

# NORTH CAROLINA REGISTER

VOLUME 38 • ISSUE 15 • Pages 955 – 1035

February 1, 2024

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**PUBLISHED BY**

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

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**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2024 – December 2024

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 <sup>th</sup> day from publication in the Register
38:13	01/02/24	12/06/23	01/17/24	03/04/24	03/20/24	04/30/2024	05/01/24	09/28/24
38:14	01/16/24	12/19/23	01/31/24	03/18/24	03/20/24	04/30/2024	05/01/24	10/12/24
38:15	02/01/24	01/10/24	02/16/24	04/01/24	04/20/24	05/29/2024	06/01/24	10/28/24
38:16	02/15/24	01/25/24	03/01/24	04/15/24	04/20/24	05/29/2024	06/01/24	11/11/24
38:17	03/01/24	02/09/24	03/16/24	04/30/24	05/20/24	06/26/2024	07/01/24	11/26/24
38:18	03/15/24	02/23/24	03/30/24	05/14/24	05/20/24	06/26/2024	07/01/24	12/10/24
38:19	04/01/24	03/08/24	04/16/24	05/31/24	06/20/24	07/31/2024	08/01/24	12/27/24
38:20	04/15/24	03/22/24	04/30/24	06/14/24	06/20/24	07/31/2024	08/01/24	01/10/25
38:21	05/01/24	04/10/24	05/16/24	07/01/24	07/20/24	08/28/2024	09/01/24	01/26/25
38:22	05/15/24	04/24/24	05/30/24	07/15/24	07/20/24	08/28/2024	09/01/24	02/09/25
38:23	06/03/24	05/10/24	06/18/24	08/02/24	08/20/24	09/25/2024	10/01/24	02/28/25
38:24	06/17/24	05/24/24	07/02/24	08/16/24	08/20/24	09/25/2024	10/01/24	03/14/25
39:01	07/01/24	06/10/24	07/16/24	08/30/24	09/20/24	10/30/2024	11/01/24	03/28/25
39:02	07/15/24	06/21/24	07/30/24	09/13/24	09/20/24	10/30/2024	11/01/24	04/11/25
39:03	08/01/24	07/11/24	08/16/24	09/30/24	10/20/24	11/26/2024	12/01/24	04/28/25
39:04	08/15/24	07/25/24	08/30/24	10/14/24	10/20/24	11/26/2024	12/01/24	05/12/25
39:05	09/03/24	08/12/24	09/18/24	11/04/24	11/20/24	12/19/2024	01/01/25	05/31/25
39:06	09/16/24	08/23/24	10/01/24	11/15/24	11/20/24	12/19/2024	01/01/25	06/13/25
39:07	10/01/24	09/10/24	10/16/24	12/02/24	12/20/24	*01/29/2025	02/01/25	06/28/25
39:08	10/15/24	09/24/24	10/30/24	12/16/24	12/20/24	*01/29/2025	02/01/25	07/12/25
39:09	11/01/24	10/11/24	11/16/24	12/31/24	01/20/25	*02/26/2025	03/01/25	07/29/25
39:10	11/15/24	10/24/24	11/30/24	01/14/25	01/20/25	*02/26/2025	03/01/25	08/12/25
39:11	12/02/24	11/06/24	12/17/24	01/31/25	02/20/25	*03/26/2025	04/01/25	08/29/25
39:12	12/16/24	11/21/24	12/31/24	02/14/25	02/20/25	*03/26/2025	04/01/25	09/12/25

\*Dates not approved by the RRC

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 but not later than 60 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.

**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

November 28, 2023

**EXECUTIVE ORDER NO. 295**

**NOTICE OF TERMINATION OF EXECUTIVE ORDER NOS. 293 AND 294**

**WHEREAS**, in November 2023, western North Carolina was threatened by wildfires and drought conditions; and

**WHEREAS**, Executive Order No. 293, *Declaration of a State of Emergency Due to Existing and Potential Wildfires*, was issued on November 8, 2023; and

**WHEREAS**, Executive Order No. 294, *Amendment to Executive Order No. 293 Expanding the Emergency Area to Additional Counties*, was issued on November 20, 2023; and

**WHEREAS**, the emergency declaration and expansion are no longer necessary.

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

Pursuant to N.C. Gen. Stat. § 166A-19.20(c)(1) Executive Order Nos. 293 and 294 are hereby terminated immediately.

**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 28<sup>th</sup> day of November in the year of our Lord two thousand and twenty-three.

Roy Cooper  
Governor

**ATTEST:**

Elaine F. Marshall  
Secretary of State





# State of North Carolina

**ROY COOPER**  
GOVERNOR

December 19, 2023

**EXECUTIVE ORDER NO. 296**

**DECLARATION OF STATE OF EMERGENCY FOR THE PURPOSE OF A TEMPORARY  
SUSPENSION OF ENFORCEMENT OF TRANSPORTATION REGULATIONS FOR  
AGRICULTURE VEHICLES IN DUPLIN AND SAMPSON COUNTIES**

**WHEREAS**, the State was impacted by a Nor'easter on December 17, 2023, resulting in widespread flooding which impacted the agricultural sector and critical infrastructure in portions of this state; and

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

**WHEREAS**, N.C. Gen. Stat. § 166A-19.1(3) provides that it is the responsibility of the undersigned, state agencies, and local governments to "provide for the rapid and orderly rehabilitation of persons and restoration of property"; and

**WHEREAS**, N.C. Gen. Stat. § 166A-19.1(4) provides that it is the responsibility of the undersigned, state agencies, and local governments to "provide for cooperation and coordination of activities relating to emergency mitigation preparedness, response, and recovery among agencies and officials of this state and with similar agencies and officials of other states and with other private and quasi-official organizations"; and

**WHEREAS**, N.C. Gen. Stat. §§ 166A-19.10 and 166A-19.20 authorize the undersigned 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; and

**WHEREAS**, N.C. Gen. Stat. § 166A-19.10(3) authorizes the undersigned to delegate any gubernatorial authority vested in him under the Emergency Management Act, and to provide for the subdelegation of that authority; and

**WHEREAS**, the impacts from the Nor'easter constitute a state of emergency as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(20); and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.70(b), 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 essentials, such as feed for livestock and poultry, (2) persons transporting livestock, poultry, and those driving vehicles for crops ready to be harvested; 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 severe damage to crops ready to be harvested, the undersigned shall direct

the North Carolina Department of Public Safety (“DPS”) to temporarily suspend weighing vehicles used to transport livestock, poultry, livestock or poultry feed, or crops ready to be harvested; and

**WHEREAS**, the Commissioner of Agriculture has recommended the suspension of weighing vehicles used to transport livestock, poultry, or crops from Duplin and Sampson counties; and

**WHEREAS**, pursuant to the authority under N.C. Gen. Stat. § 166A-19.70(g), the undersigned has determined there is an imminent threat of severe economic loss of livestock, poultry or widespread or severe damage to crops ready to be harvested.

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

**Section 1.**

I hereby declare that a state of emergency, as defined in N.C. Gen. Stat. §§ 166A-19.3(6), exists due to the impacts of the Nor’easter in certain portions of the state.

For purposes of this Executive Order, the emergency area is the following counties: Duplin and Sampson (“the Emergency Area”).

**Section 2.**

I hereby direct, DPS, in conjunction with the North Carolina Department of Transportation (“DOT”), to waive enforcement of the maximum hours of service for drivers prescribed by DPS pursuant to N.C. Gen. Stat. § 20-381 for transporters of livestock, poultry, livestock or poultry feed, or crops within, to, or from the Emergency Area.

In addition, DPS shall, pursuant to N.C. Gen. Stat. § 166A-19.70(g), temporarily suspend weighing pursuant to N.C. Gen. Stat. § 20-118.1 vehicles used to transport livestock, poultry, livestock or poultry feed, or crops ready to be harvested within, to, or from the Emergency Area.

**Section 3.**

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”).

I delegate to Eddie M. Buffaloe, Jr., the Secretary of DPS, 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.

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

**Section 4.**

I further direct Secretary Buffaloe, 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 to seek reimbursement for costs incurred by the state in responding to this emergency.

**Section 5.**

This suspension does not permit the gross weight of any vehicle or combination to exceed the safe load carrying capacity established by the DOT on any bridge pursuant to N.C. Gen. Stat. § 136-72, or to permit the operation of a vehicle when a law enforcement officer has probable cause to believe the vehicle is creating an imminent hazard to public safety.

**Section 6.**

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish that their loads are only providing direct assistance by transporting livestock, poultry, or poultry feed or crops ready to be harvested within, to, or from the Emergency Area.

The waivers of enforcement for transporters of livestock, poultry, livestock or poultry feed, or crops ready to be harvested in this Executive Order terminates when a driver or commercial motor vehicle in the Emergency Area that is used to transport livestock, poultry, livestock or poultry feed, or crops ready to be harvested are not used to support emergency relief efforts within, to, or from the Emergency Area or when the motor carrier dispatches a driver or commercial motor vehicle to another location to begin non-relief operations.

**Section 7.**

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

**Section 8.**

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.

**Section 9.**

This Executive Order is effective immediately and shall remain in effect for thirty (30) days, unless earlier terminated or extended.

**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 19<sup>th</sup> day of December in the year of our Lord two thousand and twenty-three.

  
\_\_\_\_\_  
Roy Cooper  
Governor

**ATTEST:**

  
\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State







# State of North Carolina

**ROY COOPER**  
GOVERNOR

December 21, 2023

**EXECUTIVE ORDER NO. 297**

**EXTENDING THE ANDREA HARRIS EQUITY TASK FORCE**

**WHEREAS**, the undersigned issued Exec. Order No. 143, 35 N.C. Reg. 10-19 (July 1, 2020), establishing the Andrea Harris Social, Economic, Environmental, and Health Equity Task Force on June 4, 2020, and Exec. Order No. 268, 37 N.C. Reg. 435-439 (September 15, 2022), on August 17, 2022, re-establishing the body as the Andrea Harris Equity Task Force (“Task Force”); and

**WHEREAS**, Executive Order No. 268 expires on December 31, 2023, and the undersigned has determined that the Task Force must be further extended to continue its important work; and

**WHEREAS**, pursuant to Article III § 1 of the North Carolina Constitution and N.C. Gen. Stat. §§ 143A-4 and 143B-4, the Governor is the chief executive officer of the state and is responsible for formulating and administering the policies of the executive branch of state government; and

**WHEREAS**, pursuant to N.C. Gen. Stat. §147-12, the Governor has the authority and the duty to supervise the official conduct of all executive and ministerial officers.

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

**Section 1. Extension of Status Report Deadline**

The deadline for the final status report from the Task Force is hereby extended. Section 1(B)(3) of Executive Order No. 268 shall be amended and restated as follows:

“The Andrea Harris Equity Task Force shall provide status reports on the progress and recommendations made in the focus areas determined by Section 1 of this Executive Order to the Office of the Governor on June 1, 2023, and August 30, 2024.”

**Section 2. Extension of Executive Order No. 268 – Reestablishing the Andrea Harris Equity Task Force**

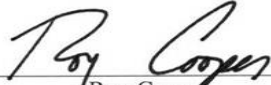
The term of the Task Force is hereby extended. Section 3 of Executive Order No. 268 shall be amended and restated as follows:

“This Executive Order is effective immediately and shall remain in effect until August 30, 2024, pursuant to N.C. Gen. Stat. § 147-16.2, unless rescinded or superseded by another applicable Executive Order.”

**Section 3. Effect and Duration**

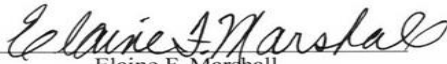
This Executive Order is effective immediately and shall remain in effect until August 30, 2024, or until rescinded or superseded by another applicable Executive Order.

**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 21<sup>st</sup> day of December in the year of our Lord two thousand and twenty-three.



Roy Cooper  
Governor

ATTEST:



Elaine F. Marshall  
Secretary of State





# State of North Carolina

**ROY COOPER**  
GOVERNOR

December 21, 2023

**EXECUTIVE ORDER NO. 298**

## **CONTINUITY OF OPERATIONS PLANNING**

**WHEREAS**, natural, man-made, public health, technological and cybersecurity incidents, emergencies and disasters can hinder the ability of State agencies to deliver essential services to the people of North Carolina; and

**WHEREAS**, protecting against emergencies and disasters of all kinds demands planning effort in government as well as in the private sector; and

**WHEREAS**, the purpose of Continuity of Operations and Continuity of Government Planning is to ensure survival of a constitutional form of government and the continuity of essential State functions under all circumstances; and

**WHEREAS**, effective State agency planning is vital to the implementation and operation of coordinated and well-managed Continuity of Operations and Continuity of Government Plans; and

**WHEREAS**, it is imperative that all State agencies have in place a viable Continuity of Operations Plan which is executable and ensures the performance of their essential functions during any emergency or situation that may disrupt normal operations; and

**WHEREAS**, the Governor is the state's chief executive and is responsible for the supervision of State agencies; see N.C. Const. art III, §§ 1, 5(4), (10); N.C. Gen. Stat. §§ 143B-1, *et seq.*, and 147-12.

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

### **Section 1.**

Each North Carolina Executive Branch agency shall prepare a Continuity of Operations Plan to ensure the State's ability to deliver essential services under any circumstances. Existing business continuity plans and disaster recovery plans for information technology pursuant to N.C. Gen. Stat. § 143B-1331 should be incorporated into the overall agency plan.

The Continuity of Operations plans for essential services and operations shall include at minimum the following:

1. Essential Functions
2. Alternate Locations and Telework

- 3. Devolution
- 4. Human Resources
- 5. Orders of Succession
- 6. Delegations of Authority
- 7. Essential Records
- 8. Communications
- 9. Critical Systems
- 10. Reconstitution
- 11. Testing, Training and Exercising
- 12. Multi-Year Strategic Planning

**Section 2.**

Each North Carolina Executive Branch agency shall include in its Continuity of Operations Plan provisions to address the emergencies and disasters most likely to occur and the resultant impacts on the agency's ability to perform its mission. Plans shall be developed using applicable state and federal agency guidance.

**Section 3.**

Each Executive Branch agency shall conduct an annual review of its Continuity of Operations Plans. Continuity of Operations Plans are to be updated as necessary. Compliance with this requirement should be documented by attestation submitted by November 1<sup>st</sup> each year from Executive Branch agency heads to the Director of Emergency Management. North Carolina Emergency Management ("NCEM") is directed to provide advice and assistance to all State agencies developing Continuity of Operations Plans and to maintain the Continuity of Operations Plan for the function of the State Emergency Response Team.

**Section 4.**

The North Carolina Department of Public Safety ("DPS"), NCEM is designated as the lead agency for the North Carolina statewide Continuity of Government Plan, and shall coordinate with other State agencies as necessary. DPS and NCEM shall ensure it is reviewed at least annually and updated as necessary.

**Section 5.**

Agencies and organizations outside the Executive Branch not directly subject to this Executive Order are invited and encouraged to comply with this Executive Order and to participate fully in the North Carolina Continuity of Operations planning effort.

**Section 6.**

This Executive Order supersedes and replaces Exec. Order No. 78, 30 N.C. Reg. 715-719 (October 1, 2015). It 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 the 21<sup>st</sup> day of December in the year of our Lord two thousand and twenty-three.

*Roy Cooper*

Roy Cooper  
Governor

**ATTEST:**

*Elaine F. Marshall*

Elaine F. Marshall  
Secretary of State





# State of North Carolina

**ROY COOPER**  
GOVERNOR

December 21, 2023

**EXECUTIVE ORDER NO. 299**

**EXTENDING THE STATE EMERGENCY RESPONSE  
COMMISSION**

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

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

**WHEREAS**, on April 20, 2017, the undersigned issued Exec. Order No. 6, 31 N.C. Reg. 2204-06 (May 15, 2017) ("Executive Order No. 6"), which establishes the North Carolina Emergency Response Commission (the "Commission"); and

**WHEREAS**, the undersigned has continued to extend the important work of the Commission by executive order, most recently by Exec. Order No. 242, 36 N.C. Reg. 1194-97 (January 18, 2022); and

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

**WHEREAS**, Executive Order No. 242 is set to expire on December 31, 2023, and pursuant to N.C. Gen. Stat. § 147-16.2 the duration of this Commission must be extended to continue its important work.

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

**Section 1. Membership**

The Secretary of the North Carolina Department of Public Safety (the "Secretary") shall

serve as the Commission's Chair and the Governor's Homeland Security Advisor. The Commission shall be comprised of at least fifteen (15) members, including the following individuals or their designees as approved by the Commission Chair:

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

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

- a. A Chief of Police;
- b. A Sheriff;
- c. A Fire Chief;
- d. An emergency medical services administrator in North Carolina;
- e. An emergency manager in North Carolina;
- f. A representative of medium or large public assembly venues in North Carolina;

- g. A representative involved in the production, storage, or transportation of hazardous materials; and
- h. A private citizen of North Carolina representing one of the critical infrastructure sectors as identified by Presidential Policy Directive 21.

**Section 2. Duties**

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

- d. The Commission will act in an advisory capacity to provide coordinated stakeholder input to the Secretary and the Director of Emergency Management in the preparation, implementation, evaluation, and revision of the North Carolina Emergency Management Program. To that end, the Commission will do the following:
  - 1. Support efforts to enhance state and local core capabilities to prevent, protect from, mitigate, respond to, and recover from all hazards, whether man-made or natural.
  - 2. Coordinate training, education, technical assistance, and outreach activities.

**Section 3. Administration**

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

**Section 4. Effect and Duration**

This Executive Order is effective immediately. It supersedes and replaces Executive Order No. 242. This Executive Order shall remain in effect until December 31, 2025, pursuant to N.C. Gen. Stat. § 147-16.2, or 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 21<sup>st</sup> day of December in the year of our Lord two thousand and twenty-three.

  
\_\_\_\_\_  
Roy Cooper  
Governor

ATTEST:

  
\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State





North Carolina License and Theft Bureau

PUBLIC NOTICE

This serves as a notice pursuant to G.S. § 20-288 of a license application submission by a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative that has not been previously issued a license by the Division.

Applicant's Name: Denago Powersports Corporation

Applicant's Address: 3700 W Royal Lane Ste 160

Application Date: November 15, 2023

Names and titles of any individual listed on the application as an owner, partner, member or officer of the applicant:

Li Qiong: Director

**NORTH CAROLINA RATE BUREAU**

**PUBLIC NOTICE**

Notice is hereby given pursuant to North Carolina General Statute 58-36-120 that, on January 3, 2024, the North Carolina Rate Bureau (“Rate Bureau”) filed for an increase in insurance rates for Homeowners insurance policies under its jurisdiction. The Rate Bureau is publishing notice of the Filing in two newspapers with statewide distribution and in the North Carolina Register. Information regarding the Filing is also posted on the Rate Bureau website ([www.ncrb.org/ncrb](http://www.ncrb.org/ncrb)) and the North Carolina Department of Insurance website ([www.ncdoi.com](http://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.

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

TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

No fiscal note required

Notice is hereby given in accordance with G.S. 150B-21.2 that the Private Protective Services Board intends to amend the rule cited as 14B NCAC 16 .0707.

CHAPTER 16 - PRIVATE PROTECTIVE SERVICES BOARD

Link to agency website pursuant to G.S. 150B-19.1(c): https://www.ncdps.gov/about-dps/boards-commissions/private-protective-services-board

SECTION .0700 - SECURITY GUARD REGISTRATION (UNARMED)

Proposed Effective Date: June 1, 2024

14B NCAC 16 .0707 TRAINING REQUIREMENTS FOR UNARMED SECURITY GUARDS

Public Hearing:

Date: February 20, 2024

Time: 2:00 p.m.

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

(a) Applicants for an unarmed security guard registration shall complete the basic unarmed security guard training course within 30 days from the date of permanent hire. The course shall consist of a minimum of 16 hours of classroom instruction including:

- (1) The Security Officer in North Carolina -- (minimum of one hour);
- (2) Legal Issues for Security Officers -- (minimum of three hours);
- (3) Emergency Response -- (minimum of three hours);
- (4) Communications -- (minimum of two hours);
- (5) Patrol Procedures -- (minimum of three hours);
- (6) Note Taking and Report Writing -- (minimum of three hours); and
- (7) Department Professional Conduct -- (minimum of one hour).

Reason for Proposed Action: The rule governing unarmed guard training is being amended to incorporate all current methods of administering training.

A minimum of four hours of classroom instruction shall be completed within 20 calendar days of any security guard, including probationary, being placed on a duty station. These four hours shall include the instruction on The Security Officer in North Carolina and Legal Issues for Security Officers.

Comments may be submitted to: Paul Sherwin, 3101 Industrial Dr., Suite 104, Raleigh, NC 27609; phone (919) 788-5320; fax (919) 715-0370; email paul.sherwin@ncdps.gov

(b) Training shall be conducted by a Board certified unarmed security guard trainer. A Board created lesson plan covering the training requirements in Paragraph (a) of this Rule shall be made available by the Board to each trainer. The Board may approve other media training materials that deliver the training requirements of Paragraph (a) of this Rule.

Comment period ends: April 11, 2024

(c) The 16 hours of training may be delivered remotely in-person, in-person remotely, synchronously on-line, or in a hybrid format under the following conditions:

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 a written objection to the Rules Review Commission. 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 letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

~~(1) The training is presented by a Board certified unarmed security officer trainer.~~

(1) In-Person is defined as an instructor physically present in-person in a classroom setting with students physically present in-person in a classroom setting. This is considered traditional in-person training. In-Person remotely is defined as an instructor delivering a course to students in an in-person seated classroom while also transmitting to another or multiple other classrooms where students are in-person and

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

- State funds affected
- Local funds affected
- Substantial economic impact (>= \$1,000,000)
- Approved by OSBM

observing via video and sound technology. Students must have the ability to have constant audio and visual communication with the instructor as the instructor is presenting. Synchronously on-line is defined as instruction utilizing an on-line audio/video platform where the instructor is teaching the course live to students that are attending live and the instructor and students have constant visual and audio communication with each other available. Hybrid format is defined as instruction utilizing both in-person classroom teaching as well as synchronously on-line. The instruction is delivered by an instructor that is in-person in a classroom with in-person seated students while the instruction is also being delivered simultaneously in an on-line live format where on-line students have had the ability to have constant audio and video communication with the in-person students and instructor.

- (2) Each student is ~~given~~ provided a copy of the unarmed security guard training manual to use for the duration of the 16 hour training course.
- (3) The technology used allows the trainer to see the students and the students to see the trainer in real time during the training.
- (4) All students ~~in each classroom~~ are able to see and read the screen or monitor, and they must be able to hear and understand the audio presentation. All monitors used in ~~each a~~ classroom setting must be at least 32 ~~inches wide, inches.~~ inches.
- (5) The technology used is of sufficient quality so that the training audio and video is delivered smoothly and without interruption.
- (6) ~~Each student is taught to use the audio and video equipment in the classroom prior to the start of the 16 hour unarmed security officer training course.~~
- (7)(6) The total number of students receiving the ~~remote~~ in-person or in-person remotely training at one time does not exceed 35 students. There is no size limitation for synchronous on-line training.
- (8)(7) Any additional training beyond the Board mandated training in the unarmed security guard training manual is taught either before or after the 16 hour unarmed security officer training.
- (9)(8) The Director is notified five days prior to training of the location of each classroom, name, and location of the certified trainer, and the number of students who will be ~~present~~ present, if in person, or provided a link, login information, or other credentials to access the training if remote, synchronously on-line, or in a hybrid format.

~~(10) The sponsoring agency allows the Director or the Director's designee access via computer of the training during the time that it is taking place.~~

Authority G.S. 74C-5; 74C-11; 74C-13(m).

**TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

**CHAPTER 42 – BOARD OF EXAMINERS IN OPTOMETRY**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Examiners in Optometry intends to amend the rule cited as 21 NCAC 42E .0103.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** <https://www.ncoptometry.org/proposed-rules>

**Proposed Effective Date:** June 1, 2024

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): Contact the Board at (910) 285-3160 or via email at janice@ncoptometry.org.*

**Reason for Proposed Action:** *To align the Rule with recently passed legislation (HB125).*

**Comments may be submitted to:** *Janice Peterson, 521 Yopp Rd., Suite 214 #444, Jacksonville, NC 28540; phone (910) 285-3160; fax (910) 285-4546; email janice@ncoptometry.org*

**Comment period ends:** April 1, 2024

**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 a written objection to the Rules Review Commission. 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 letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

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

- State funds affected
- Local funds affected
- Substantial economic impact (>= \$1,000,000)

- Approved by OSBM
- No fiscal note required

SUBCHAPTER 42E - MODE OF PRACTICE

SECTION .0100 - RESPONSIBILITY FOR PATIENTS

21 NCAC 42E .0103 **PRESCRIPTIONS**  
**PRESCRIPTIONS; DISPENSING**

(a) All prescription forms shall conform to state and federal statutes governing such forms and shall include the name, address, state licensure number, and the Drug Enforcement Administration number of the prescriber, if applicable. The optometrist shall be responsible for providing appropriate safeguards within his or her practice to prevent the unauthorized use or diversion of his prescription forms, and shall immediately notify the Board upon determining that prescription blanks might be missing or misused. ~~Should missing prescription blanks bear his DEA number, the optometrist shall also notify the North Carolina State Board of Pharmacy, giving that board the date he determined that the prescriptions blanks were missing or misused, the number missing, and any information that could be of help in preventing unauthorized use of the prescription blanks.~~

(b) Any optometrist licensed by the Board who wishes to dispense drugs pursuant to G.S. 90-127.4 must first register with the North Carolina Board of Pharmacy pursuant to G.S. 90-85.26B. In the event that legend drugs being prescribed by the optometrist are dispensed by the optometrist, the optometrist shall cause the following written or printed information to be given to the patient for each such drug dispensed at the time the drug is dispensed:

- (1) ~~date of issuance;~~
- (2) ~~name and address of patient;~~
- (3) ~~name, address and telephone number of prescriber;~~
- (4) ~~name, strength, dosage form and quantity of drug dispensed;~~
- (5) ~~the number of refills, if authorized;~~
- (6) ~~route of administration of drug dispensed; and~~
- (7) ~~directions for use.~~

(c) Within one year of examination, a patient may request and is entitled to and shall receive a copy of his or her spectacle prescription that complies with Federal Trade Commission rules and guidelines. The prescription may show a statement of caution or a disclaimer if such a statement or disclaimer is supported by appropriate findings and documented patient records. An expiration date of not less than one year from the date of the prescribing examination shall appear on every such prescription.

(d) A prescription for contact lenses shall comply with Federal Trade Commission rules and guidelines and explicitly state that it is for contact lenses and specify the lens type and all specifications necessary for the ordering and fabrication of the lenses. Words or phrases such as "OK for contact lenses", "fit with contact lenses", "contact lenses may be worn", or similar wording do not constitute a contact lens prescription. Until all the requirements of a satisfactory fit of contact lenses have been determined by the prescriber, the contact lens prescription cannot be written. All contact lenses used in the determination of a contact lens prescription are considered to be diagnostic lenses. At such time

that it has been determined that a prescription can be written, such prescription may show a statement of caution or a disclaimer if such a statement or disclaimer is supported by appropriate findings and documented patient records. An expiration date consistent with the type and modality of use of the contact lens being prescribed shall appear on every such prescription. In the event that in the professional opinion of the prescribing optometrist, a patient is not adhering to appropriate regimens of care and follow-up with regard to the continuing use of contact lenses, the optometrist may terminate his optometric care of that patient and notify the patient that he or she is terminating such relationship and the reasons for doing so.

Authority G.S. 90-114; 90-117.5; 90-127.2; 90-127.3.

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CHAPTER 46 – BOARD OF PHARMACY

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Pharmacy intends to amend the rule cited as 21 NCAC 46 .2201.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** [www.ncbop.org/rulemakings.htm](http://www.ncbop.org/rulemakings.htm)

**Proposed Effective Date:** June 1, 2024

**Public Hearing:**

**Date:** March 12, 2024

**Time:** 9:30 a.m.

**Location:** North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, North Carolina 27517

**Reason for Proposed Action:** *The Board of Pharmacy's continuing education rule previously provided for a limited number of carry-over hours on an annual basis. The Board removed that provision in 2018, as part of a larger effort to streamline continuing education for both pharmacists and the Board staff. The Board has determined that it is appropriate to re-introduce the ability to carry forward up to five continuing education hours per year.*

**Comments may be submitted to:** Jay Campbell, 6015 Farrington Rd Ste 201, Chapel Hill, NC 27517; email [ncboprulmaking@ncbop.org](mailto:ncboprulmaking@ncbop.org)

**Comment period ends:** April 1, 2024

**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 a written objection to the Rules Review Commission. 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 letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

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

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

**SECTION .2200 - CONTINUING EDUCATION**

**21 NCAC 46 .2201 HOURS: RECORDS: PROVIDERS: CORRESPONDENCE: RECIPROCITY**

(a) As a condition of license renewal, a pharmacist shall accumulate 15 hours of continuing education annually.

(b) Five of these continuing education hours shall be obtained through contact programs. Contact programs are those in which there is an opportunity for live two-way communication between the presenter and attendee. An online continuing education course may satisfy this contact-hour requirement provided that the continuing education course includes live two-way communication between the presenter and attendee.

(c) A pharmacist who accumulates more than the required 15 hours of continuing education in a single year may carry forward up to five surplus hours to be applied to the following year's continuing education requirements.

~~(d)~~ A pharmacist shall preserve all continuing education records for three years. If a continuing education provider approved in Paragraph ~~(f)~~(e) of this Rule maintains an electronic database of all pharmacists granted continuing education credits accredited by the provider, then the storage of that information in the provider's database shall be deemed to satisfy the pharmacist's recordkeeping requirement.

~~(e)~~(e) Upon license renewal, the pharmacist shall report continuing education hours through the Board's online license renewal portal. The Board may require a pharmacist to submit records, reports of accredited hours and certificates of credit on a random basis pursuant to a continuing education audit.

~~(f)~~(f) All continuing education shall be obtained through continuing education courses accredited by the Accreditation Council for Pharmacy Education or the North Carolina Association of Pharmacists. Pharmacists may also acquire five hours continuing education credit for precepting, for at least 160 hours, a student enrolled in the University of North Carolina Eshelman School of Pharmacy, the Campbell University College of Pharmacy and Health Sciences, the Wingate University School of Pharmacy, or the High Point University Fred Wilson School of Pharmacy as part of these schools' academic program.

~~(g)~~(g) A pharmacist shall be exempt from the requirements of this Rule if:

- (1) The pharmacist is eligible for a waiver of continuing education requirements under 21 NCAC 46 .1613; or
- (2) For the entire year preceding license renewal, the pharmacist resided in another state, did not practice pharmacy in North Carolina, and satisfied the state of residence's continuing education requirements for pharmacist licensure.

~~(g)~~(h) Continuing education shall not serve as a barrier to reciprocity; however, all licensees by reciprocity must observe the continuing education standards specified in Paragraphs (a), (b), (c), (d), ~~(e)~~, ~~(f)~~, ~~(g)~~ and ~~(g)~~(f) of this Rule within the first renewal period after licensure in this state.

Authority G.S. 90-85.6; 90-85.17; 90-85.18.

