive, Raleigh, NC 27609-7460

Reason for Proposed Action:
21 NCAC 58A .0601 – Complaints/ Inquiries/ Motions/ Other Pleadings
Amend this Rule to clarify the text of the Rule that all brokers are required to cooperate with a Commission investigation.

21 NCAC 58A .1905 – Waiver of 90-hour Postlicensing Education Requirement
Amend this Rule to add language that a broker who was issued a license pursuant to 21 NCAC 58A .0511(b)(2) will not be granted a waiver of Postlicensing education.

21 NCAC 58H .0203 – Application for Original Approval of a Private Real Estate School
Amend this Rule to remove the requirement of a fire inspection report in a private school application.

21 NCAC 58H .0209 – Prelicensing and Postlicensing Course Enrollment
Amend this Rule to allow any broker to take a Postlicensing course.

21 NCAC 58H .0214 – Expiration and Renewal of a School Approval or License
Amend this Rule to remove the requirement of a fire inspection report in a private school renewal application.

21 NCAC 58H .0302 – Application and Criteria for Original Prelicensing, Postlicensing, or Update Course Instructor Approval
Amend this Rule to remove the instructor applicant video from the application process, to require instructor applicants to complete the New Instructor Seminar within the previous six months of application, and to set the completion requirements for the New Instructor Seminar.

Comments may be submitted to: Melissa A. Vuotto, P.O. Box 17100, Raleigh, NC 27619-7100, email public.comment@ncrec.gov

Comment period ends: April 1, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).
☐ State funds affected
☐ Environmental permitting of DOT affected
☐ Analysis submitted to Board of Transportation
☐ Local funds affected
☐ Substantial economic impact ($1,000,000)
☐ Approved by OSBM
☒ No fiscal note required by G.S. 150B-21.4 21 NCAC 58A .0601,.1905; 58H .0203,.0209,.0214,.0302
☒ No fiscal note required by G.S. 150B-21.3A(d)(2) 21 NCAC 58A .0108,.0506,.0612,.2002

SUBCHAPTER 58A – REAL ESTATE BROKERS

SECTION .0100 – GENERAL BROKERAGE
21 NCAC 58A .0108  RETENTION OF RECORD (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0500 - LICENSING

21 NCAC 58A .0506  PROVISIONAL BROKER TO BE SUPERVISED BY BROKER (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0600 – REAL ESTATE COMMISSION HEARINGS

21 NCAC 58A .0601  COMPLAINTS/INQUIRIES/ MOTIONS/OTHER PLEADINGS

(a) There shall be no specific form required for complaints. To be sufficient, a complaint shall be in writing, identify the respondent licensee and shall reasonably apprise the Commission of the facts which form the basis of the complaint. A complaint shall:

1. be in writing;
2. identify the respondent broker or firm; and
3. apprise the Commission of the facts which form the basis of the complaint.

(b) When investigating a complaint, the scope of the Commission’s investigation shall not be limited only to matters alleged in the complaint. In addition, a person making a complaint to the Commission may change his or her complaint by submitting the changes to the Commission in writing. A complaint may be amended by submitting the revised complaint in writing to the Commission.

(c) When investigating a complaint, the scope of the Commission’s investigation shall not be limited only to matters alleged in the complaint.

(e) During the course of an investigation, any broker that receives a Letter of Inquiry from the Commission shall submit a written response within 14 days of receipt. The response shall include:

1. a full disclosure of all requested information; and
2. copies of all requested documents.

(f) Hearings in contested cases before the Commission shall be conducted according to the provisions of G.S. 150B, Article 3A.

Persons who make complaints are not parties to contested cases, but may be witnesses.

Authority G.S. 93A-3(d); 93A-3(c); 93A-6(a); 150B-38(h).

21 NCAC 58A .0612  PRESIDING OFFICER (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .1900 – POST-LICENSING EDUCATION

21 NCAC 58A .1905  WAIVER OF 90-HOUR POSTLICENSING EDUCATION REQUIREMENT

(a) A provisional North Carolina real estate broker may apply for a waiver of one or more of the three 30-hour Postlicensing courses described in Rule .1902 of this Section in the following circumstances:

1. the broker has obtained equivalent education that is parallel to the topics and timings described in the Commission’s Postlicensing course syllabi. In this case, the waiver request shall include the course(s):
   (A) jurisdiction of delivery;
   (B) title;
   (C) credit hours earned;
   (D) beginning and end dates; and
   (E) detailed subject matter description.

2. the broker has obtained full-time experience as a licensed broker or salesperson in another state for at least five of the seven years immediately prior to application for waiver, which shall include the applicant’s:
   (A) employer;
   (B) title at employer;
   (C) dates of employment;
   (D) approximate number of transactions;
   (E) areas of practice;
   (F) approximate percentage of time devoted to each area of practice;
   (G) detailed description of applicant’s role and duties;
   (H) official certification of licensure issued within the six months preceding application from a jurisdiction within a state, territory, or possession of the United States or Canada in which the applicant holds a current real estate
license that has been active within the three years prior to application.

(3) the broker has obtained full-time experience as a licensed North Carolina attorney practicing primarily in real estate matters for the two years immediately preceding application, which shall include the applicant's:
(A) firm or practice name;
(B) law license number;
(C) dates of employment;
(D) hours per week devoted to real estate law practice;
(E) approximate number of closings conducted;
(F) detailed description of practice; and
(G) manager or supervising attorney's name, telephone number, and email address.

(b) The Commission shall not consider education or experience obtained in violation of any law or rule as fulfilling the requirements for waiver of the 90-hour postlicensing education requirement.

(c) A broker shall be ineligible for a waiver of the 90-hour postlicensing education requirement if the broker was issued a license pursuant to Rule .0511(b)(2) of this Subchapter.

Authority G.S. 93A-4(a1).

