

NORTH CAROLINA REGISTER

VOLUME 22 • ISSUE 21 • Pages 1778 - 1872

May 1, 2008

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Contact List for Rulemaking Questions or Concerns

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

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Rules Division
Capehart-Crocker House
424 North Blount Street
Raleigh, North Carolina 27601-2817
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Rule Review and Legal Issues

Rules Review Commission
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Raleigh, North Carolina 27605
(919) 733-2721
(919) 733-9415 FAX

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

Fiscal Notes & Economic Analysis

Office of State Budget and Management
116 West Jones Street
Raleigh, North Carolina 27603-8005
(919) 807-4700
(919) 733-0640 FAX

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

Governor's Review

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

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee
545 Legislative Office Building
300 North Salisbury Street
Raleigh, North Carolina 27611
(919) 733-2578
(919) 715-5460 FAX

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

County and Municipality Government Questions or Notification

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

contact: Jim Blackburn jim.blackburn@ncacc.org
Rebecca Troutman rebecca.troutman@ncacc.org

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

contact: Anita Watkins awatkins@ncmlm.org

NORTH CAROLINA REGISTER
Publication Schedule for January 2008 – December 2008

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 th day from publication in the Register
22:13	01/02/08	12/06/07	01/17/08	03/03/08	03/20/08	05/01/08	05/13/08	09/28/08
22:14	01/15/08	12/19/07	01/30/08	03/17/08	03/20/08	05/01/08	05/13/08	10/11/08
22:15	02/01/08	01/10/08	02/16/08	04/01/08	04/21/08	06/01/08	01/2009	10/28/08
22:16	02/15/08	01/25/08	03/01/08	04/15/08	04/21/08	06/01/08	01/2009	11/11/08
22:17	03/03/08	02/11/08	03/18/08	05/02/08	05/20/08	07/01/08	01/2009	11/28/08
22:18	03/17/08	02/25/08	04/01/08	05/16/08	05/20/08	07/01/08	01/2009	12/12/08
22:19	04/01/08	03/10/08	04/16/08	06/02/08	06/20/08	08/01/08	01/2009	12/27/08
22:20	04/15/08	03/25/08	04/30/08	06/16/08	06/20/08	08/01/08	01/2009	01/10/09
22:21	05/01/08	04/10/08	05/16/08	06/30/08	07/21/08	09/01/08	01/2009	01/26/09
22:22	05/15/08	04/24/08	05/30/08	07/14/08	07/21/08	09/01/08	01/2009	02/09/09
22:23	06/02/08	05/09/08	06/17/08	08/01/08	08/20/08	10/01/08	01/2009	02/27/09
22:24	06/16/08	05/23/08	07/01/08	08/15/08	08/20/08	10/01/08	01/2009	03/13/09
23:01	07/01/08	06/10/08	07/16/08	09/02/08	09/22/08	11/01/08	01/2009	03/28/09
23:02	07/15/08	06/23/08	07/30/08	09/15/08	09/22/08	11/01/08	01/2009	04/11/09
23:03	08/01/08	07/11/08	08/16/08	09/30/08	10/20/08	12/01/08	01/2009	04/28/09
23:04	08/15/08	07/25/08	08/30/08	10/14/08	10/20/08	12/01/08	01/2009	05/12/09
23:05	09/02/08	08/11/08	09/17/08	11/03/08	11/20/08	01/01/09	01/2009	05/30/09
23:06	09/15/08	08/22/08	09/30/08	11/14/08	11/20/08	01/01/09	01/2009	06/12/09
23:07	10/01/08	09/10/08	10/16/08	12/01/08	12/22/08	02/01/09	05/2010	06/28/09
23:08	10/15/08	09/24/08	10/30/08	12/15/08	12/22/08	02/01/09	05/2010	07/12/09
23:09	11/03/08	10/13/08	11/18/08	01/02/09	01/20/09	03/01/09	05/2010	07/31/09
23:10	11/17/08	10/24/08	12/02/08	01/16/09	01/20/09	03/01/09	05/2010	08/14/09
23:11	12/01/08	11/05/08	12/16/08	01/30/09	02/20/09	04/01/09	05/2010	08/28/09
23:12	12/15/08	11/20/08	12/30/08	02/13/09	02/20/09	04/01/09	05/2010	09/11/09

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY
Riverwalk Development LLC**

Pursuant to N.C.G.S. § 130A-310.34, Riverwalk Development LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Eden, Rockingham County, North Carolina. The Property is the site of the former Nantucket and Fieldcrest textile mills, consists of 18.439 acres bounded to the north by wooded land and the floodplain of the Smith River; to the east and southeast by properties containing abandoned textile mills and, further east, by the Smith River and a canal; to the south by Church Street and, beyond that, undeveloped land zoned commercial and residential; to the west by Warehouse Street and, beyond that, former residential properties, vacant businesses and active commercial properties; and to the northwest by Grove Street, along which lie both vacant and occupied residential properties. Environmental contamination exists on the Property in groundwater. Riverwalk Development LLC has committed itself to mixed use redevelopment of the Property, which may include a hotel and conference center, museum, arts and crafts studios, office space, theater, restaurants, retail space, warehousing and open public space in the form of a greenway and park along the river. The redevelopment plan also includes preservation and reuse of the historic and architecturally significant Nantucket textile mill. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Riverwalk Development LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Rockingham County Public Library, located at 598 South Pierce Street, Eden, NC by contacting Connie R. Whitt at 336-623-3168 or at cwhitt@library.rcpl.org; or at the offices of the N.C. Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents) by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 508-8411.

Written public comments may be submitted to DENR within 30 days after the date this Notice is published in a newspaper of general circulation serving the area in which the Property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 21 days after the period for written public comments begins. Thus, if Riverwalk development LLC, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the Property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on May 2, 2008. All such comments and requests should be addressed as follows:

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

NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

Notice of Rule-making Proceedings is hereby given by NC Building Code Council in accordance with G.S. 150B-21.5(d).

Citation to Existing Rule Affected by this Rule-Making: *North Carolina Plumbing and Residential Codes.*

Authority for Rule-making: *G.S. 143-136; 143-138.*

Reason for Proposed Action: *To incorporate changes in the NC State Building Codes as a result of rulemaking petitions filed with the NC Building Code Council and to incorporate changes proposed by the Council.*

Public Hearing: *June 9, 2008, 1:00PM, NC Department of Insurance, First Floor Classroom, 322 Chapanoke Road, Raleigh, NC 27603*

Comment Procedures: *Written comments may be sent to Chris Noles, Secretary, NC Building Code Council, NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603. Comment period expires on June 30, 2008.*

Statement of Subject Matter:

1. Request by Craig J. Froeter, Froet Industries LLC, to amend the 2006 NC Plumbing Code, Section 1105. The proposed amendment is as follows:

1107.3 Sizing of secondary drains. Secondary (emergency) roof drain systems shall be sized in accordance with section 1106 based on the rainfall rate indicated in figure ~~1106.1a~~ 1106.1.

2. Request by Craig J. Froeter, Froet Industries LLC, to amend the 2006 NC Plumbing Code, Section 1105. The proposed amendment is as follows:

1105.1 Strainers. Roof drains shall have strainers extending not less than 4 3 inches (~~402mm~~76mm) above the surface of the roof.

3. Request by Armin Wallner, Catawba County, to amend the 2006 NC Residential Code, Section R403.1 and add Appendix Q to recognize discontinuous footings. The proposed amendment is as follows:

R403.1 General. All exterior walls shall be supported on continuous solid or fully grouted masonry or concrete footings, wood foundations, or other approved structural systems which shall be of sufficient design to accommodate all loads according to Section R301 and to transmit the resulting loads to the soil within the limitations as determined from the character of the soil. Footings shall be supported on undisturbed natural soils or engineered fill. Discontinuous footings shall be permitted to be constructed in accordance with ACI 332-04 for Concrete foundation walls and Appendix Q for Masonry foundation walls.

The proposed Appendix Q text may be viewed at the following link:

http://www.ncdoi.com/OSFM/Engineering/BCC/engineering_bcc_minutes.asp

4. Request by Al Bass, Mechanical Committee, to amend the 2009 NC Plumbing Code, Section 301.3 and add Appendix C-1 for Rain Water Recycling Systems. The proposed amendment is as follows:

301.3 Connections to the sanitary drainage system. All plumbing fixtures, drains, appurtenances and appliances used to receive or discharge liquid wastes or sewage shall be directly connected to the sanitary drainage system of the building or premises, in accordance with the requirements of this code. This section shall not be construed to prevent the indirect waste systems required by Chapter 8. All drain, waste and vent piping associated with gray water or rain water recycling systems shall be installed in full compliance with this code.

The proposed Appendix C-1 text may be viewed at the following link:

http://www.ncdoi.com/OSFM/Engineering/BCC/engineering_bcc_minutes.asp

State of North Carolina

State Board of Elections
506 N. Harrington Street
Raleigh, NC 27603
(919) 733-7173
www.sboe.state.nc.us

Gary O. Bartlett
Executive Director

Standards for Determining What Constitutes a Vote
And What Will Be Counted As a Vote
Pursuant to 42 U.S.C. § 15481(a)(6) & N.C.G.S. § 163-182.1(b)

Introduction

Pursuant to Section 301 (a)(6) of the Help America Vote Act of 2002, codified as 42 U.S.C. § 15481(a)(6), and N.C.G.S. § 163-182.1(b), the State Board of Elections has developed these standards and procedures to define what is a vote and when that vote should be counted in circumstances in which voting systems are unable to determine the voter's intent with respect to a marked ballot. This could occur if a voter uses an improper marking instrument, marks in an inappropriate manner, places marks in the wrong location on the ballot, or otherwise acts in a manner that causes the voter's ballot to be unreadable by the voting system for which the ballot was designed.

North Carolina has certified the following voting systems for use in all elections conducted in the State:

Optical Scan	Direct Record Electronic	Other Devices
M100	iVotronic	AutoMark
M650	ADA iVotronic	

Ballot marking instructions are provided for each ballot (GS 163-165.5(6)). Optical scan ballots should be marked according to the instructions provided for the ballot using a black ball point pen or marking device provided at the polling place to fill in the oval (●) next to the candidate for whom the voter wishes to vote. Direct record electronic (DRE) voting systems do not allow irregularly marked ballots. The voter should follow instructions on the voting equipment to ensure the vote is cast and receive the confirmation "Your ballot has been cast. Thank you for voting." However, when a voter's choice cannot be tabulated by the voting equipment, the principles and rules for counting official ballots as contained in GS 163-182.1, -182.2 and 8 NCAC 6B.0105 shall apply.

These standards for determining what constitutes a vote are not intended to replace or supercede federal or state statutes or the North Carolina Administrative Code but are to clarify and refine the process to be used by county boards of elections in exercising their quasi-judicial authority to determine a voter's intent in casting a vote. These standards are to be construed and applied consistently with State and Federal law.

Definitions

The following are definitions intended to be construed consistently with state and federal law.

Absentee Ballot	A ballot issued to a voter qualified to vote in the election at a time other than Election Day.
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Ballot	As defined in N.C.G.S. § 163-165(1), “ ‘[b]allot’ means an instrument on which a voter indicates a choice so that it may be recorded as a vote for a certain candidate or for or against a referendum proposal. The term ‘ballot’ may include a paper ballot to be counted by hand, a paper ballot to be counted on an electronic scanner, . . . the image on a direct record electronic unit, or a ballot used on any other system.”
Blank Ballot	A ballot containing no marks in any voting position target area readable by the ballot scanner, or one that has been marked with an unreadable marker, or one that has been consistently marked so that it is unreadable by the ballot scanner.
Candidate	A person seeking nomination or election to a specified office that has met the legal requirements for the person’s name to be printed on the ballot or counted as a write-in candidate.
Hand Count	To visually examine the ballot to determine the choices by the voter and to manually tally the choices by contest or referendum.
Overvote	A voter marks more choices than the number of positions allowed in the contest. Note: Direct Record Electronic (DRE) voting systems do not allow an overvote.
Paper Trail	The paper record generated by the voting system of each individual vote cast.
Rejected ballot	A ballot that has been damaged in a way that prohibits the scanner from reading the choices marked by the voter.
Traditional Paper ballot	A paper ballot to be counted by hand that is not readable by a voting system tabulator.
Undervote	A voter marks fewer choices than the number of positions allowed in the contest.
Vote	A choice for a candidate or a referendum proposal.
Voter Intent	A scanner or other counting machine is unable to determine the voter’s choice on an official ballot, but human counters can clearly determine the voter’s choice and hand count the official ballot.