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Pharmacy intends to adopt the rule cited as 21 NCAC 46 .2516.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** [www.ncbop.org/rulemakings.htm](http://www.ncbop.org/rulemakings.htm)

**Proposed Effective Date:** June 1, 2024

**Public Hearing:**  
**Date:** March 12, 2024  
**Time:** 9:30 a.m.

**Location:** North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, North Carolina 27517

**Reason for Proposed Action:** North Carolina law requires pharmacies both to post the hours that they are open and to ensure that adequate staffing is available to render services to the public safely during those hours. The Board is aware of a number of times that pharmacies have been forced to close temporarily due to emergencies, including unanticipated staffing shortages. While pharmacies should be able to close temporarily in order to ensure that their practice is consistent with the public health, safety and welfare, patients may be delayed in receiving needed medications. The proposed rule would ensure that permit holders may appropriately manage their pharmacies while providing an avenue for patients to be informed of temporary closings and to receive their prescriptions elsewhere, if needed.

**Comments may be submitted to:** Jay Campbell, 6015 Farrington Rd Ste 201, Chapel Hill, NC 27517; email [ncboprulemaking@ncbop.org](mailto:ncboprulemaking@ncbop.org)

**Comment period ends:** April 1, 2024

**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 a written objection to the Rules Review Commission. 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 letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

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

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

**SECTION .2500 - MISCELLANEOUS PROVISIONS**

**21 NCAC 46 .2516 EMERGENCY CLOSURE**

(a) The pharmacist-manager of a pharmacy has the responsibility and authority to cease some or all of the pharmacy operations when doing so is necessary to fill the pharmacist-manager's responsibility (a) for the safe, lawful and secure receipt of prescription orders and delivery of prescription drugs under Rule .1804(a) of this Chapter, or (b) to ensure that adequate qualified personnel are in place to properly render pharmaceutical service in compliance with state and federal law under Rule .1601(a)(1) of this Chapter.

(b) In the event that a permit is closed either to receive prescription orders or to dispense prescription drugs during the regular hours that it has posted that it is open under Rule .1601(a)(2) of this Chapter, the pharmacist-manager shall take the following actions before closing:

- (1) Post a notice in a location conspicuous to the public of (a) which services the pharmacy has ceased providing, and (b) the date and time that the pharmacist-manager anticipates that the pharmacy will resume providing those services.

The pharmacist-manager shall change the posted notice in the event that the pharmacist-manager determines that it is no longer accurate.

- (2) Send an e-mail to emergencyclosure@ncbop.org with the information provided in Paragraph (b)(1) of this Rule, including any changes to the required notice.

- (3) Arrange for the transfer of any prescriptions at the patient's request during any time when the pharmacy is not dispensing prescription drugs, and post a notice in a location conspicuous to the public of the pharmacy to which prescriptions will be transferred and the process for having those prescriptions transferred. This includes prescriptions that have been filled but not delivered before the pharmacy is closed.

(c) In the event that the pharmacist-manager is unavailable, a pharmacist who is on duty at the pharmacy has the responsibility and authority set out in Paragraph (a) of this Rule if the pharmacist follows the procedures set out in Paragraph (b) of this Rule.

(d) This Rule does not apply to permanent closures or to temporary closures lasting more than 14 consecutive days, which are instead governed by the provisions of Rule .2502(h) and (i) of this Section. This Rule further does not apply to pharmacies located outside the State of North Carolina, which should follow any closure rules of their home states.

(e) In the event that the either (a) the pharmacist-manager suffers an emergency that renders the pharmacist-manager unable to exercise the responsibilities in Paragraph (b) of this Rule, or (b) the pharmacist-manager is unavailable and the only pharmacist(s) on duty suffers an emergency that renders the pharmacist unable to exercise the responsibilities in Paragraph (b) of this Rule, the exercise of the responsibilities in Paragraph (b) of this Rule shall be excused until such time as an employee authorized by the pharmacist-manager or permit holder can exercise those responsibilities.

*Authority G.S. 90-85.6; 90-85.15A; 90-85.21; 90-85.25; 90-85.32.*

**Note from the Codifier:** The rules published in this Section of the NC Register are emergency rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code. The agency must subsequently publish a proposed temporary rule on the OAH website (www.ncoah.com/rules) and submit that adopted temporary rule to the Rules Review Commission within 60 days from publication of the emergency rule or the emergency rule will expire on the 60<sup>th</sup> day from publication. This section of the Register may also include, from time to time, a listing of emergency rules that have expired. See G.S. 150B-21.1A and 26 NCAC 02C .0600 for adoption and filing requirements.

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

**CHAPTER 07 - COASTAL MANAGEMENT**

**Rule-making Agency:** Coastal Resources Commission

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

**Rule Citation:** 15A NCAC 07H .0507, .0508, .0509; 07I .0702; 07J .0203, .0206, .0207, .0208; 07M .0401, .0402, .0403, .0701, .0703, .0704, .1101

**SECTION .0500 - NATURAL AND CULTURAL RESOURCE AREAS**

**Effective Date:** January 3, 2024

**Findings Reviewed and Approved by the Codifier:** Codifier determined that the agency's findings of need did not meet criteria for emergency rule on December 15, 2023.

**Reason for Action:** The Rules Review Commission (RRC) returned certain of the CRC's rules pursuant to S.L. 2023-134 on October 5, 2023, and the Codifier of Rules removed those rules from the North Carolina Administrative Code (Code) the same day. The rules that are the subject of this finding of need were among the rules removed from the Code. At a hearing on the CRC's request for a Temporary Restraining Order hearing on November 7, 2023 in CRC v. RRC, File No. 23CV031533-910 and in a letter dated November 8, 2023, RRC Counsel suggested that emergency and temporary rules may provide an avenue for the expedited return of the CRC's rules to the Code. To ensure the stability and effectiveness of the coastal rules for the benefit of the regulated public, and to ensure the CRC's compliance with statutory mandates for rule promulgation under N.C. Gen. Stat. Chapter 113A, Article 7, the Coastal Area Management Act, the CRC seeks the immediate return of the rules listed above to the Code. First, adherence to notice and hearing requirements is contrary to the public interest as a delay for public notice and hearing is unnecessary given that the rules the CRC seeks to promulgate have been included in the Code for decades and more recently, the public was provided an opportunity to comment during the periodic readoption process. Second, the State of North Carolina cannot rely on these rules to issue permits for development in the coastal counties, make enforcement decisions, and can no longer review certain federal projects for consistency with State law pursuant to these rules. The removal of the rules from the Code, severely impacts the commission's rules and creates confusion related to permitting procedures for the State's coastal management program and the regulated public. Additionally, the removal of these rules poses a serious threat to public safety regarding the loss of protection of coastal lands and waters, which the General Assembly has deemed "among North Carolina's most valuable resources." N.C. Gen. Stat. 113A-102(a). Given the threats to public safety and the unnecessary and redundant public notice requirement, the emergency rule making process is appropriate to restore the CRC's rules to the Code.

**15A NCAC 07H .0507 UNIQUE COASTAL GEOLOGIC FORMATIONS**

(a) Description. Unique coastal geologic formations are defined as sites that contain geologic formations that are unique or significant components of coastal systems, or that are notable examples of geologic formations or processes in the coastal area. Such areas shall be evaluated by the Commission after identification by the State Geologist pursuant to G.S. 113A-113.  
(b) Significance. Unique coastal geologic areas are important educational, scientific, or scenic resources that would be jeopardized by uncontrolled or incompatible development.  
(c) Management Objectives. The CRC's objective is to preserve unique resources of more than local significance that function as key physical components of natural systems, as important scientific and educational sites, or as valuable scenic resources. Specific objectives for each of these functions shall be related to the following:

- (1) To ensure that the designated geologic feature shall be able to interact with other components of the identified systems. These interactions are often the natural forces acting to maintain the unique qualities of the site. The primary concern is the relationship between the geologic feature and the accompanying biological component associated with the feature. Other interactions which may be of equal concern are those relating the geologic feature to other physical components, specifically the relationship of the geologic feature to the hydrologic elements; ground water and surface runoff.
- (2) To ensure that the designated geologic feature or process shall be preserved for and be accessible to the scientific and educational communities for study purposes.
- (3) To protect the values of the designated geologic feature as expressed by the local government and citizenry. These values shall be related to the educational and aesthetic qualities of the feature.

(d) Designation. The Coastal Resources Commission hereby designates Jockey's Ridge as a unique coastal geologic formation area of environmental concern. The boundaries of the area of environmental concern shall be as depicted on a map approved by



the Coastal Resources Commission on December 4, 1987, and on file with the Division of Coastal Management, available at 400 Commerce Ave., Morehead City, NC 28557. This area includes the entire rights of way of US 158 Bypass, SR 1221 (Sound Side Road), Virginia Dare Trail, and Conch Street where these roads bound this area. Jockey's Ridge is the tallest active sand dune along the Atlantic Coast of the United States. Located within the Town of Nags Head in Dare County, between US 158 and Roanoke Sound, the Ridge represents the southern extremity of a back barrier dune system which extends north along Currituck Spit into Virginia. Jockey's Ridge is an example of a medano, a large isolated hill of sand, asymmetrical in shape and lacking vegetation. Jockey's Ridge is the largest medano in North Carolina and has been designated a National Natural Landmark by the U.S. Department of the Interior.

(e) Use Standards. Jockey's Ridge. Development within the Jockey's Ridge AEC shall be consistent with the following minimum use standards:

- (1) Development which requires the removal of greater than ten cubic yards of sand per year from the area within the AEC boundary shall require a permit;
- (2) All sand which is removed from the area within the AEC boundary in accordance with 15A NCAC 07H .0507(e)(1) shall be deposited at locations within the Jockey's Ridge State Park designated by the Division of Coastal Management in consultation with the Division of Parks and Recreation;
- (3) Development activities shall not significantly alter or retard the free movement of sand except when necessary for the purpose of maintaining or constructing a road, residential/commercial structure, accessway, lawn/garden, or parking area.

Authority G.S. 113A-107(a),(b); 113A-113(b)(4)g.; 113A-124; Eff. September 9, 1977; Amended Eff. March 1, 1988; RRC objection September 17, 2022 and rule returned to agency on October 5, 2023; Codifier determined that agency's findings of need did not meet criteria for emergency rule on December 20, 2023; Emergency Adoption Eff. January 3, 2024.

**15A NCAC 07H .0508 USE STANDARDS**

Permits for development in designated fragile coastal natural or cultural resource areas shall be approved upon finding that:

- (1) The proposed design and location shall not cause significant adverse impacts to the stated values of a particular resource. One or more of the following values shall be considered in making a permit decision depending upon the stated significance of the resource:
  - (a) Development shall preserve the values of the individual resource as its functions as a critical component of a natural system.

(b) Development shall not cause significant adverse impacts to the values of the resource as a unique scientific, associative, or educational resource.

(c) Development shall be consistent with the aesthetic values of a resource as identified by the local government and citizenry.

- (2) No alternative sites are available outside the designated AEC.
- (3) Mitigation measures shall be incorporated into the project plan. These measures shall include consultation with the CRC.
- (4) The project shall be of equal or greater public benefit than those benefits lost or damaged through development.

Authority G.S. 113A-107(a),(b); 113A-113(b)(4e) to (b)(4h); 113A-124; Eff. September 9, 1977; Amended Eff. February 1, 1982; June 1, 1979; RRC objection September 17, 2022 and rule returned to agency on October 5, 2023; Codifier determined that agency's findings of need did not meet criteria for emergency rule on December 20, 2023; Emergency Adoption Eff. January 3, 2024.

**15A NCAC 07H .0509 SIGNIFICANT COASTAL ARCHAEOLOGICAL RESOURCES**

(a) Description. Significant coastal archaeological resources are defined as areas that contain archaeological remains (objects, features, and/or sites) that have more than local significance to history or prehistory. Such areas shall be evaluated by the Department of Natural and Cultural Resources in accordance with G.S. 113A-113.

(b) Significance. Significant coastal archaeological resources are important educational, scientific, or aesthetic resources. Such resources would be jeopardized by uncontrolled or incompatible development. In general, significant archaeological resources possess integrity of location, design, setting, workmanship, materials, and association and:

- (1) are associated with historic events; or
- (2) are associated with the lives of persons significant in history; or
- (3) embody the distinctive characteristics of a type, period, or method of construction, or represent a significant and distinguishable entity whose components may lack individual distinction; or
- (4) have yielded, or may yield, information important in history or prehistory.

(c) Management Objectives. The CRC's objective is to conserve coastal archaeological resources of more than local significance to history or prehistory that constitute important scientific sites, or are valuable educational, associative, or aesthetic resources. Specific objectives for each of these functions shall be related to the following:

- (1) development of a preservation management plan to provide long-term management of the

archaeological resource; and development which shall not have significant adverse impacts on the archaeological resource;

- (2) to conserve significant archaeological resources, including their spatial and structural context and characteristics through in-situ preservation or scientific study;
- (3) to ensure that the designated archaeological resource be preserved for and be accessible to the scientific and educational communities for study purposes;
- (4) to protect the values of the designated archaeological resource as expressed by the local government and citizenry; these values shall be related to the educational, associative, or aesthetic qualities of the resource.

(d) General Use Standards.

- (1) Significant concentrations of archaeological material, reflecting a full range of human behavior, shall be preserved in-situ for future research by avoidance during development activities. Areas for avoidance shall be selected after archaeological investigations have been made. Subparagraph (d)(2)(B) of this Rule outlines the nature, extent, conditions and significance of the cultural deposits. The following avoidance measures shall be considered:

- (A) incorporation of "no impact" spaces in construction plans such as green spaces between lots;
- (B) limiting specific types of ground disturbing activities;
- (C) donation of preservation easements to the State or, upon approval by the Department of Natural and Cultural Resources, a historic preservation agency or organization.

- (2) Activities which would damage or destroy the contents of a designated site's surface or subsurface shall be prohibited until an archaeological investigation and resource management plan has been implemented by the applicant. The investigation and management plan shall be developed in consultation with the Department of Natural and Cultural Resources. Such archaeological investigations shall comply with the following criteria:

- (A) archaeological investigations conducted as part of the permit review process shall be implemented in three parts: Phase I, a reconnaissance level investigation to determine the nature and extent of archaeological materials over the designated area; Phase II, an intensive level investigation which represents a direct outgrowth of Phase I findings and through systematic data recovery assesses the potential

importance of identified concentrations of archaeological materials; Phase III, mitigation of significant adverse impacts to recognized areas of importance. Evaluations of research potential shall be made and prioritized in order of importance, based upon the status of previous research in the area and the integrity of the remains;

- (B) an archaeological research design shall be required for all archaeological investigations. All research designs shall be subject to the approval of the Department of Natural and Cultural Resources prior to conducting the work. A research proposal shall allow at least 30 days for review and comment by the Department of Natural and Cultural Resources;
- (C) data shall be collected and recorded and artifacts shall be curated according to accepted standards at an approved repository in consultation with the Department of Natural and Cultural Resources.

(e) Designations. The Coastal Resources Commission hereby designates Permuda Island as a significant coastal archaeological resource area of environmental concern. Permuda Island is a former barrier island located within Stump Sound in southwestern Onslow County. The island is 1.2 miles long and 1.25 miles wide. Archaeological evidence indicates the earliest occupation from the Middle Woodland Period (300 B.C. - 800 A.D.) through the late Woodland Period (800 A.D. - 1650 A.D.) and historic occupations predating the Revolutionary War. Archaeological remains on the island consist of discrete shell heaps, broad and thick layers of shell midden, prehistoric refuse pits and postholes, as well as numerous ceramic vessel fragments and well-preserved animal bone remains.

*Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(4h); 113A-124;  
Eff. June 1, 1979;  
Amended Eff. October 1, 1988; January 1, 1985;  
RRC September 17, 2022 and rule returned to agency on October 5, 2023;  
Codifier determined that agency's findings of need did not meet criteria for emergency rule on December 20, 2023;  
Emergency Adoption Eff. January 3, 2024.*

**SUBCHAPTER 071 - SECRETARY'S GRANT CRITERIA AND PROCEDURES FOR LOCAL IMPLEMENTATION AND ENFORCEMENT PROGRAMS UNDER THE COASTAL AREA MANAGEMENT ACT**

**SECTION .0700 - FAILURE TO ENFORCE AND ADMINISTER A LOCAL IMPLEMENTATION AND ENFORCEMENT PLAN**

**15A NCAC 07I .0702 WHEN THE LOCAL PERMITTING AGENCY EXCEEDS LOCAL AUTHORITY**

When the local permit-letting agency exceeds the scope and extent of its authority pursuant to G.S. 113A-117, which is limited to consideration of applications proposing minor development as defined in the Coastal Area Management Act, that action shall be null, void and of no effect. The determinations of the Commission shall be binding on the local permit-letting agency as to questions of such jurisdiction.

*Authority G.S. 113A-118(e); 113A-120(c); 113A-124(c)(5); Eff. November 1, 1984; RRC objection Eff. September 17, 2022 and rule returned to agency on October 5, 2023; Codifier determined that agency's findings of need did not meet criteria for emergency rule on December 20, 2023; Emergency Adoption Eff. January 3, 2024.*

**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 .0200 - APPLICATION PROCESS**

**15A NCAC 07J .0203 STANDARDS FOR WORK PLATS**

(a) General. Project plans or work plats shall include a top or plan view and a cross-sectional view. All plats shall have the standard north arrow. North shall be at the top of the plat. Work plats shall be drawn to a scale of 1" = 200' or less.

(b) Details of Work Plats

(1) Top View or Plan View Work Plats. Such drawings shall show existing and proposed features such as dune systems, shorelines, creeks, marshlands, docks, piers, bulkheads, excavated areas, fill areas, type and location of sewage treatment facilities, effluent outlets, shoreline length, upland vegetation, coastal wetlands and/or 404 wetlands, house, septic tanks, septic fields, existing structures on adjacent property (i.e. shoreline stabilization, docking facility), Areas of Environmental Concern shall be labeled, the 30' buffer or DWR buffers as applicable, US Army Corps of Engineers setbacks and lines, First Line of Stable Natural Vegetation, development setbacks, pre-project vegetation line, north arrow, Submerged Aquatic Vegetation, shellfish, navigation markers, hydraulic dredge pipe alignment, spoil disposal location, dune elevations or contours and adjacent waterbody name. Existing water depths shall be indicated as Normal Water Level or Normal High Water Level unless work plats are by a professional surveyor or engineer where water depths can be

indicated using mean low water as base or zero and shall be shown either as contours or spot elevation. In areas where the difference in daily low and high tides is less than six inches, mean water level as certified by a professional surveyor or engineer or normal water level shall be used. Work plats shall indicate which features are existing and which are proposed. Property boundaries, as they appear on the deed, and the names of adjacent property owners shall be shown on the work plat with Riparian Lines and 15' riparian setback. The work plat shall show areas to be excavated and the exact site for disposal of the excavated material unless outside of the Area of Environmental Concern, then an address may be provided. When fill material is to be placed behind a bulkhead or dike, the plan shall show the exact location of such bulkheads, dikes and fill areas and calculations showing that the bulkhead or dike has the capacity to confine the material. Work plats shall indicate the presence of wetlands in the area of proposed work.

(2) Cross-Section Work Plats. A cross-sectional diagram showing depth and elevation of proposed work relative to Normal Water Level or Normal High Water Level unless certified by a professional surveyor or engineer where water depths can be shown as mean low and mean high water, shall be included in the plan. First floor elevations shall be shown for any proposed structures.

(3) Title of Work Plats. Each work plat shall be numbered, have a title block to identify the project or work, and shall include name of applicant or project, date the plat was prepared, and scale of the plat. The date of any revisions shall be noted. The applicant shall also include the name or initials of the person who drew the plat.

(c) Any application for a CAMA Major or Dredge and Fill permit shall include a narrative of the proposed development that shall include the following information:

- (1) the character of the development (i.e. residential, commercial, recreational, etc.);
- (2) a description of the development activities proposed; and
- (3) the amount of ground disturbance in the AEC measured in acres or square feet.

(d) Following review of the permit application, a permit may be issued conditioned in accordance with G.S.143B-279.4. Any subsequent violation of these conditions shall be a permit violation. Any subsequent change in the development which changes the parameters of the project shall be submitted to the Division of Coastal Management. Nothing in this Rule would prohibit an applicant from proceeding with work outside an AEC that is determined by the Division of Coastal Management to not have a direct impact on the AEC while a permit application for

work in the AEC is pending provided that all other necessary local, state, and federal permits have been obtained.

*Authority G.S. 113-229(n)(3); 113-230(a); 113A-119; 113A-124; Eff. March 15, 1978;  
Amended Eff. July 1, 1989;  
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023;  
Codifier determined that agency's findings of need did not meet criteria for emergency rule on December 20, 2023;  
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#### **15A NCAC 07J .0206 PUBLIC NOTICE REQUIREMENTS**

In accordance with G.S. 113A-119(b) the Division of Coastal Management shall issue public notice of proposed development.

*Authority G.S. 113A-119(b);  
Eff. March 15, 1978;  
Amended Eff. January 1, 1990; October 1, 1988; November 1, 1983;  
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023;  
Codifier determined that agency's findings of need did not meet criteria for emergency rule on December 20, 2023;  
Emergency Adoption Eff. January 3, 2024.*

#### **15A NCAC 07J .0207 REVIEW OF MAJOR DEVELOPMENT AND DREDGE AND FILL APPLICATIONS**

(a) In order to determine the impact of the proposed project, the Department shall prepare a field report on each major development and/or dredge and fill permit application accepted for processing. Such report shall be prepared after an on-site investigation is completed. The report shall include project location, environmental setting, project description and probable environmental impact.

(b) In order to comply with G.S. 113A-120(a)(4), the Department shall circulate major development permit applications to the State review agencies having expertise in the criteria enumerated in G.S. 113A-113(b)(1) through (b)(9).

(c) In order to comply with G.S. 113A-120(a)(2), the Department shall circulate dredge and fill permit applications to the State review agencies having expertise in those matters enumerated in G.S. 113- 229(e)(1) through (e)(5).

(d) Each reviewing agency may make an independent analysis of the application and submit recommendations and comments to the Department. Such recommendations and comments shall be considered by the Department in taking action on a permit application.

(e) Each reviewing agency may request additional information related to the scale and scope of the projects, such as Stormwater Management Plans, from the applicant through the Division of Coastal Management if such information is deemed necessary for a complete review of the application. The applicant shall be notified of the requirement for additional information and permit processing will be suspended according to 15A NCAC 07J .0204(d).

(f) The Division of Coastal Management is one of the State agencies that comments on permit applications. In its role as a commenting agency the Division shall use criteria in 15A NCAC 07H and local land use plans to assess whether to recommend permit issuance, permit issuance with conditions, or permit denial.

*Authority G.S. 113-229; 113A-120, 113A-124(a)(1); 113A-127; Eff. March 15, 1978;  
Amended Eff. July 1, 1989; October 1, 1988; September 1, 1985; November 1, 1984;  
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023;  
Codifier determined that agency's findings of need did not meet criteria for emergency rule on December 20, 2023;  
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#### **15A NCAC 07J .0208 PERMIT CONDITIONS**

(a) In compliance with G.S. 113A-120(a)(4) and G.S. 113A-120(a)(2), each of the State, federal and local reviewing agencies may submit specific recommendations regarding the manner in which the proposed development should be accomplished including limitations on the development in order to protect the public interest with respect to the factors enumerated in G.S. 113A-113(b)(1) through (b)(9) and 113-229(e)(1) through (e)(5). The State, federal and local reviewing agencies also may submit specific recommendations regarding limitations to be placed on the operation and maintenance of the completed project, to ensure continued protection of the public interest with respect to those factors. Such limitations may be imposed by the Department on the project in the form of "permit conditions". Upon the failure of the applicant to appeal a permit condition, the applicant shall be deemed to have amended his or her permit to conform to the conditions imposed by the Department. Compliance with operational and maintenance conditions shall continue for the life of the project.

(b) The local permit officer may condition a minor development permit upon amendment of the proposed project to protect the public interest with respect to the factors enumerated in G.S. 113A-120. The applicant shall sign the conditioned permit as an indication of amendment of the proposed project in a manner consistent with the conditions set out by the local permit officer before the permit shall become effective.

(c) Failure to comply with permit conditions constitutes a violation of an order of the Commission under G.S. 113A-126.

*Authority G.S. 113-229; 113A-120(b); 113A-124(a)(1); 113A-127; Eff. March 15, 1978;  
Amended Eff. March 1, 1985; November 1, 1984;  
RRC objection Eff. September 17, 2022 and rule returned to agency on October 5, 2023;  
Codifier determined that agency's findings of need did not meet criteria for emergency rule on December 20, 2023;  
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#### **SUBCHAPTER 07M - GENERAL POLICY GUIDELINES FOR THE COASTAL AREA**

SECTION .0400 - COASTAL ENERGY DEVELOPMENT – GENERAL POLICIES

15A NCAC 07M .0401 DECLARATION OF GENERAL POLICY

(a) The policy statements in this Section are enforceable and shall be considered by local governments and DCM when issuing permits and implementing the coastal management program under this Subchapter and commenting on federal permits and activities pursuant to Section 307 of the federal Coastal Zone Management Act.

(b) It is hereby declared that the general welfare and public interest require that reliable sources of energy be made available to the citizens of North Carolina. It is further declared that the development of energy facilities and energy resources within the State and in offshore waters can serve important regional and national interests. However, unwise development of energy facilities or energy resources can conflict with the recognized and equally important public interest that rests in conserving and protecting the land and water resources of the State and nation, particularly coastal lands and waters. Therefore, in order to balance the public benefits of energy development with the need to:

- (1) protect coastal resources; and
(2) preserve access to and utilization of public trust resources, the planning of future uses affecting both land and public trust resources,

the exercise of regulatory authority, and determinations of consistency with the North Carolina Coastal Management Program shall assure that the development of energy facilities and energy resources shall avoid significant adverse impact upon coastal resources or uses, public trust areas and public access rights.

(c) Exploration for the development of offshore and Outer Continental Shelf (OCS) energy resources has the potential to affect coastal resources. The Federal Coastal Zone Management Act of 1972, as amended, requires that leasing actions of the federal government be consistent to the maximum extent practicable with the enforceable policies of the federally approved North Carolina Coastal Management Program, and that exploration, development and production activities associated with such leases comply with those enforceable policies. Enforceable policies applicable to OCS activities include all the provisions of this Subchapter as well as any other federally approved components of the North Carolina Coastal Management Program. All permit applications, plans and assessments related to exploration or development of OCS resources and other energy facilities shall contain information to allow analysis of the consistency of all proposed activities with these rules.

Authority G.S. 113A-102(b); 113A-107; 113A-124; Eff. March 1, 1979; Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997; Temporary Amendment Eff. July 8, 1999; December 22, 1998; Amended Eff. February 1, 2011; August 1, 2000; RRC objection September 17, 2022 and rule returned to agency on October 5, 2023;

Codifier determined that agency's findings of need did not meet criteria for emergency rule on December 20, 2023; Emergency Adoption Eff. January 3, 2024.

15A NCAC 07M .0402 DEFINITIONS

(a) "Adverse impact", "adverse impacts", "adverse effects", or similar formulations, are defined as an effect or impact that is opposed to the goals of the Coastal Area Management Act as found in G.S. 113A-102(b) and with the provisions of G.S. 113-229(e).

(b) "Impact Assessment" is an analysis of the potential environmental, economic, and social consequences, including cumulative and secondary impacts of a proposed major energy facility. An Impact Assessment includes the following and for each of the following assess the effects the project will have on the use of public trust waters, adjacent lands, and on the coastal resources, including the effects caused by activities related to exploration or development of OCS resources and other energy facilities outside the coastal area:

- (1) An analysis of the preferred sites for those elements of the project affecting the use of public trust waters, adjacent lands and the coastal resources:
(A) In all cases where the preferred site is located within an area of environmental concern (AEC) or on a barrier island, the applicant shall identify alternative sites considered and present a full analysis in terms of Subparagraphs (b)(2) through (b)(9) of this Rule of the reasons why the chosen location was deemed more suitable than another feasible alternate site;
(B) If the preferred site is not located within an AEC or on a barrier island, the applicant shall present an analysis to support the proposed location over an alternate site.
(2) An analysis of the economic impacts, both positive and negative, of the proposed project. The analysis shall focus on economic impacts to the public, not on matters that are purely internal to the corporate operation of the applicant. No proprietary or confidential economic data shall be required. This analysis shall include potential adverse impacts upon the ability of any governmental unit to furnish necessary services or facilities as well as other secondary impacts.
(3) An analysis of potential adverse impacts on coastal resources, including marine and estuarine resources and wildlife resources, as defined in G.S. 113-129;
(4) An analysis of potential adverse impacts on existing industry and potential limitations on the availability of, and accessibility to, coastal resources, including beach compatible sand and water, for future use or development;

- (5) An analysis of potential significant adverse impacts on recreational uses and scenic, archaeological and historic resources;
- (6) An analysis of potential risks to human life or property;
- (7) An analysis of the impacts on the human environment including noise, vibration and visual impacts;
- (8) An analysis of the procedures and time needed to secure an energy facility in the event of severe weather conditions, such as extreme wind, currents and waves due to northeasters and hurricanes;
- (9) Other specific data required for the various state and federal agencies and commissions with jurisdiction to evaluate the consistency of the proposed project with relevant standards and guidelines;
- (10) A plan regarding the action to be taken upon the decommissioning and removal of the facility and related structures. The plan shall include an estimate of the cost to decommission and remove the energy facility including a discussion of the financial instrument(s) used to provide for the decommissioning and the removal of the structures that comprise the energy facility. The plan shall also include a proposed description of the condition of the site once the energy facility has been decommissioned and removed; and
- (11) An analysis that the proposed project is consistent with local land use plans.

An impact analysis for a proposed major energy facility shall include the items described in Subparagraphs (b)(1) through (b)(11) of this Rule for the associated energy exploration or development activities related to exploration or development of OCS resources and other energy facilities, including all foreseeable assessments of resource potential, the gathering of scientific data, exploration wells, and any delineation activities that are likely to follow development, production, maintenance, and decommissioning.

(c) "Major energy facilities" are those energy facilities, including those described in G.S. 113A-119.2(3), which have the potential to negatively impact any land or water use or coastal resource of the coastal area. For purposes of this definition, major energy facilities shall include the following:

- (1) Any facility refining petroleum consistent with G.S. 143-215.77;
- (2) Any terminals (and associated facilities) capable of handling, processing, or storing petroleum products or synthetic gas as defined in G.S. 143-215.96;
- (3) Any petroleum storage facility that is capable of storing 15 million gallons or more on a single site;
- (4) Gas, coal, oil or nuclear electric generating facilities 300 MGW or larger;
- (5) Wind energy facilities, including turbines, accessory buildings, transmission facilities, and

other equipment necessary for the operation of a wind generating facility that cumulatively, with any other wind energy facility whose turbines are located within one-half mile of one another, are capable of generating three megawatts or larger;

- (6) Thermal energy generation;
- (7) Pipelines 12 inches or more in diameter that carry petroleum products or synthetic gas;
- (8) Structures, including drillships and floating platforms located in offshore waters for the purposes of energy exploration, development, or production; and
- (9) Onshore support or staging facilities related to offshore energy exploration, development, or production.