SECTION .2000 – ANNUAL REPORTS

21 NCAC 58A .2002 ESCROW ACCOUNT
(READOPITION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 58H - REAL ESTATE EDUCATION

SECTION .0200 - REAL ESTATE SCHOOLS

21 NCAC 58H .0203 APPLICATION FOR ORIGINAL LICENSURE OF A PRIVATE REAL ESTATE SCHOOL
(a) Any entity seeking original licensure as a private real estate school to conduct Prelicensing or Postlicensing courses shall apply to the Commission on a form available on the Commission's website and shall set forth the following criteria in addition to the requirements in G.S. 93A-34(b):

(1) the physical, website, and email addresses and telephone number of the principal office of the school;
(2) the proposed school director's legal name, real estate license number, if any, email and mailing address, and telephone number;
(3) the type of school ownership entity and the name, title, real estate license number, if any, mailing address, and ownership percentage of each individual or entity holding at least 10% ownership in the entity;
(4) the North Carolina Secretary of State Identification Number;

(5) the criminal history and history of occupational license disciplinary actions of individual school owner(s);
(6) the physical address of each proposed school location;
(7) the source of real estate examinations to be used for each course offered;

(8) a copy of a current fire inspection report;

(9) a copy of a criminal background check for the previous seven years on the proposed school director;

(10) a signed Consent to Service of Process and Pleadings form available on the Commission's website, if a foreign entity;

(11) the Prelicensing or Postlicensing courses to be offered by the school;

(12) the Update courses to be offered by the school; and

(13) the signature and certification of the school owner(s).

(b) Private real estate school names shall contain the words "Real Estate" and other words identifying the entity as a school, such as "school," "academy," or "institute" that are distinguishable from other licensed private real estate schools and from continuing education course sponsors approved by the Commission.

(c) The school name shall be used in all school publications and advertising.

(d) Each school shall certify that its facilities and equipment are in compliance with all applicable local, state and federal laws and regulations regarding health, safety, and welfare, including the Americans with Disabilities Act.

(e) The original license application fee shall be two hundred dollars ($200.00) for each proposed school location.

(f) The initial fee for a school to offer a Prelicensing or Postlicensing course at any of its locations during the licensing period shall be forty dollars ($40.00) per Prelicensing or Postlicensing course.

(g) Private real estate schools offering Prelicensing or Postlicensing courses pursuant to Paragraph (a) of this Rule shall be eligible to offer Update courses and continuing education courses pursuant to Paragraph (a) of this Rule.

(h) If a school relocates any location during any licensing period, the school owner shall submit an original application for licensure of that location pursuant to this Rule.

Authority G.S. 93A-4; 93A-33; 93A-34.

21 NCAC 58H .0209 PRELICENSING AND POSTLICENSING COURSE ENROLLMENT

(a) A school shall not enroll an individual in a Postlicensing course if:
(1) the first day of the Postlicensing course occurs while the individual is enrolled in a Prelicensing course or if that individual has not passed the license examination; or

(b) A school shall not enroll an individual in a Postlicensing course if:
(2) the first day of the Postlicensing course occurs while the individual is taking another
Postlicensing course at the same school or a different school if such enrollment results in the individual being in class for more than 30 instructional hours in any given seven day period.

Authority G.S. 93A-4(a1); 93A-33.

21 NCAC 58H .0214 EXPIRATION AND RENEWAL OF A SCHOOL APPROVAL OR LICENSE

(a) All Commission approvals and licenses issued to real estate schools shall expire annually on June 30 following issuance of approval or licensure.

(b) A school shall file an electronic application for renewal of its approval or license within 45 days immediately preceding expiration of approval or licensure on a form available on the Commission’s website. The school renewal application form shall include:

1. the school name;
2. the school number;
3. the school’s mailing address, telephone number, and web address, if applicable;
4. all Commission approved courses offered by the school;
5. any change in the school's business entity;
6. a copy of the current bulletin;
7. court records of any conviction, guilty plea, or plea of no contest to, a misdemeanor or felony violation of state or federal law by a court of competent jurisdiction against the school owner(s) and school director since the last renewal;
8. records pertaining to any disciplinary action taken against the school owner(s) and school director by an occupational licensing board since the last renewal;
9. a signed Consent to Service of Process and Pleadings for nonresident applicants; and
10. the school director’s signature.

(c) The private school license renewal fee shall be one hundred dollars ($100.00) for each school location.

(d) The renewal fee for a private real estate school to offer a Prelicensing or Postlicensing course at any of its locations during the licensed period shall be twenty-five dollars ($25.00) per Prelicensing or Postlicensing course.

(e) If a school approval or license has expired, the school shall submit an application for original approval or licensure.

Authority G.S. 93A-4; 93A-33; 93A-34(b); 93A-35(b); 93A-36.

SECTION .0300 – APPROVED INSTRUCTORS

21 NCAC 58H .0302 APPLICATION AND CRITERIA FOR ORIGINAL PRELICENSING, POSTLICENSING, OR UPDATE COURSE INSTRUCTOR APPROVAL

(a) An individual seeking original instructor approval shall submit an application on a form available on the Commission’s website that shall require the instructor applicant to indicate the course(s) for which he or she is seeking approval and set forth the instructor applicant’s:

1. legal name, address, email address, and telephone number;
2. real estate license number and instructor number, if any, assigned by Commission;
3. criminal and occupational licensing history, including any disciplinary actions;
4. education background, including specific real estate education;
5. experience in the real estate business;
6. real estate teaching experience, if any;
7. a signed Consent to Service of Process and Pleadings for nonresident applicants; and
8. signature.

(b) An instructor applicant shall demonstrate that he or she possesses good reputation and character pursuant to G.S. 93A-34(c)(9) and has:

1. a North Carolina real estate broker license that is not on provisional status;
2. completed continuing education sufficient to activate a license under 21 NCAC 58A.1702;
3. completed 60 semester hours of college-level education at an institution accredited by any college accrediting body recognized by the U.S. Department of Education; and
4. completed the New Instructor Seminar prescribed by the Commission, within the previous six months; and
5. within the previous seven years has either:
   (A) two years full-time experience in real estate brokerage with at least one year in North Carolina;
   (B) three years of instructor experience at a secondary or post-secondary level;
   (C) real estate Prelicensing or Postlicensing instructor approval in another jurisdiction; or
   (D) qualifications found to be equivalent by the Commission, including a current North Carolina law license and three years’ full time experience in commercial or residential real estate transactions or representation of real estate brokers or firms.

(c) Along with their application, an instructor applicant shall submit a digital video recording of themselves teaching a 50 minute block of a single topic in a Prelicensing, Postlicensing, or Update course that demonstrates the ability to teach the subject in a manner consistent with the course materials. The digital video recording shall comply with Rule .0305(c) of this Section.

(d) The digital video recording requirement described in Paragraph (c) of this Rule shall be waived by the Commission if the instructor applicant has a current:

1. completion of a North Carolina real estate license that is not on provisional status;
2. approved as either a General Update Course, Prelicensing or Postlicensing instructor, or
3. Distinguished Real Estate Instructor (DREI) designation that has been awarded to the
instructor by the Real Estate Educators Association or an equivalent instructor certification.