General Standards

Only official ballots shall be counted according to the principles and rules contained in GS163-182.1. These principles include, but are not limited to, determining the voter's intent, counting all ballot items in which the voter's intent can be determined, and not rejecting an official ballot because of technical errors in the marking unless it is impossible to clearly determine the voter's intent. If a voter's intent can be determined, it shall be considered to be a valid vote.

If a voter has done anything other than to mark the ballot properly according to ballot marking instructions provided, the ballot shall be counted unless it is impossible to determine the voter's intent. If the voter has shown consistency in marking choices on the ballot, then those choices of the voter shall be counted, but shall not be counted if it results in an overvote. (GS 163-182.1 and 8 NCAC 6B.0105)

Write-In Votes

Write-in votes shall be counted pursuant to the provisions of GS 163-182.1(6) and GS 163-123 (f). A reasonable spelling of a qualified write-in candidate's name shall be counted.

Provisional Ballots

Provisional ballots shall be counted pursuant to the provisions of GS 163-166 and 8 NCAC 6B.0105(e).

Absentee Ballots

Absentee ballots shall be counted pursuant to the principles and rules contained in GS 163-182.1. Before counting an absentee ballot it shall be determined that the absentee ballot application and container return envelope were timely received, properly executed and contain requisite signatures. County boards of elections will determine the validity of an absentee ballot received in an unsealed container-return envelope.

If it is determined there are insufficient signatures on the absentee application or container return envelope, the county board of elections shall make a good faith attempt to contact the absentee voter applicant to notify the absentee voter of the insufficiency and provide opportunity for remedy the absentee voter before the absentee voting period closes and shall post a list of the defective absentee applications or container return envelopes which the political parties, candidates and public may view. If the absentee voter fails to remedy the imperfection by 5:00 p.m. on the day before election day the voter may appear at the polling place on election day and, if otherwise qualified, shall be allowed to vote using the voting equipment.

Abandoned Ballot

If a voter leaves the voting enclosure without finalizing the act of voting as required by the voting system, the precinct officials shall follow the procedure contained in 8 NCAC 10B.0104 (f).

Standards for Determining a Vote that Shall be Counted

The following standards should be applied for manual hand to eye counts or recounts:

Only official ballots shall be counted following the principles and rules contained in GS163-182.1.

If a voter has done anything other than mark the ballot properly according to ballot marking instructions provided, the ballot shall be counted according to the voter's indicated intent unless it is impossible to determine the voter's intent. If the voter has shown consistency in marking choices on the ballot, then those choices of the voter shall be counted, but it shall not be counted if it results in an overvote. (GS 163-182.1 and 8 NCAC 6B.0105). Marks indicating voter intent shall include, but not be limited to, circling the candidate's name or voting target area, strike-outs or corrections of choices, or writing in the candidate's name but failing to mark the voting target area.

Standards for Determining an Invalid Vote

If a voter uses random markings without a distinctive or consistent voting pattern so that the voter's choice cannot be determined, the vote will be considered invalid.

If the voter writes in a name that is unrecognizable, illegible, or not a real person, the vote will be considered invalid.

Note: Direct Record Electronic (DRE) voting systems do not allow an invalid vote except in write-in races.

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

Statutory reference: G.S. 150B-21.2.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Medical Care Commission intends to amend the rule cited as 10A NCAC 13D .3201.

Proposed Effective Date: October 1, 2008

Public Hearing:

Date: June 26, 2008

Time: 10:00 a.m.

Location: Room 201 Council Building, NC Division of Health Service Regulation, Dorothea Dix Campus, 701 Barbour Drive, Raleigh, NC 27603

Reason for Proposed Action: Documented clinical research shows that access to natural light has a positive therapeutic value in the care and treatment of residents and patients in health care facilities. The NC building code requirement changed to allow for mechanical ventilation and artificial lighting to be substituted for natural light and ventilation in the living, activity and dining areas.

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

Comments may be submitted to: Nadine Pfeiffer, Division of Health Service Regulation, 2701 Mail Service Center, Raleigh, NC 27699-2711, fax (919) 733-2757, email DHSR.RulesCoordinator@ncmail.net

Comment period ends: June 30, 2008

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- ☐ **State**
☐ **Local**
☐ **Substantive** (≥\$3,000,000)
☒ **None**

CHAPTER 13 – NC MEDICAL CARE COMMISSION

SUBCHAPTER 13D – RULES FOR THE LICENSING OF NURSING HOMES

SECTION .3200 - FUNCTIONAL REQUIREMENTS

10A NCAC 13D .3201 REQUIRED SPACES

(a) The net floor area of a single bedroom shall not be less than 100 square feet and the net floor area of a room for more than one bed shall not be less than 80 square feet per bed. The 80 square feet and 100 square feet requirements shall be exclusive of closets, toilet rooms, vestibules or wardrobes. When a designated single room exceeds 159 net square feet in floor area, it shall remain a single bedroom and cannot be used as a multi-bedroom unless approved in advance by the Division to meet the requirements of G.S. 131E, Article 9.

(b) The total space set aside for dining, recreation and other common use shall not be less than 25 square feet per bed for a nursing facility and 30 square feet per bed for the adult care home portion of a combination facility. Physical therapy, occupational therapy and rehabilitation space shall not be included in this total:

- (1) In nursing facilities, included in the total square footage required by Rule .3201(b) of this Section, a separate dining area or areas at a minimum of 10 square feet per bed shall be provided and a separate activity area or areas at a minimum of 10 square feet per bed shall be provided. The remainder of the total required space for dining and activities may be in a separate area or combined with either of the required dining or activity areas.
- (2) In combination facilities, included in the total square footage required by Rule .3201(b) of this Section, a separate dining area or areas at 14 square feet per adult care home bed shall be provided. The adult care home dining area or areas may be combined with the nursing facility dining area or areas. A separate activity area or areas for domiciliary beds shall

be provided at 16 square feet per domiciliary bed. The adult care home activity area may not be combined with the activity area or areas required for nursing beds.

- (3) Dining, activity, and living ~~areas-space~~ shall be designed and equipped to provide accessibility to both patients confined to wheelchairs and ambulatory patients. Required dining, activity, and living areas shall have windows with views to the outside. The glazing material for the windows shall not be less than eight percent of the floor area required for each dining, activity, or living space.
- (4) Closets and storage units for equipment and supplies shall not be included as part of the required dining, activity, and living floor space area.
- (5) Handicap accessible outdoor areas for individual and group activities shall be provided.
- (6) For nursing beds, separate bedroom closets or wardrobes shall be provided in each bedroom to provide each occupant with a minimum of 36 cubic feet of clothing storage space at least half of which is for hanging clothes.
- (7) For adult care home beds, separate bedroom closets or wardrobes shall be provided in each bedroom to provide each adult care home resident with a minimum of 48 cubic feet of clothing storage space at least half of which is for hanging clothes.
- (8) Some means for patients and residents to lock personal articles within the facility shall be provided.

(c) A toilet room shall be directly accessible from each patient room and from each central bathing area without going through the general corridor. One toilet room may serve two patient rooms but not more than eight beds. The lavatory may be omitted from the toilet room if one is provided in each patient room. One tub or shower shall be provided for each 15 beds not individually served. There shall be at least one bathtub accessible on three sides and one shower provided for each 60 beds or fraction thereof.

(d) For each nursing unit, or fraction thereof on each floor, the following shall be provided:

- (1) a medication preparation area with a counter, a sink with four-inch faucet trim handles, a medication refrigerator, eye level medication storage, cabinet storage and double locked narcotic storage room, located adjacent to the nursing station or under visual control of the nursing station;
- (2) a clean utility room with counter, sink with four-inch handles, wall and under counter storage;
- (3) a soiled utility room with counter, sink with four-inch handles, wall and under counter storage, a flush-rim clinical sink or water

closet with a device for cleaning bedpans and a means for washing and sanitizing bedpans and other utensils;

- (4) a nurses' toilet and locker space for coats, purses, and personal belongings;
- (5) an audio-visual nurse-patient call system arranged to ensure that a patient's call in the facility is noted at a staffed station;
- (6) a soiled linen storage room;
- (7) a clean linen storage room;
- (8) a nourishment station in an area enclosed with walls and doors which contains work space, cabinets and refrigerated storage, and a small stove, microwave oven or hot plate; and
- (9) one nurses' station consisting of desk space for writing, storage space for office supplies, storage space for patients' records and space for nurses' call equipment.

(e) Clean linen storage shall be provided in a separate room from bulk supplies. Clean linen for nursing units may be stored in closed carts, or cabinets in the clean utility room, or in a linen closet on the unit floor.

(f) A soiled linen room shall be provided.

(g) Each nursing unit shall be provided with at least one janitor's closet. The kitchen area and laundry area each shall have a janitor's closet. Administration, occupational and physical therapy, recreation, personal care and employee facilities shall be provided janitor's closets and may share one as a group.

(h) Stretcher and wheelchair storage shall be provided.

(i) Bulk storage shall be provided at the rate of five square feet of floor area per bed.

(j) Office space shall be provided for persons holding the following positions: administrator, director of nursing, social services director, activities director and physical therapist. There shall also be a business office.

(k) Each combination facility shall provide a minimum of one residential washer and residential dryer located to be accessible by adult care home staff, residents, and family, unless personal laundry service is provided by the facility.

Authority G.S. 131E-104.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02B .0601 - .0609.

Proposed Effective Date: November 1, 2008

Public Hearing:

Date: May 22, 2008

Time: 6:00 p.m.

Location: Philadelphia Presbyterian Church, Kerr Building, 11501 Bain School Road, Charlotte, NC 28227-7538

Reason for Proposed Action:

15A NCAC 02B .0600, Water Quality Management Plans - Water Quality Management Plans implement site-specific management strategies to provide for the maintenance and enable recovery of the quality of certain waters that provide habitat for federally-listed aquatic animal species that are listed as threatened or endangered by the U.S. Fish and Wildlife Service or National Marine Fisheries Service under the provisions of the Endangered Species Act, 16 U.S.C. 1531-1544 and subsequent modifications.

15A NCAC 02B .0601 - This rule states the purpose of the site-specific water quality management plan for the federally endangered Carolina heelsplitter freshwater mussel located in the Goose Creek watershed in the Yadkin Pee-Dee River Basin.

15A NCAC 02B .0602 - This rule establishes the stormwater control requirements of the site-specific water quality management plan for the federally endangered Carolina heelsplitter freshwater mussel located in the Goose Creek watershed in the Yadkin Pee-Dee River Basin.

15A NCAC 02B .0603 - This rule establishes the wastewater control requirements of the site-specific water quality management plan for the federally endangered Carolina heelsplitter freshwater mussel located in the Goose Creek watershed in the Yadkin Pee-Dee River Basin.

15A NCAC 02B .0604 - This rule establishes an ammonia toxicity control requirement for any activity that causes ammonia toxicity to the federally endangered Carolina heelsplitter freshwater mussel located in the Goose Creek watershed in the Yadkin Pee-Dee River Basin.