(d) "Offshore waters" are those waters seaward of the state's three-mile offshore jurisdictional boundary in which development activities may impact any land or water use or natural resource of the state's coastal area.

(e) "Significant" as used in this section includes consideration of both context and intensity. Context means that the impact or effect shall be analyzed from several perspectives that include society as a whole (human, national), the affected subregion of the North Carolina coast, the local area and all directly and indirectly affected parties. Both short-and long-term effects are relevant. Intensity refers to the severity of impact or effect. The following shall be considered in evaluating intensity:

- (1) Both adverse impacts as defined in Paragraph (a) of this Rule and impacts that promote or enhance the goals of the Coastal Area Management Act as found in G.S. 113A-102(b);
- (2) The degree to which the proposed action affects public health or safety;
- (3) Unique characteristics of the geographic area;
- (4) The degree to which the possible effects on the environment are uncertain or involve unique or unknown risks;
- (5) The degree to which the CRC's permit decisions may establish a precedent for future CRC permit decisions;
- (6) The degree to which the CRC's permit decisions are related to other CRC permit decisions with individually insignificant but cumulatively significant impacts. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts; and
- (8) The degree to which the CRC's permit decision may cause the loss or destruction of scientific, cultural, historical, and environmental resources as those terms are commonly defined and understood.

*Authority G.S. 113A-102(b); 113A-107; 113A-119.2; 113A-124; Eff. March 1, 1979; Amended Eff. October 1, 1988;*

*Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;*  
*Temporary Amendment Eff. July 8, 1999; December 22, 1998;*  
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*Emergency Adoption Eff. January 3, 2024.*

**15A NCAC 07M .0403 COASTAL ENERGY DEVELOPMENT - SPECIFIC POLICY STATEMENTS**

(a) The policy statements in this Section are enforceable and shall be considered by local governments and DCM when issuing permits and implementing the coastal management program under this Subchapter and commenting on federal permits and activities pursuant to Section 307 of the federal Coastal Zone Management Act.

(b) The siting and operations of major energy facilities impacting the use of public trust waters and adjacent lands or coastal resources of North Carolina shall be done in a manner that allows for protection of the environment and local and regional socio-economic goals as set forth in the local land use plans and in 15A NCAC 07H and 07M. The placement and operation of such facilities shall be consistent with state rules and statutory standards and shall comply with local land use plans and with use standards for development within AECs, as set forth in 15A NCAC 07H.

(c) Proposals, plans and permit applications for major energy facilities to be sited in or impacting any land or water use or coastal resource of the North Carolina coastal area shall include a disclosure of all costs and benefits associated with the project. This disclosure shall be prepared in the form of an impact assessment as defined in 15A NCAC 07M .0402 prepared by the applicant. If environmental documents are prepared and reviewed under the provisions of the National Environmental Policy Act (NEPA) or the North Carolina Environmental Policy Act (NCEPA), this review shall satisfy the definition of "impact assessment" if all issues listed in this Rule are addressed and these documents are submitted to review state permit applications for the project or consistency determinations.

(d) Local governments shall not restrict the development of energy facilities; however, they may develop siting measures that will minimize impacts to local resources and to identify potential sites suitable for energy facilities. This Section shall not limit the ability of a city or county to plan for and regulate the siting of a wind energy facility in accordance with land use regulations authorized under Chapter 160A, Chapter 153A, and Chapter 160D of the General Statutes. Wind energy facilities constructed within the planning jurisdiction of a city or county shall demonstrate compliance with any local ordinance concerning land use and any applicable permitting process.

(e) Energy facilities that do not require shorefront access shall be sited inland of the shoreline areas. When the siting of energy facilities along shorelines of the coastal zone area are necessary, shoreline siting shall be acceptable only if it can be demonstrated that there are no significant adverse impacts to coastal resources, public trust waters, and the public's right to access will not be restricted, and all mitigating measures have been taken to

minimize impacts to AECs. Mitigating measures shall be determined after consideration of economics, technical feasibility, areal extent of impacts, and impacted area.

(f) The scenic and visual qualities of coastal areas shall be considered and protected as public resources consistent with G.S. 113A-1-2(b)(4)(a). Energy development shall be sited and designed to provide maximum protection of views to and along the ocean, sounds, and scenic coastal areas, and to minimize the alteration of natural landforms.

(g) All energy facilities in or impacting the use of public trust waters and adjacent lands or coastal resources shall be sited and operated so as to comply with the following criteria:

- (1) Activities that may result in significant adverse impacts on coastal resources, including marine and estuarine resources and wildlife resources, as defined in G.S. 113-129, and significant adverse impacts on the use of public trust waters and adjacent lands in the coastal area shall be avoided;
- (2) For petroleum facilities, data and information required for State permits and federal consistency reviews, pursuant to 15 CFR part 930, shall assess the risks of petroleum release or spills, evaluate possible trajectories, and enumerate response and mitigation measures employing the best available technology to be followed in the event of a release or spill. The information shall demonstrate that the potential for petroleum release or spills and ensuing damage to coastal resources has been minimized and shall factor environmental conditions, currents, winds, and inclement events such as northeasters and hurricanes, in trajectory scenarios. This same data and information shall be required for facilities requiring an Oil Spill Response Plan;
- (3) Dredging, spoil disposal, and construction of structures that are likely to have significant adverse impacts on the use of public trust waters and adjacent lands or coastal resources shall be avoided;
- (4) Significant adverse impacts to existing or traditional uses, such as fishing, navigation and access to public trust areas, and areas with high biological or recreational value such as those listed in Parts (10)(A) through (10)(K) of this Paragraph, shall be avoided;
- (5) Placement of structures in geologically unstable areas, such as unstable sediments and active faults, shall be avoided if the siting of structures will have significant adverse impacts on the use of public trust waters, adjacent lands or coastal resources;
- (6) Procedures necessary to secure an energy facility in the event of severe weather conditions, such as extreme wind, currents, and waves due to northeasters and hurricanes, shall be initiated to ensure that significant adverse

- impacts on the use of public trust waters, adjacent lands and coastal resources;
- (7) Significant adverse impacts on federally listed threatened or endangered species shall be avoided;
- (8) Major energy facilities are not appropriate uses in fragile or historic areas, and other areas containing environmental or natural resources of more than local significance, as defined in G.S. 113A-113(b)(4), such as parks, recreation areas, wildlife refuges, and historic sites;
- (9) Energy facilities shall not be sited in areas where they pose a threat to the integrity of the facility and surrounding areas, such as ocean front areas with high erosion rates, areas having a history of overwash or inlet formation, and Inlet Hazard Areas identified in 15A NCAC 07H .0304;
- (10) In the siting of energy facilities and related structures, significant adverse impacts to the following areas shall be avoided:
- (A) areas of high biological significance, including offshore reefs, rock outcrops, hard bottom areas, sea turtle nesting beaches, coastal wetlands, primary or secondary nursery areas or spawning areas and essential fish habitat areas of particular concern as designated by the appropriate fisheries management agency, oyster sanctuaries, submerged aquatic vegetation as defined by the Marine Fisheries Commission, colonial bird nesting areas, and migratory bird routes;
- (B) tracts of maritime forest in excess of 12 contiguous acres and areas identified as eligible for registration or dedication by the North Carolina Natural Heritage Program;
- (C) crossings of streams, rivers, and lakes except for existing corridors;
- (D) anchorage areas and port areas;
- (E) artificial reefs, shipwrecks, and submerged archaeological resources;
- (F) Ocean Dredged Material Disposal Sites;
- (G) primary dunes and frontal dunes;
- (H) established recreation or wilderness areas, such as federal, state and local parks, forests, wildlife refuges;
- (I) military air space, training or target area and transit lanes;
- (J) cultural or historic sites of more than local significance; and
- (K) segments of Wild and Scenic River System.
- (11) Construction of energy facilities shall occur only during periods of lowest biological

- vulnerability. Nesting and spawning periods shall be avoided; and
- (12) If facilities located in the coastal area are abandoned, habitat of value equal to or greater than that existing prior to construction shall be restored following abandonment. For abandoned facilities outside the coastal area, habitat in the areas shall be restored to its preconstruction state and functions if the abandonment of the structure is likely to have significant adverse impacts on the use of public trust waters, adjacent lands or coastal resources.

*Authority G.S. 113A-102(b); 113A-107; 113A-124; Eff. March 1, 1979;*  
*Amended Eff. April 1, 1992;*  
*Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;*  
*Temporary Amendment Eff. July 8, 1999; December 22, 1998;*  
*Amended Eff. February 1, 2011; August 1, 2000;*  
*RRC objection September 17, 2022 and rule returned to agency on October 5, 2023;*  
*Codifier determined that agency's findings of need did not meet criteria for emergency rule on December 20, 2023;*  
*Emergency Adoption Eff. January 3, 2024.*

**SECTION .0700 – MITIGATION - GENERAL POLICY**

**15A NCAC 07M .0701 DECLARATION OF GENERAL POLICY**

- (a) The policy statements in this Section are enforceable and shall be considered by local governments and DCM when issuing permits and implementing the coastal management program under this Subchapter and commenting on federal permits and activities pursuant to Section 307 of the federal Coastal Zone Management Act.
- (b) It is the policy of the Coastal Resources Commission to require that adverse impacts to coastal lands and waters be mitigated or minimized through planning, site selection, compliance with Commission's standards for development, and creation or restoration of coastal resources. Coastal ecosystems shall be protected and maintained as complete and functional systems by mitigating the adverse impacts of development by enhancing, creating, or restoring areas with the goal of improving or maintaining ecosystem function and areal proportion.
- (c) The CRC shall apply mitigation requirements as defined in this Section consistent with the goals, policies, and objectives set forth in G.S. 113A-102 for coastal resource management and development. Mitigation shall be used to enhance coastal resources and offset any potential losses occurring from permitted and unpermitted development. Proposals to mitigate losses of coastal resources shall be considered only for development shown to be in the public interest, as defined by the standards in 15A NCAC 07M .0703.

*Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; 113-229;*  
*Eff. January 1, 1984;*  
*Amended Eff. September 1, 1985;*



RRC objection September 17, 2022 and rule returned to agency on October 5, 2023;  
Codifier determined that agency's findings of need did not meet criteria for emergency rule on December 20, 2023;  
Emergency Adoption Eff. January 3, 2024.

**15A NCAC 07M .0703 MITIGATION PROJECTS**

(a) Before the CRC may approve a development project for mitigation the applicant shall demonstrate that all of the following criteria are met:

- (1) there is no alternate design or location for the project that would avoid the losses to be mitigated;
- (2) the entire project for which the permit is requested is dependent upon being located within or in proximity to public trust waters and coastal wetlands; and
- (3) benefits to the public interest will outweigh adverse impacts to the environment. A benefit to the public interest may be established by a project which has been shown to be the least damaging alternative and which:

- (A) if publicly funded, creates benefits of national or state importance. This category may include public roadways, navigation projects, state ports, and projects designed to provide public access to public trust waters;
- (B) if privately funded, provides increased access opportunities to public trust resources to the general public for free or for a nominal fee, or provides economic benefits to the State or community and is consistent with the local land use plan.

(b) Mitigation may also be the basis for CRC approval for projects which cannot meet all the criteria of 15A NCAC 07M .0703(a) if the CRC determines that public benefits of the project and enhancement and protection of the environment outweigh environmental losses based on the criteria set out in 15A NCAC 07M .0703(d).

(c) Mitigation projects may be considered by the CRC during the permit processing time prescribed in 15A NCAC 07J .0204, in accordance with the procedures set out in 15A NCAC 07J .0600 concerning declaratory rulings. The applicant may request a declaratory ruling on the applicability of the mitigation policy as set forth in 15A NCAC 07M .0703(a) provided that the applicant agrees that the permit processing time period set out in 15A NCAC 07J .0600 will not run during the pendency of the declaratory ruling consideration. If a declaratory ruling is to be issued pursuant to the applicant's request, a public meeting will be held to discuss the proposed project and to assist the Commission in obtaining the information necessary to make the declaratory ruling, and to receive comments from the public prior to presenting the ruling request to the Commission. Information concerning the proposed mitigation may also be introduced at the meeting. CRC approval of the mitigation project is binding on the Commission and the applicant in accordance with 15A NCAC 07J .0603(e).

(d) In determining whether to approve an application for development for which mitigation is proposed, the Division of Coastal Management shall consider the scope of the project, the site of the proposed mitigation, the amount of mitigation proposed, the historic uses of the development site and mitigation site, the public trust, and significant adverse impacts.

*Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; 113-229;*  
*Eff. January 1, 1984;*  
*Amended Eff. September 1, 1985;*  
*RRC objection September 17, 2022 and rule returned to agency on October 5, 2023;*  
*Codifier determined that agency's findings of need did not meet criteria for emergency rule on December 20, 2023;*  
*Emergency Adoption Eff. January 3, 2024.*

**15A NCAC 07M .0704 MITIGATION - SPECIFIC POLICIES**

(a) The policy statements in this Section are enforceable and shall be considered by local governments and DCM when issuing permits and implementing the coastal management program under this Subchapter and commenting on federal permits and activities pursuant to Section 307 of the federal Coastal Zone Management Act.

(b) The Division of Coastal Management shall consider mitigation requests based on the following order of preference:

- (1) Enhancement of coastal resources with created or restored systems determined to be more productive of the resources characteristic of unaltered North Carolina ecosystems than those destroyed.
- (2) Creation or restoration of an area of similar ecological utility and potential biological value than that destroyed or altered.
- (3) Creation or restoration of an area with a different ecological function or potential than that destroyed or altered.
- (4) The following forms of mitigation shall be considered by the Division of Coastal Management and may be used in combination with Subparagraphs (1) through (3) of this Paragraph to achieve the stated goal set forth in 15A NCAC 07M .0703(d).
  - (A) Acquisition for public ownership of unique and ecologically important systems not protected by state or federal regulatory programs. The type of impacts to be mitigated and the quality of the area to be acquired will be considered on a case-by-case basis.
  - (B) Transfer of privately owned lands subject to state and federal regulation into public ownership.
  - (C) Provisions of funds for State, federal or accredited institution research or management programs.
  - (D) Increased public access to public trust resources for recreational use.

(c) Mitigation proposals may be the basis for approval of a development which is otherwise in conflict with general or specific use standards set forth in 15A NCAC 07H .0208.

(d) Mitigation proposals to offset losses of coastal resources due to publicly funded projects shall be reviewed by the Division of Coastal Management with the sponsoring agency and incorporated into the project by the State or federal agency.

(e) Approved mitigation proposals for all categories of development shall become a part of permit conditions according to G.S. 113A-120(b) and thereby subject to enforcement authority pursuant to G.S. 113A-126.

*Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; 113A-126;*

*Eff. January 1, 1984;*

*RRC objection September 17, 2022 and rule returned to agency on October 5, 2023;*

*Codifier determined that agency's findings of need did not meet criteria for emergency rule on December 20, 2023;*

*Emergency Adoption January 3, 2024.*

**SECTION .1100 - BENEFICIAL USE OF DREDGED MATERIALS FROM NAVIGATIONAL CHANNEL MAINTENANCE AND EXCAVATION – GENERAL POLICIES**

**15A NCAC 07M .1101 DECLARATION OF GENERAL POLICY**

(a) The policy statements in this Section are enforceable and shall be considered by local governments and DCM when issuing

permits and implementing the coastal management program under this Subchapter and commenting on federal permits and activities pursuant to Section 307 of the federal Coastal Zone Management Act.

(b) Dredged material disposal practices may result in removal of material important to the sediment budget of ocean and inlet beaches. This activity may adversely impact natural beach functions especially during storm events and may increase long term erosion rates. Ongoing channel maintenance requirements throughout the coastal area also lead to the need to construct new or expanded disposal sites as existing sites fill. In addition, new sites for disposal are increasingly harder to find due to competition from development interests for suitable sites. Therefore, it is the policy of the State of North Carolina that material resulting from the excavation or maintenance of navigation channels be used in a beneficial way wherever practicable.

*Authority G.S. 113A-107; 113-229;*

*Eff. October 1, 1992;*

*RRC objection September 17, 2022 and rule returned to agency on October 5, 2023;*

*Codifier determined that agency's findings of need did not meet criteria for emergency rule on December 20, 2023;*

*Emergency Adoption Eff. January 3, 2024.*

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**APPROVED RULES**

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*This Section includes a listing of rules approved by the Rules Review Commission followed by the full text of those rules. The rules that have been approved by the RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register are identified by an \* in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

Rules approved by the Rules Review Commission at its meeting on December 14, 2023.

**REGISTER CITATION TO THE  
NOTICE OF TEXT**

**CHILD CARE COMMISSION**

<u>Definitions</u>	10A NCAC 09 .0102*	37:24 NCR
<u>Safe Environment</u>	10A NCAC 09 .0601*	37:24 NCR
<u>Building Requirements</u>	10A NCAC 09 .1707*	37:24 NCR
<u>Sanitation Requirements for Family Child Care Homes</u>	10A NCAC 09 .1725*	37:24 NCR
<u>Provisional Child Care Facility License or Provisional No...</u>	10A NCAC 09 .2204*	37:24 NCR
<u>Suspension</u>	10A NCAC 09 .2206	37:24 NCR
<u>Revocation of a Child Care Facility License or an Order t...</u>	10A NCAC 09 .2209*	37:24 NCR
<u>Scope</u>	10A NCAC 09 .2611	37:24 NCR
<u>Definition of Multi-Unit Child Care Centers</u>	10A NCAC 09 .2612*	37:24 NCR
<u>Licensure</u>	10A NCAC 09 .2613	37:24 NCR
<u>Outdoor Space</u>	10A NCAC 09 .2614*	37:24 NCR
<u>Staff/Child Ratios</u>	10A NCAC 09 .2615*	37:24 NCR
<u>Provider Qualifications</u>	10A NCAC 09 .2616	37:24 NCR

**HHS - HEALTH SERVICE REGULATION, DIVISION OF**

<u>Definitions</u>	10A NCAC 14C .1401*	38:02 NCR
<u>Performance Standards</u>	10A NCAC 14C .1403*	38:02 NCR
<u>Performance Standards</u>	10A NCAC 14C .2703	38:02 NCR

**MENTAL HEALTH/DD/SAS, COMMISSION FOR**

<u>Staff Definitions</u>	10A NCAC 27G .0104	38:01 NCR
<u>Definitions</u>	10A NCAC 28A .0102*	38:01 NCR

**LABOR, DEPARTMENT OF**

<u>Regulation of Inflatable or Air-Supported Amusement Devices</u>	13 NCAC 15 .0430*	n/a G.S. 150B-21.5(b)(1)
<u>Definitions</u>	13 NCAC 15 .0431*	n/a G.S. 150B-21.5(b)(1)
<u>Ride Design</u>	13 NCAC 15 .0432*	n/a G.S. 150B-21.5(b)(1)
<u>Anchorage or Tie-Down</u>	13 NCAC 15 .0433*	n/a G.S. 150B-21.5(b)(1)
<u>Operation of Inflatable or Air-Supported Amusement Devices</u>	13 NCAC 15 .0434*	n/a G.S. 150B-21.5(b)(1)
<u>Blowers</u>	13 NCAC 15 .0435*	n/a G.S. 150B-21.5(b)(1)
<u>Wind Speed</u>	13 NCAC 15 .0436*	n/a G.S. 150B-21.5(b)(1)
<u>Signs</u>	13 NCAC 15 .0437*	n/a G.S. 150B-21.5(b)(1)
<u>Operating Manual and Documentation</u>	13 NCAC 15 .0438*	n/a G.S. 150B-21.5(b)(1)

**PRIVATE PROTECTIVE SERVICES BOARD**

<u>Application for Unarmed Security Guard Registration</u>	14B NCAC 16 .0701*	37:24 NCR
<u>Trainer Name to be Submitted to Director</u>	14B NCAC 16 .0708	37:24 NCR
<u>Application for Firearms Trainer Certificate</u>	14B NCAC 16 .0902*	37:24 NCR
<u>Renewal of a Firearms Trainer Certificate</u>	14B NCAC 16 .0904*	37:24 NCR

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**APPROVED RULES**

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<u>Application for an Unarmed Trainer</u>	14B NCAC	16	.0910*	37:24 NCR
<u>Rosters of Unarmed Trainer Classes</u>	14B NCAC	16	.0912	37:24 NCR
<u>Training and Supervision for Private Investigator Associates</u>	14B NCAC	16	.1109*	37:24 NCR

**COASTAL RESOURCES COMMISSION**

<u>Specific Use Standards for Ocean Hazard Areas</u>	15A NCAC	07H	.0308*	37:14 NCR
<u>Permit Fee</u>	15A NCAC	07H	.1103	38:05 NCR
<u>Permit Fee</u>	15A NCAC	07H	.1203	38:05 NCR
<u>Permit Fee</u>	15A NCAC	07H	.1303	38:05 NCR
<u>Permit Fee</u>	15A NCAC	07H	.1403	38:05 NCR
<u>Application Fee</u>	15A NCAC	07H	.1503	38:05 NCR
<u>Permit Fee</u>	15A NCAC	07H	.1903	38:05 NCR
<u>Permit Fee</u>	15A NCAC	07H	.2003	38:05 NCR
<u>Permit Fee</u>	15A NCAC	07H	.2103	38:05 NCR
<u>Permit Fee</u>	15A NCAC	07H	.2203	38:05 NCR
<u>Permit Fee</u>	15A NCAC	07H	.2403	38:05 NCR
<u>Permit Fee</u>	15A NCAC	07H	.2503	38:05 NCR
<u>Permit Fee</u>	15A NCAC	07H	.2703	38:05 NCR

**WILDLIFE RESOURCES COMMISSION**

<u>Definitions and General Requirements</u>	15A NCAC	10B	.0501	38:04 NCR
<u>Surveillance Area</u>	15A NCAC	10B	.0503*	38:04 NCR
<u>Mecklenburg and Gaston Counties</u>	15A NCAC	10F	.0333*	38:04 NCR

**REVENUE, DEPARTMENT OF**

<u>Supplies and Equipment for an Accommodation</u>	17 NCAC	07B	.1202*	n/a G.S. 150B-1(d)(4)
<u>Gifts to Donees</u>	17 NCAC	07B	.1303*	n/a G.S. 150B-1(d)(4)
<u>Medical Supplies, Instruments, and Equipment</u>	17 NCAC	07B	.1404*	n/a G.S. 150B-1(d)(4)
<u>Housing Authorities</u>	17 NCAC	07B	.1705*	n/a G.S. 150B-1(d)(4)
<u>Sales to Employees</u>	17 NCAC	07B	.2001*	n/a G.S. 150B-1(d)(4)
<u>Gifts and Wages to an Employee or Other Person</u>	17 NCAC	07B	.2002*	n/a G.S. 150B-1(d)(4)
<u>Blueprints Sold to Architects</u>	17 NCAC	07B	.4109*	n/a G.S. 150B-1(d)(4)
<u>In General</u>	17 NCAC	07B	.4201*	n/a G.S. 150B-1(d)(4)
<u>Exempt Sales to the United States Government</u>	17 NCAC	07B	.4202*	n/a G.S. 150B-1(d)(4)
<u>Fed Savings/Loan Assoc, Natl and State Banks, Credit Unions</u>	17 NCAC	07B	.4206*	n/a G.S. 150B-1(d)(4)
<u>Independent Cleaning Solicitors</u>	17 NCAC	07B	.4510*	n/a G.S. 150B-1(d)(4)
<u>Postage Charges by Printers</u>	17 NCAC	07B	.4708*	n/a G.S. 150B-1(d)(4)
<u>Records Required to be Kept</u>	17 NCAC	07B	.4801*	n/a G.S. 150B-1(d)(4)
<u>Eyeglasses and Contact Lenses</u>	17 NCAC	07B	.5001*	n/a G.S. 150B-1(d)(4)
<u>Taxable Optical Supplies</u>	17 NCAC	07B	.5004*	n/a G.S. 150B-1(d)(4)

**SECRETARY OF STATE, DEPARTMENT OF THE**

<u>Definitions</u>	18 NCAC	07K	.0101*	38:04 NCR
<u>Travel Fee Rate</u>	18 NCAC	07K	.0201	38:04 NCR
<u>Estimate of Charges</u>	18 NCAC	07K	.0202*	38:04 NCR
<u>Inclusion of Fees in Journal</u>	18 NCAC	07K	.0203*	38:04 NCR
<u>Consent to Travel Fees May be Electronic</u>	18 NCAC	07K	.0204*	38:04 NCR
<u>Contents of Advance Consent to Travel Fees</u>	18 NCAC	07K	.0205	38:04 NCR

Notarial Record of Written Consent to Travel Fees 18 NCAC 07K .0206\* 38:04 NCR

**CHIROPRACTIC EXAMINERS, BOARD OF**

Licensure; Renewal of License 21 NCAC 10 .0204\* 38:05 NCR

**COSMETIC ART EXAMINERS, BOARD OF**

Esthetics Student Equipment 21 NCAC 14T .0402\* 37:23 NCR

Natural Hair Care Styling Student Equipment 21 NCAC 14T .0404\* 37:23 NCR

**OPTOMETRY, BOARD OF EXAMINERS IN**

Ceasing Practice 21 NCAC 42B .0204\* 38:04 NCR

Remuneration and Expenses 21 NCAC 42M .0105 38:02 NCR

*The following rules are subject to Legislative Review:*

**COASTAL RESOURCES COMMISSION**

Use Standards 15A NCAC 07H .0208\* 37:15 NCR

Policy Statements 15A NCAC 07M .0603\* 37:15 NCR

**TITLE 10A - DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**10A NCAC 09 .0102 DEFINITIONS**

The terms and phrases used in this Chapter are defined as follows:

- (1) "Activity area" means a space that is accessible to children and where related equipment and materials are kept in accordance with G.S. 110-91(12).
- (2) "Agency" as used in this Chapter means Division of Child Development and Early Education, Department of Health and Human Services located at 333 Six Forks Road, Raleigh, North Carolina 27609.
- (3) "Appellant" means the person or persons who request a contested case hearing.
- (4) "Asbestos hazard" means a condition that results in exposure to asbestos in excess of the standards set forth in 10A NCAC 41C .0607(a) or to a category of asbestos containing material defined at 40 C.F.R. 763.88(b)(1)-(6).
- (5) "Basic School-Age Care" training (BSAC training) means the training on the elements of quality afterschool care for school-age children, developed by the North Carolina State University Department of 4-H Youth Development and subsequently revised by the North Carolina School-age Quality Improvement Project.
- (6) "Biocontaminant" means blood, bodily fluids, or excretions that may spread infectious disease.
- (7) "Child Care Center" means an arrangement where, at any one time, there are three or more preschool-age children or nine or more school-

- (8) age children receiving child care. This does not include arrangements described in Item (18) of this Rule regarding Family Child Care Homes. "Child Care Facility" means child care centers, family child care homes, and any other child care arrangement not excluded by G.S. 110-86(2) that provides child care, regardless of the time of day, wherever operated, and whether or not operated for profit.
- (9) "Child care provider" as defined by G.S. 110-90.2(a)(2) includes the following employees who have contact with the children in a child care program:
  - (a) facility directors;
  - (b) child care administrative staff;
  - (c) teachers;
  - (d) teachers' aides;
  - (e) substitute providers;
  - (f) uncompensated providers;
  - (g) cooks;
  - (h) maintenance personnel; and
  - (i) drivers.
- (10) "Child Development Associate Credential" means the national early childhood credential administered by the Council for Early Childhood Professional Recognition.
- (11) "Curriculum" means a curriculum that has been approved as set forth in these Rules by the NC Child Care Commission as comprehensive, evidenced-based, and with a reading component.
- (12) "Developmentally appropriate" means suitable to the chronological age range and developmental characteristics of a specific group of children.

- (13) "Division" means the Division of Child Development and Early Education within the Department of Health and Human Services.
- (14) "Domains" means the developmental areas of learning described in the North Carolina Foundations for Early Learning and Development © 2013, available on the Division's website at [https://ncchildcare.nc.gov/providers/pv\\_foundations.asp](https://ncchildcare.nc.gov/providers/pv_foundations.asp). This instrument is incorporated by reference and does not include subsequent editions. The domains address children's emotional and social development, health and physical development, approaches to play and learning, language development, and communication and cognitive development.
- (15) "Drop-in care" means a child care arrangement where children attend on an intermittent, unscheduled basis.
- (16) "Early Childhood Environment Rating Scale - Revised Edition" (Harms, Clifford, and Cryer, 2005, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are two and a half years old through five years old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and does not include subsequent editions. A copy of the scale is available for purchase on the Teachers College Press website at [https://www.tcpres.com/search?search\\_term=assessment+materials](https://www.tcpres.com/search?search_term=assessment+materials). The cost of this scale is twenty-five dollars and ninety-five cents (\$25.95). A copy of this instrument is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection during regular business hours.
- (17) "Experience working with school-age children" means working with school-age children as a child care administrator, program coordinator, group leader, assistant group leader, lead teacher, teacher or aide.
- (18) "Family Child Care Environment Rating Scale – Revised Edition" (Harms, Cryer and Clifford, 2007, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by children in family child care homes to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and does not include subsequent editions. A copy of the scale is available for purchase on the Teachers College Press website at [https://www.tcpres.com/search?search\\_term=assessment+materials](https://www.tcpres.com/search?search_term=assessment+materials). The cost of this scale is twenty-five dollars and ninety-five cents (\$25.95). A copy of this instrument is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection during regular business hours.
- (19) "Family Child Care Home" means a child care arrangement located in a residence where, at any one time, more than two children, but less than nine children, receive child care. Family child care home operators must reside at the location of the family child care home.
- (20) "First aid kit" is a collection of first aid supplies (such as bandages, tweezers, disposable nonporous gloves, micro shield or face mask, liquid soap, cold pack) for treatment of minor injuries or stabilization of major injuries.
- (21) "Group" means the children assigned to a specific caregiver or caregivers, to meet the staff/child ratios set forth in G.S. 110-91(7) and in this Chapter, using space the Division has identified for each group.
- (22) "Health care professional" means:
- (a) a physician licensed in North Carolina;
  - (b) a nurse practitioner approved to practice in North Carolina; or
  - (c) a licensed physician assistant.
- (23) "Household member" means a person who resides in a family home as evidenced by factors including maintaining clothing and personal effects at the household address, receiving mail at the household address, using identification with the household address, or eating and sleeping at the household address on a regular basis.
- (24) "If weather conditions permit" means:
- (a) temperatures that fall within the guidelines developed by the Iowa Department of Public Health and specified on the Child Care Weather Watch chart. These guidelines shall be used when determining appropriate weather conditions for taking children outside for outdoor learning activities and playtime. This chart may be downloaded free of charge from <http://idph.iowa.gov/Portals/1/Files/HCCI/weatherwatch.pdf>; and is incorporated by reference and includes subsequent editions and amendments;
  - (b) following the air quality standards as set out in 15A NCAC 18A .2832(d). The Air Quality Color Guide can be found on the Division's web site at <https://www.deq.nc.gov/mitigation-services/publicfolder/library/news/bro>

- chures/air-quality-color-guide/download; and
- (c) no active precipitation. Caregivers may choose to go outdoors when there is active precipitation if children have appropriate clothing such as rain boots and rain coats, or if they are under a covered area.
- (25) "Infant" means any child from birth through 12 months of age.
- (26) "Infant/Toddler Environment Rating Scale - Revised Edition" (Harms, Cryer, and Clifford, 2003, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are younger than 30 months old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and does not include subsequent editions. A copy of the scale is available for purchase on the Teachers College Press website at [http://www.tcpres.com/search?search\\_term=assessment+materials](http://www.tcpres.com/search?search_term=assessment+materials). The cost of this scale is twenty-five dollars and ninety-five cents (\$25.95). A copy of this instrument is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection during regular business hours.
- (27) "ITS-SIDS Training" means the Infant/Toddler Safe Sleep and SIDS Risk Reduction Training developed by the NC Healthy Start Foundation and administered by the North Carolina Child Care Health and Safety Resource Center for the Division of Child Development and Early Education for caregivers of children ages 12 months and younger. Information regarding trainer and training availability can be found on the Division's website at [http://ncchildcare.ncdhhs.gov/providers/pv\\_its\\_sidsproject.asp](http://ncchildcare.ncdhhs.gov/providers/pv_its_sidsproject.asp).
- (28) "Lead Teacher" means an individual who is responsible for planning and implementing the daily program of activities for a group of children in a child care facility. A lead teacher is counted in staff/child ratio, has unsupervised contact with children, and is monetarily compensated by the facility.
- (29) "Licensee" means the person or entity that is granted permission by the State of North Carolina to operate a child care facility. The owner of a facility is the licensee.
- (30) "Lockdown drill" means an emergency safety procedure in which occupants of the facility remain in a locked indoor space and is used when emergency personnel or law enforcement determine a dangerous person is in the vicinity.
- (31) "North Carolina Early Childhood Administration Credential" means the state early childhood administration credential that is based on completion of required early childhood coursework taken at any NC Community College. Other post secondary curriculum coursework shall be approved as equivalent if the Division determines that the content of the other post secondary curriculum coursework offered is substantially equivalent to the NC Early Childhood Administration Credential Coursework. A copy of the North Carolina Early Childhood Administration Credential requirements is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection or copying at no charge during regular business hours. This information can be found on the Division's website at <http://ncchildcare.ncdhhs.gov/providers/credential.asp>.
- (32) "North Carolina Early Educator Certification (certification)" is an acknowledgement of an individual's verified level of educational achievement based on a standardized scale. The North Carolina Institute for Child Development Professionals certifies individuals and assigns a certification level on two scales:
- (a) the Early Care and Education Professional Scale (ECE Scale) in effect as of July 1, 2010; or
- (b) the School Age Professional Scale (SA Scale) in effect as of May 19, 2010. Each scale reflects the amount of education earned in the content area pertinent to the ages of children served. The ECE Scale is designed for individuals working with or on behalf of children ages birth to five. The SA Scale is designed for individuals working with or on behalf of children ages 5 to 12 who are served in school age care settings. Information on the voluntary certification process can be found on the North Carolina Institute for Child Development Professionals website at <http://ncicdp.org/certification-licensure/eec-overview/>.
- (33) "North Carolina Early Childhood Credential" means the state early childhood credential that is based on completion of required early childhood coursework taken at any North Carolina Community College. Other equivalences shall be approved by the Division if the Division determines that the content of other coursework or other pathways are substantially equivalent to the North Carolina Early Childhood Credential coursework.