(e) Prior to teaching any Prelicensing or Postlicensing course, an approved instructor shall take the Commission's New Pre/Postlicensing Instructor Seminar.

(c) In order to complete the New Instructor Seminar, a broker shall:

1. attend at least 90 percent of all scheduled hours; and
2. demonstrate the ability to teach a 15-minute block of a single Prelicensing topic in a manner consistent with the Commission's Prelicensing Syllabi.

(d) Instructors approved prior to July 1, 2019 shall be exempt from the New Instructor Seminar requirement pursuant to Subparagraph (b)(4) of this Rule.

(2(e)) Prior to teaching any Update course, an approved instructor shall take the Commission's annual Update Instructor Seminar for the current license period. The Update Instructor Seminar shall not be used to meet the requirement in Rule .0306(b)(4) of this Section.

Authority G.S. 93A-3(f); 93A-4; 93A-10; 93A-33; 93A-34.

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CHAPTER 58 – REAL ESTATE COMMISSION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Real Estate Commission intends to amend the rules cited as 21 NCAC 58A .0105 and .1902.

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

Proposed Effective Date: July 1, 2020

Public Hearing:
Date: March 13, 2019
Time: 9:00 a.m.
Location: 1313 Navaho Drive, Raleigh, NC 27609-7460

Reason for Proposed Action:
21 NCAC 58A .0105 – Advertising
Amend this Rule to require the name of the firm or sole proprietorship with which the broker or team is affiliated be at least the same size as the broker's name in advertising.

21 NCAC 58A .1902 – Postlicensing Education Requirement
Amend this Rule to replace 'classroom hour' with 'instructional hour,' to include the new names of the postlicensing courses, and to require provisional brokers to complete all postlicensing courses within 18 months following the date of initial licensure.

Comment period ends: April 1, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

☐ State funds affected
☐ Local funds affected
☐ Substantial economic impact (≥$1,000,000)
☐ Approved by OSBM
☒ No fiscal note required by G.S. 150B-21.4 21 NCAC 58A .0105 and .1902

SUBCHAPTER 58A – REAL ESTATE BROKERS

SECTION .0100 - GENERAL BROKERAGE

21 NCAC 58A .0105 ADVERTISING

(a) Authority to Advertise.

1. A broker shall not advertise any brokerage service or the sale, purchase, exchange, rent, or lease of real estate for another or others without the consent of his or her broker-in-charge and without including in the advertisement the name of the firm or sole proprietorship with which the broker is affiliated. In the advertisement, the name of the firm or sole proprietorship with which the broker or team is affiliated, if any, shall be of equal or greater size as the name of the broker or team.

2. A broker shall not advertise or display a "for sale" or "for rent" sign on any real estate without the written consent of the owner or the owner's authorized agent.

(b) Blind Ads. A broker shall not advertise the sale, purchase, exchange, rent, or lease of real estate for others in a manner indicating the offer to sell, purchase, exchange, rent, or lease is being made by the broker's principal only. Every such advertisement shall indicate that it is the advertisement of a broker or firm and shall not be confined to publication of only contact information, such as a post office box number, telephone number, street address, internet web address, or e-mail address.
(c) A person licensed as a limited nonresident commercial broker shall comply with the provisions of Rule .1809 of this Subchapter in connection with all advertising concerning or relating to his or her status as a North Carolina broker.

Authority G.S. 93A-2(a1); 93A-3(c); 93A-9.

SECTION .1900 – POST-LICENSING EDUCATION

21 NCAC 58A .1902  POSTLICENSING EDUCATION REQUIREMENT

(a) The 90 classroom hour postlicensing education program shall consist of three 30 classroom hour courses prescribed by the Commission which may be taken in any sequence. A provisional broker as described in G.S. 93A-4(a1) or G.S. 93A-4.3(d) must satisfactorily complete at least one of the 30 hour courses during each of the first three years following the date of his or her initial licensure as a broker in order to retain his or her eligibility to actively engage in real estate brokerage. Upon completion of all three courses by a provisional broker, the provisional status of the broker's license shall be terminated by the Commission. The three courses shall be devoted to:

1. real estate brokerage relationships and responsibilities;
2. real estate contracts and transactions; and
3. specialized topics, including commercial real estate, rental management, real estate finance, real estate appraisal, real estate development, and real estate regulation.

(b) If a provisional broker as described in G.S. 93A-4(a1) or G.S. 93A-4.3(d) fails to complete the required postlicensing education described in Paragraph (a) of this Rule by the end of either the first or second year following the date of his or her initial licensure as a broker, his or her license shall be placed on inactive status. Between the end of the first year after initial licensure and the end of the third year after initial licensure, a provisional broker who is subject of the postlicensing education requirement and who desires to activate a license that is on inactive status shall make up any postlicensing education deficiency as well as satisfy the continuing education requirements for license activation described in Rule .1703 of this Subchapter, satisfy the requirement for supervision by a broker-in-charge described in Rule .0506 of this Subchapter and file with the Commission a request for license activation as described in Rule .0504 of this Subchapter.

(c) If a provisional broker as described in G.S. 93A-4(a1) or G.S. 93A-4.3(d) fails to complete all three postlicensing courses within three years following the date of his or her initial licensure, his or her license shall be placed on inactive status. In order to activate the license, the provisional broker shall demonstrate completion of all three postlicensing courses within the previous three years, which will terminate the provisional status of the broker's license, and shall satisfy the continuing education requirements for license activation described in Rule .1703 of this Subchapter.

(a) The 90-hour Postlicensing education program, prescribed by the Commission, shall consist of the following three 30 instructional hour courses:

1. Postlicensing Course 301;
2. Postlicensing Course 302; and
3. Postlicensing Course 303.

(b) A provisional broker as described in G.S. 93A-4(a1) shall complete all Postlicensing courses pursuant to Paragraph (a) of this Rule within 18 months following the date of initial licensure.

(c) If a provisional broker fails to complete the required Postlicensing courses pursuant to Paragraph (b) of this Rule, the provisional broker's license shall be placed on inactive status.

(d) A provisional broker seeking to activate a license that was placed on inactive status pursuant to Paragraph (c) of this Rule shall:

1. complete all three Postlicensing Courses within the previous two years described in Paragraph (a) of this Rule;
2. satisfy the continuing education requirements for license activation described in Rule .1703 of this Subchapter; and
3. file an activation form with the Commission pursuant to Rule .0504 of this Subchapter.