15A NCAC 02B .0605 - This rule outlines the riparian buffer requirements in the Goose Creek watershed for the federally endangered Carolina heelsplitter freshwater mussel located there. There are two options presented for comment: Option A and Option B. Option A consists of .0605 through .0609. Option A of Rule .0605 includes restrictions on new impervious surfaces within certain parts of the 100-Year floodplain up to 200 feet from surface waters as well as the allowance of certain uses that are specified in rule .0605A. Option .0605A includes other components for riparian buffers, explained in Rules .0606, .0607, .0608 and .0609.

Option B is the alternative to Option A. Option B consists of .0605B and .0606. This option has requirements for undisturbed riparian buffers, 200 feet from perennial streams and 100 feet from intermittent streams.

15A NCAC 02B .0606 - This rule establishes the variance procedure to be used by persons who wish to seek permission to undertake uses designated as prohibited within the protected riparian buffer areas for either Option A or B of Rule .0605.

15A NCAC 02B .0607 - This rule outlines the requirements for riparian buffers on perennial streams and intermittent streams and is part of Option-A of Rule .0605.

15A NCAC 02B .0608 - This rule outlines the requirements for forest harvesting operations and practices within the riparian buffer if forest harvesting is allowed within the riparian buffer. This rule is part of Option A of Rule .0605.

15A NCAC 02B .0609 - This rule outlines the mitigation requirements for the federally endangered Carolina heelsplitter freshwater mussel located in the Goose Creek watershed in the

Yadkin Pee-Dee River Basin. This rule is part of Option A of Rule .0605.

Procedure by which a person can object to the agency on a proposed rule: You may attend the public hearing and make relevant verbal comments, and/or submit written comments, data or other relevant information by June 30, 2008. An appointed Hearing Officer may limit the length of time that you may speak at the public hearing so that all those who wish to speak may have an opportunity to do so. The EMC is very interested in all comments pertaining to the proposed Goose Creek Watershed rule. If you wish to present verbal comments at the public hearing, it is requested that you submit a copy of your comments in writing to the Hearing Officer in order for your full comments to be captured in the rulemaking record. In addition, the EMC is specifically soliciting comments on the following options that are contained in the currently proposed rules 15A NCAC 02B .0603 and .0607, as follows:

(1) 100 foot undisturbed buffers on intermittent streams and 200 foot undisturbed buffers on perennial streams versus a range of buffers from 50 to 200 feet depending on the site-specific condition such as presence of floodplains, and allowing certain low-impact uses within the buffer area,

(2) Whether or not to allow non-electric utility line installations, such as sanitary sewers, parallel to streams within the proposed 50-foot buffers. If allowed in the inner 30 feet of the buffer, non-electric utility line installations would require appropriate mitigation. Whether or not to allow perpendicular crossings of non-electric utility lines to impact greater than 150 linear feet with appropriate mitigation

(3) Whether or not to allow certain uses with mitigation and what the appropriate mitigation multiplier would be if mitigation were allowed, and

(4) An option to include rule language requiring the existing NPDES wastewater permit holders to connect to sanitary sewers when sanitary sewers are available.

All persons interested and potentially affected by the rule proposals are strongly encouraged to read this entire notice and make comments on the proposed rules. The EMC may not adopt a rule that differs substantially from the text of a proposed rule published in this notice unless the EMC publishes the texts of the proposed different rule and accepts comments on the new text (General Statute 150B 21.2(g)). Written comments may be submitted to: Jeff Manning, DENR/Division of Water Quality/Planning Section, 1617 Mail Service Center, Raleigh, NC 27699-1617, by email to Jeff.Manning@ncmail.net, or by fax at (919) 715-5637.

Comments may be submitted to: Jeff Manning, DENR/ Division of Water Quality, Planning Section, 1617 Mail Service Center, Raleigh, NC 27699-1617, phone (919) 733-5083 extension 579, fax (919) 715-5637, email jeff.manning@ncmail.net

Comment period ends: June 30, 2008

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the

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

Fiscal Impact:

- ☐ State
☐ Local
☐ Substantive (≥\$3,000,000)
☒ None

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0600 - WATER QUALITY MANAGEMENT PLANS

15A NCAC 02B .0601 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): PURPOSE

The Goose Creek watershed in the Yadkin Pee-Dee River Basin provides habitat for an aquatic animal species that is listed as federally endangered by the U.S. Fish and Wildlife Service under the provisions of the Endangered Species Act, 16 U.S.C. 1531-1544. Maintenance and recovery of the water quality conditions required to sustain and recover the federally-listed endangered species thereby protects the biological integrity of the waters. The Goose Creek watershed, which includes Goose Creek (Index # 13-17-18), Stevens Creek (Index # 13-17-18-1), Paddle Branch (Index # 13-17-18-2), Duck Creek (Index # 13-17-18-3) and all tributaries, shall be protected by the site-specific management strategy described in this Section. The purpose of the actions required by this site-specific management strategy is for the maintenance and recovery of the water quality conditions required to sustain and recover the federally endangered Carolina heelsplitter (*Lasmigona decorata*) species. Management of the streamside zones to stabilize streambanks and prevent sedimentation are critical measures to restore water quality to sustain and enable recovery of the federally endangered Carolina heelsplitter. Site-specific management strategies shall be implemented to:

- (1) control stormwater for projects disturbing half acre or more of land as described in Rule .0602,
- (2) control wastewater discharges as described in Rule .0603,

- (3) control ammonia toxicity to streams supporting the Carolina heelsplitter as described in Rule .0604, and
- (4) maintain riparian buffers as described in Rules .0605 through .0608.

Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A.

15A NCAC 02B .0602 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): STORMWATER CONTROL REQUIREMENTS
Any new development activity that disturbs half acre or more of land within the Goose Creek watershed shall control and treat the difference in the stormwater runoff from the predevelopment and post-development conditions for the one-year, 24-hour storm, with structural stormwater controls, with the exception of NC Department of Transportation activities that shall be regulated in accordance with provisions of that agency's existing NPDES Stormwater Permit. Development and redevelopment should consider stormwater management measures that promote infiltration of flows and groundwater recharge for the purpose of maintaining stream base flow. Structural stormwater controls shall meet the following requirements:

- (1) Remove an 85% average annual amount of Total Suspended Solids;
- (2) Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours, for detention ponds;
- (3) Discharge the storage volume at a rate equal or less than the pre-development discharge rate for the one-year, 24-hour storm; and
- (4) Meet Design of Stormwater Management Measures set forth in 15A NCAC 02H .1008.

Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A.

15A NCAC 02B .0603 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): WASTEWATER CONTROL REQUIREMENTS
No new NPDES wastewater discharges or expansions to existing discharges shall be permitted. Effluent limitations for existing wastewater dischargers shall be addressed through the permitting process. [Optional additional language: Existing NPDES permitted wastewater discharges shall connect to sanitary sewer when available and feasible.]

Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A.

15A NCAC 02B .0604 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): CONTROL AMMONIA TOXICITY
For any activity that causes ammonia toxicity to the Carolina heelsplitter freshwater mussel, action shall be taken to further reduce ammonia (NH₃-N) inputs to achieve 0.5 mg/L or less of total ammonia on a chronic basis in streams supporting the Carolina heelsplitter. This achievable level of total ammonia is

based on ambient water temperature equal to or greater than 25 degrees Celsius and is based on relevant mussel toxicity literature.

Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A.

NOTE: RULE OPTION A FOR THE SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): CONTROL NEW IMPERVIOUS AND PARTIALLY PERVIOUS SURFACES IN FLOODPLAINS

15A NCAC 02B .0605 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): CONTROL NEW IMPERVIOUS AND PARTIALLY PERVIOUS SURFACES IN FLOODPLAINS
New impervious or partially pervious surfaces shall not be allowed within the 100-Year Floodplain within 200 feet of perennial streams and 100 feet of intermittent streams. The 100-Year Floodplain is the one percent Annual Chance Floodplain as delineated by the North Carolina Floodplain Mapping Program in the Division of Emergency Management. Within the parts of the 100-Year Floodplain that are regulated by this Rule, redevelopment is allowed for residential structures and redevelopment of non-residential structures is allowed provided that less than an additional half acre is disturbed during the redevelopment activity for non-residential structures. Redevelopment is defined in 15A NCAC 02H .1002(14). Exceptions to these requirements are allowed for roads, paths, water dependent structures as defined in 15A NCAC 02B .0202, and uses that are exempt or allowable as outlined in Rule .0607. Any exceptions, exempt or allowed activities shall require stormwater control as outlined by Rule .0602.

Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A.

NOTE: RULE OPTION B FOR SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): MAINTAIN TWO-HUNDRED (200) FOOT UNDISTURBED BUFFERS ON PERENNIAL STREAMS; MAINTAIN ONE-HUNDRED (100) FOOT UNDISTURBED BUFFERS ON INTERMITTENT STREAMS.

NOTE: RULE OPTION B IS IN LIEU OF 02B .0605A, 02B .0607, 02B .0608, AND 02B .0609.

15A NCAC 02B .0605 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): MAINTAIN TWO-HUNDRED (200) FOOT UNDISTURBED BUFFERS ON PERENNIAL STREAMS; MAINTAIN ONE-HUNDRED (100) FOOT UNDISTURBED BUFFERS ON INTERMITTENT STREAMS
The following requirements apply to undisturbed riparian buffers adjacent to perennial streams and intermittent streams.

- (1) **RIPARIAN BUFFER.** The protected riparian buffer shall consist of a vegetated area that is undisturbed. A perennial or intermittent stream shall be considered to be present if the feature is shown as described in the applicability paragraph of 15A NCAC 02B .0233(3) and 02B .0233(3)(a)(i)-(iii). The location of the riparian buffer shall be as follows:
 - (a) For intermittent and perennial streams, the riparian buffer shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward a distance of 200 feet on all sides of the perennial surface water, 100 feet from all sides of the intermittent surface water, measured horizontally on a line perpendicular to the surface water.
 - (b) For ponds, lakes and reservoirs located within a natural drainage way, the riparian buffer shall begin at the most landward limit of the normal water level or the rooted herbaceous vegetation and extend landward a distance of 200 feet, measured horizontally on a line perpendicular to the surface water.
- (2) **EXEMPTION WHEN USES ARE PRESENT AND ONGOING.** The buffer requirements in this Rule shall not apply to portions of the riparian buffer where a use is existing and ongoing. Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt. The determination of whether a use is existing and ongoing will be made by the Division of Water Quality. A use is existing and ongoing when it is a completed and maintained activity, an activity with appropriate valid permits, or an activity with documentation for unexpired vested rights, as described below:
 - (a) A use that was present within the riparian buffer as of September 1, 2007 and has continued since that time. Existing uses shall include agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems. Change of ownership through purchase or inheritance is not a change of use. Activities necessary to maintain uses are allowed provided that the site remains similarly vegetated, no impervious surface is added within the buffer area where it did not exist

- as of September 1, 2007, and existing diffuse flow is maintained.
- (b) A use that can be documented to the Division that meets at least one of the following criteria:
- (i) Project requires a 401 Certification/404 Permit, these were issues prior to September 1, 2007 and are still valid;
- (ii) Project requires a state permit, such as a landfill, NPDES wastewater discharge, land application residuals and road construction activities, and has begun construction or are under contract to begin construction and has received all required state permits prior to September 1, 2007;
- (iii) Project is being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with DENR on avoidance and minimization by September 1, 2007; or
- (iv) Project is not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the DWQ prior to September 1, 2007.
- (c) A project that can be documented to the Division of Water Quality that has vested rights that were established or recognized for that project under the common law or by G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 prior to September 1, 2007.

This rule does not confer or restrict a vested right established or recognized under common law or G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1.

- (d) At the time an existing use is changed to another use, the buffer requirement of this Rule shall apply. Change of use shall include the following:
- (i) To add impervious surface within the riparian buffer; or
- (ii) An agricultural operation within the riparian buffer is converted to a non-agricultural use.

Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A.

15A NCAC 02B .0606 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): MANAGE ACTIVITIES WITHIN RIPARIAN BUFFERS ON PERENNIAL AND INTERMITTENT STREAMS: VARIANCES

Persons who wish to undertake uses designated as prohibited within the protected riparian buffer area may pursue a variance. The variance request procedure shall be as follows:

- (1) For any variance request, the Division of Water Quality shall make a finding of fact as to whether the following requirements have been met:
- (a) There are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:
- (i) If the applicant complies with the provisions of the buffer requirements, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Division shall consider whether the variance is the minimum possible deviation from the terms of the buffer requirements that shall make reasonable use of the property possible.

- (ii) The hardship results from application of the buffer requirements to the property rather than from other factors such as deed restrictions or other hardship.
- (iii) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.
- (iv) The applicant did not cause the hardship by knowingly or unknowingly violating the buffer requirements.
- (v) The applicant did not purchase the property after the effective date of this Rule, and then requesting an appeal.
- (vi) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice;
- (b) The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and
- (c) In granting the variance, the public safety and welfare have been assured water quality has been protected, and substantial justice has been done.
- (2) A variance request pertains to any activity that is proposed to impact any portion of the riparian buffer. If the Division has determined that a major variance request meets the requirements in Item (1) of this Rule, then it shall prepare a preliminary finding and submit it to the Environmental Management Commission. Preliminary findings on variance requests shall be reviewed by the Commission within 90 days after receipt by the Director. Requests for appeals of determinations that the requirements of Item (1) of this Rule have not been met shall be made to the Office of Administrative Hearings for determinations made by the Division or the appropriate Board of Adjustments under G.S.

160A-388 or G.S. 153A-345 for determinations made by the delegated local authority. The purpose of the Commission's review is to determine if it agrees that the requirements in Item (1) of this Rule have been met. Requests for appeals of decisions made by the Commission shall be made to the Office of Administrative Hearings. The following actions shall be taken depending on the Commission's decision on the major variance request:

- (a) Upon the Commission's approval, the Division shall issue a final decision granting the variance.
- (b) Upon the Commission's approval with conditions or stipulations, the Division shall issue a final decision, which includes these conditions or stipulations.
- (c) Upon the Commission's denial, the Division shall issue a final decision denying the variance.

Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A.

15A NCAC 02B .0607 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): MANAGE ACTIVITIES WITHIN RIPARIAN BUFFERS ON PERENNIAL AND INTERMITTENT STREAMS

The following requirements apply to the riparian buffers on perennial streams and intermittent streams.

- (1) RIPARIAN BUFFER. The protected riparian buffer shall consist of a vegetated area that is undisturbed except for uses provided for in the table in this Rule. A perennial or intermittent stream shall be considered to be present if the feature is shown as described in the applicability paragraph of Rule 15A NCAC 02B .0233(3) and 02B .0233(3)(a)(i)-(iii). The location of the riparian buffer shall be as follows:
 - (a) For intermittent and perennial streams, the riparian buffer shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward a distance of 50 feet on all sides of the surface water, measured horizontally on a line perpendicular to the surface water.
 - (b) For ponds, lakes and reservoirs located within a natural drainage way, the riparian buffer shall begin at the most landward limit of the normal water level or the rooted herbaceous vegetation and extend landward a distance of 50 feet, measured

horizontally on a line perpendicular to the surface water.

- (2) EXEMPTION WHEN USES ARE PRESENT AND ONGOING. The buffer requirements in this Rule shall not apply to portions of the riparian buffer where a use is existing and ongoing. Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt. The determination of whether a use is existing and ongoing will be made by the Division of Water Quality. A use is existing and ongoing when it is a completed and maintained activity, an activity with appropriate valid permits, or an activity with documentation for unexpired vested rights, as described below:

- (a) A use that was present within the riparian buffer as of September 1, 2007 and has continued since that time. Existing uses shall include agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems. Change of ownership through purchase or inheritance is not a change of use. Activities necessary to maintain uses are allowed provided that the site remains similarly vegetated, no impervious surface is added within the buffer area where it did not exist as of September 1, 2007, and existing diffuse flow is maintained.

- (b) A use that can be documented to the Division that meets at least one of the following criteria:

- (i) Project requires a 401 Certification/404 Permit, these were issues prior to September 1, 2007 and are still valid;
- (ii) Project requires a state permit, such as a landfill, NPDES wastewater discharge, land application residuals and road construction activities, and has begun construction or are under contract to begin construction and has received all required state permits prior to September 1, 2007;
- (iii) Project is being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process

(published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with DENR on avoidance and minimization by September 1, 2007; or

- (iv) Project is not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the DWQ prior to September 1, 2007.

- (c) A project that can be documented to the Division of Water Quality that has vested rights that were established or recognized for that project under the common law or by G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 prior to September 1, 2007. This rule does not confer or restrict a vested right established or recognized under common law or G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1.

- (d) At the time an existing use is changed to another use, the buffer requirement of this rule shall apply. Change of use shall include the following:

- (i) To add impervious surface within the riparian buffer; or
- (ii) An agricultural operation within the riparian buffer is converted to a non-agricultural use.

- (3) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.

- (a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters the riparian buffer.

- (b) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.

(4) REQUIREMENTS FOR CATEGORIES OF USES. Uses designated as exempt, potentially allowable, and prohibited in the table shall have the following requirements:

(a) EXEMPT. Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable. In addition, exempt uses shall meet requirements listed in the table of this Rule for the specific use.

(b) POTENTIALLY ALLOWABLE. Uses designated as potentially allowable may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to this Rule. These uses require written authorization from the Division of Water Quality.

(c) PROHIBITED. Uses designated as prohibited or not included in this table may not proceed within the riparian buffer unless a variance is granted pursuant to Rule .0606. Site-specific mitigation may be required as one condition of a variance approval.

(5) DETERMINATION OF "NO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as potentially allowable shall submit a request for a "no practical alternatives" determination to the Division of Water Quality. The applicant shall certify that the criteria identified in Sub-Item (5)(a) of this Rule are met. The Division shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:

(a) For any request for an Authorization Certificate, the Division shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:

(i) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality.

(ii) The use cannot practically be reduced in size or density,

reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality.

(iii) Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.

(b) Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub-Item (5)(a) of this Rule by the Division. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." The Division may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:

(i) The name, address and phone number of the applicant;

(ii) The nature of the activity to be conducted by the applicant;

(iii) The location of the activity, including the jurisdiction;

(iv) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;

(v) An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and

(vi) Plans for any best management practices proposed to be used to

PROPOSED RULES

- control the impacts associated with the activity.
- (c) Any disputes over determinations regarding Authorization Certificates shall be referred to the Director for a decision. The Director's decision is subject to review as provided in Articles 3 and 4 of G.S. 150B.
- (6) Fifty-foot wide riparian buffers along surface waters in this watershed shall be maintained.

Some uses within riparian buffers are exempt and some uses are potentially allowable. Any exempt or potentially allowed use shall require stormwater control as outlined in Rule .0602 of this Section if the half acre threshold is met. The following chart sets out the uses and their designation under this Rule as exempt, potentially allowable or prohibited as described above.

	<u>Exempt</u>	<u>Potentially Allowable, requires DWQ approval</u>	<u>Prohibited</u>
<u>Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer</u>		<u>X</u>	
<u>Archaeological activities</u>	<u>X</u>		
<u>Bridges</u>		<u>X</u>	
<u>Dam maintenance activities</u>	<u>X</u>		
<u>Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers:</u>	<u>X</u>	<u>X</u>	
<ul style="list-style-type: none"> <u>Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients including ammonia and other pollution that convey to waterbodies</u> 			
<ul style="list-style-type: none"> <u>New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to minimize the sediment, nutrients including ammonia and other pollution and attenuate flow before the conveyance discharges through the riparian buffer</u> 			<u>X</u>
<ul style="list-style-type: none"> <u>New drainage ditches, roadside ditches and stormwater outfalls that do not minimize the sediment, nutrients including ammonia and other pollution and attenuate flow before discharging through the riparian buffer</u> 			<u>X</u>
<ul style="list-style-type: none"> <u>Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch</u> 			
<u>Drainage of a pond in a natural drainage way provided that a new riparian buffer that meets the diffuse flow requirements of this Rule is established adjacent to the new channel</u>	<u>X</u>		
<u>Driveway crossings of streams and other surface waters subject to this Rule:</u>	<u>X</u>		
<ul style="list-style-type: none"> <u>Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer</u> 		<u>X</u>	
<ul style="list-style-type: none"> <u>Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer</u> 			
<ul style="list-style-type: none"> <u>In a subdivision that cumulatively disturbs equal to</u> 			

PROPOSED RULES

	<u>Exempt</u>	<u>Potentially Allowable, requires DWQ approval</u>	<u>Prohibited</u>
<p>or less than 150 linear feet or one-third of an acre of riparian buffer</p> <ul style="list-style-type: none"> • <u>In a subdivision that cumulatively disturbs greater than 150 linear feet or one-third of an acre of riparian buffer</u> 		<u>X</u>	<u>X</u>
<u>Fences provided that disturbance is minimized and installation does not result in removal of forest vegetation</u>	<u>X</u>		
<u>Forest harvesting – see Rule .0608</u>			
<u>Fertilizer application:</u> <ul style="list-style-type: none"> • <u>One-time fertilizer application at agronomic rates to establish replanted vegetation</u> • <u>Ongoing fertilizer application</u> 	<u>X</u>		<u>X</u>
<u>Greenway/hiking trails</u>		<u>X</u>	
<u>Historic preservation</u>	<u>X</u>		
<u>Landfills as defined by G.S. 130A-290</u>			<u>X</u>
<u>Mining activities:</u> <ul style="list-style-type: none"> • <u>Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the diffuse flow requirements of this Rule are established adjacent to the relocated channels</u> • <u>Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the diffuse flow requirements of this Rule are not established adjacent to the relocated channels</u> • <u>Wastewater or mining dewatering wells with approved NPDES permit</u> 	<u>X</u>	<u>X</u>	<u>X</u>
<ul style="list-style-type: none"> • <u>Non-electric utility lines with impacts other than perpendicular crossings³ [Comment is requested on whether or not to make this use "Potentially Allowable with DWQ Approval and with Mitigation" pursuant to Rule .0609 versus "Prohibiting" the activity. If allowable, then installation of non-electric utility lines, such as sanitary sewers, would be allowed parallel to streams within the 50-foot buffers. If the use is within the inner 30 feet of the buffer nearest the stream, the installation could require appropriate mitigation. Comment is requested on what the appropriate mitigation multiplier and ratio needs to be for this watershed and for the goal of this Rule.]</u> 		<u>X or (See Rule .0609)</u>	<u>X</u>

	<u>Exempt</u>	<u>Potentially Allowable, requires DWQ approval</u>	<u>Prohibited</u>
<p><u>Non-electric utility line perpendicular crossing of streams and other surface waters subject to this Rule that are not collection systems³:</u></p> <ul style="list-style-type: none"> • <u>Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width</u> • <u>Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width</u> • <u>Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width</u> • <u>Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width [Comment is requested on whether or not to make this use "Potentially Allowable with DWQ Approval and with Mitigation" pursuant to Rule .0609 versus "Prohibiting" the activity. Comment is requested on what the appropriate mitigation multiplier and ratio needs to be for this watershed and for the goal of this rule.]</u> • <u>Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer [Comment is requested on whether or not to make this use "Potentially Allowable with DWQ Approval and with Mitigation" pursuant to Rule .0609 versus "Prohibiting" the activity. Comment is requested on what the appropriate mitigation multiplier and ratio needs to be for this watershed and for the goal of this rule.]</u> 	<u>X</u>	<u>X</u> <u>X</u> <u>X or (See Rule .0609)</u>	<u>X</u>
<p><u>Non-electric utility line crossings that are collections systems as defined in Rule 15A NCAC 02T .0300:</u></p> <ul style="list-style-type: none"> • <u>That use any of the following installation methods to minimize the sediment, nutrient and other pollution through the riparian buffer: underground directional boring methods, bore-and-jack techniques or another appropriate microtunnelling method</u> • <u>That does not minimize the sediment, nutrient and other pollution through the riparian buffer by the most appropriate exempt method.</u> 	<u>X</u>		<u>X</u>
<u>On-site sanitary sewage systems - new ones that use ground absorption</u>			<u>X</u>
<u>Overhead electric utility lines^{1,2,3}:</u>			
<ul style="list-style-type: none"> • <u>Stream crossings that disturb equal to or less than 150 linear feet of riparian buffer</u> • <u>Stream crossings that disturb greater than 150 linear feet of riparian buffer</u> 	<u>X</u>	<u>X</u>	