Substantially equivalent coursework shall include, but not be limited to:

- (a) a currently active Child Development Associate Credential from the Council for Professional Recognition, a Certified Child Care Professional Credential from the National Early Childhood Program Accreditation, or a Montessori Credential from any of the Montessori Accreditation Council for Teacher Education, American Montessori Society, National Center for Montessori Education, or Association Montessori Internationale; or
  - (b) a passing score on a test developed by the early childhood faculty of the North Carolina Community College System designed to demonstrate an individual's mastery of the concepts taught in early childhood coursework taken at any North Carolina community college.
- A copy of the North Carolina Early Childhood Credential requirements is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection or copying at no charge during regular business hours. This information can be found on the Division's website at <http://ncchildcare.ncdhhs.gov/providers/credentials.asp>.
- (34) "Operator" means the owner, director, or other person having responsibility for operation of a child care facility subject to licensing.
  - (35) "Owner" means any person with a five percent or greater equity interest in a child care facility; however, stockholders of corporations who own child care facilities shall not be subject to mandatory criminal history checks pursuant to G.S. 110-90.2 unless they are a child care provider.
  - (36) "Parent" means a child's parent, legal guardian, or full-time custodian.
  - (37) "Passageway" means a hall or corridor.
  - (38) "Person" means any individual, trust, estate, partnership, corporation, joint stock company, consortium, or any other group, entity, organization, or association.
  - (39) "Premises" means the entire child care building and grounds including natural areas, outbuildings, dwellings, vehicles, parking lots, driveways and other structures located on the property.
  - (40) "Preschooler" or "preschool-age child" means any child who is at least three years of age and does not fit the definition of school-age child in this Rule.

- (41) "Reside" refers to any person that lives at a child care facility location. Factors for determining residence include:
  - (a) use of the child care facility address as a permanent address for personal identification or mail delivery;
  - (b) use of the child care facility to store personal belongings such as furniture, clothing, and toiletry items; and
  - (c) names listed on official documents such as criminal records or property tax records.
- (42) "School-Age Care Environment Rating Scale, Updated Edition" (Harms, Jacobs, and White, 2014, published by Teachers College Press) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of the children in the group are older than five years, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and does not include subsequent editions. A copy of the scale is available for purchase on the Teacher College Press website at [https://www.tcpres.com/search?search\\_term=assessment+materials](https://www.tcpres.com/search?search_term=assessment+materials). The cost of this scale is twenty-five dollars and ninety-five cents (\$25.95). A copy of this instrument is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection during regular business hours.
- (43) "School-age child" means any child who is attending or who has attended a public or private grade school or kindergarten and meets age requirements as specified in G.S. 115C-364.
- (44) "Seasonal Program" means a recreational program as set forth in G.S. 110-86(2)(b).
- (45) "Shelter-in-Place drill" means staying in place to take shelter rather than evacuating. It involves selecting a small interior room, with no or few windows, and used when emergency personnel or law enforcement determine there is a threat.
- (46) "Staff" or "staff member" as used in this Chapter includes child care providers, substitute providers, and uncompensated providers. Volunteers, as defined in this Rule, are not staff members.
- (47) "Substitute provider" means any person who temporarily assumes the duties of a staff person for a time period not to exceed two consecutive months and may or may not be monetarily compensated by the facility. Any substitute provider must be at least 18 years of age and literate.
- (48) "Teacher" means an individual who assists the Lead Teacher in planning and implementing the



daily program of activities for a group of children in a child care facility. A teacher is counted in staff/child ratio, has unsupervised contact with children, and is monetarily compensated by the facility.

- (49) "Teacher's aide" or "Aide" means a person who assists the lead teacher or the teacher in planning and implementing the daily program. A teacher's aide shall be at least 16 years old and less than 18 years old, shall be literate, and may count in staff/child ratio as long as there is also a credentialed staff person who is at least 21 years of age present in the room and available to respond to the needs of the teacher's aide and children in care.
- (50) "Toddler" means any child ages 13 months to 35 months of age.
- (51) "Track-Out Program" means any child care provided to school-age children when they are out of school on a year-round school calendar.
- (52) "Uncompensated provider" means a person who works in a child care facility and is counted in staff/child ratio or has unsupervised contact with children, but who is not monetarily compensated by the facility. Any uncompensated provider must be at least 18 years of age and literate.
- (53) "Volunteer" means a person who works in a child care facility and is not counted in staff/child ratio, does not have unsupervised contact with children, and is not monetarily compensated by the facility. A person who is at least 13 years of age, but less than 16 years of age, may work on a volunteer basis, as long as he or she is supervised by and works with a staff person who is at least 21 years of age and meets staff qualification requirements.

*History Note: Authority G.S. 110-85; 110-88; 110-90.2; 143B-168.3; 45 CFR 98.41; S.L. 2021-180; S.L. 2022-71; Eff. January 1, 1986; Amended Eff. April 1, 1992; October 1, 1991; October 1, 1990; November 1, 1989; Temporary Amendment Eff. January 1, 1996; Amended Eff. March 1, 2015; May 1, 2013; September 1, 2012; July 3, 2012; July 1, 2012; November 1, 2007; May 2006; May 1, 2004; April 1, 2003; July 1, 2000; April 1, 1999; July 1, 1998; April 1, 1997; Readopted Eff. October 1, 2017; Amended Eff. January 1, 2024; July 1, 2023; February 1, 2022; February 1, 2021; September 1, 2019.*

**10A NCAC 09 .0601 SAFE ENVIRONMENT**

- (a) All child care centers shall provide a safe indoor and outdoor environment for the children in care.
- (b) All equipment and furnishings shall be in good repair. All commercially manufactured equipment and furnishings shall be assembled and installed according to procedures specified by the manufacturer. For equipment and furnishings purchased after

September 1, 2017, that include instructions from the manufacturer, those manufacturer's instructions shall be kept on file at the center, unless they are available electronically for review.

- (c) Equipment and furnishings shall be sturdy, stable, and free of hazards that may injure children including sharp edges, lead based or peeling paint, rust, loose nails, splinters, protrusions (excluding nuts and bolts on sides of fences), and pinch and crush points.
- (d) Staff of the center shall immediately remove all equipment and furnishings that do not meet the requirements of Paragraphs (b) and (c) of this Rule from the premises or make the equipment or furnishings inaccessible to the children.
- (e) Each child care center shall provide equipment and furnishings that are child-size or that can be adapted for use by children. Chairs and tables shall be of appropriate height for the children who will be using them.
- (f) Each child care center shall be free of lead poisoning hazards as defined in G.S. 130A-131.7(7) and asbestos hazards.

*History Note: Authority G.S. 110-91(3),(6); 143B-168.3; Eff. January 1, 1986; Amended Eff. January 1, 1996; January 1, 1991; Readopted Eff. October 1, 2017; Amended Eff. January 1, 2024; February 1, 2021.*

**10A NCAC 09 .1707 BUILDING REQUIREMENTS**

The applicant shall ensure that the family child care home complies with the following requirements:

- (1) all children are kept on the ground level of exit discharge;
- (2) all family child care homes must be free of lead poisoning hazards as defined in G.S. 130A-131.7(7) and asbestos hazards;
- (3) all homes are equipped with an electrically operated (with a battery backup) smoke detector, or one electrically operated and one battery operated smoke detector located next to each other;
- (4) all homes are provided with at least one five pound 2-A: 10-B: C type extinguisher for every 2,500 square feet of floor area;
- (5) heating appliances shall be installed and maintained according to any North Carolina Building Code provisions governing the building;
- (6) all indoor areas used by children are heated when the indoor temperature is below 65 degrees and ventilated when the indoor temperature is above 85 degrees;
- (7) pipes or radiators that are hot enough to be capable of burning children and are accessible to the children are covered or insulated; and
- (8) children are cared for in space designated as the caregiving area on a floor plan provided by the operator to the Division as specified in 10A NCAC 09 .1709. Changes to the designated caregiving space shall be submitted to the Division 30 days prior to the new space being used by children.

*History Note: Authority G.S. 110-85; 110-91; 143B-168.3; S.L. 2021-180; 45 CFR 98.41; Eff. October 1, 2017; Amended Eff. January 1, 2024; February 1, 2021.*

**10A NCAC 09 .1725 SANITATION REQUIREMENTS FOR FAMILY CHILD CARE HOMES**

(a) To assure the health of children through proper sanitation, the family child care home operator shall:

- (1) collect and submit samples of water from each well used for the children's water supply for bacteriological analysis to the local health department or a laboratory certified to analyze drinking water for public water supplies by the North Carolina State Laboratory of Public Health every two years. Results of the analysis shall be on file in the home;
- (2) collect and submit samples of water from each water outlet used for drinking or food preparation for lead analysis to the local health department or a laboratory certified to analyze for lead in drinking water by the North Carolina State Laboratory of Public Health. Results of the analysis shall be on file in the home. For operators that submit an application for licensure after the effective date of this Rule, water samples shall be collected by the operator and tested during the application process. For all other family child care homes, water samples shall be collected by the operator and tested within 12 months of the effective date of this Rule;
- (3) wash his or her hands prior to caring for children each day;
- (4) ensure that each child's hands are washed upon arrival at the home each day;
- (5) have sanitary toilet, diaper changing, and hand washing facilities as follows:
  - (A) diaper changing areas shall be separate from food preparation areas;
  - (B) toileting areas shall have toilet tissue available at all times;
  - (C) all toilet fixtures shall be cleanable and in good repair;
  - (D) handwashing areas shall have soap and paper towels or other drying devices available at all times;
  - (E) diapering surfaces shall be smooth, intact, nonabsorbent, and cleanable; and
  - (F) potty chairs and diapering surfaces shall be cleaned after each use.
- (6) use sanitary diapering procedures. Diapers shall be changed whenever they become soiled or wet. The operator shall:
  - (A) gather all supplies before placing a child on the diapering surface;
  - (B) wash his or her hands before, as well as after, diapering each child;

- (C) ensure the child's hands are washed after diapering the child; and
  - (D) place soiled diapers in a covered, leak proof container which is emptied and cleaned daily;
  - (7) use sanitary procedures when preparing and serving food. The operator shall:
    - (A) wash his or her hands before and after handling food and feeding the children; and
    - (B) ensure the child's hands are washed before and after the child is fed;
  - (8) wash his or her hands, and ensure the child's hands are washed, after toileting or handling bodily fluids;
  - (9) handwashing procedures shall include:
    - (A) using liquid soap and water;
    - (B) rubbing hands vigorously with soap and water for 15 seconds;
    - (C) washing all surfaces of the hands, to include the backs of hands, palms, wrists, under fingernails and between fingers;
    - (D) rinsing well for 10 seconds;
    - (E) drying hands with a paper towel or other hand drying device; and
    - (F) turning off faucet with a paper towel or other method without recontaminating hands;
  - (10) refrigerate all perishable food and beverages. The refrigerator shall be in good repair and maintain a temperature of 45 degrees Fahrenheit or below. A refrigerator thermometer is required to monitor the temperature;
  - (11) have a house that is free of rodents;
  - (12) screen all windows and doors used for ventilation; and
  - (13) store garbage in waterproof containers with tight fitting covers.
- (b) If reusable, cloth diapers are used, place soiled cloth diaper, after disposing of feces in toilet without rinsing, in a tightly closed plastic bag or other equivalent container approved by the Division, stored out of reach of children and sent daily to the child's home to be laundered or to a laundry service.
- (c) The operator shall not force children to use the toilet and the operator shall consider the developmental readiness of each child when toilet training. The operator shall provide assistance to each child to ensure proper hygiene, as needed.
- (d) The operator shall ensure that clean clothes are available in the event that a child's clothes become wet or soiled. The change of clothing may be provided by the operator or by the child's parents.

*History Note: Authority G.S. 110-85; 110-88; 110-91; S.L. 2021-180; 45 CFR 98.41; Eff. October 1, 2017; Amended Eff. January 1, 2024; September 1, 2019.*

**10A NCAC 09 .2204 PROVISIONAL CHILD CARE FACILITY LICENSE OR PROVISIONAL NOTICE OF COMPLIANCE**

A provisional child care facility license or provisional notice of compliance may be issued to an operator for any period of time not to exceed 12 months in accordance with the factors listed in 10A NCAC 09 .2201(b) for, among other things, the following reasons:

- (1) a substantiation of one or more violations of the child care requirements set forth in this Chapter as a result of a complaint that does not meet the criteria for a maltreatment finding pursuant to G.S. 110-105.3(b)(3) but for which more than three months is needed to monitor for corrective action implementation;
- (2) to allow a time period for correcting a violation of the building, fire, or sanitation requirements;
- (3) to allow a time period for remediation of an identified lead poisoning hazard as defined in G.S. 130A-131.7(7) or remediation of an asbestos hazard, regardless of whether a provisional sanitation classification has been issued;
- (4) to allow a time period for correction of an administratively dissolved corporation status from the North Carolina Secretary of State;
- (5) when the compliance history of the facility drops below the minimum requirement set forth in G.S. 110-90;
- (6) change of location of a child care facility without proper notification to the Division as specified in Rules 10A NCAC 09 .0204(b), .0403(a), and .1702(d); or
- (7) pattern of noncompliance.

*History Note: Authority G.S. 110-88(6); 110-90; 110-99; 143B-168.3; Eff. February 1, 2019; Amended Eff. January 1, 2024; February 1, 2021.*

**10A NCAC 09 .2206 SUSPENSION**

A suspension of a license or suspension of a notice of compliance may be issued to an operator in accordance with the factors listed in 10A NCAC 09 .2201(b) for a time period not to exceed one year for the following reasons:

- (1) the operator of the child care facility is a corporate entity that has been placed under revenue suspension by the North Carolina Secretary of State;
- (2) when the Division has issued a provisional child care facility license or notice of compliance related to building, fire, or sanitation requirements and the operator has failed to comply;
- (3) to allow a specific time period for correcting a violation of building, fire, or sanitation requirements, provided that the appropriate inspector documents that closure of the child

- (4) care facility is necessary to protect health or safety of children during correction;
- (4) when a facility is required to test for lead poisoning hazards as defined in G.S. 130A-131.7(7) or asbestos hazards or the Division has requested such testing to determine compliance with 10A NCAC 09 .0601(f) or 10A NCAC 09 .1707(2) and an operator has failed to test for lead poisoning hazards as defined in G.S. 130A-131.7(7) or asbestos hazards; or
- (5) when a disapproved sanitation classification is issued to a child care facility. The suspension of a child care facility license or suspension of a notice of compliance shall not be stayed during the pendency of an appeal.

*History Note: Authority G.S. 110-88; 110-90; 110-102.2; 143B-168.3; 150B-3; Eff. July 1, 1988; Amended Eff. April 1, 2001; November 1989; Readopted Eff. February 1, 2019 (Transferred from 10A NCAC 09 .2205); Amended Eff. January 1, 2024; February 1, 2021.*

**10A NCAC 09 .2209 REVOCATION OF A CHILD CARE FACILITY LICENSE OR AN ORDER TO CEASE OPERATION**

Revocation of a child care facility license or an order to cease operation may be issued to an operator in accordance with the factors listed in 10A NCAC 09 .2201(b) for the following reasons:

- (1) child maltreatment has occurred in a child care facility and harm occurred as set forth in Rule .2201(c)(2) of this Section;
- (2) more than two determinations of child maltreatment have occurred at a child care facility within three years;
- (3) violation of any section of G.S. 110, Article 7 or the Rules of this Chapter or 10A NCAC 10 has been willful or continual as evidenced by:
  - (a) a pattern of noncompliance, and the operator has not made efforts to correct repeated violations or is unable to comply; or
  - (b) the operator has failed to comply with the terms of a corrective action plan issued with a special provisional or probationary license or notice of compliance;
- (4) violation of any section of G.S. 110, Article 7 or the Rules of this Chapter or 10A NCAC 10 is hazardous to the health or safety of children;
- (5) the operator fails to comply with an implemented protection plan as set forth in G.S. 110-105.3(e);
- (6) the operator falsifies information in violation of G.S. 110-91(14);
- (7) the compliance history of the facility drops below the minimum requirement set forth in G.S. 110-90 and the conditions at the facility

- are hazardous to the health and safety of the children or staff;
- (8) receipt of a disapproved sanitation classification that is not corrected with a superior or approved sanitation classification within 12 months of issuance of a Suspension as set forth in Rule .2206 of this Section;
  - (9) the operator of the child care facility is a corporate entity that has been placed under revenue suspension from the North Carolina Secretary of State that has not been corrected within one year of issuance of a Suspension as set forth in Rule .2206 of this Section; or
  - (10) the Division has suspended the child care license or notice of compliance and the violation has not been corrected after 12 months. The revocation of a child care facility license or a notice of compliance pursuant to this Section shall not be stayed during the pendency of an appeal.

*History Note:* Authority G.S. 110-88; 110-90; 110-102.2; 143B-168.3; 150B-3; Eff. July 1, 1988; Amended Eff. April 1, 2001; August 1, 1990; November 1, 1989; Readopted Eff. February 1, 2019 (Transferred from 10A NCAC 09 .2206); Amended Eff. January 1, 2024; February 1, 2021.

**10A NCAC 09 .2611 SCOPE**

The rules in this Section apply to child care centers with multiple units, licensed individually, in one building. All rules within this Chapter shall apply except as provided in this Section.

*History Note:* Authority G.S. 110-85; 110-86; 110-88; 110-91; Eff. January 1, 2024.

**10A NCAC 09 .2612 DEFINITION OF MULTI-UNIT CHILD CARE CENTERS**

A "multi-unit child care center" is one building with multiple licensed units, each with a separate owner and entrance and each having its own physical and mailing address.

*History Note:* Authority G.S. 110-85; 110-86; 110-88; 110-91; Eff. January 1, 2024.

**10A NCAC 09 .2613 LICENSURE**

The Division shall make one or more inspections to inspect each unit within the building and issue individual licenses if all applicable requirements of G.S. 110, Article 7, this Chapter, and this Section are met.

*History Note:* Authority G.S. 110-85; 110-86; 110-88; 110-91; 110-105; Eff. January 1, 2024.

**10A NCAC 09 .2614 OUTDOOR SPACE**

Subject to the requirements in 10A NCAC 09 .0605, .1402, and .2809, the licensed units within the multi-unit child care center may share outdoor space provided the staff/child ratios and group sizes in 10A NCAC 09 .2615 are maintained.

*History Note:* Authority G.S. 110-85; 110-86; 110-88; 110-91; Eff. January 1, 2024.

**10A NCAC 09 .2615 STAFF/CHILD RATIOS**

Each unit in a multi-unit child care center shall meet the following staff/child ratios and group sizes for children:

Age of Children	Ratio Staff/Children	Maximum Group Size
0 to 12 Months	1/5	10
12 to 24 Months	1/6	12
2 to 3 Years	1/10	20
3 to 5 Years	1/15	25
5 Years and Older	1/25	25

- (1) when combining age groups, the staff/child ratio for the youngest child in the group shall be maintained for the entire group;
- (2) when only one caregiver is required to meet the staff/child ratio and children under two years of age are in care, that person shall not concurrently perform food preparation or other duties which are not direct child care responsibilities;
  - (a) The unit shall post the name, address, and telephone number of an adult who has agreed in writing to be available to provide emergency relief and who can respond within a reasonable period of time; or
  - (b) There shall be a second adult on the premises who is available to provide emergency relief. This second adult may be a person in another licensed unit within the multi-unit center or support staff within the building.

*History Note:* Authority G.S. 110-85; 110-86; 110-88; 110-91; Eff. January 1, 2024.

**10A NCAC 09 .2616 PROVIDER QUALIFICATIONS**

- (a) The person who has the responsibility for administration of the program and planning and implementing daily activities for the group of children in their care shall meet the requirements for an administrator and lead teacher as outlined in G.S. 110-91(8).
- (b) When meeting enhanced standards, the person who has responsibility for administration of the program and planning and implementing daily activities shall meet the lead teacher requirements outlined in 10A NCAC 09 .2819.
- (c) When meeting enhanced standards, additional staff within the licensed unit shall meet lead teacher or teacher requirements in

Section .2800 of this Chapter as determined by their caregiving role.

(d) The person responsible for the administration of the program and program planning does not have to meet administrative hours as required in 10A NCAC 09 .0714(a).

History Note: Authority G.S. 110-85; 110-86; 110-88; 110-91; Eff. January 1, 2024.

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10A NCAC 14C .1401 DEFINITIONS

The following definitions shall apply to all rules in this Section:

- (1) "Approved neonatal intensive care unit (NICU) beds" means acute care beds in a hospital that were issued a certificate of need to provide Level IV neonatal intensive care services but are not providing those services as of the application deadline for the review period.
(2) "Average daily census (ADC)" means the total number of existing, approved, and proposed NICU days of care provided during a full fiscal year of operation divided by 365 days.
(3) "Existing NICU beds" means acute care beds in a hospital that are providing Level IV neonatal intensive care services as of the application deadline for the review period.
(4) "Level IV neonatal intensive care services" means services provided to high-risk medically unstable or critically ill neonates less than 32 weeks of gestational age, or infants requiring constant nursing care or supervision in NICU beds.
(5) "Occupancy rate" means the ADC divided by the total number of existing, approved, and proposed NICU beds expressed as a percentage.
(6) "Proposed NICU beds" means the acute care beds proposed to provide Level IV neonatal intensive care services in a hospital in the application under review.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. January 4, 1994; Amended Eff. November 1, 1996; Temporary Amendment Eff. March 15, 2002; Amended Eff. April 1, 2003; Readopted Eff. January 1, 2024.

10A NCAC 14C .1403 PERFORMANCE STANDARDS

(a) An applicant proposing to develop a new Level IV neonatal intensive care service without increasing the total number of acute care beds on the hospital license shall:

- (1) provide projected utilization of the proposed NICU beds during each of the first three full

fiscal years of operation following completion of the project;

- (2) document that the occupancy rate for the proposed NICU beds shall be at least 65 percent during the third full fiscal year of operation following completion of the project; and
(3) provide the assumptions and methodology used for the projected utilization and occupancy rate required by Subparagraphs (1) and (2) of this Paragraph.

(b) An applicant proposing to develop a new Level IV neonatal intensive care service or increase the number of NICU beds on the hospital license shall:

- (1) provide projected utilization of all existing, approved, and proposed NICU beds on the hospital license during each of the first three full fiscal years of operation following completion of the project;
(2) document that the occupancy rate for all existing, approved, and proposed NICU beds on the hospital license shall be at least 65 percent during the third full fiscal year of operation following completion of the project; and
(3) provide the assumptions and methodology used for the projected utilization and occupancy rate required by Subparagraphs (1) and (2) of this Paragraph.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. January 4, 1994; Temporary Amendment Eff. March 15, 2002; Amended Eff. April 1, 2003; Temporary Amendment Eff. February 1, 2009; Amended Eff. November 1, 2009; Temporary Amendment Eff. February 1, 2010; Amended Eff. November 1, 2010; Temporary Amendment Eff. January 27, 2023; Readopted Eff. January 1, 2024.

10A NCAC 14C .2703 PERFORMANCE STANDARDS

(a) An applicant proposing to acquire a fixed MRI scanner pursuant to a need determination in the annual State Medical Facilities Plan in effect as of the first day of the review period shall:

- (1) identify the existing fixed MRI scanners owned or operated by the applicant or a related entity and located in the proposed fixed MRI scanner service area;
(2) identify the approved fixed MRI scanners owned or operated by the applicant or a related entity and located in the proposed fixed MRI scanner service area;
(3) identify the existing mobile MRI scanners owned or operated by the applicant or a related entity that provided mobile MRI services at host sites located in the proposed fixed MRI

- scanner service area during the 12 months before the application deadline for the review period;
- (4) identify the approved mobile MRI scanners owned or operated by the applicant or a related entity that will provide mobile MRI services at host sites located in the proposed fixed MRI scanner service area;
- (5) provide projected utilization of the MRI scanners identified in Subparagraphs (1) through (4) of this Paragraph and the proposed fixed MRI scanner during each of the first three full fiscal years of operation following completion of the project;
- (6) provide the assumptions and methodology used to project the utilization required by Subparagraph (5) of this Paragraph;
- (7) project that the fixed MRI scanners identified in Subparagraphs (1) and (2) of this Paragraph and the proposed fixed MRI scanner shall perform during the third full fiscal year of operation following completion of the project as follows:
- (A) 3,494 or more adjusted MRI procedures per fixed MRI scanner if there are two or more fixed MRI scanners in the fixed MRI scanner service area;
- (B) 3,058 or more adjusted MRI procedures per fixed MRI scanner if there is one fixed MRI scanner in the fixed MRI scanner service area; or
- (C) 1,310 or more adjusted MRI procedures per MRI scanner if there are no existing fixed MRI scanners in the fixed MRI scanner service area; and
- (8) project that the mobile MRI scanners identified in Subparagraphs (3) and (4) of this Paragraph shall perform 3,120 or more adjusted MRI procedures per mobile MRI scanner during the third full fiscal year of operation following completion of the project.
- (b) An applicant proposing to acquire a mobile MRI scanner pursuant to a need determination in the annual State Medical Facilities Plan in effect as of the first day of the review period shall:
- (1) identify the existing mobile MRI scanners owned or operated by the applicant or a related entity that provided mobile MRI services at host sites located in the proposed mobile MRI scanner service area during the 12 months before the application deadline for the review period;
- (2) identify the approved mobile MRI scanners owned or operated by the applicant or a related entity that will provide mobile MRI services at host sites located in the proposed mobile MRI scanner service area;
- (3) identify the existing fixed MRI scanners owned or operated by the applicant or a related entity that are located in the proposed mobile MRI scanner service area;
- (4) identify the approved fixed MRI scanners owned or operated by the applicant or a related entity that will be located in the proposed mobile MRI scanner service area;
- (5) identify the existing and proposed host sites for each mobile MRI scanner identified in Subparagraphs (1) and (2) of this Paragraph and the proposed mobile MRI scanner;
- (6) provide projected utilization of the MRI scanners identified in Subparagraphs (1) through (4) of this Paragraph and the proposed mobile MRI scanner during each of the first three full fiscal years of operation following completion of the project;
- (7) provide the assumptions and methodology used to project the utilization required by Subparagraph (6) of this Paragraph;
- (8) project that the mobile MRI scanners identified in Subparagraphs (1) and (2) of this Paragraph and the proposed mobile MRI scanner shall perform 3,120 or more adjusted MRI procedures per MRI scanner during the third full fiscal year of operation following completion of the project; and
- (9) project that the fixed MRI scanners identified in Subparagraphs (3) and (4) of this Paragraph shall perform during the third full fiscal year of operation following completion of the project as follows:
- (A) 3,494 or more adjusted MRI procedures per fixed MRI scanner if there are two or more fixed MRI scanners in the fixed MRI scanner service area;
- (B) 3,058 or more adjusted MRI procedures per fixed MRI scanner if there is one fixed MRI scanner in the fixed MRI scanner service area; or
- (C) 1,310 or more adjusted MRI procedures per MRI scanner if there are no fixed MRI scanners in the fixed MRI scanner service area.
- History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. February 1, 1994; Temporary Amendment Eff. January 1, 1999; Temporary Amendment Eff. January 1, 1999 Expired on October 12, 1999; Temporary Amendment Eff. January 1, 2000; Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000;*

Temporary Amendment Eff. January 1, 2001;
Temporary Amendment effective January 1, 2001 amends and
replaces a permanent rulemaking originally proposed to be
effective April 1, 2001;
Temporary Amendment Eff. January 1, 2002;
Temporary Amendment Eff. January 1, 2002 amends and replaces
the permanent rule effective, August 1, 2002;
Temporary Amendment Eff. January 1, 2003;
Amended Eff. August 1, 2004; April 1, 2003;
Temporary Amendment Eff. January 1, 2005;
Amended Eff. November 1, 2005;
Temporary Amendment Eff. February 1, 2006;
Amended Eff. November 1, 2006;
Temporary Amendment Eff. February 1, 2008;
Amended Eff. November 1, 2008;
Readopted Eff. January 1, 2022;
Temporary Amendment Eff. January 27, 2023;
Amended Eff. January 1, 2024.