Authority G.S. 93A-4; 93A-4(a1).
This Section contains information for the meeting of the Rules Review Commission December 13, 2018 and January 17, 2019 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate
Jeff Hyde (1st Vice Chair)
Robert A. Bryan, Jr.
Margaret Currin
Jeffrey A. Poley
Brian P. LiVecchi

Appointed by House
Garth Dunklin (Chair)
Andrew P. Atkins
Anna Baird Choi
Paul Powell
Jeanette Doran (2nd Vice Chair)

COMMISSION COUNSEL
Amber Cronk May (919)431-3074
Amanda Reeder (919)431-3079
Jason Thomas (919)431-3081

RULES REVIEW COMMISSION MEETING DATES
February 21, 2019
March 21, 2019
April 18, 2019
May 16, 2019

RULES REVIEW COMMISSION MEETING MINUTES
December 13, 2018

The Rules Review Commission met on Thursday, December 13, 2018, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, Brian LiVecchi, Jeff Poley, and Paul Powell.

Staff members present were Commission Counsels Amber Cronk May, Amanda Reeder, and Jason Thomas; and Julie Brincefield, Alex Burgos, and Dana McGhee.

The meeting was called to order at 9:03 a.m. with Chairman Dunklin presiding.

Chairman Dunklin read the notice required by G.S. 163A-159 and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

Chairman Dunklin read into the record the following statement of economic interest for:

Robert Angus Bryan, Jr. and Margaret Person Currin, which stated there was no actual or likely conflict of interest.
Andrew Perry Atkins, which stated there was no actual conflict of interest, but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.

Mr. Atkins fills the role of a public member on the Commission. He is an Associate Attorney with the law firm of Smith Anderson Blount Dorsett Mitchell & Jernigan, LLP. He has disclosed that the law firm provides representation to various state agencies, boards and commissions. As such, Mr. Atkins has the potential for a conflict of interest and should exercise appropriate caution in the performance of his public duties should issues regarding the State agency, board or commission clients of the law firm come before the Commission for official action.

Anna Baird Choi, which stated there was no actual conflict of interest, but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.
Ms. Choi fills the role of a public member on the Commission. She is an Attorney with the law firm of Nichols, Choi & Lee, PLLC. She has disclosed that the law firm provides representation to several occupational licensing boards. As such, Ms. Choi has the potential for a conflict of interest and should exercise appropriate caution in the performance of her public duties should issues regarding the occupational licensing board clients of the law firm come before the Commission for official action.

The Chairman notified the Commissioners that the following items on the agenda would be taken up out of order at the end of the agenda: the permanent rules for the Industrial Commission and the report for the Medical Care Commission.

**APPROVAL OF MINUTES**
Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the November 15, 2018 meeting and the November 26, 2018 special meeting. There were none and the minutes were approved as distributed.

**FOLLOW UP MATTERS**

**Board of Elections and Ethics Enforcement**
The agency is addressing the objections for 08 NCAC 02 .0112; 03 .0101, .0102, .0103, .0104, .0105, .0106, .0201, .0202, .0301, .0302; 04 .0302, .0304, .0305, .0306, .0307; 06B .0103, .0104, .0105; 08 .0104; 09 .0106, .0107, .0108, .0109; 10B .0101, .0102, .0103, .0104, .0105, .0106, .0107 - No action was required by the Commission.

Prior to the review of the rules from the Board of Elections and Ethics Enforcement, Commissioner Doran recused herself and did not participate in any discussion concerning the rules because she has a matter pending before the Board.

**DHHS/Division of Medical Assistance**
10A NCAC 22F .0301 - No action was required by the Commission, as the rewritten rule was approved at the November 15, 2018 meeting, but the changes were determined to be substantial pursuant to G.S. 150B-21.12(c). The agency is required to republish the rule in accordance with the procedure set forth in G.S. 150B-21.1(a3) and (b).

**Commission for the Blind**
10A NCAC 63C .0203, .0204, .0403, and .0601 - No action was required by the Commission.

**Criminal Justice Education and Training Standards Commission**
12 NCAC 09G .0103 was unanimously approved.

**Department of Public Safety**
14B NCAC 01C .0401, .0402; 07A .0104, .0105, .0106, .0107, .0108, .0109, .0110, .0111, .0112, .0113, .0114, .0115, .0116, .0118, and .0119 – All rules were unanimously approved.

Prior to the review of the rules from the Board of Nursing, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm provides legal services to the Board, including questions on rulemaking from time to time.

**LOG OF FILINGS (PERMANENT RULES)**

**Pre-Reviewed Rules**

**Medical Care Commission**
All rules were unanimously approved.

Prior to the review of the rules from the Medical Care Commission, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the rules because the Medical Care Commission is a client of his law firm.

**Department of Public Safety**
All rules were unanimously approved.
Alcoholic Beverage Control Commission
All rules were unanimously approved.

Environmental Management Commission 15A NCAC 02K
15A NCAC 02K .0224 was unanimously approved.

Environmental Management Commission 15A NCAC 13B
The Commission extended the period of review for these Rules in accordance with G.S. 150B-21.10. They did so in response to a request from the Environmental Management Commission to extend the period in order to allow the agency to make technical changes and submit the rewritten rules at a later meeting.

Commission for Public Health
15A NCAC 18C .1305 was unanimously approved.

Board of Dental Examiners
All rules were unanimously approved.

Non Pre-Reviewed Rules
North Carolina Housing Finance Agency 04 NCAC 19S
All rules were unanimously approved.

Child Care Commission
All rules were unanimously approved.

Commission for Mental Health
10A NCAC 26F .0106 was unanimously approved.

Department of Insurance
All rules were unanimously approved.

Industrial Commission
All rules in 11 NCAC 23A and 23H were approved.

Rules 11 NCAC 23B .0206 and .0207 were approved with Commissioners Atkins, Bryan, Choi, Currin, Doran, and LiVecchi, voting in favor of the rules; Commissioners Dunklin, Hyde, and Powell voted against. Commissioner Poley was not present for the discussion or vote on these Rules.

Rule 11 NCAC 23B .0503 was unanimously approved contingent upon receiving technical changes to remove "government entities" from the rule. The rule with the technical change was received after the meeting.

Margaret McDonald, Assistant General Counsel and DPS Rulemaking Coordinator, addressed the Commission.