PROPOSED RULES

	<u>Exempt</u>	<u>Potentially Allowable, requires DWQ approval</u>	<u>Prohibited</u>
Periodic maintenance of modified natural streams such as canals and a grassed travelway on one side of the surface water when alternative forms of maintenance access are not practical.		<u>X</u>	
Pesticide application: Refer to the NC Pesticide Board's rules at 02 NCAC 09L .2201-.2203 and the US EPA Endangered Species Protection Program at www.epa.gov/espp .			
Playground equipment: <ul style="list-style-type: none"> Playground equipment on single family lots provided that installation and use does not result in removal of vegetation Playground equipment installed on lands other than single-family lots or that requires removal of vegetation 	<u>X</u>	<u>X</u>	
Ponds in natural drainage ways, excluding dry ponds: <ul style="list-style-type: none"> New ponds provided that a riparian buffer that meets the diffuse flow requirements of this Rule is established adjacent to the pond New ponds where a riparian buffer that meets the diffuse flow requirements of this Rule is NOT established adjacent to the pond 		<u>X</u>	<u>X</u>
Protection of existing structures, facilities and streambanks when this requires additional disturbance of the riparian buffer or the stream channel		<u>X</u>	
Railroad impacts other than crossings of streams and other surface waters subject to this Rule			<u>X</u>
Railroad crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer 	<u>X</u>	<u>X</u>	<u>X</u>
Removal of previous fill or debris provided that diffuse flow is maintained and any vegetation removed is restored	<u>X</u>		
Road impacts other than crossings of streams and other surface waters subject to this Rule			<u>X</u>
Road crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> Road crossings that impact equal to or less than 40 linear feet of riparian buffer Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer Road crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer 	<u>X</u>	<u>X</u>	<u>X</u>

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	<u>Exempt</u>	<u>Potentially Allowable, requires DWQ approval</u>	<u>Prohibited</u>
<u>Scientific studies and stream gauging</u>	<u>X</u>		
<u>Stormwater management ponds excluding dry ponds:</u>		<u>X</u>	
<ul style="list-style-type: none"> <u>New stormwater management ponds provided that a riparian buffer that meets the diffuse flow requirements of this Rule is established adjacent to the pond</u> <u>New stormwater management ponds where a riparian buffer that meets the diffuse flow requirements of this Rule is NOT established adjacent to the pond</u> 			<u>X</u>
<u>Stream restoration</u>	<u>X</u>		
<u>Streambank stabilization</u>		<u>X</u>	
<u>Temporary roads:</u>			
<ul style="list-style-type: none"> <u>Temporary roads that disturb less than or equal to 2,500 square feet provided that vegetation is restored within six months of initial disturbance</u> <u>Temporary roads that disturb greater than 2,500 square feet provided that vegetation is restored within six months of initial disturbance</u> <u>Temporary roads used for bridge construction or replacement provided that restoration activities, such as soil stabilization and revegetation, are conducted immediately after construction</u> 	<u>X</u>	<u>X</u>	
<u>Temporary sediment and erosion control devices:</u>		<u>X</u>	
<ul style="list-style-type: none"> <u>To control impacts associated with uses approved by the Division or that have received a variance provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer</u> <u>In-stream temporary erosion and sediment control measures for work within a stream channel</u> 	<u>X</u>		
<u>Underground electric utility lines:</u>			
<ul style="list-style-type: none"> <u>Impacts other than perpendicular crossings^{3,4}</u> 	<u>X</u>		
<u>Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule:</u>			
<ul style="list-style-type: none"> <u>Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer^{3,4}</u> <u>Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer^{3,4}</u> 	<u>X</u>	<u>X</u>	
<u>Vegetation management:</u>			
<ul style="list-style-type: none"> <u>Emergency fire control measures provided that topography is restored</u> <u>Planting vegetation to enhance the riparian buffer</u> <u>Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised</u> <u>Removal of individual trees which are in danger of causing damage to dwellings, other structures or human life</u> <u>Removal of poison ivy</u> <u>Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 1998. Exotic Plant Guidelines. Department of Environment and Natural Resources. Division of Parks and Recreation.</u> 	<u>X</u> <u>X</u> <u>X</u> <u>X</u> <u>X</u> <u>X</u>		

	<u>Exempt</u>	<u>Potentially Allowable, requires DWQ approval</u>	<u>Prohibited</u>
Raleigh, NC. Guideline #30			
Water dependent structures as defined in 15A NCAC 02B .0202		<u>X</u>	
Water supply reservoirs:		<u>X</u>	
<ul style="list-style-type: none"> • <u>New reservoirs provided that a riparian buffer that meets the diffuse flow requirements of this Rule is established adjacent to the reservoir</u> • <u>New reservoirs where a riparian buffer that meets the diffuse flow requirements of this Rule is NOT established adjacent to the reservoir</u> 			<u>X</u>
Water wells	<u>X</u>		
Wetland restoration	<u>X</u>		

¹ Provided that all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternatives evaluation by the Division.

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Rip rap shall not be used unless it is necessary to stabilize a tower.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.
- Underground cables shall be installed by vibratory plow or trenching.
- The trench shall be backfilled with the excavated soil material immediately following cable installation.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

Authority G.S. 143-214.1; 143-215.8A.

² Provided that poles or towers shall not be installed within 10 feet of a water body unless the Division completes a no practical alternatives evaluation.

³ Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.

⁴ Provided that all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternatives evaluation by the Division.

- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.

15A NCAC 02B .0608 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): MANAGE ACTIVITIES WITHIN RIPARIAN BUFFERS ON PERENNIAL AND INTERMITTENT STREAMS: FOREST HARVESTING REQUIREMENTS
The following requirements shall apply for forest harvesting operations and practices.

- (1) The following measures shall apply in the entire riparian buffer:
 - (a) Logging decks and sawmill sites shall not be placed in the riparian buffer.
 - (b) Access roads and skid trails shall be prohibited except for temporary and

- permanent stream crossings established in accordance with 15A NCAC 01I .0203. Temporary stream crossings shall be permanently stabilized after any site disturbing activity is completed.
- (c) Timber felling shall be directed away from the stream or water body.
 - (d) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts.
 - (e) Individual trees may be treated to maintain or improve their health, form or vigor.
 - (f) Harvesting of dead or infected trees or application of pesticides necessary to prevent or control extensive tree pest and disease infestation shall be allowed. These practices must be approved by the Division of Forest Resources for a specific site. The Division of Forest Resources must notify the Division of all approvals.
 - (g) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed.
 - (h) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species.
 - (i) High intensity prescribed burns shall not be allowed.
 - (j) Application of fertilizer shall not be allowed except as necessary for permanent stabilization. Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer.
- (2) In the riparian buffer, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through G.S. 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective
- harvest is allowed in accordance with the following:
- (a) Tracked or wheeled vehicles are not permitted except at stream crossings designed, constructed and maintained in accordance with 15A NCAC 01I .0203.
 - (b) Soil disturbing site preparation activities are not allowed.
 - (c) Trees shall be removed with the minimum disturbance to the soil and residual vegetation.
 - (d) The first 10 feet of the riparian buffer directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined provided that no trees with exposed primary roots visible in the streambank be cut.
 - (e) In the zone from 10 feet to 30 feet of the riparian buffer, a maximum of 50 percent of the trees greater than five inches dbh may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible.
 - (f) In the outer 20 feet of the riparian buffer, harvesting and regeneration of the forest stand shall be allowed provided that sufficient ground cover is maintained to provide for diffusion and infiltration of surface runoff.
- Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A.*
- NOTE: COMMENT IS REQUESTED ON WHETHER OR NOT TO MAKE THESE USES "POTENTIALLY ALLOWABLE WITH DWQ APPROVAL AND WITH MITIGATION" VERSUS "PROHIBITING" THE ACTIVITY AS PROPOSED IN RULE .0607.
- 15A NCAC 02B .0609 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): MANAGE ACTIVITIES WITHIN RIPARIAN BUFFERS ON PERENNIAL AND INTERMITTENT STREAMS: MITIGATION REQUIREMENTS FOR BUFFER IMPACTS**
- The activities listed below are potentially allowable with DWQ approval and with DWQ approved mitigation. Potentially allowable with DWQ approval is defined in Rule .0607 of this Section, and approved mitigation requires written consent from DWQ during the permitting process based on the requirements of this Rule.

- (1) Installation of a non-electric utility line, such as a sanitary sewer or collection system, parallel to surface water with impacts to the riparian buffer other than a perpendicular crossing that intersects the surface water at a perpendicular angle between 75 degrees and 105 degrees, shall be potentially allowable with DWQ approval and with DWQ approved mitigation. Mitigation shall be required if the impact to the riparian buffer is within the inner 30 feet of the riparian buffer nearest the surface water. Mitigation shall be...reforestation or restoration of already impacted riparian buffers within the Goose Creek Watershed anywhere from the headwaters to the confluence with Rocky River. Mitigation shall be required at a minimum to reforest or restore impacted riparian buffers at a rate of 1:1.5, 1:3 or some other rate or type of mitigation.
- (2) Non-electric utility line perpendicular crossing of surface waters that are not collection systems that disturb more than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width shall be potentially allowable with DWQ approval and with DWQ approved mitigation. Mitigation shall be...reforestation or restoration of already impacted riparian buffers within the Goose Creek Watershed anywhere from the headwaters to the confluence with Rocky River. Mitigation shall be required at a minimum to reforest or restore impacted riparian buffers at a rate of 1:1.5, 1:3 or some other rate or type of mitigation.
- (3) Non-electric utility line perpendicular crossing of surface waters that are not collection systems that disturb greater than 150 linear feet of riparian buffer shall be potentially allowable with DWQ approval and with DWQ approved mitigation. Mitigation shall be...reforestation or restoration of impacted riparian buffers within the Goose Creek Watershed from the headwaters to the confluence with Rocky River. Mitigation shall be required at a minimum to reforest or restore impacted riparian buffers at a rate of 1:1.5, 1:3 or some other rate or type of mitigation.

Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 16 – DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Dental Examiners intends to amend the rules cited as 21 NCAC 16I .0102 - .0103; 16R .0103 - .0104, .0106.

Proposed Effective Date: *October 1, 2008*

Public Hearing:

Date: *June 5, 2008*

Time: *7:00 p.m.*

Location: *Dental Board's Office, 507 Airport Blvd., Ste 105, Morrisville, NC 27560*

Reason for Proposed Action:

21 NCAC 16I .0102 - is proposed for amendment to provide that dental hygienists may acquire any part of their required annual continuing education credits by self study.

21 NCAC 16I .0103 – is proposed for amendment to provide for the removal of the requirement that continuing education courses for hygienists need not be directly related to clinical patient care and to clarify that hours for certain kinds of continuing education will not be counted toward the annual mandatory minimum.