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10A NCAC 27G .0104 STAFF DEFINITIONS

The following credentials and qualifications apply to staff
described in this Subchapter:

- (1) "Associate Professional (AP)" within the
mental health, developmental disabilities and
substance abuse services (mh/dd/sas) system of
care means an individual who is either a:
(a) graduate of a college or university
with a masters degree in a human
service field with less than one year of
full-time, post-graduate degree
accumulated mh/dd/sa experience
with the population served, or a
substance abuse professional with less
than one year of full-time, post-
graduate degree accumulated
supervised experience in alcoholism
and drug abuse counseling.
Supervision shall be provided by a
qualified professional with the
population served until the individual
meets one year of experience. The
supervisor and the employee shall
develop an individualized supervision
plan upon hiring. The parties shall
review the plan annually;
(b) graduate of a college or university
with a bachelor's degree in a human
service field with less than two years
of full-time, post-bachelor's degree
accumulated mh/dd/sa experience
with the population served, or a
substance abuse professional with less
than two years of full-time, post-
bachelor's degree accumulated
supervised experience in alcoholism
and drug abuse counseling.
Supervision shall be provided by a

- qualified professional with the
population served until the individual
meets two years of experience. The
supervisor and the employee shall
develop an individualized supervision
plan upon hiring. The parties shall
review the plan annually;
(c) graduate of a college or university
with a bachelor's degree in a field
other than human services with less
than four years of full-time, post-
bachelor's degree accumulated
mh/dd/sa experience with the
population served, or a substance
abuse professional with less than four
years of full-time, post-bachelor's
degree accumulated supervised
experience in alcoholism and drug
abuse counseling. Supervision shall be
provided by a qualified professional
with the population served until the
individual meets four years of
experience. The supervisor and the
employee shall develop an
individualized supervision plan upon
hiring. The parties shall review the
plan annually; or
(d) registered nurse who is licensed to
practice in the State of North Carolina
by the North Carolina Board of
Nursing with less than four years of
full-time accumulated experience in
mh/dd/sa with the population served.
Supervision shall be provided by a
qualified professional with the
population served until the individual
meets four years of experience. The
supervisor and the employee shall
develop an individualized supervision
plan upon hiring. The parties shall
review the plan annually.
(2) "Certified clinical supervisor (CCS)" means an
individual who is certified as such by the North
Carolina Addictions Specialist Professional
Practice Board.
(3) "Certified criminal justice addictions
professional (CCJP)" means an individual who
is certified as such by the North Carolina
Addictions Specialist Professional Practice
Board.
(4) "Certified alcohol and drug counselor" means
an individual who is certified as such by the
North Carolina Addictions Specialist
Professional Practice Board.
(5) "Certified substance abuse prevention
specialist" means an individual who is certified
as such by the North Carolina Addictions
Specialist Professional Practice Board.

- (6) "Clinical" means having to do with the treatment or habilitation of a client.
- (7) "Clinical staff member" means a qualified professional or associate professional who provides treatment or habilitation to a client.
- (8) "Clinical or professional supervision" means regularly scheduled assistance by a qualified professional or associate professional to a staff member who is providing direct, therapeutic intervention to a client or clients. The purpose of clinical supervision is to ensure that each client receives treatment or habilitation that is consistent with accepted standards of practice and the needs of the client.
- (9) "Clinical social worker" means a social worker who is licensed as such by the N.C. Social Work Certification and Licensure Board.
- (10) "Direct Support Professional" means an individual who has a GED or high school diploma hired to provide intellectual disability, developmental disability, or traumatic brain injury services. Supervision shall be provided by a qualified professional with experience with the population served. The supervisor and the employee shall develop an individualized supervision plan upon hiring and shall review it annually thereafter.
- (11) "Director" means the individual who is responsible for the operation of the facility.
- (12) "Family Partner" means an individual hired to provide direct engagement, support, and advocacy to the family of each child and adolescent served in a Psychiatric Residential Treatment Facility. A Family Partner shall meet the criteria for a Paraprofessional as defined in this Rule, have lived experience as a primary caregiver for a child or adolescent with a mental health disorder, a substance use disorder, intellectual disorder, or developmental disability. A Family Partner shall achieve certification as a Family Peer Specialist by the National Federation of Families for Children with Mental Illness within 18 months of hire and shall maintain active certification while in this role.
- (13) "Licensed Clinical Addictions Specialist (LCAS)" means an individual who is licensed as such by the North Carolina Addictions Specialist Professional Practice Board.
- (14) "Licensed clinician" means an individual with clinical licensure awarded by the State of North Carolina, as a physician, licensed psychologist, licensed psychological associate, licensed clinical social worker, licensed professional counselor, licensed marriage and family therapist, or licensed clinical addictions specialist. "Licensed clinician" also includes an individual with clinical licensure and certification as a certified clinical nurse specialist in psychiatric mental health advanced practice, or a certified nurse practitioner in psychiatric mental health advanced practice.
- (15) "Licensed Clinical Mental Health counselor (LCMHC)" means a counselor who is licensed as such by the North Carolina Board of Licensed Clinical Mental Health Counselors.
- (16) "Nurse" means a person licensed to practice in the State of North Carolina either as a registered nurse or as a licensed practical nurse.
- (17) "Paraprofessional" within the mh/dd/sas system of care means an individual who, with the exception of staff providing respite services or personal care services, has a GED or high school diploma; those employed prior to November 1, 2001 to provide a mh/dd/sa service are not required to have a GED or high school diploma. Supervision shall be provided by a qualified professional or associate professional with the population served. The supervisor and the employee shall develop an individualized supervision plan upon hiring. The parties shall review the plan annually.
- (18) "Psychiatrist" means an individual who is licensed to practice medicine in the State of North Carolina and who has completed a training program in psychiatry accredited by the Accreditation Council for Graduate Medical Education.
- (19) "Psychologist" means an individual who is licensed to practice psychology in the State of North Carolina as either a licensed psychologist or a licensed psychological associate.
- (20) "Qualified client record manager" means an individual who is a graduate of a curriculum accredited by the Council on Medical Education and Registration of the American Health Information Management Association and who is currently registered or accredited by the American Health Information Management Association.
- (21) "Qualified professional" means, within the mh/dd/sas system of care either:
  - (a) an individual who holds a license, provisional license, or certificate issued by the governing board regulating a human service profession, including a registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing who also has four years of full-time accumulated experience in mh/dd/sa with the population served;
  - (b) a graduate of a college or university with a Masters degree in a human service field and has one year of full-time, pre- or post-graduate degree accumulated supervised mh/dd/sa



- (c) a graduate of a college or university with a bachelor's degree in a human service field and has two years of full-time, pre- or post-bachelor's degree accumulated supervised mh/dd/sa experience with the population served, or a substance abuse professional who has two years of full-time, pre- or post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling;
  - (d) a graduate of a college or university with a bachelor's degree in a field other than human services and has four years of full-time, pre- or post-bachelor's degree accumulated supervised mh/dd/sa experience with the population served, or a substance abuse professional who has four years of full-time, pre- or post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling.
- (22) "Qualified substance abuse prevention professional (QSAPP)" within the mh/dd/sas system of care, means either:
- (a) a graduate of a college or university with a masters degree in a human service field and has one year of full-time, post-graduate degree accumulated supervised experience in substance abuse prevention;
  - (b) a graduate of a college or university with a bachelor's degree in a human service field and has two years of full-time, post-bachelor's degree accumulated supervised experience in substance abuse prevention;
  - (c) a graduate of a college or university with a bachelor's degree in a field other than human services and has four years of full-time, post bachelor's degree accumulated supervised experience in substance abuse prevention; or
  - (d) a substance abuse prevention professional who is certified as a Certified Prevention Specialist by the North Carolina Addictions Specialist Professional Practice Board.

*Eff. May 11, 1996;*  
*Temporary Amendment Eff. January 1, 2001;*  
*Temporary Amendment Expired October 13, 2001;*  
*Temporary Amendment Eff. November 1, 2001;*  
*Amended Eff. February 1, 2009; October 1, 2004; April 1, 2003;*  
*Temporary Amendment Eff. March 1, 2019;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 20, 2019;*  
*Temporary Amendment Expired Eff. December 10, 2019;*  
*Amended Eff. January 1, 2024.*

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**10A NCAC 28A .0102 DEFINITIONS**

(a) In addition to the definitions contained in this Rule, the terms defined in G.S. 122C-3, 122C-4 and 122C-53(f) also apply to all rules in Subchapters 28A, 28B, 28C, and 28D of this Chapter.

(b) As used in the rules in Subchapters 28A, 28B, 28C, and 28D of this Chapter, the following terms have the meanings specified:

(1) "Abuse" means the same as defined in 42 CFR Part 488 Subpart E, which is incorporated by reference, including subsequent amendments. The Code of Federal Regulations is available free of charge at <https://www.govinfo.gov/app/collection/CFR>.

(2) "Associate Professional (AP)" within the mental health, developmental disabilities and substance abuse services (mh/dd/sas) system of care means an individual who is either a:

(A) graduate of a college or university with a Masters degree in a human service field with less than one year of full-time, post-graduate degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than one year of full-time, post-graduate degree accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and supervision shall be provided by a qualified professional with the population served until the individual meets one year of experience;

(B) graduate of a college or university with a bachelor's degree in a human service field with less than two years of full-time, post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than two years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and reviewed

*History Note: Authority G.S. 122C-3; 122C-25; 122C-26; 143B-147; S.L. 2017-32;*

- annually. Supervision shall be provided by a qualified professional with the population served until the individual meets two years of experience;
- (C) graduate of a college or university with a bachelor's degree in a field other than human services with less than four years of full-time, post bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than four years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be provided by a qualified professional with the population served until the individual meets four years of experience; or
- (D) registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing with less than four years of full-time accumulated experience in mh/dd/sa with the population served. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be provided by a qualified professional with the population served until the individual meets four years of experience.
- (3) "Basic necessities" mean the essential items or substances needed to support life and health which include, but are not limited to, a nutritionally sound diet balanced during three meals per day, access to water and bathroom facilities at frequent intervals, seasonable clothing, medications to control seizures, diabetes and other like physical health conditions, and access to social contacts.
- (4) "Certified clinical supervisor (CCS)" means an individual who is certified as such by the North Carolina Addictions Specialist Professional Practice Board.
- (5) "Certified alcohol and drug counselor" means an individual who is certified as such by the North Carolina Addictions Specialist Professional Practice Board.
- (6) "Client" has the same meaning assigned in G.S. 133C-3. "Client" may also be referred to as a patient or resident.
- (7) "Client record" means any record made of confidential information as defined G.S. 122C-3.
- (8) "Clinical Director" means Medical Director, Director of Medical Services or such person acting in the position of Clinical Director, or his designee.
- (9) "Clinically competent" means authorization by the State Facility Director for a qualified professional to provide specific treatment or habilitation services to clients based on the professional's education, training, experience, competence and judgment.
- (10) "Consent" means concurrence by a client or his legally responsible person following receipt of information from the qualified professional who will administer the proposed treatment or procedure. Informed consent implies that the client or his legally responsible person was provided with information concerning proposed treatment, including both benefits and risks, in order to make an educated decision with regard to such treatment.
- (11) "Dangerous articles or substances" mean, but are not limited to, any weapon or potential weapon, heavy blunt object, sharp objects, potentially harmful chemicals, or drugs of any sort, including alcohol.
- (12) "Division" means the Division of State Operated Healthcare Facilities.
- (13) "Division Director" means the Director of the Division or his designee.
- (14) "Emergency" means a situation in a state facility in which a client is in imminent danger of causing abuse or injury to self or others, or when substantial property damage is occurring as a result of unexpected and severe forms of inappropriate behavior, and rapid intervention by the staff is needed.
- (15) "Emergency surgery" means an operation or surgery performed in a medical emergency, as defined in Subparagraph (b)(28) of this Rule, where informed consent cannot be obtained from an authorized person, as specified in G.S. 90-21.13, because the delay would worsen the physical condition or endanger the life of the client.
- (16) "Exclusionary time-out" means the removal of a client to a separate area or room from which exit is not barred for the purpose of modifying behavior.
- (17) "Exploitation" means the same as defined in 42 CFR Part 483 Subpart B, which is incorporated by reference, including subsequent amendments. The Code of Federal Regulations is available free of charge at <https://www.govinfo.gov/app/collection/CFR>.
- (18) "Forensic Division" means the units at any State hospital designated in accordance with G.S. 122C-252 which serves clients who are:
- (A) admitted for the purpose of evaluation for capacity to proceed to trial;

- (B) found not guilty by reason of insanity;  
 (C) determined incapable of proceeding to trial.
- (19) "Grievance" means a verbal or written complaint by or on behalf of a client concerning a situation that occurred within the state facility. A grievance does not include complaints that can be resolved without delay by staff present. A complaint that is not resolved shall be filed and processed in accordance with the requirements of 10A NCAC 28B .0203.
- (20) "Human Rights Committee" means a committee, appointed by the Secretary, to act in a capacity regarding the protection of client rights.
- (21) "Independent psychiatric consultant" means a licensed psychiatrist not on the staff of the state facility in which the client is being treated. The psychiatrist may be in private practice, be employed by another state facility, or be employed by a facility other than a state facility as defined in G.S. 122C-3(14).
- (22) "Interpreter services" means specialized communication services provided for the hearing impaired by interpreters certified by the National Registry of Interpreters for the Deaf or the National Association of the Deaf.
- (23) "Involuntary client" means a person admitted to any regional psychiatric hospital or alcohol and drug abuse treatment center under the provisions of Article 5, Parts 7, 8 or 9 of G.S. 122C and includes, but is not limited to, clients detained pending a district court hearing and clients involuntarily committed after a district court hearing. This term shall also include individuals who are defendants in criminal actions and are being evaluated in a state facility for mental responsibility or mental competency as a part of such criminal proceedings as specified in G.S. 15A-1002, unless a valid order providing otherwise is issued from a court of competent jurisdiction, and the civil commitment of defendants found not guilty by reason of insanity as specified in G.S. 15A-1321.
- (24) "Isolation time-out" means the removal of a client to a separate room from which exit is barred where there is direct, uninterrupted supervision by staff for the purpose of modifying behavior. "Isolation time-out" does not include precautions intended to prevent transmission of a communicable disease.
- (25) "Licensed Clinical Addiction Specialist (LCAS)" means an individual who is certified as such by the North Carolina Addictions Specialist Professional Practice Board.
- (26) "Licensed Clinical Mental health (LCMHC)" means a counselor who is licensed as such by the North Carolina Board of Licensed Clinical Mental Health Counselors.
- (27) "Major physical injury" means damage caused to the body resulting in profuse bleeding or contusion of tissues; fracture of a bone; damage to internal organs; loss of consciousness; loss of normal neurological function (inability to move or coordinate movement); or any other painful condition caused by such injury.
- (28) "Medical emergency" means a situation where the client is unconscious, ill, or injured, and the circumstances require immediate medical or other health care related decisions and actions to prevent the worsening of the physical condition, or endanger the life, of the client.
- (29) "Minimal risk research" means that the risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, than those encountered in daily life or during the performance of routine physical or psychological examinations or tests.
- (30) "Minor client" means a person under 18 years of age who:  
 (A) has not been married; or  
 (B) has not been emancipated by a decree issued by a court of competent jurisdiction; or  
 (C) is not a member of the armed forces.
- (31) "Misappropriation of resident property" means the same as defined by 42 CFR Part 488 Subpart E, incorporated by reference, including subsequent amendments. The Code of Federal Regulations is available free of charge at <https://www.govinfo.gov/app/collection/CFR>.
- (32) "Neglect" means the same as defined by 42 CFR Part 488 Subpart E, incorporated by reference, including subsequent amendments. The Code of Federal Regulations is available free of charge at <https://www.govinfo.gov/app/collection/CFR>.
- (33) "Normalization" means the principle of helping the client to obtain an existence as close to normal as possible, taking into consideration the client's disabilities and potential, by making available to him patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.
- (34) "Paraprofessional" within the mh/dd/sa system of care means an individual who, with the exception of staff providing respite services or personal care services, has a GED or high school diploma; an individual employed prior to November 1, 2001 to provide a mh/dd/sa service is not required to have a GED or high school diploma. Upon hiring, an individualized supervision plan shall be developed and supervision shall be provided by a qualified

- professional or associate professional with the population served.
- (35) "Person standing in loco parentis" means one who has put himself in the place of a lawful parent by assuming the rights and obligations of a parent without formal adoption.
- (36) "Physical Restraint" means the application or use of any manual method of restraint that restricts freedom of movement, or the application or use of any physical or mechanical device that restricts freedom of movement or normal access to one's body, including material or equipment attached or adjacent to the client's body that he or she cannot easily remove. Holding a client in a therapeutic hold or any other manner that restricts his or her movement constitutes manual restraint for that client. Mechanical devices may restrain a client to a bed or chair, or may be used as ambulatory restraints. Examples of mechanical devices include cuffs, ankle straps, sheets or restraining shirts, arm splints, mittens and helmets. Excluded from this definition of physical restraint are physical guidance, gentle physical prompting techniques, escorting and therapeutic holds used solely for the purpose of escorting a client who is walking, soft ties used solely to prevent a medically ill client from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes or similar medical devices, and prosthetic devices or assistive technology which are designed and used to increase client adaptive skills. Escorting means the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a client to walk to a safe location.
- (37) "Protective devices" means an intervention that provides support for clients or enhances the safety of clients with specific medical or behavioral needs. Such devices may include posey vests, geri-chairs or table top chairs to provide support and safety for clients with physical disabilities; devices such as helmets and mittens for self-injurious behaviors; or devices such as soft ties used to prevent medically ill clients from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes or similar medical devices. As provided in Rule .0207 of Subchapter 28D, the use of a protective device for behavioral control shall comply with the requirements specified in Rule .0203 of Subchapter 28D.
- (38) "Psychotropic medication" means medication with the primary function of treating mental illness, personality or behavior disorders. It includes, but is not limited to, antipsychotics, antidepressants, antianxiety agents and mood stabilizers.
- (39) "Qualified professional" means, within the mh/dd/sas system of care, an individual who is either:
- (A) an individual who holds a license, provisional license, or certificate issued by the governing board regulating a human service profession, including a registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing who also has four years of full-time accumulated experience in mh/dd/sa with the population served;
- (B) a graduate of a college or university with a Masters degree in a human service field and has one year of full-time, pre- or post-graduate degree accumulated supervised mh/dd/sa experience with the population served, or a substance abuse professional who has one-year of full-time, pre- or post-graduate degree accumulated supervised experience in alcoholism and drug abuse counseling;
- (C) a graduate of a college or university with a bachelor's degree in a human service field and has two years of full-time, pre- or post-bachelor's degree accumulated supervised mh/dd/sa experience with the population served, or a substance abuse professional who has two years of full-time, pre- or post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling; or
- (D) a graduate of a college or university with a bachelor's degree in a field other than human services and has four years of full-time, pre- or post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional who has four years of full-time, pre- or post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling.
- (40) "Regional alcohol and drug abuse treatment center" means a state facility for persons with a substance abuse disorder as specified in G.S. 122C-181(a)(3).
- (41) "Regional developmental disability center" means a state facility for the developmentally disabled as specified in G.S. 122C-181(a)(2).
- (42) "Regional psychiatric hospital" means a state facility for the mentally ill as specified in G.S. 122C-181(a)(1).

- (43) "Representative payee" means the person, group, or facility designated by a funding source, such as Supplemental Security Income (SSI), to receive and handle funds according to the guidelines of the source on behalf of a client.
- (44) "Research" means inquiry involving a trial or observation made under conditions determined by the investigator to confirm or disprove an hypothesis or to explicate some principle or effect.
- (45) "Respite client" means a client admitted to a developmental disability center or a neuromedical treatment center for a short-term period, not to exceed 30 days. The primary purpose of such admission is to provide a temporary interval of rest or relief for the client's regular caretaker.
- (46) "Responsible professional" shall have the meaning as specified in G.S. 122C-3; the "responsible professional" shall also be a qualified professional as defined in Subparagraph (b)(39) of this Rule.
- (47) "Seclusion" means isolating a client in a separate locked room for the purpose of managing a client's behavior. "Seclusion" does not include precautions intended to prevent transmission of a communicable disease. In the Forensic Service, Pretrial Evaluation Unit and the Forensic Treatment Program Maximum Security Ward in the Central Regional Hospital, the use of locked rooms is not considered seclusion for clients with criminal charges who are:
- (A) undergoing pretrial evaluations ordered by a criminal court;
  - (B) in treatment for restoration of capacity to proceed;
  - (C) in treatment to reduce violence risk; or
  - (D) considered to be an escape risk.
- (48) "State Facility Director" means the chief administrative officer or manager of a state facility or his designee.
- (49) "Strike" means, but is not limited to, hitting, kicking, slapping or beating whether done with a part of one's body or with an object.
- (50) "Timeout" means the removal of a client from other clients to another space within the same activity area for the purpose of modifying behavior.
- (51) "Treatment" means the act, method, or manner of habilitating or rehabilitating, caring for or managing a client's physical or mental problems.
- (52) "Treatment plan" means a written individual plan of treatment or habilitation for each client to be undertaken by the treatment team and includes any documentation of restriction of client's rights.

- (53) "Treatment team" means an interdisciplinary group of qualified professionals sufficient in number and variety by discipline to assess and address the identified needs of the client.
- (54) "Unit" means an integral component of a state facility established for the delivery of one or more elements of service to which specific staff and space are assigned, and for which responsibility has been assigned to a director, supervisor, administrator, or manager.
- (55) "Voluntary client" means a person admitted to a state facility under the provisions of Article 5, Parts 2, 3, 4 or 5 of G.S. 122C.

*History Note: Authority G.S. 122C-3; 122C-4; 122C-51; 122C-53(f); 143B-147; S.L. 2017-32; Eff. October 1, 1984; Amended Eff. June 1, 1990; April 1, 1990; July 1, 1989; Temporary Amendment Eff. January 1, 1998; Amended Eff. April 1, 1999; Temporary Amendment Eff. January 1, 2001; Temporary Amendment Expired October 13, 2001; Temporary Amendment Eff. November 1, 2001; Amended Eff. April 1, 2003; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24, 2017; Temporary Amendment Eff. March 1, 2019; Temporary Amendment Expired Eff. December 10, 2019; Amended Eff. January 1, 2024.*

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**TITLE 13 - DEPARTMENT OF LABOR**

<b>13 NCAC 15 .0430</b>	<b>REGULATION OF INFLATABLE OR AIR-SUPPORTED AMUSEMENT DEVICES</b>
<b>13 NCAC 15 .0431</b>	<b>DEFINITIONS</b>
<b>13 NCAC 15 .0432</b>	<b>RIDE DESIGN</b>
<b>13 NCAC 15 .0433</b>	<b>ANCHORAGE OR TIE-DOWN</b>
<b>13 NCAC 15 .0434</b>	<b>OPERATION OF INFLATABLE OR AIR-SUPPORTED AMUSEMENT DEVICES</b>
<b>13 NCAC 15 .0435</b>	<b>BLOWERS</b>
<b>13 NCAC 15 .0436</b>	<b>WIND SPEED</b>
<b>13 NCAC 15 .0437</b>	<b>SIGNS</b>
<b>13 NCAC 15 .0438</b>	<b>OPERATING MANUAL AND DOCUMENTATION</b>

*History Note: Authority G.S. 95-111.1; 95-111.2; 95-111.4; Eff. July 1, 2003; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 5, 2016; Repealed Eff. April 1, 2024.*

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**TITLE 14B - DEPARTMENT OF PUBLIC SAFETY**

**14B NCAC 16 .0701 APPLICATION FOR UNARMED SECURITY GUARD REGISTRATION**

(a) Each employer or his or her designee shall submit an online application for the registration of each employee to the Board. This online submission shall be accompanied by:

- (1) electronic submission of fingerprints from a Live Scan or similar system approved by the State Bureau of Investigations or one set of classifiable fingerprints on an applicant fingerprint card that shall be mailed separately to the Board's office;
- (2) one head and shoulders color digital photograph of the applicant in JPG, JPEG, or PNG format of sufficient quality for identification, taken within six months prior to online application and submitted by uploading the photograph online with the application submission;
- (3) a statement of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 60 months;
- (4) the applicant's non-refundable registration fee, along with a four dollar (\$4.00) convenience fee and a separate credit card transaction fee;
- (5) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected online by the Private Protective Services Board;
- (6) one original signed SBI release of information form that shall be uploaded online with the original mailed to the Board's administrative office;
- (7) a statement signed by a certified trainer that the applicant has completed the training requirements of Rule .0707 of this Section; and
- (8) a completed affidavit form and public notice statement form.

(b) The employer of each applicant for registration shall give the applicant a copy of the online application and a copy of the completed affidavit form to serve as a record of application and shall retain a copy of the application, including affidavit, in the guard's personnel file in the employer's office.

(c) The applicant's copy of the application and completed affidavit form shall serve as a temporary registration card that shall be carried by the applicant when he or she is working within the scope of his or her employment and shall be exhibited upon the request of any law enforcement officer or authorized representative of the Board.

(d) A copy of the statement required by Subparagraph (a)(7) of this Rule shall be retained by the licensee in the individual applicant's personnel file in the employer's office.

*History Note: Authority G.S. 74C-5; 74C-8.1; 74C-11; Eff. June 1, 1984; Amended Eff. May 1, 2012; July 1, 2011; August 1, 1998; December 1, 1995; June 1, 1994; February 1, 1990; May 1, 1988;*

*Transferred and Recodified from 12 NCAC 07D .0701 Eff. July 1, 2015; Amended Eff. November 1, 2017; Readopted Eff. March 1, 2020; Amended Eff. January 1, 2024; July 1, 2021.*

**14B NCAC 16 .0708 TRAINER NAME TO BE SUBMITTED TO DIRECTOR**

*History Note: Authority G.S. 74C-5; 74C-13(m); Eff. July 1, 2021; Repealed Eff. January 1, 2024.*

**14B NCAC 16 .0902 APPLICATION FOR FIREARMS TRAINER CERTIFICATE**

Each applicant for a firearms trainer certificate shall submit an online application to the Board. The application shall be accompanied by:

- (1) electronic submission of fingerprints from a Live Scan or similar system approved by the State Bureau of Investigations or one set of classifiable fingerprints on an applicant fingerprint card that shall be mailed separately to the Board's office;
- (2) one head and shoulders color digital photograph of the applicant in JPG, JPEG, or PNG format of sufficient quality for identification, taken within six months prior to online submission and submitted by uploading online with the application submission;
- (3) a statement of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 60 months;
- (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected online by the Private Protective Services Board;
- (5) the applicant's non-refundable application fee, along with a four dollar (\$4.00) convenience fee and a separate credit card transaction fee;
- (6) evidence of the liability insurance required by G.S. 74C-10(e) if the applicant is not an employee of a licensee;
- (7) a certificate of successful completion of the training required by Rule .0901(a)(3) and (4) of this Section or acceptable certificate of other current certification as set forth in Rule .0901(c) and (d) of this Section; and
- (8) the actual cost charged to the Private Protective Services Board by the North Carolina Justice Academy or other entity to cover the cost of the firearms training course given by the N.C. Justice Academy or other entity and collected as part of the online application process by the Private Protective Services Board.

*History Note: Authority G.S. 74C-5; 74C-8.1(a); 74C-8(d);74C-13;*  
*Eff. June 1, 1984;*  
*Amended Eff. August 1, 1998; December 1, 1995; July 1, 1987; December 1, 1985;*  
*Temporary Amendment Eff. July 17, 2001;*  
*Amended Eff. January 1, 2013; May 1, 2012; August 1, 2002;*  
*Transferred and Recodified from 12 NCAC 07D .0902 Eff. July 1, 2015;*  
*Amended Eff. November 1, 2017;*  
*Readopted Eff. March 1, 2020;*  
*Amended Eff. January 1, 2024; July 1, 2021.*

**14B NCAC 16 .0904 RENEWAL OF A FIREARMS TRAINER CERTIFICATE**

(a) Each applicant for renewal of a firearms trainer certificate shall complete an online renewal form on the website provided by the Board. This form shall be submitted online not less than 30 days prior to the expiration of the applicant's current certificate and shall be accompanied by:

- (1) uploaded online a certificate of successful completion of a firearms trainer refresher course approved by the Board and the Secretary of Public Safety consisting of a minimum of eight hours of classroom and practical range training in safety and maintenance of the applicable firearm (i.e. handgun, shotgun, or rifle), range operations, control and safety procedures, and methods of firing. This training shall be completed within 180 days of the submission of the renewal application;
- (2) a statement of the results of a criminal history records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 24 months; and
- (3) the applicant's renewal fee, along with the four dollar (\$4.00) convenience fee and a separate credit card transaction fee.

(b) If there is a criminal charge pending against the applicant for renewal that constitutes a deniable offense under G.S. 74C-8(d)(2), consideration of the application shall be deferred until the criminal charge is adjudicated.

(c) Members of the armed forces whose certification is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall receive that same extension of time to pay the certification renewal fee and to complete any continuing education requirements prescribed by the Board. The applicant shall furnish the Board a copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue.

(d) Any firearms trainer who fails to qualify with the minimum score during the refresher course shall not continue to instruct during the period between the failure to qualify and the expiration of his or her permit.

(e) The holder of a firearms trainer certificate may utilize a dedicated light system or gun mounted light for personal requalification.

(f) During a national or State declared state of emergency that restricts or prohibits a certified firearms trainer from requalifying, the Board shall, upon written request to the Director by the licensee, extend the deadline for requalification up to 90 days beyond the effective period of the state of emergency. Any certificate renewed pursuant to this Paragraph shall be issued conditionally and shall automatically expire on the 90th day if requalification requirements have not been met.

*History Note: Authority G.S. 74C-5; 74C-8.1(a); 74C-9; 74C-13; 93B-15;*  
*Eff. June 1, 1984;*  
*Amended Eff. January 1, 2013; October 1, 2010; June 1, 2009; December 1, 1995; December 1, 1985;*  
*Transferred and Recodified from 12 NCAC 07D .0904 Eff. July 1, 2015;*  
*Amended Eff. November 1, 2017; February 1, 2016; October 1, 2015;*  
*Readopted Eff. November 1, 2019;*  
*Amended Eff. March 1, 2020;*  
*Emergency Amendment Eff. May 6, 2020;*  
*Temporary Amendment Eff. July 24, 2020;*  
*Temporary Amendment Expired Eff. May 14, 2021;*  
*Amended Eff. July 1, 2022; January 1, 2022;*  
*Amended Eff. January 1, 2024; October 1, 2022.*

**14B NCAC 16 .0910 APPLICATION FOR AN UNARMED TRAINER**

Each applicant for an unarmed trainer certificate shall submit an online application to the Board. The application shall be accompanied by:

- (1) electronic submission of fingerprints from a Live Scan or similar system approved by the State Bureau of Investigations or one set of classifiable fingerprints on an applicant fingerprint card that shall be mailed separately to the Board's office;
- (2) one head and shoulders color digital photograph of the applicant in JPG, JPEG, or PNG format of sufficient quality for identification, taken within six months prior to online submission and submitted by uploading online with the application submission;
- (3) a statement of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G. S. 74C-8.1(a) for each state where the applicant has resided within the preceding 60 months;
- (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected online by the Private Protective Services Board;
- (5) the applicant's non-refundable application fee, along with a four dollar (\$4.00) convenience fee and a separate credit card transaction fee;
- (6) a certificate of successful completion of the training required by Rule .0909(a)(3) or current

certificate of other acceptable certification as set forth in Rule .0909(b) of this Section.