Jerrel Jordan, with DPS, addressed the Commission.

Theresa Stephenson, Senior Deputy General Counsel with DPS, addressed the Commission.

Stephanie Brennan, with the Attorney General’s Office, addressed the Commission on behalf of the NC DOJ.

Kenneth Lassiter, Director of Prisons for DPS, addressed the Commission.

Ashley Snyder, the rulemaking coordinator with the agency, addressed the Commission.

Summit Gupta, the Chief Deputy Commissioner with the agency, addressed the Commission.

The Commission received over 10 letters of objection in accordance with G.S. 150B-21.3(b2), requesting a delayed effective date and legislative review of Rules 11 NCAC 23B .0206, .0207, and .0503.

Environmental Management Commission 15A NCAC 02B
15A NCAC 02B .0304 was unanimously approved.
EXISTING RULES REVIEW

Department of Environmental Quality
01 NCAC 41A – The Commission unanimously approved the report as submitted by the agency.
01 NCAC 41C – The Commission unanimously approved the report as submitted by the agency.
01 NCAC 41D – The Commission unanimously approved the report as submitted by the agency.
01 NCAC 41E – The Commission unanimously approved the report as submitted by the agency.

Medical Care Commission
10A NCAC 13G -The Commission unanimously approved the report as submitted by the agency, with the following exceptions for rules that received public comment that were deemed to have merit as defined by G.S. 150B-21.3A(c)(2): .0317 and .0318. The RRC designated those rules as “necessary with substantive public interest”, with Commissioner Atkins voting against.

Steven Lewis, with Division of Health Service Regulation, addressed the Commission.

Prior to the review of the report from the Medical Care Commission, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the report because the Medical Care Commission is a client of his law firm.

Commission for Public Health
10A NCAC 41C – The Commission unanimously approved the report as submitted by the agency.

Department of Health and Human Services
15A NCAC 01O - The Commission unanimously approved the report as submitted by the agency.

Environmental Management Commission
15A NCAC 02G – The Commission unanimously approved the report as submitted by the agency.
15A NCAC 02I – The Commission unanimously approved the report as submitted by the agency.
15A NCAC 02J – The Commission unanimously approved the report as submitted by the agency.

Wildlife Resources Commission
15A NCAC 10A – The Commission unanimously approved the report as submitted by the agency.
15A NCAC 10D – The Commission unanimously approved the report as submitted by the agency.
15A NCAC 10E – The Commission unanimously approved the report as submitted by the agency.
15A NCAC 10G – The Commission unanimously approved the report as submitted by the agency.
15A NCAC 10I – The Commission unanimously approved the report as submitted by the agency.
15A NCAC 10J – The Commission unanimously approved the report as submitted by the agency.
15A NCAC 10K – The Commission unanimously approved the report as submitted by the agency.

Pesticide Board
02 NCAC 09L – As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than April 30, 2020 pursuant to G.S. 150B-21.3A(d)(2).

Structural Pest Control Committee
02 NCAC 34 – As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than April 30, 2020 pursuant to G.S. 150B-21.3A(d)(2).

The Chair called the meeting into a brief recess at 11:16 a.m. The meeting resumed at 11:30 a.m.

COMMISSION BUSINESS

At 11:57 a.m., upon a motion and second, and unanimous vote, the Commission ended the public meeting of the Rules Review Commission and called the meeting into closed session pursuant to G.S. 143-318.11(a)(3) to discuss the lawsuit filed by the Department of Health and Human Services and the Commission for Public Health against the Rules Review Commission.

The Commission came out of closed session and reconvened at 12:32 p.m.
The Commission authorized litigation counsel to negotiate a consent order in the matter of DHHS/CPH v. RRC consistent with the action taken at the Commission’s special called meeting on November 26, 2018, and further authorized the Chair to give final approval to the consent order on the Commission’s behalf.

The meeting adjourned at 12:33 p.m.

The next regularly scheduled meeting of the Commission is Thursday, January 17th, 2019 at 9:00 a.m.

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:
Garth Dunklin, Chair
December 13, 2018

Rules Review Commission
Meeting
Please Print Legibly

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December 13, 2018

Christina L. Waggett, Rulemaking Coordinator
Pesticide Board
1001 Mail Service Center
Raleigh, North Carolina 27699-1001

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 02 NCAC 09L

Dear Ms. Waggett:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the December 13, 2018 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than April 30, 2020.

If you have any questions regarding the Commission’s action, please let me know.

Sincerely,

[Signature]

Amber May
Commission Counsel

An Equal Employment Opportunity Employer
# RRC Determination: Necessary with substantive public interest

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December 13, 2018

Christina L. Waggett, Rulemaking Coordinator
Structural Pest Control Committee
1001 Mail Service Center
Raleigh, North Carolina 27699-1001

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 02 NCAC 34

Dear Ms. Waggett:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the December 13, 2018 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than April 30, 2020.

If you have any questions regarding the Commission’s action, please let me know.

Sincerely,

Amber May
Commission Counsel
### RRC DETERMINATION

**PERIODIC RULE REVIEW**

July 01, 2018 through June 30, 2019

**Structural Pest Control Committee**

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December 13, 2018 Meeting

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#### Periodic Rule Review
**December 13, 2018**

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AGENDA
RULES REVIEW COMMISSION
THURSDAY, JANUARY 17, 2019 9:00 A.M.
1711 New Hope Church Rd., Raleigh, NC 27609

I. Ethics reminder by the chair as set out in G.S. 163A-159(e)

II. Approval of the minutes from the last meeting

III. Follow-up matters
   A. Board of Elections and Ethics Enforcement - 08 NCAC 02 .0112, .0113; 03 .0101, .0102, .0103, .0104, .0105, .0106, .0201, .0202, .0301, .0302; 04 .0302, .0304, .0305, .0306, .0307; 06B .0103, .0104, .0105; 08 .0104; 09 .0106, .0107, .0108, .0109; 10B .0101, .0102, .0103, .0104, .0105, .0106, .0107 (May)
   B. DHHS/Division of Health Benefits – 10A NCAC 22F .0301 (May)
   C. Commission for the Blind - 10A NCAC 63C .0203, .0204, .0403, .0601 (Thomas)