21 NCAC 16R .0103 – is proposed for amendment to provide that dentists may acquire any part of their required annual continuing education credits by self study.

21 NCAC 16R .0104 – is proposed for amendment to delete the requirement that continuing education courses for dentists need not be directly related to clinical patient care.

21 NCAC 16R .0106 – is proposed for amendment to create three classes of dentists who may qualify for an exemption from mandatory continuing education or reduced course requirements.

Procedure by which a person can object to the agency on a proposed rule: *By submitting written comments to Bobby D. White, Chief Operations Officer, N.C. Dental Board, 507 Airport Boulevard, Ste. 105, Morrisville, NC*

Comments may be submitted to: *Carolyn Bakewell, 507 Airport Boulevard, Suite 105, Morrisville, NC 27560*

Comment period ends: *August 5, 2008*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- ☐ State
☐ Local
☐ Substantive (≥\$3,000,000)
☒ None

- (4) national, state or local societies or associations; and
(5) local, state or federal governmental entities.

Authority G.S. 90-225.1.

SUBCHAPTER 16I - ANNUAL RENEWAL OF DENTAL HYGIENIST LICENSE

SUBCHAPTER 16R - CONTINUING EDUCATION REQUIREMENTS: DENTISTS

SECTION .0100 – ANNUAL RENEWAL

SECTION .0100 – CONTINUING EDUCATION

21 NCAC 16I .0102 CONTINUING EDUCATION REQUIRED

(a) As a condition of license renewal, each dental hygienist must complete a minimum of six clock hours of continuing education each calendar year. Any or all ~~Two of the six clock~~ hours may be acquired through self ~~home~~ study courses. For ~~home~~ self study courses to be counted towards this continuing education requirement, the hygienist must successfully complete a test following the course and obtain a certificate of completion. Current certification in CPR is required in addition to the mandatory continuing education hours.

(b) A dental hygienist who can demonstrate a disabling condition may request a variance in required continuing education hours during a particular period. Written documentation of a disabling condition that interferes with the hygienist's ability to complete the required hours shall be provided to the Board. The Board may grant or deny such requests on a case by case basis. In considering the request, the Board may require additional documentation substantiating any specified disability.

Authority G.S. 90-225.1.

21 NCAC 16I .0103 APPROVED COURSES AND SPONSORS

(a) Courses in satisfaction of the continuing education requirement must be ~~directly~~ related to clinical patient care. Hours devoted to financial issues or practice development topics will not be counted toward the continuing education requirement. Hours spent reviewing dental or dental hygiene publications or videos shall not count toward fulfilling the continuing education requirement, with the exception of ~~home~~ self study courses as described in .0102 of this ~~Subchapter~~. Subchapter that are offered by a Board approved continuing education sponsor.

(b) Approved continuing education course sponsors include:

- (1) providers recognized by the American Dental Association's Continuing Education Recognition Program, the Academy of General Dentistry, the American Dental Hygienists' Association, or components of such organizations;
- (2) North Carolina Area Health Education Centers;
- (3) educational institutions with dental, dental hygiene or dental assisting schools or departments;

21 NCAC 16R .0103 CONTINUING EDUCATION REQUIRED

As a condition of license renewal, every dentist must complete a minimum of 15 clock hours of continuing education each calendar year. Any or all ~~Three of the 15 clock~~ hours may be acquired through self ~~home~~ study courses. For ~~home~~ self study courses to be counted towards this continuing education requirement, the dentist must successfully complete a test following the course and obtain a certificate of completion. Current certification in CPR is required in addition to the mandatory continuing education hours.

Authority G.S. 90-31.1.

21 NCAC 16R .0104 APPROVED COURSES AND SPONSORS

(a) Courses allowed to satisfy the continuing education requirement must be ~~directly~~ related to clinical patient care. Hours spent reviewing dental journals, publications or videos shall not count toward fulfilling the continuing education requirement, with the exception of self-study courses as described in .0103 of this Subchapter that are offered by Board approved sponsors. ~~sponsors as set out in Paragraph (b) of this Rule.~~

(b) Approved continuing education course sponsors include:

- (1) those recognized by the Continuing Education Recognition Program Of the American Dental Association;
- (2) the Academy of General Dentistry;
- (3) North Carolina Area Health Education Centers;
- (4) educational institutions with dental, dental hygiene or dental assisting schools or departments;
- (5) national, state or local societies or associations; and
- (6) local, state or federal governmental entities.

Authority G.S. 90-31.1.

21 NCAC 16R .0106 VARIANCES AND EXEMPTION FROM AND CREDIT FOR CONTINUING EDUCATION

(a) Upon receipt of satisfactory written evidence, the Board may grant exemptions from the mandatory continuing education requirements set out in Rule .0103 of this Subchapter as follows:

- (1) A dentist who practices up to 250 clock hours in a calendar year may be exempted from all continuing education requirements. Such

dentists, who shall be known as semi-retired Class I dentists, must maintain current CPR certification.

(2) A dentist who practices up to 1,000 clock hours in a calendar year may be exempt from one half of the continuing education courses required of dentists who practice full time. Such dentists, who shall be known as semi-retired Class II dentists, must maintain current CPR certification.

(3) A retired dentist who does not practice any dentistry may be exempted from all continuing education and CPR certification requirements.

(4) A dentist who is disabled may request a variance in continuing education hours during the period of the disability. The Board may grant or deny requests for variance in continuing education hours based on a disabling condition on a case by case basis, taking into consideration the particular disabling condition involved and its affect on the dentist's ability to complete the required hours. In considering the request, the Board may require additional documentation substantiating any specified disability.

~~(a) Dentists may request exemption from continuing education requirements by submitting evidence in writing to the Board of retirement or semi retirement from the practice of dentistry. A retired dentist is a dentist who never practices dentistry. A semi-retired dentist is a dentist who practices on an occasional basis not to exceed 100 clock hours in a calendar year. A dentist who can demonstrate a disabling condition may request a variance in continuing education hours during a particular period. Written documentation of a disabling condition that interferes with the dentist's ability to complete the required hours shall be provided to the Board. The Board may grant or deny requests for variance in continuing education hours based on a disabling condition on a case by case basis, taking into consideration the particular disabling condition involved and its affect on the dentist's ability to complete the required hours. In considering the request, the Board may require additional documentation substantiating any specified disability.~~

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

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

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

auxiliaries. Verification of credit hours shall be maintained in the manner specified in Rule .0105 of this Section.

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

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

* * * * *

CHAPTER 32 – NORTH CAROLINA MEDICAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Medical Board intends to adopt the rules cited as 21 NCAC 32X .0101 - .0105.

Proposed Effective Date: September 1, 2008

Public Hearing:

Date: June 30, 2008

Time: 10:00 a.m.

Location: NC Medical Board, 1203 Front Street, Raleigh, NC 27609

Reason for Proposed Action: *To establish the rules implementing the requirements of NCGS 90-5.2 that the Medical Board collect and publish data regarding its licensees.*

Procedure by which a person can object to the agency on a proposed rule: *Person may submit objections to these Rules by contacting Rules, North Carolina Medical Board, 1203 Front Street, Raleigh, NC 27609, fax (919) 326-1131, email rules@ncmedboard.org.*

Comments may be submitted to: *Katherine Carpenter, North Carolina Medical Board, 1203 Front Street, Raleigh, NC 27609, phone (919) 326-1100, fax (919) 326-1131, email rules@ncmedboard.org*

Comment period ends: June 30, 2008

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- ☐ State
☐ Local
☐ Substantive (≥\$3,000,000)
☒ None

**SUBCHAPTER 32X – PRACTITIONER PROFILE
INFORMATION**

21 NCAC 32X .0101 REQUIRED INFORMATION

(a) Pursuant to G.S. 90-5.2, all physicians and physician assistants licensed by the Board shall provide the following information on an application for licensure and annual registration. Additionally, all physicians and physician assistants shall provide the following information within 30 days of any change in the information on the profile:

- (1) The names of all medical, osteopathic, or physician assistant schools attended and the year of graduation.
- (2) Any graduate medical or osteopathic education at any institution approved by the Accreditation Council of Graduate Medical Education, the Committee for the Accreditation of Canadian Medical Schools, the American Osteopathic Association, or the Royal College of Physicians and Surgeons of Canada or any graduate physician assistant training.
- (3) Any specialty board certification and whether that board is approved by the American Board of Medical Specialties, the Bureau of Osteopathic Specialists of American Osteopathic Association, or the Royal College of Physicians and Surgeons of Canada.
- (4) Specialty area(s) of practice.
- (5) Current hospital affiliation(s).
- (6) Address and telephone number of the primary practice setting.
- (7) An e-mail address or facsimile number which shall not be made available to the public and shall be used for the purpose of expediting the dissemination of information about a public health emergency.
- (8) Any final disciplinary order or other action required to be reported to the Board pursuant to G.S. 90-14.13 that results in a suspension or revocation of privileges.
- (9) Any final disciplinary order or action of any regulatory Board or agency including other state medical Boards, the United States Food and Drug Administration, the United States Drug Enforcement Administration, Medicare, the North Carolina Medicaid program, or another state's Medicaid program.
- (10) Any felony convictions including the date of the conviction, the nature of the conviction, the jurisdiction in which the conviction occurred, and the sentence imposed.

- (11) Any misdemeanor convictions other than minor traffic offenses. The report must include the nature of the conviction, the jurisdiction in which the conviction occurred, and the punishment imposed. A person shall be considered convicted for purposes of this rule if they pled guilty, were found guilty by a court of competent jurisdiction, or entered a plea of nolo contendere. Certain convictions will be published pursuant to 21 NCAC 32W .0104.

- (12) Any medical license, active or inactive, granted by another state or country.

- (13) Malpractice payment information as described in 21 NCAC 32W .0103.

Authority G.S. 90-5.2.

21 NCAC 32X .0102 VOLUNTARY INFORMATION

Physicians and Physician Assistants may provide additional information on hours of continuing education earned, subspecialties obtained, academic appointments, volunteer work in indigent clinics, and honors or awards received.

Authority G.S. 90-5.2.

21 NCAC 32X .0103 REPORTING OF MEDICAL JUDGEMENTS AND SETTLEMENTS

(a) Pursuant to G.S. 90-5.2 and 90-14.3, all physicians and physician assistants licensed by the Board shall report all medical malpractice judgments and settlements affecting or involving the physician or physician assistant on an application for licensure and annual registration. Additionally, all physicians and physician assistant licensed by the Board shall report all medical malpractice judgments and settlements affecting or involving the physician or physician assistant within 30 days of the initial payment or the date of the judgment. A judgment or settlement shall include a lump sum payment or the first payment of multiple payments, a payment made from personal funds, or payment made by a third party on behalf of a physician or physician assistant.

(b) Each report of a settlement or judgment shall indicate:

- (1) The date the judgment or settlement was paid.
- (2) The specialty in which the doctor was practicing at the time the incident occurred that resulted in the judgment or settlement.
- (3) The total amount of the judgment or settlement in United States dollars.
- (4) The city, state, and country in which the judgment or settlement occurred.
- (5) The date of the occurrence of the events leading to the judgment or settlement.

(c) For each physician or physician assistant, the Board shall publish all payments made or judgments entered within the past seven years along with the date of the occurrence associated with the payment or judgment and the date of the payment or judgment. Additionally, the Board shall publish whether public disciplinary action was taken based on the Board's review of the care that led to the malpractice payment. The Board shall not

release or publish the individually identifiable numeric values of reported judgments or settlements or the identity of the patient associated with the judgment or settlement.

(d) For each malpractice payment or judgment that is published, the physician or physician assistant will be given the opportunity to provide a brief statement explaining the circumstances that led to the payment or judgment. The physician or physician assistant shall not publish identifiable numeric values of reported judgments or settlements or disclose the patient's identity, including information relating to dates and places of treatment or any other information that would tend to identify the patient. In the event the statement provided by the licensee does not conform to the requirements of this Rule, the Board will edit such statements to ensure conformity.