- (7) the actual cost charged to the Private Protective Services Board by Wake Technical Community College, or other entity, to cover the cost of the unarmed guard trainer course and collected as part of the online application process by the Private Protective Services Board.

*History Note:* Authority G.S. 74C-8; 74C-9; 74C-11; 74C-13; Eff. October 1, 2004;  
*Amended Eff.* January 1, 2013;  
*Transferred and Recodified from 12 NCAC 07D .0910 Eff.* July 1, 2015;  
*Readopted Eff.* March 1, 2020;  
*Amended Eff.* January 1, 2024.

**14B NCAC 16 .0912 ROSTERS OF UNARMED TRAINER CLASSES**

*History Note:* Authority G.S. 74C-5; 74C-13; Eff. January 1, 2013;  
*Transferred and Recodified from 12 NCAC 07D .0912 Eff.* July 1, 2015;  
*Readopted Eff.* March 1, 2020;  
*Repealed Eff.* January 1, 2024.

**14B NCAC 16 .1109 PROBATIONARY EMPLOYEES**

- (a) A private investigator licensee may employ a potential trainee as a probationary employee for 60 consecutive calendar days. The Director, upon written request of the licensee, shall extend the probationary period by 30 additional days.
- (b) A private investigator licensee may supervise an intern as a probationary employee concurrent with the intern's educational institution's schedule.
- (c) A private investigator licensee may employ an apprentice participating in a North Carolina registered apprentice program as set forth in G.S. 93B-8.6 as a probationary employee for the period prescribed in the federal guidelines as set forth therein.
- (d) To qualify as an "intern" the potential probationary employee must be enrolled as a student in a high school, community college, college, or university, be in good standing with the educational institution, and the internship must be for credit towards a degree, diploma, or certificate issued by the educational institution.
- (e) Upon completion of the probationary period and the desire of the licensee to supervise the probationary employee as a private investigator trainee, the potential trainee shall apply pursuant to Section .0200 of this Chapter.
- (f) For hours gained during probationary employment, an internship, or apprenticeship to be considered for licensure the probationary employee shall comply with Rule .1102 of this Section.
- (g) Before a probationary employee engages in any activity defined as private investigation or has access to any confidential client information, the employee shall complete 40 hours of one-on-one supervision by the supervising licensee, and the licensee shall conduct a criminal record check on the employee.
- (h) Before engaging the probationary employee, intern, or apprentice the licensee shall submit to the Director in writing the

name, address, last four digits of social security number, confirmation that the results of the criminal history record check contain no prohibitions as set forth in G.S. 74C-8(d)(2), and anticipated start date and ending date of employment of the probationary employee. The Director shall confirm receipt within three business days of receipt.

- (i) Probationary employment which does not comply with this Rule is a violation of Rule .0204(c)(2) of this Chapter.
- (j) Any probationary employee, intern, or apprentice shall be a minimum of 18 years of age.
- (k) The use of the terms "employee" and "employment" in this Rule does not require or mandate compensation for any probationary employment, internship, or apprenticeship.

*History Note:* Authority G.S. 74C-5(2); 93B-8.6; Eff. January 1, 2024.

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

**15A NCAC 07H .0208 USE STANDARDS**

(a) General Use Standards

- (1) Uses that are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and public trust areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads, factories, and parking lots are examples of uses that are not water dependent. Uses that are water dependent include: utility crossings, wind energy facilities, docks, wharves, boat ramps, dredging, bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring pilings, navigational channels, access channels and drainage ditches;
- (2) Before being granted a permit, the CRC or local permitting authority shall find that the applicant has complied with the following standards:
- (A) The location, design, and need for development, as well as the construction activities involved shall be consistent with the management objective of the Estuarine and Ocean System AEC in Rule .0203 of this Section and shall be sited and designed to avoid significant adverse impacts upon the productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation as defined by the Marine Fisheries Commission in 15A NCAC 03I .0101(4)(i), and spawning and nursery areas;
- (B) Development shall comply with State and federal water and air quality rules, statutes, and regulations;
- (C) Development shall not cause irreversible damage to documented



- archaeological or historic resources as identified by the N.C. Department of Natural and Cultural Resources;
  - (D) Development shall not increase siltation;
  - (E) Development shall not create stagnant water bodies;
  - (F) Development shall be timed to avoid significant adverse impacts on life cycles of estuarine and ocean resources; and
  - (G) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters.
- (3) When the proposed development is in conflict with the general or specific use standards set forth in this Rule, the CRC may approve the development if the applicant can demonstrate that the activity associated with the proposed project will have public benefits consistent with the findings and goals of the Coastal Area Management Act identified in G.S. 113A-102, that the public benefits outweigh the adverse effects of the project, that there is no alternate site available for the project, and that all means and measures to mitigate adverse impacts of the project have been incorporated into the project design and shall be implemented at the applicant's expense. Measures taken to mitigate or minimize adverse impacts shall include actions that:
- (A) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
  - (B) restore the affected environment; or
  - (C) compensate for the adverse impacts by replacing or providing substitute resources.
- (4) "Primary nursery areas" are defined as those areas in the estuarine and ocean system where initial post larval development of finfish and crustaceans takes place and populations are uniformly in their early juvenile stages. Primary nursery areas are designated and described by the N.C. Marine Fisheries Commission (MFC) at 15A NCAC 03R .0103 and by the N.C. Wildlife Resources Commission (WRC) at 15A NCAC 10C .0502;
- (5) "Outstanding Resource Waters" (ORW) are defined as those estuarine waters and public trust areas classified by the N.C. Environmental Management Commission (EMC) as defined in 15A NCAC 02B .0225; and
- (6) Beds of "submerged aquatic vegetation" are defined as those habitats in public trust and estuarine waters, that occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas, vegetated with one or more species of submergent vegetation as listed in 15A NCAC 03I .0101(4)(i). Any rules relating to beds of submerged aquatic vegetation shall not apply to non-development control activities authorized by the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et seq.).
- (7) "Adverse impact", "adverse impacts", "adverse effects", or similar formulations, are defined as an effect or impact that is opposed to the goals of the Coastal Area Management Act as found in G.S. 113A-102(b) and with the provisions of G.S. 113-229(e).
- (8) "Significant" as used in this Section includes consideration of both context and intensity. Context means that the impact or effect shall be analyzed from several perspectives that include society as a whole (human, national), the affected subregion of the North Carolina coast, the local area and all directly and indirectly affected parties. Both short- and long-term effects are relevant. Intensity refers to the severity of impact or effect. The following shall be considered in evaluating intensity:
- (A) both adverse impacts as defined in Subparagraph (a)(7) of this Rule and impacts that promote or enhance the goals of the Coastal Area Management Act set out at G.S. 113A-102(b);
  - (B) the degree to which the proposed action affects public health or safety;
  - (C) unique characteristics of the geographic area;
  - (D) the degree to which the possible effects on the environment are uncertain or involve unique or unknown risks;
  - (E) the degree to which the CRC's permit decisions may establish a precedent for future CRC permit decisions;
  - (F) the degree to which the CRC's permit decisions are related to other CRC permit decisions with individually insignificant but cumulatively significant impacts. Significance cannot be avoided by terming an action temporary or by breaking it down into smaller component parts; and
  - (G) the degree to which the CRC's permit decision may cause the loss or destruction of scientific, cultural, historical, and environmental resources as those terms are commonly defined and understood.
- (b) Specific Use Standards
- (1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of

submerged aquatic vegetation as defined in 15A NCAC 07H .0208(a)(6), or areas of coastal wetlands except as otherwise allowed within this Subchapter. Navigation channels, canals and boat basins shall also comply with the following standards:

- (A) Navigation channels and canals may not be allowed through regularly and irregularly flooded coastal wetlands if the loss of wetlands will have significant adverse impacts on fishery resources, water quality, or adjacent wetlands. Navigation channels and canals may be allowed if there is no alternative that would avoid the wetland losses;
- (B) All dredged material shall be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or coastal wetlands;
- (C) Dredged material from maintenance of channels and canals through coastal wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method having no wetland impacts. Under no circumstances shall dredged material be placed on regularly or irregularly flooded wetlands. New dredged material disposal areas shall not be located in the buffer area as outlined in 15A NCAC 07H .0209(d)(10);
- (D) Widths of excavated canals and channels shall be the minimum required to meet the applicant's needs but not impair water circulation;
- (E) Any canal or boat basin shall be excavated no deeper than the depth of the connecting waters;
- (F) Construction of finger canal systems are not allowed. Canals shall be either straight or meandering with no right angle corners;
- (G) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may include shoreline stabilization, vegetative stabilization, or setbacks based on soil characteristics; and
- (H) Maintenance excavation in canals, channels, and boat basins within primary nursery areas and beds of submerged aquatic vegetation as defined in 15A NCAC 031 .0101(4)(i), by the Marine Fisheries Commission shall be avoided. However, when essential to maintain a traditional and

established use, maintenance excavation shall be approved if the applicant meets all of the following criteria:

- (i) There has been navigational use of the area;
  - (ii) There exists a previously permitted channel that was constructed or maintained under permits issued by the State or federal government. If a natural channel was in use, or if a human-made channel was constructed before permitting was necessary, there shall be evidence that the channel was continuously used for a specific purpose;
  - (iii) Excavated material can be removed and placed in a disposal area in accordance with Part (b)(1)(B) and Part (b)(1)(C) of this Rule without impacting adjacent nursery areas and beds of submerged aquatic vegetation as defined in 15A NCAC 031 .0101(4)(i) by the Marine Fisheries Commission;
  - (iv) The original depth and width of a human-made or natural channel shall not be increased to allow a new or expanded use of the channel; and
  - (v) Consistent with the provisions of G.S. 113-229.
- (2) Hydraulic Dredging
- (A) The terminal end of the dredge pipeline shall be positioned at a distance sufficient to preclude erosion of the containment dike and a maximum distance from spillways to allow settlement of suspended solids;
  - (B) Dredged material shall be either confined on high ground by retaining structures or deposited on beaches for purposes of renourishment if the material is suitable in accordance with 15A NCAC 07H .0208(b)(8) and 15A NCAC 07H .0312 except as provided in Part (G) of this Subparagraph;
  - (C) Confinement of excavated materials shall be landward of all coastal wetlands and shall employ soil stabilization measures to prevent entry of sediments into the adjacent water bodies or coastal wetlands;

- (D) Effluent from diked areas receiving disposal from hydraulic dredging operations shall be contained by pipe, trough, or similar device to a point waterward of emergent vegetation or, where local conditions require, below normal low water or normal water level;
  - (E) When possible, effluent from diked disposal areas shall be returned to the area being dredged;
  - (F) A water control structure shall be installed at the intake end of the effluent pipe;
  - (G) Publicly funded projects shall be considered by review agencies on a case-by-case basis with respect to dredging methods and dredged material disposal in accordance with Subparagraph (a)(3) of this Rule; and
  - (H) Dredged material from closed shellfish waters and effluent from diked disposal areas used when dredging in closed shellfish waters shall be returned to the closed shellfish waters.
- (3) Drainage Ditches
- (A) Drainage ditches located through any coastal wetland shall not exceed six feet wide by four feet deep (from ground surface) unless the applicant shows that larger ditches are necessary;
  - (B) Dredged material derived from the construction or maintenance of drainage ditches through regularly flooded marsh shall be placed landward of these marsh areas in a manner that will ensure that entry of sediment into the water or marsh will not occur. Dredged material derived from the construction or maintenance of drainage ditches through irregularly flooded marshes shall be placed on non-wetlands wherever feasible. Non-wetland areas include existing disposal sites;
  - (C) Excavation of new ditches through high ground shall take place landward of an earthen plug or other methods to minimize siltation to adjacent water bodies; and
  - (D) Drainage ditches shall not have a significant adverse impact on primary nursery areas, productive shellfish beds, submerged aquatic vegetation beds as defined by the Marine Fisheries Commission in 15A NCAC 03I .0101(4)(i) or other estuarine habitat. Drainage ditches shall be designed so as to minimize the effects of freshwater inflows, sediment, and the introduction of nutrients to receiving waters. Settling basins, water gates, and retention structures are examples of design alternatives that may be used to minimize sediment introduction.
- (4) Nonagricultural Drainage
- (A) Drainage ditches shall be designed so that restrictions in the volume or diversions of flow are minimized to both surface and ground water;
  - (B) Drainage ditches shall provide for the passage of migratory organisms by allowing free passage of water of sufficient depth required to allow passage of those migratory organisms; and
  - (C) Drainage ditches shall not create stagnant water pools or changes in the velocity of flow.
- (5) Marinas. "Marinas" are defined as any publicly or privately owned dock, basin, or wet boat storage facility constructed to accommodate more than 10 boats and providing any of the following services: permanent or transient docking spaces, dry storage, fueling facilities, haulout facilities, and repair service. Excluded from this definition are boat ramp facilities allowing access only, temporary docking, and none of the preceding services. Expansion of existing facilities shall comply with the standards of this Subparagraph for all development other than maintenance and repair necessary to maintain previous service levels. Marinas shall comply with the following standards:
- (A) Marinas shall be sited in non-wetland areas or in deep water areas not requiring dredging, and shall not disturb shellfish resources, beds of submerged aquatic vegetation as defined in 15A NCAC 03I .0101(4)(i) by the Marine Fisheries Commission, or wetland habitats, except for dredging necessary for access to high-ground sites. The following alternatives for siting marinas shall be allowed.
    - (i) an upland basin site requiring no alteration of wetland or estuarine habitat and providing flushing by tidal or wind generated water circulation or basin design characteristics;

- (ii) an upland basin site requiring dredging for access when the necessary dredging and operation of the marina will not result in significant adverse impacts to existing fishery, shellfish, or wetland resources and the basin design shall provide flushing by tidal or wind generated water circulation;
  - (iii) an open water site located outside a primary nursery area which utilizes piers or docks rather than channels or canals to reach deeper water; and
  - (iv) an open water marina requiring excavation of no intertidal habitat, and no dredging greater than the depth of the connecting channel.
- (B) Marinas that require dredging shall not be located in primary nursery areas nor in areas which require dredging through primary nursery areas for access. Maintenance dredging in primary nursery areas for existing marinas shall comply with the standards set out in Part (b)(1)(I) of this Rule;
- (C) Marinas to be developed in waters subject to public trust rights, other than those created by dredging upland basins or canals for the purpose of providing docking for residential developments shall be allowed no more than 27 square feet of public trust areas for every one linear foot of shoreline adjacent to these public trust areas for construction of docks and mooring facilities. The 27 square feet allocation does not apply to fairway areas between parallel piers or any portion of the pier used only for access from land to the docking spaces;
- (D) To protect water quality in shellfishing areas, marinas shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure will result from the location of the marina. In compliance with 33 U.S.C. 101(a)(2) of the Clean Water Act and North Carolina Water Quality Standards 15A NCAC 02B .0200 adopted pursuant to that section,
- shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption as determined by the NC Division of Marine Fisheries in accordance with 15A NCAC 18A .0900. The Division of Coastal Management shall consult with the Division of Marine Fisheries regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development;
- (E) Marinas shall not be located without written consent from the leaseholders or owners of submerged lands that have been leased from the State or deeded by the State;
- (F) Marina basins shall be designed to promote flushing through the following design criteria:
- (i) the basin and channel depths shall gradually increase toward open water and shall never be deeper than the waters to which they connect; and
  - (ii) when possible, an opening shall be provided at opposite ends of the basin to establish flow-through circulation;
- (G) Marinas shall be designed so that the capability of the waters to be used for navigation or for other public trust rights in estuarine or public trust waters are not jeopardized while allowing the applicant access to deep waters;
- (H) Marinas shall be located and constructed so as to avoid impacts on navigation throughout all federally maintained channels and their boundaries as designated by the US Army Corps of Engineers. This includes permanent or temporary mooring sites; speed or traffic reductions; or any other device, either physical or regulatory, that may cause a federally maintained channel to be restricted;

- (I) Open water marinas shall not be enclosed within breakwaters that preclude circulation sufficient to maintain water quality as determined by the Division of Water Resources.
  - (J) Marina design shall comply with all applicable EMC requirements 15A NCAC 02B .0200 for management of stormwater runoff. Stormwater management systems shall not be located within the 30-foot buffer area outlined in 15A NCAC 07H .0209(d);
  - (K) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and listing the availability of local pump-out services;
  - (L) Boat maintenance areas shall be designed so that all scraping, sandblasting, and painting will be done over dry land with collection and containment devices that prevent entry of waste materials into adjacent waters;
  - (M) All applications for marinas shall be reviewed by the Division of Coastal Management to consider the cumulative impacts of marina development in accordance with G.S. 113A-120(a)(10); and
  - (N) Replacement of existing marinas to maintain previous service levels shall be allowed provided that the development complies with the standards for marina development within this Section.
- (6) Piers and Docking Facilities.
- (A) Piers shall not exceed six feet in width. Piers greater than six feet in width shall be permitted only if the greater width is necessary for safe use, to improve public access or to support a water dependent use that cannot otherwise occur;
  - (B) The total square footage of docks, platforms, and mooring facilities (excluding the pier) allowed shall be eight square feet per linear foot of shoreline with a maximum of 2,000 square feet to limit shading impacts to the substrate. In calculating the total square footage, uncovered open water slips shall not be counted in the total. Projects requiring dimensions greater than those stated in this Rule shall be permitted only if the greater dimensions are necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur. Size restrictions shall not apply to marinas;
  - (C) Piers and docking facilities over coastal wetlands shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking;
  - (D) A boathouse shall not exceed 400 square feet except to accommodate a documented need, provided to the Division of Coastal Management by the applicant for a larger boathouse and shall have sides extending no farther than one-half the height of the walls as measured from the Normal Water Level or Normal High Water to the bottom edge of the roofline, and covering only the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline, except that structural boat covers utilizing a frame-supported fabric covering may be permitted on properties with less than 75 linear feet of shoreline when using screened fabric for side walls. Size restrictions do not apply to marinas;
  - (E) The total area enclosed by an individual boat lift shall not exceed 400 square feet except to accommodate a documented need for a larger boat lift;
  - (F) Piers and docking facilities shall be single story. They may be roofed but shall not be designed to allow second story use;
  - (G) Pier and docking facility length shall be limited by:
    - (i) not extending into the channel portion of the water body; and
    - (ii) not extending more than one-fourth the width of a natural water body, or human-made canal or basin. Measurements to determine widths of the water body, canals, or basins shall be made from the waterward edge of any coastal wetland vegetation that borders the water body. The one-fourth length limitation does not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation

with the Corps of Engineers, has established an official pier-head line. The one-fourth length limitation shall not apply when the proposed pier is located between longer piers or docking facilities within 200 feet of the applicant's property.

(iii) Notwithstanding Subparts (i) and (ii) of this Part, the proposed pier or docking facility shall not be longer than the pier head line established by the piers or docking facilities along the same contiguous shoreline having the same land use, nor longer than one-third the width of the water body. This restriction does not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public.

(H) Piers or docking facilities longer than 400 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least 1 foot for each 100 foot increment of length longer than 400 feet, or, if the additional length is necessary to span some obstruction to navigation. Measurements to determine lengths shall be made from the waterward edge of any coastal wetland vegetation that borders the water body;

(I) Piers and docking facilities shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier or docking facility and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. If the adjacent property is sold before

construction of the pier or docking facility commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the pier. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 07H .1205(t) illustrating the rule as applied to various shoreline configurations. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable as determined by the Director of the Division of Coastal Management; and Applicants for authorization to construct a pier or docking facility shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed dock or pier would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.

(J)

(7) Bulkheads

(A) Bulkhead alignment, for the purpose of shoreline stabilization, shall approximate the location of normal high water or normal water level;

(B) Bulkheads shall be constructed landward of coastal wetlands in order to avoid significant adverse impacts to coastal resources;

(C) Bulkhead backfill material shall be obtained from an upland source approved by the Division of Coastal Management pursuant to this Section, or if the bulkhead is a part of a permitted project involving excavation from a non-upland source, the material so obtained may be contained behind the bulkhead;

(D) Bulkheads shall be permitted below normal high water or normal water level only when the following standards are met:

(i) the property to be bulkheaded has an identifiable erosion problem, whether it results from natural causes or adjacent bulkheads, or it has unusual geographic or geologic features, e.g. steep grade bank;

- (ii) the bulkhead alignment extends no further below normal high water or normal water level than necessary to allow recovery of the area eroded in the year prior to the date of application, to align with adjacent bulkheads, or to mitigate the unusual geographic or geologic features;
- (iii) the bulkhead alignment will not adversely impact public trust rights or the property of adjacent riparian owners; and
- (iv) the property to be bulkheaded is in a non-oceanfront area.
- (E) Where possible, sloping rip-rap, gabions, or vegetation shall be used rather than bulkheads.
- (8) Beach Nourishment
  - (A) Beach creation or maintenance shall be allowed to enhance water related recreational facilities for public, commercial, and private use if consistent with all of the following:
    - (i) Beaches are located in areas where they have historically been found due to natural processes;
    - (ii) Material placed in the water and along the shoreline shall be clean sand. Grain size shall be equal to that found naturally at the site;
    - (iii) Beach creation shall not be allowed in primary nursery areas, nor in any areas where siltation from the site would pose a threat to shellfish beds;
    - (iv) Material shall not be placed on any coastal wetlands or submerged aquatic vegetation beds as defined by the Marine Fisheries Commission in 15A NCAC 03I .0101(4)(i);
    - (v) Material shall not be placed on any submerged bottom with shellfish resources as identified by the Division of Marine Fisheries during the permit review; and
    - (vi) Beach construction shall not cause filling of adjacent navigation channels, canals, or boat basins.
- (B) Placing unconfined sand material in the water and along the shoreline shall not be allowed as a method of shoreline erosion control;
- (C) Material from dredging projects may be used for beach nourishment if:
  - (i) it is first handled in a manner consistent with dredged material disposal as set forth in 15A NCAC 07H .0208;
  - (ii) it is allowed to dry prior to being placed on the beach; and
  - (iii) only that material of acceptable grain size as set forth in Subpart (b)(8)(A)(ii) of this Rule is removed from the disposal site for placement on the beach. Material shall not be placed directly on the beach by dredge or dragline during maintenance excavation.
- (D) The renewal of permits for beach nourishment projects shall require an evaluation by the Division of Coastal Management of any significant adverse impacts of the original work; and
- (E) Permits issued for beach nourishment shall be limited to authorizing beach nourishment only one time.
- (9) Groins
  - (A) Groins shall not extend more than 25 feet waterward of the normal high water or normal water level unless a longer structure is justified by site specific conditions and by an individual who meets any North Carolina occupational licensing requirements for the type of structure being proposed and approved during the application process;
  - (B) Groins shall be set back a minimum of 15 feet from the adjoining riparian lines. The setback for rock groins shall be measured from the toe of the structure. This setback may be waived by written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the groin;

- (C) Groins shall pose no threat to navigation;
  - (D) The height of groins shall not exceed one foot above normal high water or normal water level;
  - (E) No more than two structures shall be allowed per 100 feet of shoreline unless the applicant provides the Division of Coastal Management a design showing that more structures are needed for shoreline stabilization. The groin structures shall be designed by an individual who meets any North Carolina occupational licensing requirements for the structures being proposed.
  - (F) "L" and "T" sections shall not be allowed at the end of groins; and
  - (G) Riprap material used for groin construction shall be free from loose dirt and of a size sufficient to prevent its movement from the site by wave and current action.
- (10) "Freestanding Moorings".
- (A) A "freestanding mooring" is any means to attach a ship, boat, vessel, floating structure, or other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling as long as the piling is not associated with an existing or proposed pier, dock, or boathouse;
  - (B) Freestanding moorings shall be permitted only:
    - (i) to riparian property owners within their riparian corridors;
    - (ii) to any applicant proposing to locate a mooring buoy consistent with a water use plan that is included in either the local zoning or land use plan; or
    - (iii) is associated with commercial shipping, public service, or temporary construction or salvage operations.
  - (C) All mooring fields shall provide an area for access to any moorings and other land based operations that shall include wastewater pumpout, trash disposal, and vehicle parking;
  - (D) To protect water quality of shellfishing areas, mooring fields shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure will result from the location of the mooring field. In compliance with Section 101(a)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 (a)(2), and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption as determined by the Division of Marine Fisheries in accordance with 15A NCAC 18A .0900. The Division of Marine Fisheries shall be consulted regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development;
  - (E) Moorings shall not be located without written consent from the leaseholders or owners of submerged lands that have been leased from the state or deeded by the State;
  - (F) Moorings shall be located and constructed so as to avoid impacts on navigation throughout all federally maintained channels. This includes permanent or temporary mooring sites, speed or traffic reductions, or any other device, either physical or regulatory, which may cause a federally maintained channel to be restricted;
  - (G) Open water moorings shall not be enclosed within breakwaters that preclude circulation and degrade water quality in violation of EMC in accordance with 15A NCAC 02B .0225.
  - (H) Mooring fields shall have posted in view of patrons a notice prohibiting the discharge of any waste from boat toilets or any other discharge and listing the availability of local pump-out services and waste disposal;
  - (I) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing including the length of the vessel to be moored. Moorings and the attached vessel shall not interfere



- with the access of any riparian owner nor shall it block riparian access to channels or deep water, which allows riparian access. Freestanding moorings shall not interfere with the ability of any riparian owner to place a pier for access;
- (J) Freestanding moorings shall not be established in submerged cable or pipe crossing areas or in a manner that interferes with the operations of an access through any bridge;
  - (K) Freestanding moorings shall be marked or colored in compliance with U.S. Coast Guard and the WRC requirements and the required marking maintained for the life of the mooring(s); and
  - (L) The type of material used to create a mooring must be of a design and type of material so as to not present a hazard to navigation or public safety.
- (11) Filling of Canals, Basins and Ditches - Notwithstanding the general use standards for estuarine systems as set out in Paragraph (a) of this Rule, filling canals, basins and ditches shall be allowed if all of the following conditions are met:
- (A) the area to be filled was not created by excavating lands which were below the normal high water or normal water level;
  - (B) if the area was created from wetlands, the elevation of the proposed filling does not exceed the elevation of said wetlands so that wetland function will be restored;
  - (C) the filling will not adversely impact any designated primary nursery area, shellfish bed, beds of submerged aquatic vegetation as defined by the Marine Fisheries Commission in 15A NCAC 03I .0101(4)(i), coastal wetlands, public trust right, or public trust usage; and
  - (D) the filling will not adversely affect the value and enjoyment of property of any riparian owner.
- (12) "Submerged Lands Mining"
- (A) Development Standards. Mining of submerged lands shall meet all the following standards:
    - (i) The Division of Coastal Management shall evaluate the biological productivity and biological significance of mine sites, or borrow sites used for sediment extraction for significant adverse impacts and a protection strategy for these sites provided with the State approval request or permit application;
    - (ii) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant benthic communities identified by the Division of Marine Fisheries or the WRC shall be avoided;
    - (iii) Mining shall avoid archaeological resources and shipwrecks identified by the Department of Cultural Resources; and unique geological features that require protection from uncontrolled or incompatible development as identified by the Division of Energy, Mineral, and Land Resources pursuant to G.S. 113A-113(b)(4)(g);
    - (iv) Mining activities shall not be conducted on or within 500 meters of biological communities identified by the Division of Marine Fisheries or the WRC, such as high relief hard bottom areas. "High relief" is defined for this Part as relief greater than or equal to one-half meter per five meters of horizontal distance;
    - (v) Mining activities shall be timed to minimize impacts on the life cycles of estuarine or ocean resources; and
    - (vi) Mining activities shall not negatively affect potable groundwater supplies, wildlife, freshwater, estuarine, or marine fisheries.
  - (B) Permit Conditions. Permits for submerged lands mining shall be conditioned on the applicant amending the mining proposal to include measures necessary to ensure compliance with the provisions of the Mining Act and the rules for development set out in this Subchapter. Permit conditions shall also include:
    - (i) Monitoring by the applicant to ensure compliance with all

- applicable development standards; and
- (ii) A determination of the necessity and feasibility of restoration shall be made by the Division of Coastal Management as part of the permit or consistency review process. Restoration shall be necessary where it will facilitate recovery of the pre-development ecosystem. Restoration shall be considered feasible unless, after consideration of all practicable restoration alternatives, the Division of Coastal Management determines that the adverse effects of restoration outweigh the benefits of the restoration on estuarine or ocean resources. If restoration is determined to be necessary and feasible, then the applicant shall submit a restoration plan to the Division of Coastal Management prior to the issuance of the permit.
- (C) Dredging activities for the purposes of mining natural resources shall be consistent with the development standards set out in 15A NCAC 07H .0208.
- (D) Mitigation. Where mining cannot be conducted consistent with the development standards set out in this Rule, the applicant may request mitigation approval under 15A NCAC 07M .0700; and
- (13) "Wind Energy Facilities"
  - (A) An applicant for the development and operation of a wind energy facility shall provide:
    - (i) an evaluation of the proposed noise impacts of the turbines to be associated with the proposed facility;
    - (ii) an evaluation of shadow flicker impacts for the turbines to be associated with the proposed facility;
    - (iii) an evaluation of avian and bat impacts of the proposed facility;
    - (iv) an evaluation of viewshed impacts of the proposed facility;
    - (v) an evaluation of potential user conflicts associated with development in the proposed project area; and
    - (vi) a plan regarding the action to be taken upon decommissioning and removal of the wind energy facility. The plan shall include estimates of monetary costs, time frame of removal, and the proposed site condition after decommissioning.
  - (B) Development Standards. Development of wind energy facilities shall meet the following standards in addition to adhering to the requirements outlined in Part (a)(13)(A) of this Rule:
    - (i) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant benthic communities identified by the Division of Marine Fisheries or the WRC shall be avoided;
    - (ii) Development shall not be sited on or within 500 meters of biological communities identified by the Division of Marine Fisheries or the WRC, such as high relief hard bottom areas. High relief is defined for this standard as relief greater than or equal to one-half meter per five meters of horizontal distance;
    - (iii) Development shall not cause irreversible damage to documented archeological resources including shipwrecks identified by the Department of Natural and Cultural Resources and unique geological features as identified by the State Archeologist pursuant to G.S. 113A-113(b)(4)(g) that require protection from uncontrolled or incompatible development;
    - (iv) Development activities shall be timed to avoid significant adverse impacts on the life cycles of estuarine or ocean resources, or wildlife;

- (v) Development or operation of a wind energy facility shall not jeopardize the use of the surrounding waters for navigation or for other public trust rights in public trust areas or estuarine waters; and
- (vi) Development or operation of a wind energy facility shall not interfere with air navigation routes, air traffic control areas, military training routes, or, special use airspace and shall comply with standards adopted by the Federal Aviation Administration and codified under 14 CFR Part 77.13.
- (C) Permit Conditions. Permits for wind energy facilities may be conditioned on the applicant amending the proposal to include measures necessary to ensure compliance with the standards for development set out in this Rule. Permit conditions may include monitoring to ensure compliance with all applicable development standards.