IV. Review of Log of Filings (Permanent Rules) for rules filed November 21, 2018 through December 20, 2018
   • Pre-Reviewed Rules
     ▪ Board of Agriculture 09B (Reeder)
     ▪ Soil and Water Conservation Commission (Reeder)
     ▪ Board of Barber Examiners (Reeder)
     ▪ Board of Dental Examiners (May)
     ▪ Substance Abuse Professional Practice Board (Reeder)
   • Non Pre-Reviewed Rules
     ▪ Board of Agriculture 37 (Reeder)
     ▪ Commissioner of Agriculture (Reeder)
     ▪ Board of Agriculture 60 (Reeder)
     ▪ Department of Insurance (Reeder)
     ▪ Alcoholic Beverage Control Commission (Reeder)
     ▪ Marine Fisheries Commission (Thomas)
     ▪ Coastal Resources Commission (May)
     ▪ Department of Transportation (May)
     ▪ Board of Examiners of Electrical Contractors (Reeder)

V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting

E. Department of Administration – 01 NCAC 06F .0101, .0102 (May)

VI. Existing Rules Review
   • Review of Reports
     1. 02 NCAC 46 - Board of Agriculture (Reeder)
     2. 02 NCAC 48A – Board of Agriculture (Reeder)
     3. 02 NCAC 48B – Board of Agriculture (Reeder)
     4. 02 NCAC 52J - Board of Agriculture (Reeder)
     5. 02 NCAC 61- Board of Agriculture (Reeder)
     6. 11 NCAC 01- Department of Insurance (Thomas)
     7. 11 NCAC 04 - Department of Insurance (Thomas)
     8. 11 NCAC 17- Department of Insurance (Thomas)
     9. 15A NCAC 18A, Sections .0100, .0300 - .0900 and .3400 – Marine Fisheries Commission (Reeder)
   • Readoptions
     10. 10A NCAC 13K - Medical Care Commission (May)
     11. 14B NCAC 09 - Victims Compensation Commission (May)

VII. Review of the 2019 State Medical Facilities Plan (Reeder)

VIII. Commission Business
   F. Periodic Review and Expiration of Existing Rules Readoption Schedule
      • Executive Committee to meet following Commission Business
      • Next meeting: Thursday, February 21, 2019
Commission Review  
*Log of Permanent Rule Filings*  
*November 21, 2018 through December 20, 2018*

**AGRICULTURE, BOARD OF**

The rules in Chapter 9 are from the Food and Drug Protection Division.

The rules in Subchapter 9B are the rules and standards adopted by reference.

Adoptions by Reference  
Amend*  
Current Good Manufacturing Practices for Retail Food Estas...  
Adopt*  

The rules in Chapter 37 concern agronomic services.

Nematode Advisory Service  
Amend***

**AGRICULTURE, COMMISSIONER OF**

The rules in Chapter 58 are for the agricultural development and farmland preservation trust fund.

Evaluation of Applications  
Readopt with Changes*  
Grant Agreement  
Readopt with Changes*  
Reporting  
Readopt with Changes*  
Records  
Readopt with Changes*  

**SOIL AND WATER CONSERVATION COMMISSION**

The rules in Subchapter 59D concern the agriculture cost share program for nonpoint source pollution control.

Purpose  
Readopt with Changes*  
Definitions For Subchapter 59D  
Readopt with Changes*  
Agriculture Cost Share Program Financial Assistance Alloc...  
Readopt with Changes*  
Community Conservation Assistance Program Allocation Guid...  
Readopt with Changes*  
Agricultural Water Resources Assistance Program Financial...  
Readopt with Changes*  
Best Management Practices Eligible for Cost Share Payments  
Readopt with Changes*  
Cost Share and Incentive Payments  
Readopt with Changes*  
Technical Assistance Funds  
Readopt with Changes*
Cost Share Agreement 02 NCAC 59D .0109
Adopt*

District Program Operation 02 NCAC 59D .0110
Adopt*

The rules in Subchapter 59H concern community conservation assistance program for nonpoint source pollution control

Purpose 02 NCAC 59H .0101
Readopt/Repeal*

Definitions 02 NCAC 59H .0102
Readopt/Repeal*

Allocation Guidelines and Procedures 02 NCAC 59H .0103
Readopt/Repeal*

Best Management Practices Eligible for Cost Share Payments 02 NCAC 59H .0104
Readopt/Repeal*

Cost Share and Incentive Payments 02 NCAC 59H .0105
Readopt/Repeal*

Technical Assistance Funds 02 NCAC 59H .0106
Readopt/Repeal*

Cost Share Agreement 02 NCAC 59H .0107
Readopt/Repeal*

District Program Operation 02 NCAC 59H .0108
Readopt/Repeal*

AGRICULTURE, BOARD OF

The rules in Chapter 60 are for the division of forest resources.

The rules in Subchapter 60B concern the administration (.0100) of division programs including forest fire control (.0200); pest control (.0300); forest management (.0400); forest tree seedlings (.0500); custom forestry services (.0600); forest development program (.0700); urban and community forestry (.0800); NC prescribed burning act (.0900); and Dupont State Forest (.1000).

Administration of Program 02 NCAC 60B .0701
Amend*

INSURANCE, DEPARTMENT OF

The rules in Chapter 20 concern managed care health benefit plans including managed care definitions (.0100); contracts between network plan carriers and health care providers (.0200); provider accessibility and availability (.0300); network provider credentials (.0400); HMO quality management programs (.0500); and significant modifications to HMO operations (.0600).

Scope and Definitions 11 NCAC 20 .0101
Amend*

ALCOHOLIC BEVERAGE CONTROL COMMISSION

The rules in Subchapter 15A concern organization rules: policies and procedures including general provisions (.0100); structure (.0200); publications, records, copies (.0300); rule-making (.0400); emergency rules (.0500); declaratory rulings (.0600); personnel policies: commission (.0700); adjudication: contested cases (.0800); fiscal rules for local boards (.0900); local abc board: personnel policies (.1000); local abc boards: relationship with state commission (.1100); openings and discontinuance of stores (.1200); storage and distribution of spirituous liquors: commercial transportation (.1300); purchase of alcoholic beverages by local boards (.1400); pricing of spirituous liquor (.1500); warehouse storage of spirituous liquors (.1600); retail sales of alcoholic beverages (.1700); purchase transportation permits for individuals
and mixed beverages permittees (.1800); sales of liquor to mixed beverages permittees (.1900); local board training (.2000); distillery permit holders’ sale of spirituous liquor distilled on premises to visitors of the distillery for consumption off the premises (.2100); special one-time permits (.2200); and homemade wine and malt beverage events (.2300).