Authority G.S. 90-5.2.

21 NCAC 32X .0104 PUBLISHING MISDEMEANOR CONVICTIONS

The Board will only publish those misdemeanor convictions involving offenses against a person, offenses of moral turpitude,

offenses involving the use of drugs or alcohol, and violations of public health and safety codes. The Board will publish such convictions for a period of ten years from the date of conviction.

Authority G.S. 90-5.2.

21 NCAC 32X .0105 NONCOMPLIANCE OR FALSIFICATION OF PROFILE INFORMATION

(a) Pursuant to G.S. 90-5.2(d), failure to provide the information required by 21 NCAC 32W .0101 and 21 NCAC 32W .0103 within 30 days of the request for information by the Board or within 30 days of a change in the information on the profile may constitute unprofessional conduct and may subject the licensee to disciplinary action by the Board.

(b) Pursuant to G.S. 90-14(a)(3) and 90-5.2(d), providing false information to the Board for the physician profile system shall constitute unprofessional conduct and shall subject the licensee to disciplinary action by the Board.

Authority G.S. 90-5.2.

APPROVED RULES

*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 March 20, 2008.

**REGISTER CITATION TO THE
NOTICE OF TEXT****AGRICULTURE, BOARD OF**

<u>Issuance of Certificates and Limited Permits</u>	02	NCAC 48A	.1706*	22:03 NCR
<u>Importation Requirements: Goats</u>	02	NCAC 52B	.0208	22:03 NCR
<u>Importation Requirements: Sheep</u>	02	NCAC 52B	.0209*	22:03 NCR

BANKS, OFFICE OF THE COMMISSIONER OF

<u>Experience</u>	04	NCAC 03M	.0204*	22:01 NCR
<u>Surety Bond</u>	04	NCAC 03M	.0206*	22:01 NCR
<u>Amendments to Information on File With the Commissioner</u>	04	NCAC 03M	.0402*	22:01 NCR
<u>Termination of Operations</u>	04	NCAC 03M	.0403*	22:01 NCR
<u>Records to be Maintained</u>	04	NCAC 03M	.0501*	22:01 NCR

PUBLIC HEALTH, COMMISSION FOR

<u>Reportable Diseases and Conditions</u>	10A	NCAC 41A	.0101*	n/a G.S. 150B-21.5(a)(5)
<u>Control Measures - Sexually Transmitted Diseases</u>	10A	NCAC 41A	.0204	22:12 NCR
<u>Criteria for Project Selection</u>	10A	NCAC 43A	.0808*	22:12 NCR

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Basic Training - Wildlife Enforcement Officers</u>	12	NCAC 09B	.0228	22:10 NCR
<u>Certification of Criminal Justice Schools</u>	12	NCAC 09C	.0401	22:10 NCR
<u>Required Annual In-Service Training Topics</u>	12	NCAC 09E	.0102	22:10 NCR
<u>Instructors Annual In Service Training</u>	12	NCAC 09E	.0104	22:10 NCR
<u>Minimum Training Specifications: Annual In-Service Training</u>	12	NCAC 09E	.0105*	22:10 NCR
<u>Corrections Specialized Instructor Training - Firearms</u>	12	NCAC 09G	.0415	22:10 NCR

COASTAL RESOURCES COMMISSION

<u>Presentation to Coastal Resources Commission for Certific...</u>	15A	NCAC 07B	.0802	22:09 NCR
<u>Coastal Shorelines</u>	15A	NCAC 07H	.0209*	22:09 NCR
<u>General Identification and Description of Landforms</u>	15A	NCAC 07H	.0305*	22:09 NCR
<u>Specific Use Standards for Ocean Hazard Areas</u>	15A	NCAC 07H	.0308*	22:08 NCR
<u>Technical Standards for Beach Fill Projects</u>	15A	NCAC 07H	.0312*	22:09 NCR

PUBLIC HEALTH, COMMISSION FOR

<u>Inspections and Reinspections</u>	15A NCAC 18A	.2604	22:12 NCR
<u>Grading</u>	15A NCAC 18A	.2606*	22:12 NCR
<u>Grading</u>	15A NCAC 18A	.3606*	22:12 NCR
<u>Definitions</u>	15A NCAC 18A	.3801*	22:12 NCR
<u>Sample Analysis</u>	15A NCAC 18A	.3803*	22:12 NCR
<u>Reporting</u>	15A NCAC 18A	.3804*	22:08 NCR
<u>Data Review</u>	15A NCAC 18A	.3805*	22:08 NCR

WELL CONTRACTORS CERTIFICATION COMMISSION

<u>Types of Certification</u>	15A NCAC 27	.0110*	22:08 NCR
<u>Schedule of Certification Fees</u>	15A NCAC 27	.0201*	22:08 NCR
<u>Application for Certification</u>	15A NCAC 27	.0301	22:08 NCR
<u>Submittal and Processing of Applications for Examinations</u>	15A NCAC 27	.0401*	22:08 NCR
<u>Well Contractor Examinations</u>	15A NCAC 27	.0410	22:08 NCR
<u>Certification by Legislative Exemption</u>	15A NCAC 27	.0501	22:08 NCR
<u>Requirements of Certification</u>	15A NCAC 27	.0702	22:08 NCR
<u>Level D Certification Without Examination</u>	15A NCAC 27	.0703*	22:08 NCR
<u>Certification Without Examination in 2008</u>	15A NCAC 27	.0704	22:08 NCR
<u>Recordkeeping</u>	15A NCAC 27	.0830	22:08 NCR
<u>Revocation, Relinquishment or Expiration of Certification</u>	15A NCAC 27	.0901	22:08 NCR

REVENUE, DEPARTMENT OF

<u>Out-of-State Sales: Nonresident Registration</u>	17 NCAC 04C	.0504*	n/a G.S. 150B-1(d)(4)
<u>Bond Required of Wholesaler and Importer</u>	17 NCAC 04E	.0601*	n/a G.S. 150B-1(d)(4)
<u>Remedy</u>	17 NCAC 05D	.0114*	n/a G.S. 150B-1(d)(4)

MEDICAL BOARD

<u>Certified Photograph and Certification of Graduation</u>	21 NCAC 32B	.0204*	n/a G.S. 150B-21.5(b)(1)
<u>Application Forms</u>	21 NCAC 32B	.0206*	n/a G.S. 150B-21.5(b)(1)
<u>Letters of Recommendation</u>	21 NCAC 32B	.0207*	n/a G.S. 150B-21.5(b)(1)
<u>Fee</u>	21 NCAC 32B	.0209*	n/a G.S. 150B-21.5(b)(1)
<u>Required Application Materials</u>	21 NCAC 32B	.0210*	n/a G.S. 150B-21.5(b)(1)
<u>Passing Score</u>	21 NCAC 32B	.0211*	n/a G.S. 150B-21.5(b)(1)
<u>Examination Times</u>	21 NCAC 32B	.0212*	n/a G.S. 150B-21.5(b)(1)
<u>Graduate Medical Education and Training for Licensure</u>	21 NCAC 32B	.0213*	n/a G.S. 150B-21.5(b)(1)
<u>Personal Interview</u>	21 NCAC 32B	.0214*	n/a G.S. 150B-21.5(b)(1)
<u>Continuing Education</u>	21 NCAC 32M	.0107*	22:09 NCR
<u>Definitions</u>	21 NCAC 32W	.0101*	22:11 NCR
<u>Qualifications for License</u>	21 NCAC 32W	.0102*	22:11 NCR
<u>Inactive License Status</u>	21 NCAC 32W	.0103	22:11 NCR
<u>Annual Renewal</u>	21 NCAC 32W	.0104	22:11 NCR
<u>Continuing Medical Education</u>	21 NCAC 32W	.0105	22:11 NCR
<u>Student Anesthesiologist Assistants</u>	21 NCAC 32W	.0106*	22:11 NCR

APPROVED RULES

<u>Exemption from License</u>	21	NCAC 32W	.0107*	22:11 NCR
<u>Scope of Practice</u>	21	NCAC 32W	.0108*	22:11 NCR
<u>Supervision of Anesthesiologist Assistants</u>	21	NCAC 32W	.0109*	22:11 NCR
<u>Limitations on Practice</u>	21	NCAC 32W	.0110*	22:11 NCR
<u>Title and Practice Protection</u>	21	NCAC 32W	.0111*	22:11 NCR
<u>Identification Requirements</u>	21	NCAC 32W	.0112	22:11 NCR
<u>Fees</u>	21	NCAC 32W	.0113	22:11 NCR
<u>Violations</u>	21	NCAC 32W	.0114*	22:11 NCR
<u>Practice During a Disaster</u>	21	NCAC 32W	.0115	22:11 NCR

NURSING, BOARD OF

<u>License Required</u>	21	NCAC 36	.0221*	22:09 NCR
<u>Clinical Nurse Specialist Practice</u>	21	NCAC 36	.0228	22:09 NCR
<u>Out of State Students</u>	21	NCAC 25	.0233*	22:09 NCR
<u>Administration</u>	21	NCAC 36	.0317	22:09 NCR
<u>Medication Aide Training Requirements</u>	21	NCAC 36	.0406	22:09 NCR
<u>Continuing Education (CE)</u>	21	NCAC 36	.0807*	22:09 NCR

RESPIRATORY CARE BOARD

<u>Application Process</u>	21	NCAC 61	.0201*	22:10 NCR
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These rules are subject to the next Legislative Session. (See G.S. 150B-21.3(b1))

BANKS, OFFICE OF THE COMMISSIONER

<u>Definitions</u>	04	NCAC 03M	.0101*	22:01 NCR
<u>Financial Responsibility</u>	04	NCAC 03M	.0205*	22:01 NCR
<u>Approval of Providers and Programs</u>	04	NCAC 03M	.0301*	22:01 NCR

MEDICAL CARE COMMISSION

<u>Scope</u>	10A	NCAC 13F	.1601*	22:11 NCR
<u>Issuance of Rated Certificates</u>	10A	NCAC 13F	.1602*	22:11 NCR
<u>Statutory and Rule Requirements Affecting Rated Certificates</u>	10A	NCAC 13F	.1603*	22:11 NCR
<u>Contents of Rated Certificate</u>	10A	NCAC 13F	.1605*	22:11 NCR
<u>Scope</u>	10A	NCAC 13G	.1601*	22:11 NCR
<u>Issuance of Rated Certificate</u>	10A	NCAC 13G	.1602*	22:11 NCR
<u>Statutory and Rule Requirements Affecting Rated Certificates</u>	10A	NCAC 13G	.1603*	22:11 NCR
<u>Contents of Rated Certificate</u>	10A	NCAC 13G	.1605*	22:11 NCR

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Stormwater Requirements: Coastal Counties</u>	15A	NCAC 02H	.1005*	22:04 NCR
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**TITLE 02 – DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES**

*Eff. December 1, 1991;
Amended Eff. April 1, 2008.*

**02 NCAC 48A .1706 ISSUANCE OF CERTIFICATES
AND LIMITED PERMITS**

(a) Certificates may be issued by a specialist for the movement of regulated articles under the following conditions:

- (1) In the judgment of the specialist, they have not been exposed to infestations;
- (2) They have been examined by the specialist and found to be free of noxious weeds;
- (3) They have been treated under the direction of the specialist with control measures effective under the conditions applied;
- (4) They have been grown, produced, stored, or handled in such manner that, in the judgment of the specialist, designated noxious weeds would not be transmitted by movement of the article.

(b) Limited permits may be issued by a specialist for the movement of noncertified regulated articles to specified destinations for limited handling, utilization, processing or treatment when the specialist determines no hazard of spread of noxious weeds exists.