*History Note: Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-115; 113A-115.1; 113A-124; 113-229; Eff. September 9, 1977; Amended Eff. February 1, 1996; April 1, 1993; February 1, 1993; November 30, 1992; RRC Objection due to ambiguity Eff. March 21, 1996; Amended Eff. August 1, 2012(see S.L. 2012-143, s.1(f)); February 1, 2011; August 1, 2010; June 1, 2010; August 1, 1998; May 1, 1996; Readopted Eff. July 1, 2020; Amended Eff. August 1, 2022; Amended Eff. pending legislative review.*

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

- (a) For purposes of this Rule, the following definitions apply:
  - (1) "Adverse impact", "adverse impacts", "adverse effects", or similar formulations, are defined as an effect or impact that is opposed to the goals of the Coastal Area Management Act as found in G.S. 113A-102(b) and with the provisions of G.S. 113-229(e).
  - (2) "Significant" as used in this Section includes consideration of both context and intensity. Context means that the impact or effect shall be analyzed from several perspectives that include society as a whole (human, national), the affected subregion of the North Carolina coast, the local area and all directly and indirectly affected parties. Both short- and long-term

effects are relevant. Intensity refers to the severity of impact or effect. The following shall be considered in evaluating intensity:

- (A) both adverse impacts as defined in Subparagraph (a)(1) of this Rule and impacts that promote or enhance the goals of the Coastal Area Management Act as set out at G.S. 113A-102(b);
- (B) the degree to which the proposed action affects public health or safety;
- (C) unique characteristics of the geographic area;
- (D) the degree to which the effects on the quality of the human environment are likely to be disagreed upon;
- (E) the degree to which the possible effects on the environment are uncertain or involve unique or unknown risks;
- (F) the degree to which the CRC's permit decisions may establish a precedent for future CRC permit decisions;
- (G) the degree to which the CRC's permit decisions are related to other CRC permit decisions with individually insignificant but cumulatively significant impacts. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts; and
- (H) the degree to which the CRC's permit decision may cause the loss or destruction of scientific, cultural, historical, and environmental resources as those terms are commonly defined and understood.
- (b) Ocean Shoreline Erosion Control Activities:
  - (1) Use Standards Applicable to all Erosion Control Activities:
    - (A) All oceanfront erosion response activities shall be consistent with 15A NCAC 07H .0308 and G.S.113A-115.1.
    - (B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, unless specifically authorized under the Coastal Area Management Act, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins, and breakwaters.
    - (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the

- (D) structure on the property or the date of its construction.  
Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain habitat for fish and wildlife species, as identified by State or federal natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule .0306(h) of this Section.
- (E) Project construction shall be timed to minimize adverse effects on biological activity.
- (F) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
- (G) Permanent erosion control structures that would otherwise be prohibited by these standards may be permitted on finding by the Division that:
  - (i) the erosion control structure is necessary to protect a bridge that provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in Part (a)(2)(B) of this Rule;
  - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
  - (iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.
- (H) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
  - (i) the structure is necessary to protect a State or federally registered historic site that is imminently threatened by shoreline erosion as defined in Part (a)(2)(B) of this Rule;
  - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;
- (I) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
  - (iii) the structure is limited in extent and scope to that necessary to protect the site; and
  - (iv) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of significant adverse impacts on adjoining properties and on public access to and use of the beach.

- (J) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:
  - (i) the structure will not be enlarged beyond the dimensions set out in the permit;
  - (ii) there is no alternative to replacing the structure that will provide the same or similar benefits as determined by DCM based on costs and engineering options; and
  - (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.
- (K) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 07M .0200 and general and specific use standards within this Section.
- (2) Temporary Erosion Control Structures:
  - (A) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.
  - (B) Temporary erosion control structures as defined in Part (A) of this Subparagraph may be used to protect only imminently threatened roads and associated right of ways and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.
  - (C) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed under Rule .0309 of this Section as an exception to the erosion setback requirement.
  - (D) Temporary erosion control structures may be placed waterward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
  - (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected except to align with temporary erosion control structures on adjacent properties, where the Division has determined that gaps between adjacent erosion control structures may result in an increased risk of damage to the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet waterward of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet waterward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or the Director's designee in accordance with Part (A) of this Subparagraph.
  - (F) Temporary erosion control structures may remain in place for up to eight years for a building and its associated septic system, a bridge or a road. The property owner shall be responsible for removal of any portion of the temporary erosion control structure exposed above grade within 30 days of the end of the allowable time period.

- (G) An imminently threatened structure or property may be protected only once, regardless of ownership, unless the threatened structure or property is located in a community that is actively pursuing a beach nourishment project or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. Existing temporary erosion control structures may be permitted for additional eight-year periods provided that the structure or property being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter, and the community in which it is located is actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (H) of this Subparagraph shall begin at the time the initial erosion control structure was installed. For the purpose of this Rule:
- (i) a building and its septic system shall be considered separate structures,
  - (ii) a road or highway may be incrementally protected as sections become imminently threatened. The time period for removal of each contiguous section of temporary erosion control structure shall begin at the time that the initial section was installed, in accordance with Part (F) of this Subparagraph.
- (H) For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with G.S. 113A-115.1 if it:
- (i) has been issued an active CAMA permit, where necessary, approving such project; or
  - (ii) has been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or
  - (iii) has received a favorable economic evaluation report on a federal project; or
  - (iv) is in the planning stages of a project designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and initiated by a local government or community with a commitment of local or state funds to construct the project or the identification of the financial resources or funding bases necessary to fund the beach nourishment, inlet relocation or stabilization project.
- If beach nourishment, inlet relocation, or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Part (F) of this Subparagraph.
- (I) Once a temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, it shall be removed to the maximum extent practicable by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale

- beach nourishment project, or an inlet relocation or stabilization project, any portion of the temporary erosion control structure exposed above grade shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.
- (J) Removal of temporary erosion control structures is not required if they are covered by sand. Any portion of the temporary erosion control structure that becomes exposed above grade after the expiration of the permitted time period shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management.
  - (K) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
  - (L) Sandbags used to construct temporary erosion control structures shall be tan in color and 3 to 5 feet wide and 7 to 15 feet long when measured flat. Base width of the temporary erosion control structure shall not exceed 20 feet, and the total height shall not exceed 6 feet, as measured from the bottom of the lowest bag.
  - (M) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
  - (N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.
- (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and in accordance with Rule .0312 of this Section.
  - (4) Beach Bulldozing. Beach bulldozing is defined as the process of moving natural beach material from any point seaward of the vegetation line to create a protective sand dike or to obtain material for any other purpose is considered development and may be permitted as an erosion response if the following conditions are met:
    - (A) The area on which this activity is being performed shall maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;
    - (B) The activity shall not exceed the lateral bounds of the applicant's property unless permission is obtained from the adjoining land owner(s);
    - (C) Movement of material from seaward of the mean low water line will require a CAMA Major Development and State Dredge and Fill Permit;
    - (D) The activity shall not increase erosion on neighboring properties and shall not have an adverse effect on natural or cultural resources as identified by the NC Department of Natural and Cultural Resources.
    - (E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.
- (b) Dune Protection, Establishment, Restoration and Stabilization.
    - (1) No development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation that would adversely affect the integrity of the dune's function as a protective barrier against flooding and erosion. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these other dunes shall be allowed only to the extent permitted by this Rule.
    - (2) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same configuration as adjacent natural dunes.
    - (3) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.
    - (4) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas shall be replanted or temporarily stabilized until planting can be completed.
    - (5) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand in the area in which it is to be placed.
    - (6) No new dunes shall be created in inlet hazard areas. Reconstruction or repair of existing dune systems as defined in Rule .0305 of this Section

and within the Inlet Hazard Area may be permitted.

- (7) Sand held in storage in any dune, other than the frontal or primary dune, shall remain on the lot or tract of land to the maximum extent practicable and may be redistributed within the Ocean Hazard AEC provided that it is not placed any farther oceanward than the crest of a primary dune, if present, or the crest of a frontal dune.
- (8) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid dune impacts.

(c) Structural Accessways:

- (1) Structural accessways shall be permitted across primary or frontal dunes so long as they are designed and constructed in a manner that does not alter the primary or frontal dune. Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a) of this Rule.
- (2) An accessway shall be considered to entail negligible alteration of primary or frontal dunes provided that:
  - (A) The accessway is exclusively for pedestrian use;
  - (B) The accessway is a maximum of six feet in width;
  - (C) Except in the case of beach matting, the accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the dune, in accordance with any more restrictive local, State, or federal building requirements. Beach matting shall be installed at grade and not involve any excavation or fill of the dune; and
  - (D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.
- (3) An accessway that does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this Paragraph. Public fishing piers are allowed provided all other applicable standards of this Rule are met.
- (4) In order to preserve the protective nature of primary and frontal dunes, a structural accessway such as a "Hatteras ramp" may be provided for off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than 15 feet in width and may be constructed of wooden sections fastened together, or other materials approved by the Division, over the length of the affected dune area. Installation of a Hatteras ramp shall

be done in a manner that will preserve the dune's function as a protective barrier against flooding and erosion by not reducing the volume of the dune.

- (5) Structural accessways and beach matting may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune, provided they do not interfere with public trust rights and emergency access along the beach. Structural accessways and beach matting are not restricted by the requirement to be landward of the First Line of Stable and Natural Vegetation as described in Rule .0309(a) of this Section. A local, State, or federal entity may install beach matting farther seaward to enhance handicap accessibility at a public beach access, subject to review by the Wildlife Resources Commission and the U.S. Fish and Wildlife Service to determine whether the proposed design or installation will have an adverse impact on sea turtles or other threatened or endangered species.

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

- (1) In order to avoid danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any building constructed within the ocean hazard area shall comply with relevant sections of the North Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.
- (2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.
- (3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on or seaward of the primary dune, the pilings shall extend to five feet below mean sea level.
- (4) All foundations shall be designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100-year storm. Cantilevered decks and walkways shall meet the requirements of this Part or shall be designed to break-away without structural damage to the main structure.



*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-115.1; 113A-124; Eff. June 1, 1979; Temporary Amendment Eff. June 20, 1989, for a period of 180 days to expire on December 17, 1989; Amended Eff. August 3, 1992; December 1, 1991; March 1, 1990; December 1, 1989; RRC Objection Eff. November 19, 1992 due to ambiguity; RRC Objection Eff. January 21, 1993 due to ambiguity; Amended Eff. March 1, 1993; December 28, 1992; RRC Objection Eff. March 16, 1995 due to ambiguity; Amended Eff. April 1, 1999; February 1, 1996; May 4, 1995; Temporary Amendment Eff. July 3, 2000; May 22, 2000; Amended Eff. April 1, 2019; May 1, 2013; July 1, 2009; April 1, 2008; February 1, 2006; August 1, 2002; Readopted Eff. December 1, 2020; Amended Eff. January 1, 2024; August 1, 2022; December 1, 2021.*

**15A NCAC 07H .1103 PERMIT FEE**

The applicant shall pay a permit fee of four hundred dollars (\$400.00) for riprap revetments. The applicant shall pay a permit fee of four hundred dollars (\$400.00) for bulkheads. Permit fees shall be paid by check or money order payable to the Department of Environmental Quality.

*History Note: Authority G.S. 113-229; 113A-107; 113A-118.1; 113A-119; 113A-119.1; 113A-124; Eff. March 1, 1984; Amended Eff. October 5, 2009; September 1, 2006; August 1, 2000; March 1, 1991; Readopted Eff. April 1, 2022; Amended Eff. January 1, 2024.*

**15A NCAC 07H .1203 PERMIT FEE**

The applicant shall pay a permit fee of four hundred dollars (\$400.00) by check or money order payable to the Department of Environmental Quality.

*History Note: Authority G.S. 113-229; 113A-107; 113A-118.1; 113A-119; 113A-119.1; 113A-124; Eff. March 1, 1984; Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991; Readopted Eff. December 1, 2021; Amended Eff. January 1, 2024.*

**15A NCAC 07H .1303 PERMIT FEE**

The applicant shall pay a permit fee of four hundred (\$400.00) by check or money order payable to the Department of Environmental Quality.

*History Note: Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113A-119.1; 113A-124; Eff. March 1, 1984; Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991; Readopted Eff. October 1, 2022; Amended Eff. January 1, 2024.*

**15A NCAC 07H .1403 PERMIT FEE**

The applicant shall pay a permit fee of four hundred dollars (\$400.00) by check or money order payable to the Department of Environmental Quality.

*History Note: Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113A-119.1; 113A-124; Eff. March 1, 1984; Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991; Readopted Eff. October 1, 2022; Amended Eff. January 1, 2024.*

**15A NCAC 07H .1503 APPLICATION FEE**

The applicant shall pay a permit fee of four hundred dollars (\$400.00) for maintenance excavation up to 1,000 cubic yards. Permit fees shall be paid by check or money order payable to the Department of Environmental Quality.

*History Note: Authority G.S. 113-229; 113A-107; 113A-118.1; 113A-119; 113A-119.1; 113A-124; Eff. July 1, 1984; Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991; Readopted Eff. October 1, 2022; Amended Eff. January 1, 2024.*

**15A NCAC 07H .1903 PERMIT FEE**

The applicant shall pay a permit fee of four hundred dollars (\$400.00) by check or money order payable to the Department of Environmental Quality.

*History Note: Authority G.S. 113-229(c1); 113A-107; 113A-118.1; 113A-119; 113A-119.1; 113A-124; Eff. March 1, 1989; Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991; Readopted Eff. July 1, 2022; Amended Eff. January 1, 2024.*

**15A NCAC 07H .2003 PERMIT FEE**

The applicant shall pay a permit fee of four hundred dollars (\$400.00) by check or money order payable to the Department of Environmental Quality.

*History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119; 113A-119.1; 113A-124; Eff. October 1, 1993; Amended Eff. September 1, 2006; August 1, 2000; Readopted Eff. October 1, 2022; Amended Eff. January 1, 2024.*

**15A NCAC 07H .2103 PERMIT FEE**

The applicant shall pay a permit fee of four hundred dollars (\$400.00). This fee shall be paid by check or money order made payable to the Department of Environmental Quality.

*History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119; 113A-119.1; 113A-124; Eff. June 1, 1994; Amended Eff. September 1, 2006; August 1, 2000; Readopted Eff. October 1, 2022;*

Amended Eff. January 1, 2024.

**15A NCAC 07H .2203 PERMIT FEE**

The applicant shall pay a permit fee of four hundred dollars (\$400.00). This fee shall be paid by check or money order made payable to the Department of Environmental Quality.

History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119; 113A-119.1; 113A-124; Eff. February 1, 1996; Amended Eff. September 1, 2006; August 1, 2000; Readopted Eff. October 1, 2022; Amended Eff. January 1, 2024.

**15A NCAC 07H .2403 PERMIT FEE**

The applicant shall pay a permit fee of four hundred dollars (\$400.00). This fee shall be paid by check or money order made payable to the Department of Environmental Quality.

History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119; 113A-119.1; 113A-124; Eff. August 1, 2000; Amended Eff. September 1, 2006; Readopted Eff. October 1, 2022; Amended Eff. January 1, 2024.

**15A NCAC 07H .2503 PERMIT FEE**

The standard permit fee of four hundred dollars (\$400.00) has been waived for this General Permit.

History Note: Authority G.S. 113A-107; 113A-118(f); 113A-118.1; 113A-119; 113A-119.1; 113A-124; Temporary Adoption Eff. October 2, 1999; Temporary Adoption Expired on July 28, 2000; Eff. April 1, 2001; Amended Eff. September 1, 2006; Readopted Eff. July 1, 2022; Amended Eff. January 1, 2024.

**15A NCAC 07H .2703 PERMIT FEE**

The applicant shall pay a permit fee of four hundred dollars (\$400.00). This fee shall be paid by check or money order made payable to the Department of Environmental Quality.

History Note: Authority G.S. 113A-107; 113A-118.1; 113A-119; 113A-119.1; 113A-124; Temporary Adoption Eff. June 15, 2004; Eff. April 1, 2005; Amended Eff. September 1, 2006; Readopted Eff. October 1, 2022; Amended Eff. January 1, 2024.

**15A NCAC 07M .0603 POLICY STATEMENTS**

(a) Floating structures shall not be allowed or permitted within the public trust waters of the coastal area except in a marina permitted as development pursuant to the Coastal Area Management Act of 1974.

(b) All floating structures shall be in conformance with local regulations for on-shore sewage treatment.

(c) A boat shall be deemed a floating structure when its means of propulsion has been removed or rendered inoperative and it contains at least 200 square feet of living space area.

History Note: Authority G.S. 113A-102; 113A-103; 113A-107; 113A-108; 113A-118; 113A-119.2(a)(2); 113A-120(a)(8); Eff. July 1, 1983; Readopted Eff. January 1, 2023; Amended Eff. pending legislative review.

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**15A NCAC 10B .0501 DEFINITIONS AND GENERAL REQUIREMENTS**

(a) The rules in this Section apply to an area of the State where Chronic Wasting Disease (CWD) has been detected, as determined by the Commission.

(b) The following definitions shall apply to rules in this Section:

- (1) "Cervid" means the animals in the Family Cervidae not otherwise regulated by the North Carolina Department of Agriculture and Consumer Services.
- (2) "Cervid Health Cooperator" means an individual authorized to collect CWD samples on behalf of the Commission.
- (3) "Chronic Wasting Disease" or "CWD" means the transmissible spongiform encephalopathy prion disease affecting species within the deer (Cervidae) Family.
- (4) "CWD Management Area" means the area delineated by the Commission where CWD has been determined to be endemic and the rules of this Section apply.
- (5) "Primary Surveillance Area" or "PSA" means a county delineated by the Commission for CWD surveillance where a confirmed CWD positive cervid has been found.
- (6) "Sample" means the cervid head and no less than three inches of the neck.
- (7) "Secondary Surveillance Area" or "SSA" means a county adjacent to or near a PSA delineated by the Commission for CWD surveillance.
- (8) "Submit" means to deliver a sample to a cervid health cooperator or qualified Commission employee or deposit in a Commission CWD Testing Drop-off Station.
- (9) "Surveillance Area" means the PSA and SSA collectively.

History Note: Authority G.S. 113-134; 113-306; Temporary Adoption Eff. July 1, 2022; Temporary Adoption Eff. July 1, 2023; Eff. January 1, 2024.

**15A NCAC 10B .0503 SURVEILLANCE AREA**

(a) Inside a surveillance area, placement of minerals or salt licks to purposefully congregate wildlife shall be prohibited. Placement

of bait, food, or food product to purposefully congregate wildlife shall be prohibited from January 2 through August 31 inside a Surveillance Area, except that:

- (1) bird feeders specifically designed for nongame birds shall be allowed;
- (2) placement of bait, food, or food products to hunt during the urban archery season shall be allowed within the established season in participating municipalities; and
- (3) the placement of food specifically permitted by the Commission for scientific research, population management, and wildlife control may be allowed.

(b) White-tailed deer fawn rehabilitation is prohibited in a Surveillance Area.

(c) White-tailed deer fawns originating from within a Surveillance Area shall not be transported outside the Surveillance Area.

(d) No cervid carcass or carcass parts originating from inside a Primary Surveillance Area (PSA) or Secondary Surveillance Area (SSA) shall be transported outside of the county of origin, except:

- (1) meat that has been boned out so that no pieces or fragments of bone remain;
- (2) caped hides with no part of the skull or spinal column attached;
- (3) antlers, antlers attached to cleaned skull plates, or skulls free from meat or brain tissue;
- (4) cleaned lower jawbones with teeth or cleaned teeth;
- (5) finished taxidermy products and tanned hides;
- (6) carcass or carcass parts permitted by the Commission for disposal outside of the Surveillance Area;
- (7) carcass or carcass parts originating inside a PSA county may be transported into contiguous PSA counties; and
- (8) carcass or carcass parts originating inside a SSA county may be transported into contiguous SSA or PSA counties.

(e) No person shall possess or use a substance or material that contains or is labeled as containing any excretion collected from a cervid, including feces, urine, blood, gland oil, or other bodily fluid for the purposes of taking or attempting to take, attracting, or scouting wildlife inside a surveillance area. This prohibition shall not apply to the following substances:

- (1) products labeled as containing synthetic analogs of cervid excretions;
- (2) natural substances labeled as being collected from facilities within North Carolina that have a valid Farmed Cervid License from the North Carolina Department of Agriculture and Services;
- (3) natural deer urine products labeled as containing excretions from facilities within North Carolina that have a valid Farmed Cervid License from the North Carolina Department of Agriculture and Consumer Services; and

(4) natural deer urine products labeled as containing excretions from facilities that meet all the following requirements:

- (A) determined to be free of Chronic Wasting Disease (CWD) based on testing by an independent laboratory using a method that may help detect the presence of CWD prions;
- (B) complies with a federally approved CWD herd certification program and any federal CWD protocols; and
- (C) participates in additional herd management requirements as specified by the Wildlife Resources Commission.

*History Note: Authority G.S. 113-134; 113-306; Temporary Adoption Eff. July 1, 2022; Emergency Adoption Eff. September 1, 2022; Temporary Adoption Eff. November 29, 2022; Temporary Adoption Eff. July 1, 2023; Eff. January 1, 2024.*

**15A NCAC 10F .0333 MECKLENBURG AND GASTON COUNTIES**

(a) Regulated Areas. This Rule shall apply to the following waters of Lake Wylie in Mecklenburg and Gaston counties:

- (1) McDowell Park. The waters of the coves adjoining McDowell Park and the Southwest Nature Preserve in Mecklenburg County shore to shore, east of the mouth of the cove at a line from a point on the south shore at 35.10272 N, 81.03026 W to a point on the north shore at 35.10556 N, 80.02964 W;
- (2) Gaston County Wildlife Club Cove. The waters of the cove west of the Gaston County Wildlife Club on South Point Road in Belmont, north of a line at the mouth of the cove from a point on the east shore at 35.15628 N, 81.01427 W to a point on the west shore at 35.15628 N, 81.01615 W;
- (3) Buster Boyd Bridge. The waters from a point 250 feet east of the Buster Boyd Bridge on N.C. Highway 49 in Mecklenburg County at 35.10293 N, 81.03932 W, to a point 150 feet west of the Buster Boyd Bridge at 35.10242 N, 81.04089 W;
- (4) N.C. Highway 27 Bridge. The waters shore to shore, from a point 50 yards north of the N.C. Highway 27 bridge in Mecklenburg and Gaston counties at 35.29849 N, 81.00346 W to a point 190 yards south of the N.C. Highway 27 bridge at 35.29635 N, 81.00424 W;
- (5) Brown's Cove. The area beginning at the mouth of Brown's Cove in Mecklenburg County shore to shore, at a point at 35.16453 N, 81.00474 W, west to a point at 35.16480 N, 81.00309 W;
- (6) Paradise Point Cove. The waters of Paradise Point Cove in Gaston County between Paradise

- Circle and Lake Front Drive, west of a line from a point on the south shore at 35.18853 N, 81.04036 W to a point on the north shore at 35.18991 N, 81.04136 W;
- (7) Withers Cove. The waters of Withers Cove in Mecklenburg County, shore to shore, beginning at a line north of the Mecklenburg Charlotte Fire Department and Police Department Boathouse from a point on the west shore at 35.14632 N, 81.00383 W to a point on the east shore at 35.14713 N, 81.00173 W, and ending at a point 50 feet southeast of the Withers Bridge on S.R. 1116, otherwise known as Shopton Road, at 35.14576 N, 81.00187 W;
- (8) Sadler Island. The waters shore to shore beginning at a line from a point on the west shore of Lake Wylie in Gaston County at 35.27481 N, 81.0138 W east to a point on the east shore of the Lake in Mecklenburg County at 35.27423 N, 81.01111 W, extending south on the Lake west of Sadler Island to a line from a point on the west shore of the Lake in Gaston County at 35.27079 N, 81.01525 W, east to a point on the west side of Sadler Island in Mecklenburg County at 35.27051 N, 81.01396 W, and the waters shore to shore east of Sadler Island in Mecklenburg County from a point at 35.27441 N, 81.01185 W, south-southwest to a line from a point on the south shore of Sadler Island at 35.26635 N, 81.01432 W, south to a point on the Lake shore at 35.26494 N, 81.01368 W;
- (9) Other Bridges. The waters within 50 feet of a bridge in North Carolina that crosses the waters of Lake Wylie that is not otherwise specifically mentioned in this Paragraph;
- (10) Yachtsman on Lake Wylie Community. The waters within 50 yards of the community piers near the terminus of Waterside Drive in Mecklenburg County, and northward to include the waters east of the island that is west of Point Lookout Road, ending at a line from a point on the northern end of the island at 35.12226 N, 81.03306 W, east to a point on the shore at 35.12253 N, 81.03190 W;
- (11) Brown's Cove. The waters of Brown's Cove in Mecklenburg County, beginning at a line from a point on the east shore at 35.16892 N, 80.99702 W to a point on the west shore at 35.16948 N, 80.99783 W, northeast to a line from a point on the south shore at 35.16913 N, 80.99556 W to a point on the north shore at 35.17043 N, 80.99684 W;
- (12) South Point Boating Access Area. The waters within 50 yards of the South Point Boating Access Area in Gaston County, 199 Boat Launch Road in Belmont;
- (13) Other Facilities. The waters within 50 yards of a public boat launching ramp not otherwise

- specified in this Paragraph, public dock, public pier, public marina, public boat storage structure, or public boat service area; and
- (14) Marked Swimming and Mooring Areas. The waters within 50 yards of a marked swimming area or marked mooring area.
- (b) Speed Limit. No person shall operate a vessel at greater than no-wake speed within the regulated areas described in Paragraph (a) of this Rule.
- (c) Restricted Area. No person operating or responsible for the operation of a vessel shall allow it to enter the waters of the restricted area with swim beach at the South Point Access Area in Gaston County, at 199 Boat Launch Road in Belmont, north of the rope in the cove east of the South Point Boating Access Area.
- (d) Placement and Maintenance of Markers. The following agencies are the designated agencies for placement and maintenance of markers implementing this Rule:
- (1) the Lake Wylie Marine Commission for the regulated areas designated in Subparagraphs (a)(1) through (11), (13) and (14);
  - (2) the North Carolina Wildlife Resources Commission for the regulated area designated in Subparagraph (a)(12); and
  - (3) Duke Energy Carolinas, LLC for the restricted area designated in Paragraph (c).

*History Note: Authority G.S. 75A-3; 75A-15; Eff. July 1, 1980; Amended Eff. July 1, 1994; June 1, 1985; June 1, 1984; March 1, 1983; Temporary Amendment Eff. January 1, 1998; Amended Eff. July 1, 1998; Temporary Amendment Eff. February 4, 2000; Amended Eff. April 1, 2009; June 1, 2004; July 1, 2000; Temporary Amendment Eff. May 1, 2015; Amended Eff. October 1, 2015; Readopted Eff. October 1, 2018; Amended Eff. January 1, 2024; June 1, 2023; June 1, 2022; May 1, 2019.*

**TITLE 17 - DEPARTMENT OF REVENUE**

**17 NCAC 07B .1202 SUPPLIES AND EQUIPMENT FOR AN ACCOMMODATION**

For purposes of G.S. 105-164.13, a hotel, motel, inn, tourist camp, tourist cabin, or other accommodation provider making purchases of supplies, equipment, or fixtures including linens, bedding, bathroom supplies, cleaning supplies, and furniture are purchased for use and not resale, and the accommodation provider shall pay the sales or use tax on the supplies, equipment, or fixtures at the time of purchase, pursuant to G.S. 105-164.4.

*History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538; Eff. February 1, 1976; Amended Eff. May 1, 2009; October 1, 1993; October 1, 1991;*

*Readopted Eff. January 1, 2024.*

**17 NCAC 07B .1303 GIFTS TO DONEES**

(a) A donee is a person that receives an item, as the term item is defined in G.S. 105-164.3, from a purchaser without charge. Pursuant to G.S. 105-164.4, retailers making sales of items sourced to this State shall collect and remit the sales and use tax due on the sales price of the item, even if the item is given away by the purchaser to a donee or delivered directly to a donee.

(b) Pursuant to G.S. 105-164.6, the purchaser of items used or consumed in this State is liable for use tax due on the purchase price of the items, even if the items are given away by the purchaser to a donee or delivered directly to a donee, unless the sales tax is paid to the retailer at the time of purchase.

(c) A retailer who, at the direction of a buyer, delivers property to the purchaser's donee at a point outside the State shall maintain proof of delivery in accordance with 17 NCAC 07B .1301.

*History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4B; 105-164.6; 105-262; 105-264; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;*

*Eff. February 1, 1976;*

*Amended Eff. April 1, 2006; July 18, 2002; July 1, 1999; October 1, 1993; October 1, 1991; March 1, 1984; January 3, 1984;*

*Readopted Eff. January 1, 2024.*

**17 NCAC 07B .1404 MEDICAL SUPPLIES, INSTRUMENTS, AND EQUIPMENT**

Pursuant to G.S. 105-164.4, sales to physicians, dentists, hospitals, or other consumers of medical supplies, medical instruments, medical equipment, and laboratory equipment used to diagnose, prevent, treat, or cure disease are subject to sales and use tax. For purposes of G.S. 105-164.13, these items are not purchased for resale or pursuant to a prescription. Examples of medical supplies, instruments, and equipment subject to sales and use tax include the following:

- (1) adhesive tape;
- (2) alcohol;
- (3) bandages;
- (4) battery chargers;
- (5) bed pans;
- (6) betadine solution;
- (7) blood glucose monitors;
- (8) blood glucose test/reagent strips;
- (9) blood or urine control strips;
- (10) breathing circuits;
- (11) carbon dioxide (CO2) saturation monitors and accessories;
- (12) cold packs and hot packs;
- (13) collection bags;
- (14) cotton;
- (15) crutch and cane holders;
- (16) cylinder tank carriers;
- (17) denture adhesive;
- (18) dial-a-does insulin delivery devices;
- (19) dressings;
- (20) exam and surgical gloves;
- (21) gauze;

- (22) glucose for insulin reactions;
- (23) incontinence pads, sheets, and liners;
- (24) intravenous (IV) hangers;
- (25) knives;
- (26) lancets;
- (27) lubricants;
- (28) microscopes;
- (29) mouthpieces;
- (30) needles and syringes;
- (31) non-corrective eye lenses;
- (32) ostomy barrier wipes and powders;
- (33) ostomy cleansers, deodorants, and adhesive removers;
- (34) peak flow meters;
- (35) percussors;
- (36) pulse oximeters;
- (37) rollabout chairs;
- (38) soap;
- (39) scissors;
- (40) sterile water;
- (41) tissues;
- (42) trachael suction catheters;
- (43) tracheostomy care kits;
- (44) tracheostomy cleaning brushes;
- (45) tracheostomy masks and collars;
- (46) tubing, sold by the linear foot or otherwise;
- (47) urinals;
- (48) urine test or reagent strips or tablets; or
- (49) x-ray machines.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;*

*Eff. February 1, 1976;*

*Amended Eff. July 1, 2000; August 1, 1998; October 1, 1993; October 1, 1991;*

*Readopted Eff. January 1, 2024.*

**17 NCAC 07B .1705 HOUSING AUTHORITIES**

Sales of items, as the term item is defined in G.S. 105-164.3, to housing authorities created and existing under Chapter 157 of the North Carolina General Statutes for use in carrying on their activities are subject to the statutory rates of sales and use tax pursuant to G.S. 105-164.4, and such housing authorities are not entitled to refunds under the provisions of G.S. 105-164.14.