**Location and Address**
Amend*

14B NCAC 15A .0102

**MARINE FISHERIES COMMISSION**

The rules in Subchapter 3I are general and miscellaneous rules.

**Possession or Transportation Limits Through State Waters:**
Readopt with Changes*

The rules in Subchapter 3J concern the use of nets in general (.0100) and in specific areas (.0200); the use of pots, dredges, and other fishing devices (.0300); fishing gear (.0400); and pound nets (.0500).

**Nets or Net Stakes**
Readopt with Changes*

**Nets Pulled by More than One Vessel**
Readopt with Changes*

**Chowan River and Meherrin River**
Readopt with Changes*

**Currituck Sound and Its Tributaries**
Readopt with Changes*

**Southport Boat Harbor**
Readopt with Changes*

**Nuclear Plant Intake Canal**
Readopt with Changes*

**Albemarle Sound and Chowan River Herring Management**
Readopt without Changes*

**Dredges and Mechanical Methods Prohibited**
Readopt with Changes*

**Electrical Fishing Device in Cape Fear River**
Readopt with Changes*

**Hook and Line**
Readopt with Changes*

**Oysters, Hard Clams, or Mussels Prohibited**
Readopt with Changes*

**Bay Scallop Harvest Management**
Readopt with Changes*

**Taking Bay Scallops at Night and on Weekends**
Readopt with Changes*

**Bay Scallop Dredge Prohibited**
Readopt without Changes*

**Size and Harvest Limits**
Readopt with Changes*

**Disposition of Meats**
Readopt with Changes*

**Dredges and Mechanical Methods Prohibited and Open Season**
Readopt with Changes*

**Oysters, Hard Clams, or Mussels Prohibited**
Readopt with Changes*

**Bay Scallop Harvest Management**
Readopt with Changes*

**Taking Bay Scallops at Night and on Weekends**
Readopt with Changes*

**Bay Scallop Dredge Prohibited**
Readopt without Changes*
Calico Scallop Harvest  15A NCAC 03K .0504
Readopt with Changes*

Marketing Scallops Taken from Shellfish Leases or Franchises  15A NCAC 03K .0507
Readopt with Changes*

Scallop Aquaculture Harvest Exemptions  15A NCAC 03K .0508
Readopt with Changes*

The rules in Chapter 3 are from the Marine Fisheries Commission. The rules in Subchapter 3L concern shrimp (.0100); crabs (.0200); and lobsters (.0300).

Stone Crabs  15A NCAC 03L .0208
Readopt with Changes*

The rules in Subchapter 3M cover harvesting of finfish including general rules (.0100); striped bass (.0200); mackerel (.0300); menhaden and Atlantic herring (.0400); and other finfish (.0500).

Mutilated Finfish  15A NCAC 03M .0101
Readopt with Changes*

Unmarketable Finfish  15A NCAC 03M .0102
Readopt with Changes*

Minimum Size Limits  15A NCAC 03M .0103
Readopt with Changes*

Red Drum  15A NCAC 03M .0501
Readopt with Changes*

Mullet  15A NCAC 03M .0502
Readopt with Changes*

Snapper Grouper Complex  15A NCAC 03M .0506
Readopt with Changes*

Billfish  15A NCAC 03M .0507
Readopt with Changes*

American Eel  15A NCAC 03M .0510
Readopt with Changes*

River Herring  15A NCAC 03M .0513
Readopt with Changes*

Dolphin  15A NCAC 03M .0515
Readopt with Changes*

Wahoo  15A NCAC 03M .0517
Readopt with Changes*

Kingfishes (Sea Mullet)  15A NCAC 03M .0518
Readopt with Changes*

Tuna  15A NCAC 03M .0520
Readopt with Changes*

Sheepshead  15A NCAC 03M .0521
Readopt without Changes*

The rules in Subchapter 3O cover various licenses (.0100); leases and franchises (.0200); license appeal procedures (.0300); Standard Commercial Fishing License Eligibility Board (.0400); and licenses, leases and franchises (.0500).

Display of Licenses and Registrations  15A NCAC 03O .0106
Readopt with Changes*

For-Hire License Requirements  15A NCAC 03O .0112
Readopt with Changes*

Procedures and Requirements to Obtain Permits  15A NCAC 03O .0501
Readopt with Changes*

Permit Conditions; Specific  15A NCAC 03O .0503
Readopt with Changes*

The rules in Subchapter 3R specify boundaries for various areas (.0100); and fishery management areas (.0200).

**Attended Gill Net Areas**

Readopt with Changes*

**COASTAL RESOURCES COMMISSION**

The rules in Chapter 7 are coastal management rules.

The rules in Subchapter 7B are land use planning guidelines including introduction (.0600); land use planning (.0700); CAMA land use plan review and CRC certification (.0800); and CAMA land use plan amendments (.0900).

**Public Hearing and Local Adoption Requirements**

Amend*

**Certification and Use of the Plan**

Amend*

The rules in Subchapter 7H are the state guidelines for areas of environmental concern (AECs) including introduction and general comments (.0100); the estuarine system (.0200); ocean hazard areas (.0300); public water supplies (.0400); natural and cultural resource areas (.0500); development standards (.0600); general permits for construction or maintenance of bulkheads and the placement of riprap for shoreline protection in estuarine and public trust waters (.1100); piers, docks and boat houses in estuarine and public trust waters (.1200); general permit to construct boat ramps along estuarine and public trust shorelines and into estuarine and public trust waters (.1300); groins in estuarine and public trust waters (.1400); excavation within or connecting to existing canals, channels, basins, or ditches in estuarine waters, public trust waters, and estuarine shoreline AECs (.1500); aerial and subaqueous utility lines with attendant structures in coastal wetlands, estuarine waters, public trust waters and estuarine shorelines (.1600); emergency work requiring a CAMA or a dredge and fill permit (.1700); beach bulldozing landward of the mean high-water mark in the ocean hazard AEC (.1800); camelopardal structures within the estuarine and ocean hazard AECs (.1900); construction of sheeptire sill for shoreline protection in estuarine and public trust waters (.2000); construction of freestanding moorings in established waters and public trust areas (.2100); replacement of existing bridges and culverts in estuarine waters, estuarine shorelines, public trust areas and coastal wetlands (.2200); placement of riprap for wetland protection in estuarine and public trust waters (.2300); replacement of structures; the reconstruction of primary or frontal dune systems; and the maintenance excavation of existing canals, basins, channels, or ditches, damaged, destroyed, or filled in by hurricanes or tropical storms (.2500); construction of wetland, stream and buffer mitigation sites by the North Carolina Ecosystem Enhancement Program or the North Carolina Wetlands Restoration Program (.2600); and the construction of riprap sills for wetland enhancement in estuarine and public trust waters (.2700).