*History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-262; 105-264; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;*

*Eff. February 1, 1976;*

*Amended Eff. May 1, 2009; October 1, 1993; October 1, 1991; August 1, 1988; March 1, 1984;*

*Readopted Eff. January 1, 2024.*

**17 NCAC 07B .2001 SALES TO EMPLOYEES**

(a) Pursuant to G.S. 105-164.4, an employer engaged in business in this State shall collect and remit the sales and use tax due on

the retail sale of an item, as the term item is defined in G.S. 105-164.3, to an employee. The tax due shall be computed on the sales price of the item. An employer required to collect sales or use tax shall register with the Department in accordance with 17 NCAC 07B .0104. The fact that an employer's sales are infrequent, comprise only a small fraction of the total business, or are to employees only, shall not relieve an employer of these requirements.

(b) Employees shall pay the sales or use tax due on the purchase of an item from their employer, pursuant to G.S. 105-164.4 and G.S. 105-164.6. The tax due shall be computed on the sales price or purchase price of the item.

*History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.19; 105-262; 105-264; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;*

*Eff. February 1, 1976;*

*Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991;*

*Readopted Eff. January 1, 2024.*

**17 NCAC 07B .2002 GIFTS AND WAGES TO AN EMPLOYEE OR OTHER PERSON**

Pursuant to G.S. 105-164.4, an employer shall pay the sales or use tax due on the purchase of an item, as the term item is defined in G.S. 105-164.3, that is provided to an employee or other person as a gift or as compensation. The tax due shall be computed on the sales price or purchase price of the item given away, irrespective of whether the item is fabricated, produced, manufactured, or processed by the employer, or acquired elsewhere.

*History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4B; 105-164.6; 105-262; 105-264; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;*

*Eff. February 1, 1976;*

*Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991;*

*Readopted Eff. January 1, 2024.*

**17 NCAC 07B .4109 BLUEPRINTS SOLD TO ARCHITECTS**

For purposes of G.S. 105-164.13, sales of blueprints, photographs and other items, as the term item is defined in G.S. 105-164.3, to an architectural or engineering firm are sales for use or consumption and not for resale, and are subject to sales and use tax, pursuant to G.S. 105-164.4.

*History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;*

*Eff. February 1, 1976;*

*Amended Eff. September 1, 2006; October 1, 1993; October 1, 1991;*

*Readopted Eff. January 1, 2024.*

**17 NCAC 07B .4201 IN GENERAL**

(a) Sales made directly to the United States Government, or any qualifying agency or instrumentality thereof, are not subject to the

sales and use tax, pursuant to G.S. 105-164.13(17). Qualifying United States Government agencies are divisions of the federal government. Qualifying United States instrumentalities are non-governmental agencies that act independently and whose obligations are backed by the federal government, whose enabling legislation or charter is to provide a necessary public service and are immune from sales and use tax under federal law. In order for a transaction to be a sale to the United States Government, or qualifying agency or instrumentality thereof, the entity shall purchase the the item directly from the retailer and make payment directly to the retailer with its own funds. For example, meals and lodging billed to and paid for by the federal government are not subject to sales and use tax, however meals and lodging billed to and paid for by a federal employee who is subsequently reimbursed by the federal government are subject to sales and use tax.

(b) Examples of qualifying United States Government agencies and instrumentalities thereof include the Departments of Defense, United States Armed Forces, federally operated hospitals, American Red Cross, Federal Reserve banks, federal land banks, federal housing projects, federal housing authorities, United States Postal Service, or any other department of the federal government whose activities are directly under federal control and whose purchases are paid for from the federal treasury.

(c) Sales made to the following organizations shall not be subject to sales and use tax, pursuant to G.S. 105-164.13(17), provided that the organization is authorized by the regulations of the Departments of Defense or a branch of the United States Armed Forces: United States Armed Forces Activities Funds, post exchanges, officers' mess funds, noncommissioned officers funds and other voluntary unincorporated organizations of United States Armed Forces personnel.

*History Note: Authority G.S. 105-164.13; 105-262; 105-264; Eff. February 1, 1976;*

*Amended Eff. August 1, 1988;*

*Readopted Eff. January 1, 2024.*

**17 NCAC 07B .4202 EXEMPT SALES TO THE UNITED STATES GOVERNMENT**

(a) Retailer Records. -- A retailer that makes sales directly to the United States Government, or a qualifying agency or instrumentality thereof, shall retain copies of any Certificates of Exemption, Form E-595E, purchase requisitions or affidavits, or other documentation provided to substantiate the exemption from sales and use tax, pursuant to G.S. 105-164.13(17). Qualifying United States Government agencies are divisions of the federal government and qualifying instrumentalities are non-governmental agencies that act independently and whose obligations are backed by the federal government, whose enabling legislation or charter is to provide a necessary public service and are immune from sales and use tax under federal law. Pursuant to G.S. 105-164.22, copies of the documentation shall be available for inspection by the Secretary of Revenue or the Secretary's agents upon request. Documentation shall be kept until the statute of limitations to request a refund and to be issued a proposed assessment have expired, as set out in G.S. 105-241.6 and G.S. 105-241.8.

(b) United States Government Credit Card Program – GSA Smartpay. -- Under the program, credit cards may be centrally billed or individually billed.

- (1) Centrally billed charges are billed directly to and paid directly by the United States Government and are exempt from sales and use tax, pursuant to G.S. 105-164.13(17).
- (2) Individually billed charges are billed to and paid by the federal employee who is then reimbursed by the United States Government. Individually billed charges are subject to sales and use tax, pursuant to G.S. 105-164.4.

(c) Non-GSA Smartpay credit card programs implemented by qualifying agencies or instrumentalities of the United States Government are exempt from sales and use tax, pursuant to G.S. 105-164.13(17), when the charges are centrally billed and directly paid by the qualifying agency or instrumentality.

*History Note: Authority G.S. 105-164.4; 105-164.13; 105-164.22; 105-262; 105-264; Eff. February 1, 1976; Amended Eff. September 1, 2006; April 1, 1997; January 1, 1995; October 1, 1993; October 1, 1991; August 1, 1988; Readopted Eff. January 1, 2024.*

**17 NCAC 07B .4206 FED SAVINGS/LOAN ASSOC, NATL AND STATE BANKS, CREDIT UNIONS**

For purposes of G.S. 105-164.13(17), sales which a state would be without power to tax under the Constitution or laws of the United States or under the Constitution of this State do not include the following sales:

- (1) Sales to federal savings and loan associations and national banks.
- (2) Sales to state banks and state chartered credit unions.

*History Note: Authority G.S. 105-164.13; 105-262; 105-264; 105-164.26; 12 U.S.C. 1464(h); 12 U.S.C. 548; Eff. February 1, 1976; Amended Eff. September 1, 2006; January 1, 1995; October 1, 1993; October 1, 1991; Readopted Eff. January 1, 2024.*

**17 NCAC 07B .4510 INDEPENDENT CLEANING SOLICITORS**

(a) Independent Cleaning Solicitors. -- For purposes of this Rule, an independent cleaning solicitor is a person engaged in the business of soliciting laundry, dry cleaning, or hat blocking services to customers but engages another business to perform the laundering, dry cleaning, or hat blocking.

(b) Sales by Independent Cleaning Solicitors. -- An independent cleaning solicitor making sales is a retailer, as defined in G.S. 105-164.3, and is liable for collecting and remitting the sales and use tax on their gross receipts derived from laundry, dry cleaning, or hat blocking services it solicits, pursuant to G.S. 105-164.4.

(c) Purchases by Independent Cleaning Solicitors. -- The purchase of laundry, dry cleaning, or hat blocking services by an independent cleaning solicitor to sell to its customers from a company that performs the laundering, cleaning, or other service

is exempt as a wholesale sale, pursuant to G.S. 105-164.13(61b). Independent cleaning solicitors shall comply with 17 NCAC 07B .0106 when purchasing laundry, dry cleaning, or hat blocking services, for the purpose of resale.

*History Note: Authority G.S. 105-164.4; 105-164.13; 105-262; 105-264; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538; Eff. February 1, 1976; Amended Eff. August 1, 2009; October 1, 1993; Readopted Eff. January 1, 2024.*

**17 NCAC 07B .4708 POSTAGE CHARGES BY PRINTERS**

Pursuant to G.S. 105-164.13(17) and 18 USC 8, the face value of United State Postal Service postage sold by commercial printers for printed postal cards or envelopes, that are sold for use by the commercial printers' customer, is exempt from sale and use tax when the postage is printed or affixed to the printed postcards or envelopes prior to sale, and when the value of the postage is stated separately from other charges on the invoice or similar billing document given to the customer at the time of sale.

*History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538; Eff. February 1, 1976; Amended Eff. April 1, 2006; October 1, 1993; October 1, 1991; July 5, 1980; Readopted Eff. January 1, 2024.*

**17 NCAC 07B .4801 RECORDS REQUIRED TO BE KEPT**

(a) Persons making sales or purchases of an item, as the term item is defined in G.S. 105-164.3, shall keep records as required in G.S. 105-164.22 that establish the amount of the person's sales and use tax liability. Documentation shall be kept until the statute of limitations to request a refund and to be issued a proposed assessment have expired, as set out in G.S. 105-241.6 and G.S. 105-241.8. Records to establish a person's sales and use tax liability include the following:

- (1) All cash and credit sales, including sales under any type of financing or installation plan.
- (2) The amount of all items purchased and copies of all bills of lading, invoices, and purchase orders.
- (3) Copies of all sales invoices furnished by wholesale merchants that shall show the name and address of the purchaser, the date of purchase, the item or items purchased, and the purchase price of the item.
- (4) All deductions and exemptions claimed in sales and use tax returns for each transaction.
- (5) All purchase, sales, and inventory records for items, as the term item is defined in G.S. 105-164.3, used or consumed in the conduct of business.

- (6) A true and complete inventory of the value of the materials, supplies, goods or merchandise on hand.
- (7) All exemption certificates, and records of all sales made to a person furnishing an exemption certificate.
- (8) All affidavits of capital improvement or other records that establish a transaction is a real property contract. For purposes of this Rule, other records means written records that establish a transaction is a capital improvement.
- (9) All affidavits certifying tax paid by the purchaser on an item that becomes a part of real property.
- (10) Records of all sales made through a facilitator engaged in business in the State.
- (11) All affidavits of export.
- (12) All shipping records for items that are delivered.
- (13) All agreements with facilitators.
- (14) All bank account records.
- (15) All point-of-sale records and cash register z-tapes.
- (16) Any other document, report, form, or other similar record that establishes a person's sales and use tax liability.

(b) Except for persons listed in G.S. 105-164.20(b), person's having both cash and credit sales may elect to report their tax liability on either the cash or accrual basis of accounting provided their records are kept in such a manner that they can determine their tax liability correctly on the basis used. If a person wishes to change the basis of reporting selected when applying for a Certificate of Registration in accordance with 17 NCAC 07B .0104 to another, the person shall apply to the Secretary of Revenue by written letter signed by the person and mailed to the attention of the Sales and Use Tax Division to the Department's mailing address set out in 17 NCAC 01A .0101 for permission to make such change. A person's selected basis continues in effect until the person receives permission from the Secretary, or the Secretary's designee, to change the basis selected. The Secretary, or the Secretary's designee, shall only grant permission allowing a person to change the basis of reporting upon a showing that the person's accounting system and processes shall establish the amount of the person's sales and use tax liability using the requested basis of accounting.

*History Note: Authority G.S. 105-164.20; 105-164.22; 105-262; 105-264; Eff. February 1, 1976; Amended Eff. October 1, 1993; Readopted Eff. January 1, 2024.*

**17 NCAC 07B .5001 EYEGLASSES AND CONTACT LENSES**

(a) Eyeglasses:

- (1) Corrective Eyeglasses. -- Sales of corrective eyeglasses for human use, including frames as an integral part thereof, are exempt from sales and use tax as prosthetic devices, pursuant to

G.S. 105-164.13(12). When eyeglass cases, lens wipes, and lens solution are given to the purchaser as part of the sale and included in the sales price of corrective eyeglasses for human use, they are also exempt under G.S. 105-164.13(12) from sales and use tax. Corrective eyeglasses, whether prescription eyeglasses or reading glasses, are not required to be sold on prescription in order for the exemption from sales and use tax to apply.

- (2) Record Keeping. -- A person who sells corrective eyeglasses shall keep sales records that clearly separate it sales of corrective eyeglasses from sales of other items. Pursuant to G.S. 105-164.22, failure of a person to keep records that establish a sale is exempt from sales and use tax subjects the person to liability for sales and use tax on the sale.

(b) Contact Lenses:

- (1) Corrective Contact Lenses. -- Sales of corrective contact lenses for human use are exempt from sales and use tax as prosthetic devices, pursuant to G.S. 105-164.13(12). When carrying cases, patient instruction booklets, patient care kits, aseptors, salt tablets, lens solution, and squeeze bottles are given to the purchaser as part of the sale and included in the sales price of corrective contact lenses for human use, they are also exempt under G.S. 105-164.13(12) from sales and use tax.
- (2) Record Keeping. -- A person who sells corrective contact lenses shall keep sales records that clearly separate its sales of corrective contact lenses from sales of other items. Pursuant to G.S. 105-164.22, failure of a person to keep records that establish a sale is exempt from sales and use tax subjects the person to liability for sales and use tax on the sale.

*History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.4D; 105-164.13; 105-164.22; 105-262; 105-264; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538; Eff. February 1, 1976; Readopted Eff. January 1, 2024.*

**17 NCAC 07B .5004 TAXABLE OPTICAL SUPPLIES**

(a) The sale to consumers of solutions for cleaning eyeglasses, eyeglass cleaning cloths or wipes, eyeglass cases, eyeglass chains or cords, and similar eyeglass supplies are exempt from sales and use tax pursuant to G.S. 105-164.13(12), provided that:

- (1) The items are sold with corrective eyeglasses and the items are not billed separate and apart from the corrective eyeglasses; and
- (2) The sale is a bundled transaction pursuant to G.S. 105-164.4D.

(b) The sale to consumers of aseptors, salt tablets, squeeze bottles, carrying cases, contact lens instruction booklets, contact lens care



kits, and similar contact lens supplies are exempt from sales and use tax pursuant to G.S. 105-164.13(12), provided that:

- (1) The items are sold with corrective contact lenses and the items are not billed separate and apart from the corrective contact lenses; and
- (2) The sale is a bundled transaction pursuant to G.S. 105-164.4D.

*History Note: Authority G.S. 105-164.4; 105-164.4D; 105-164.6; 105-164.13; 105-262; 105-264; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;*

*Eff. February 1, 1976;*

*Amended Eff. October 1, 2009; October 1, 1993; October 1, 1991;*

*Readopted Eff. January 1, 2024.*

- (b) all entries are permanent; and
- (c) no changes can be made to the entries made permanent pursuant to Sub-Item (b) of this Item.

(7) "Dishonored payment" or "payment that has been dishonored" means money tendered to the Department by any means that is refused, rejected, or failed to be paid to the Department.

(8) "Enter information" means to:

- (a) handwrite, type, or input data;
- (b) confirm that pre-populated words or numbers are correct. Note: An example would be clicking a checkbox to select the correct date;
- (c) select applicable options from among offered options. Note: An example would be selecting "oath or affirmation" from a drop-down list of the types of notarial acts; or
- (d) include in the electronic journal acknowledged signatures of:
  - (i) principals;
  - (ii) a designee of a principal; or
  - (iii) a credible witness.

(9) "Federal business mileage rate" means the business mileage rate set by the U.S. Internal Revenue Service (IRS).

(10) "Federally recognized Indian tribe" means a tribe on the list published in the Federal Register by the U.S. Secretary of the Interior pursuant to 25 U.S.C. 5131.

(11) "File" means the date upon which a filing submitted to the Department is deemed complete by the Department. Note: "File" shall not mean that the Department has determined that the filer is qualified and will be appointed, registered, approved, or licensed.

(12) "Filer" means a person that submits a filing to the Department.

(13) "Filing" means a form or other document required or permitted to be filed with the Department pursuant to Chapter 10B of the General Statutes or the rules in this Chapter.

(14) "Form" means a departmental data collection instrument that requires or requests information, without regard to the format.

(15) "Form preparer" means an individual who enters information on a form:

- (a) at the direction of another; and
- (b) without exercising independent judgment or discretion as to the content entered.

(16) "Information technology" or "IT" means that term as defined in G.S. 143B-1320(a)(11).

(17) "Information technology security" or "IT security" means the tools, techniques, and strategies used to protect the confidentiality, integrity, and availability of data, information systems, and digital assets from:

**TITLE 18 - DEPARTMENT OF THE SECRETARY OF STATE**

**18 NCAC 07K .0101 DEFINITIONS**

For purposes of Chapter 10B of the General Statutes and the Rules in this Chapter:

- (1) "Approved" means that an applicant has been authorized by the Department to provide services as a technology provider in compliance with Chapter 10B of the General Statutes and the rules in this Chapter. Technology providers licensed by the Department are deemed approved.
- (2) "Armed Forces of the United States" means the persons described in 10 U.S.C. 101(a)(4) and G.S. 143B-1224(2), including their reserve components.
- (3) "Bank or financial institution" means a "depository institution" as defined in G.S. 53-208.42(7).
- (4) "Certificate of appointment" means a document issued by the Department notifying a Register of Deeds that:
  - (a) the named appointee is authorized to take the oath of office; and
  - (b) the Register of Deeds or designee shall provide the commission certificate to the notary public after:
    - (i) administering the oath of office to the appointee; and
    - (ii) signing of the certificate by both the Register of Deeds or designee, and the notary.
- (5) "Commission certificate" means the document confirming that an individual:
  - (a) has complied with all requirements of Chapter 10B of the General Statutes and the rules in this Chapter; and
  - (b) is authorized to act as a notary public.
- (6) "Commit" means the final step in the notarial act after which:
  - (a) the notarial act is complete;

- (a) internal and external threats; and
- (b) unauthorized access, use, disclosure, disruption, modification, or destruction.
- (18) "Initial appointment" means the first issuance by the Department of a commission certificate to a notary public.
- (19) "Instructor," "certified notary public instructor," "certified instructor," "notary instructor," and "certified notary instructor" mean a notary public who has complied with:
  - (a) the requirements of G.S. 10B-14; and
  - (b) the rules in Subchapter 07E of this Chapter.
- (20) "Location" means a description establishing that a principal is present in a jurisdiction where the notarial act may take place. Note: A statement that the principal is then located inside the U.S. embassy in Paris, France, would suffice to establish that the principal is present in a jurisdiction where the notarial act may take place.
- (21) "Long-term" means a period of at least one year.
- (22) "Notarial transaction process" includes:
  - (a) steps before the notarial act takes place. Note: The interactions establishing the date and location of a notarial act, obtaining advance consent to travel fees, and the steps required by G.S. 10B-134.9(a) are examples of steps before the notarial act;
  - (b) the notarial act; and
  - (c) steps following the notarial act. Note: Affixing the notary's seal and signature are examples of steps following the notarial act.
- (23) "Person" means the term as defined in G.S. 12-3(6).
- (24) "State recognized tribe" means a group listed in G.S. 143B-407(a).
- (25) "Successfully complete" and "successful completion" mean that a notarial applicant has complied with Chapter 10B and the rules in this Chapter and has:
  - (a) presented satisfactory evidence of identity as defined in G.S. 10B-3(22) or be personally known as defined in G.S. 10B-3(17);
  - (b) attended a notarial course taught by a certified notary instructor; and
  - (c) achieved a passing grade on the course examination as described in G.S. 10B-8(a).
- (26) "Technological failure" means a deficiency in:
  - (a) any component of the electronic notarization system;
  - (b) any component of the computer systems of the notary or principals; or
  - (c) the connections linking the components described in Sub-Items (a) and (b) of this Item.
- For purposes of this Rule, "component of the electronic notarization system" means any combination of hardware, software, a notary public's electronic journal, and communications technology recordings.
- (27) "Technology provider" means:
  - (a) a platform;
  - (b) a depository;
  - (c) a custodial service; or
  - (d) an AVEN as defined in 18 NCAC 07F .0102(1).
- (28) "Termination of employment" means the cessation of permanent or temporary work for another, whether compensated or not, for any reason, including voluntary and involuntary cessation of work.
- (29) "Traditional notarization" means a notarial act in which:
  - (a) there is personal appearance as defined in G.S. 10B-3(16); and
  - (b) one of the following occurs:
    - (i) a document is executed and notarized with ink signatures signed by hand or facsimile stamp and affixed with the physical notary seal as defined in G.S. 10B-3(23);
    - (ii) an oath or affirmation is administered without the execution of a document; or
    - (iii) creating an inventory as described in G.S. 53C-6-13(a).
- (30) "Traditional notary public" means an individual commissioned to perform traditional notarizations.
- (31) "Type of notarial act" means an acknowledgement, an oath or affirmation, verification or proof, inventory of an abandoned safe deposit box, or notarization of an absentee ballot.
- (32) "Under the exclusive control of the notary" means accessible by and attributable solely to the notary public to the exclusion of all other persons through being:
  - (a) in the case of a physical seal:
    - (i) in the direct physical custody of the notary; or
    - (ii) physically secured; or
  - (b) in the case of an electronic seal or electronic signature, secured with one or more methods of authentication in an approved electronic notarization system.

- (33) "United States" or "U.S." means the term as defined in G.S. 12-3(11).

*History Note:* Authority G.S. 10B-4; 10B-14; 10B-36; 10B-38; 10B-106; 10B-125; 10B-126; 10B-134.15; 10B-134.19; 10B-134.21;  
*Eff. July 1, 2024.*

**18 NCAC 07K .0201 TRAVEL FEE RATE**

A notary public who charges travel fees shall refer to the IRS website for the current federal business mileage rate prior to charging the travel fee.

*History Note:* Authority G.S. 10B-4;  
*Eff. January 1, 2024.*

**18 NCAC 07K .0202 ESTIMATE OF CHARGES**

In addition to the publication or provision of a notary public's schedule of fees pursuant to G.S. 10B-32, if a principal requests a fee estimate from a notary, the notary shall provide an estimate that includes:

- (1) the estimated total fee; and
- (2) the basis for the estimated charges.

*History Note:* Authority G.S. 10B-4;  
*Eff. January 1, 2024.*

**18 NCAC 07K .0203 INCLUSION OF FEES IN JOURNAL**

A notarial journal maintained pursuant to the rules in Subchapter I of this Chapter shall include, with regard to a specific notarial act for which fees were charged:

- (1) how much the notary public charged for each notarial act performed; and
- (2) if travel reimbursement was charged:
  - (a) the actual reimbursement charged; and
  - (b) the fee charged per mile.

*History Note:* Authority G.S. 10B-4; 10B-38; 10B-126; 10B-134.15;  
*Eff. January 1, 2024.*

**18 NCAC 07K .0204 CONSENT TO TRAVEL FEES MAY BE ELECTRONIC**

A notary public who charges travel fees pursuant to G.S. 10B-31(5) may obtain the advance consent of the principal in writing and delivered in any manner agreed upon by the notary and the principal.

*History Note:* Authority G.S. 10B-4; 10B-31;  
*Eff. January 1, 2024.*

**18 NCAC 07K .0205 CONTENTS OF ADVANCE CONSENT TO TRAVEL FEES**

A notary public who charges travel fees shall obtain advance written consent of the principal that includes the following information:

- (1) date of the consent;
- (2) name of the principal;

- (3) name of the notary;
- (4) estimated mileage that the notary will charge;
- (5) fee per mile that the notary will charge; and
- (6) planned date of the notary's travel.

*History Note:* Authority G.S. 10B-4;  
*Eff. January 1, 2024.*

**18 NCAC 07K .0206 NOTARIAL RECORD OF WRITTEN CONSENT TO TRAVEL FEES**

A notary public who charges travel fees shall preserve the advance written consent as a notarial record:

- (1) in the notary's journal; or
- (2) if written consent is not included in a journal, then a record of the written consent including the contents required by Rule .0205 of this Section shall be maintained by the notary.

*History Note:* Authority G.S. 10B-4; 10B-31; 10B-126; 10B-134.15;  
*Eff. January 1, 2024.*

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**TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

**CHAPTER 10 – BOARD OF CHIROPRACTIC EXAMINERS**

**21 NCAC 10 .0204 LICENSURE; RENEWAL OF LICENSE**

(a) Initial Licensure. The initial license awarded to an applicant who passed the examination shall be mailed to the address appearing on the application form.

(b) Change of Contact Information. The licentiate shall inform the Board of any change in his or her contact information. Updated contact information shall be forwarded to the Board office email at [ncboce@ncchiroboard.com](mailto:ncboce@ncchiroboard.com) within 30 days after any such change.

(c) General. The renewal, inactivation, and restoration of a license are governed by G.S. 90-155 and this Rule. A current license that is not renewed shall be placed on inactive status on January 30<sup>th</sup> of the following year. A licentiate desiring license renewal shall submit to the Board, on or before the date of inactivation, a completed license renewal form accompanied by the renewal fee as provided in Paragraph (i) of this Rule. The renewal fee shall not be paid in cash and may be paid by credit card through the Board's website, [www.ncchiroboard.com](http://www.ncchiroboard.com), or by a check made payable to the North Carolina Board of Chiropractic Examiners.

(d) License Renewal Notification and Form. On or before December 1 of each year, the Board shall email to each licentiate, at the licentiate's current email address on file with the Board, license renewal instructions. The license renewal form with instructions shall also be available at the Board's website, [www.ncchiroboard.com](http://www.ncchiroboard.com), or upon request at the Board's office. A licentiate desiring license renewal shall note on the form changes in name, address, specialty, employment circumstances, and criminal convictions since the last renewal form was submitted to

the Board. The licentiate shall also note on the form any professional development continuing education for which the licentiate seeks credit pursuant to Rule .0210(d) of this Chapter.

(e) Continuing Education. As used in G.S. 90-155, one "day" of continuing education shall mean nine hours. Except as provided in Paragraphs (f), (g) and (h) of this Rule, a licentiate seeking license renewal shall obtain 18 hours (2 days) of Board-approved continuing education each calendar year. At least 10 hours shall be obtained by attending in-person or live on-line educational sessions. Live online hours include the opportunity to interact with the instructor in real-time. As many as eight hours may be obtained in the manner set forth in Rule .0210 of this Section. The Board shall not award credit for any continuing education hours until the sponsor or licentiate submits to the Board the sponsor's certificate of attendance or course completion.

(f) First-Year Continuing Education Exemptions. A licentiate who was enrolled in chiropractic college at any time during the year of initial licensure or a licentiate initially licensed after September 1st of the current year shall be permitted to renew his or her license for the ensuing year without obtaining continuing education but shall be required to submit a license renewal form and pay the renewal fee. In subsequent years, a licentiate shall not be permitted to renew his or her license until the continuing education requirements set forth in Paragraph (e) of this Rule are satisfied.

(g) Hardship Waivers. A licentiate seeking a hardship waiver of the continuing education requirement shall make written application to the Board no later than December 15th of the current year explaining the nature and circumstances of the hardship. Upon the applicant's showing that compliance with the continuing education requirement poses an undue hardship, the Board may waive the requirement in whole or part or grant an extension of time within which to comply. "Undue hardship" shall include protracted medical illness, natural disaster, or extended absence from the United States.

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

(i) Renewal Fee. A renewal fee in the maximum amount allowed by G.S. 90-155 shall be paid by each licentiate applying for renewal.

(j) Restoration of Inactive License. Evidence of Proficiency. In order to provide evidence of proficiency, a former licentiate whose license has been inactive for 180 or fewer days due to non-compliance with G.S. 90-155 shall be re-examined and shall pay the non-refundable application fee prescribed in Rule .0202(d) of this Section and shall demonstrate compliance with continuing education requirements. A former licentiate whose license has been inactive for more than 180 days shall comply with Rule .0203(f) of this Section in addition to this Paragraph. Payment of the application fee shall not constitute payment of the reinstatement fee of twenty-five dollars (\$25.00) mandated by G.S. 90-155.

*History Note: Authority G.S. 90-142; 90-145; 90-155; 90-148; 93B-15; Eff. February 1, 1976;*

*Readopted Eff. January 27, 1978;*  
*Amended Eff. January 1, 1983;*  
*Legislative Objection Lodged Eff. January 31, 1983;*  
*Curative Amended Eff. February 28, 1983;*  
*Amended Eff. July 1, 2014; December 1, 1988;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019;*  
*Amended Eff. January 1, 2024; January 1, 2022; January 1, 2020.*

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**CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS**

**21 NCAC 14T .0402 ESTHETICS STUDENT EQUIPMENT**

Each esthetics school shall make available to students the use of the following items while the students are in class:

- (1) Draping;
- (2) Spatulas;
- (3) Tweezers;
- (4) Make up supplies; and
- (5) One mannequin with head, neck and shoulders.

*History Note: Authority G.S. 88B-2; 88B-4; 88B-16; Eff. January 1, 2012;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015;*  
*Amended Eff. January 1, 2024.*

**21 NCAC 14T .0404 NATURAL HAIR CARE STYLING STUDENT EQUIPMENT**

Each natural hair care school shall make available to students the use of the following items while the students are in class:

- (1) Six combs;
- (2) Six brushes;
- (3) Ten clips;
- (4) Mannequin with hair;
- (5) One electric flat iron;
- (6) One blowdryer;
- (7) One hard rubber or nonflammable comb for heat protection used in thermal styling; and
- (8) Two capes.

*History Note: Authority G.S. 88B-2; 88B-4; 88B-16; Eff. January 1, 2012;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015;*  
*Amended Eff. January 1, 2024.*

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**CHAPTER 42 – BOARD OF EXAMINERS IN OPTOMETRY**

**21 NCAC 42B .0204 CEASING PRACTICE**

(a) In the event an optometrist shall cease to practice at any practice location (primary or branch) as defined in Rules .0201 and .0202 of this Section, the optometrist shall notify the Board

in writing within ten days of ceasing practice, indicating the reason for discontinuing practice and the disposition of patient records.

(b) On ceasing practice at any location, the licensee shall notify those patients whose records he retains in accordance with 21 NCAC 42E .0102(5) and (6) of the disposition or availability of such records. Such notice shall be given by direct mail, email, or through a public announcement in a newspaper of general circulation in the county or counties wherein the patients reside. If such notice is given by publication, such publication shall occur not less than weekly for a period of not less than ninety days. Proof of the giving of such notice shall be retained by the licensee.

(c) Any licensee ceasing practice shall maintain control and custody of the records located at that practice location until such time as such records are transferred to the patients or to the custody of another practitioner similarly licensed.

*History Note:* Authority G.S. 90-117.5; 90-118.2;

*Eff. April 1, 1993;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015;*

*Amended Eff. January 1, 2024.*

**21 NCAC 42M .0105 REMUNERATION AND EXPENSES**

The preceptor shall serve as such without remuneration for his or her services. Any funds given to the preceptee shall be only for reimbursement of expenses and subsistence costs.

*History Note:* Authority G.S. 90-115.1(3); 90-117.5;

*Eff. April 1, 1993;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015;*

*Amended Eff. January 1, 2024.*