**Coastal Shorelines**

Amend*

**Specific Use Standards for Ocean Hazard Areas**

Amend*

**General Conditions**

Amend*

**Specific Conditions**

Amend*

The rules in Subchapter 7K set out activities in areas of environmental concern (AECs) which do not require a Coastal Area Management Act (CAMA) permit. These include activities that are not considered development (.0100); exempt minor maintenance and improvement (.0200); and exempt federal agency activities (.0400).

**Maintenance and Repair**

Amend*

**Single Family Residences Exempted**

Amend*
TRANSPORTATION, DEPARTMENT OF

The rules in Chapter 2 are from the Division of Highways.

The rules in Subchapter 2B concern highway planning including right of way (.0100); traffic engineering (.0200); chief engineer-programs (.0300); relocation assistance procedures (.0400); utility encroachments (.0500); and driveway entrances (.0600).

The Sale of Surplus Lands

Readopt/Repeal*

Copies of Forms

Readopt/Repeal*

Definitions

Readopt/Repeal*

Uniform Traffic Control Devices

Readopt/Repeal*

Channelization for Entrances and Exits to Property

Readopt/Repeal*

Personal Property not to be Acquired

Readopt/Repeal*

Relocation Assistance

Readopt without Changes*

Applicability

Readopt without Changes*

Execution of Utility Agreement

Readopt without Changes*

The rules in Subchapter 2D concern highway operations including standards for design and construction (.0100); landscape (.0200); field operations-maintenance and equipment (.0400); ferry operations (.0500); oversize-overweight permits (.0600); highway design branch (.0700); prequalification advertising and bidding regulations (.0800); regulations for informal construction and repair contracts (.0900); adopt-a-highway program (.1000); and disadvantaged business enterprise, minority business enterprise and women business enterprise programs for highway and bridge construction contracts (.1100).

Minimum Size of Surface Drainage Pipeline

Readopt without Changes*

Guidelines - Curb Cuts and Ramps

Readopt without Changes*

Temporary Bridge Weight Limits and Closings

Readopt without Changes*

General Regulations for Drawbridges

Readopt/Repeal*

The rules in Subchapter 2E concern miscellaneous operations including tort claims (.0100); outdoor advertising (.0200); junkyard control (.0300); general ordinances (.0400); selective vegetation removal policy (.0600); professional or specialized services (.0700); solicitation of contributions for religious purposes at rest areas (.0800); distribution of newspapers from dispensers at rest areas and welcome centers (.0900); scenic byways (.1000); tourist-oriented directional sign program (.1100); private property owners (.1200).

Aircraft Landing and Taking Off on Highways

Readopt without Changes*

Parades on Highway System Roads

Readopt without Changes*

Parking Vehicle for Sale or Distribution of Goods

Readopt without Changes*
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**BARBER EXAMINERS, BOARD OF**

The rules in Subchapter 6N establish fees and provide for the use of various forms.

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**DENTAL EXAMINERS, BOARD OF**

The rules in Subchapter 16P concern the advertisement of dental services.

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The rules in Subchapter 16Q concern general anesthesia and sedation including definitions (.0100); general anesthesia (.0200); parenteral conscious sedation (.0300); enteral conscious sedation (.0400); renewal of permits (.0500); reporting and penalties (.0600); and penalty for non-compliance (.0700).

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Amend*
Procedure for Moderate Pediatric Conscious Sedation Evalu... 21 NCAC 16Q .0408
Amend*
Annual Renewal Required 21 NCAC 16Q .0501
Repeal*

ELECTRICAL CONTRACTORS, BOARD OF EXAMINERS OF

The rules in Chapter 18B are from the Board of Electrical Contractors including general provisions (.0100); examinations and qualifications (.0200); terms and definitions applicable to licensing (.0300); licensing requirements (.0400); reciprocal licensing agreements with other states (.0700); special restricted licenses (.0800); violations and contested case hearings (.0900); forms, certificates, and publications of the board (.1000); and continuing education courses and requirements (.1100).

Requirements for All Examination Applicants 21 NCAC 18B .0201
Amend*

SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD

The rules in Chapter 68 include general provisions (.0100); certification (.0200); clinical addictions specialist (.0300); education (.0400); ethical principles of conduct (.0500); grounds for discipline and disciplinary procedures (.0600); and appeals process (.0700).

Designation as Substance Abuse Counselor Intern 21 NCAC 68 .0203
Readopt with Changes**
Certified Substance Abuse Counselor Certification 21 NCAC 68 .0205
Readopt with Changes**
Process for Prevention Consultant Certification 21 NCAC 68 .0206
Readopt with Changes*
Certification or Licensure Period 21 NCAC 68 .0207
Readopt with Changes*
Renewal Requirements for Counselor, Criminal Justice Addi... 21 NCAC 68 .0208
Readopt with Changes**
Process for Clinical Supervisor Certification 21 NCAC 68 .0211
Readopt with Changes**
Process for Residential Facility Director Certification 21 NCAC 68 .0212
Readopt with Changes**
Licensure Requirements for Initial Applicants for Licensu... 21 NCAC 68 .0305
Readopt with Changes**
Renewal of Individual Licensure as Clinical Addictions Sp... 21 NCAC 68 .0306
Readopt with Changes*

Commission Review
Log of Temporary Rule Filings
December 27, 2018 through January 17, 2019

ADMINISTRATION, DEPARTMENT OF

The rules in Subchapter 6F concern telecommunications facilities for broadband providers.

Procedures 01 NCAC 06F .0101
Adopt*
Terms and Conditions 01 NCAC 06F .0102
Adopt*
This Section contains a listing of recently issued Administrative Law Judge decisions for contested cases that are non-confidential. Published decisions are available for viewing on the OAH website at http://www.ncoah.com/hearings/decisions/. If you are having problems accessing the text of the decisions online or for other questions regarding contested cases or case decisions, please contact the Clerk's office by email: oah.clerks@oah.nc.gov or phone 919-431-3000.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter  
Don Overby  
J. Randall May  
David Sutton  
Tenisha Jacobs  
A. B. Elkins II  
Selina Malherbe  
J. Randolph Ward  
Stacey Bawtinhimer

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