(c) Scientific permits may be issued by the Administrator to allow the movement of noxious weeds in any living stage and any regulated articles for scientific purposes under such conditions as may be prescribed in each specific case by the Plant Pest Administrator. Scientific permits are issued pursuant to 02 NCAC 48A .1300.

(d) Certificates or limited permits, which ensure the pest-free premises for the following:

- (1) Nurseries growing seedlings for afforestation or reforestation purposes; and
- (2) Sod farms producing sod for establishment of ornamental turf,

shall be issued by an inspector for intrastate and interstate shipments of conifer seedlings, hardwood seedlings and sod. To ensure pest-free premises, forest seedling nurseries and sod farms designated for crop production may be fumigated or treated with a fumigant such as methyl bromide or other pesticide registered with the United States Environmental Protection Agency. Each shipment originating from another state shall be accompanied by a certificate or limited permit issued by the state of origin to verify fumigation or other treatments.

(e) As a condition of issuance of certificates or limited permits for the movement of regulated articles, any person engaged in purchasing, assembling, exchanging, handling, processing, utilizing, treating, or moving such articles shall sign a compliance agreement stipulating that he will maintain such safeguards against the establishment and spread of infestation and comply with such conditions as to the maintenance of identity, handling and subsequent movement of such articles, and the cleaning and treatment of means of conveyance and containers used in the transportation of such articles, as may be required by the specialist.

History Note: Authority G.S. 106-420;

**02 NCAC 52B .0208 IMPORTATION
REQUIREMENTS: GOATS**

*History Note: Authority G.S. 106-307.5; 106-396;
Eff. April 1, 1984;
Amended Eff. January 1, 2005; April 1, 2001;
Repealed Eff. April 1, 2008.*

**02 NCAC 52B .0209 IMPORTATION
REQUIREMENTS: SHEEP AND GOATS**

(a) All sheep and goats imported into North Carolina, regardless of age, must be officially identified prior to leaving the farm of origin (see "official scrapie identification" in Subparagraph (c)(2) of this Rule), except:

- (1) Sheep and goats less than 12 months of age moving directly to slaughter;
- (2) Sheep and goat wethers.

(b) Sheep and goats consigned for the purpose of immediate slaughter to a livestock market licensed under G.S. 106, Article 35, or to a slaughtering establishment with state or federal inspection may be imported without a health certificate. A waybill or certificate marked for immediate slaughter must accompany such shipments. No sheep or goats consigned for immediate slaughter may be removed from slaughter channels.

(c) Sheep and goats not consigned for the purpose of immediate slaughter must be accompanied by an official health certificate from the state of origin signed by a veterinarian accredited in that state as follows:

- (1) The health certificate covering the importation of sheep and goats shall include a report of inspection indicating the sheep and goats are not under quarantine and are free from signs of any infectious or communicable disease.
- (2) The health certificate shall contain a statement that the flock of origin has not had scrapie diagnosed within the past 42 months. The health certificate shall include United States Department of Agriculture-approved scrapie identification, age, sex, breed and markings for each animal. Official scrapie identification shall consist of one of the following:
 - (A) Official ear tags which are approved by the United States Department of Agriculture, Animal and Plant Health Inspection Service for use in the Scrapie Eradication Program or the Scrapie Flock Certification Program;
 - (B) Electronic implants which are approved for use in animals participating in a scrapie flock certification program and accompanied by a certificate of veterinary inspection or owner statement that includes the implant

numbers and name of the chip manufacturer; or which are used in animals registered with a national registry association and the implant number is recorded by the registry on the registration certificate accompanying the animal. The animal shall be accompanied by an implant reader which can read the implant in the animal;

- (C) Legible official registry tattoos that have been recorded in the record of a sheep or goat registry association when the animal is accompanied by either a registration certificate or certificate of veterinary inspection upon which the tattoo number is recorded.
- (3) Sheep and goats not consigned for the purpose of immediate slaughter that originate from United States Department of Agriculture-certified and accredited free states are exempt from brucellosis and tuberculosis testing requirements. Sheep and goats that do not originate from a United States Department of Agriculture-certified and accredited free state shall have a negative brucellosis test within 30 days prior to import and shall have a negative tuberculosis test within 60 days prior to import unless they originate from a United States Department of Agriculture-certified and accredited free herd.
- (4) Dairy goats and sheep over six months of age and sexually intact imported from out-of-state shall have a negative brucellosis test within 30 days prior to import and shall have a negative tuberculosis test within 60 days prior to import unless they originate from a United States Department of Agriculture-certified and accredited free herd.
- (5) The brucellosis and tuberculosis testing requirements of this Rule does not apply to sheep and goats entering the state for only exhibition purposes, coming from states or herds that are United States Department of Agriculture-certified and accredited free, when accompanied by an official health certificate which includes a United States Department of Agriculture-approved scrapie identification. Such animals shall remain in the state for exhibition purposes for no more than 30 days from the date of issuance of the health certificate.

TITLE 04 – DEPARTMENT OF COMMERCE

04 NCAC 03M .0101 DEFINITIONS

As used in this Subchapter, unless a contrary definition is provided or required by the context:

- (1) Terms used in this Subchapter which are defined in the Act have the same meaning as set forth in the Act.
- (2) When any term in this Subchapter is defined by reference to or incorporation of a regulation or rule of a federal or state agency, board, commission or other regulatory body other than the Commissioner, the reference shall be deemed to be to the regulation or rule as it is in effect and interpreted on the effective date of this Subchapter.
- (3) "Act" means Article 19A of Chapter 53 of the North Carolina General Statutes, commonly known as the "Mortgage Lending Act", as codified and as amended.
- (4) "Advertisement" means material used or intended to be used to induce the public to apply for a mortgage loan. The term includes any printed or published material, or descriptive literature concerning a mortgage loan to be solicited, processed, negotiated or funded by a licensee or exempt entity whether disseminated by direct mail, newspaper, magazine, radio or television broadcast, electronic mail or other electronic means, billboard or similar display. The term does not include any disclosures, program descriptions, or other materials prepared or authorized by any state or federal government agency, nor does the term include any material or communication which has been excluded for purposes of any regulation of the Board of Governors of the Federal Reserve System regulating consumer credit disclosures.
- (5) "Audited statement of financial condition" means a statement of financial condition prepared in accordance with generally accepted accounting principles and certified by a certified public accountant as fairly and accurately reflecting the financial condition of the licensee as of the date specified therein.
- (6) "Certified statement of financial condition" means a statement of financial condition prepared in accordance with generally accepted accounting principles and certified by the preparer as fairly and accurately reflecting the financial condition of the licensee as of the date specified therein.
- (7) "Commission" means the North Carolina Banking Commission.

History Note: Authority G.S. 106-307.5; 106-348; 106-396; Eff. April 1, 1984; Amended Eff. April 1, 2008; January 1, 2005; April 1, 2001; May 1, 1992; December 1, 1989.

- (8) "Continuing education program" means a classroom education program approved pursuant to Rule .0301 of this Subchapter.
- (9) "Controlling person" means a person who, with regard to a licensee:
 - (a) has the ability to exercise "control", as the term is defined in G.S. 53-243.01(6), or
 - (b) otherwise has the power to direct the management and policy of the licensee.
- (10) "Fundamentals Examination" means the mortgage lending fundamentals examination required by G.S. 243.05(b)(2).
- (11) "Fundamentals program" means a classroom education program approved pursuant to Rule .0301 of this Subchapter.
- (12) "Instructor" means an individual who is employed by a provider and who is responsible for teaching a program.
- (13) "License" means a mortgage lender, mortgage broker or loan officer license issued pursuant to the Act and this Subchapter.
- (14) "Material" facts or "Material" information are facts or information, or changes in such facts or information, that, if known, would be likely to influence a decision to grant or revoke a license or to take other disciplinary action against a licensee or exempt person.
- (15) "Program" means either a fundamentals or continuing education program.
- (16) "Provider" means any person who provides a program.
- (17) "Testing Service" means an organization selected by the Commissioner to develop and administer the examination.

*History Note: Authority G.S. 53-243.04;
 Temporary Adoption Eff. July 1, 2002;
 Eff. April 1, 2003;
 Amended Eff. Pending Legislative Review.*

04 NCAC 03M .0204 EXPERIENCE

As used in G.S. 243.05(c)(1), a person is considered to have acquired "experience in residential mortgage lending" during any documented period in which:

- (1) that person's employment income was principally derived from employment in the mortgage banking, banking or mortgage brokerage industry; and
- (2) he or she had actual responsibility for job functions in each area of study included in a fundamentals program approved by the Commissioner, pursuant to 04 NCAC 03M .0301(c).

*History Note: Authority G.S. 53-243.05;
 Eff. April 1, 2003;
 Amended Eff. April 1, 2008.*

04 NCAC 03M .0205 FINANCIAL RESPONSIBILITY

(a) In order for applicants to be deemed to have the financial responsibility such as to command the confidence of the community and to warrant belief that the business will be operated honestly and fairly under G.S. 53-243.05(i), the applicant shall:

- (1) If a mortgage banker:
 - (A) provide an audited statement of financial condition that demonstrates a net worth of at least one hundred thousand dollars (\$100,000);
 - (B) provide evidence of warehouse line of credit of one million dollars (\$1,000,000) or other evidence of funding capacity to conduct mortgage originations;
 - (C) demonstrate a history of satisfying debt obligations, as indicated by a trade or personal credit report(s) that does not contain evidence of current outstanding judgments or tax liens against applicant, its officers or directors, by creditors within the past seven years; and
 - (D) provide an explanation of the corporate or ownership structure of the applicant, including information regarding any required distributions to investors or owners.
- (2) If a mortgage broker:
 - (A) provide a certified statement of financial condition that demonstrates a net worth of at least twenty-five thousand dollars (\$25,000);
 - (B) demonstrate a history of satisfying debt obligations, as indicated by a trade or personal credit report(s) that does not contain evidence of current outstanding judgments or tax liens against applicant, its officers or directors, by creditors within the past seven years; and
 - (C) provide evidence (in the form of a copy of a bank statement or other verifiable document) that the broker owns and holds on a continual basis cash or other liquid assets in a demand deposit account under the firm's name of at least ten thousand dollars (\$10,000) in an FDIC-insured financial institution.
- (3) If a loan officer or limited loan officer:
 - (A) have a credit score of 600 or greater; and
 - (B) demonstrate a history of satisfying debt obligations, as indicated by an absence of current outstanding judgments by creditors or tax liens within the past seven years.

(b) The Commissioner may, waive any requirement listed in Paragraph (a) of this Rule if he believes the predominant weight of the evidence supports a determination that the applicant has the financial responsibility necessary to command the confidence of the community and to warrant belief that the business will be operated honestly and fairly.

History Note: Authority G.S. 53-92; 53-104; 53-243.04; 53-243.05(i);
Eff. Pending Legislative Review.

04 NCAC 03M .0206 SURETY BOND

(a) All licensees with surety bonds under G.S. 53-243.05(f) must ensure that full amount of the surety bond is in effect at all times. In the event of a claim against the bond, the licensee shall have 30 days to reinstate the bond to the level required in G.S. 53-243.05(f). Failure to maintain the surety bond at the level required in G.S. 53-243.05(f) is grounds for immediate suspension of licensure.

(b) All licensees with surety bonds under G.S. 53-243.05(f) must report any claims made against the surety bond to the Commissioner within 10 business days upon receipt of notice of any claim.

(c) All surety bonds under G.S. 53-243.05(f) shall:

- (1) require the bonding company to report all claims and any claims paid on the bond to the Commissioner within 10 days of such claim or payment;
- (2) require the bonding company to pay within 30 days any amount which the Commissioner orders the bonding company to pay upon a determination by the Commissioner that the licensee has failed to faithfully perform the licensee's obligations; and
- (3) remain in effect for a minimum of five years after lapse or termination of the bond in order to satisfy possible claims for failure to faithfully fulfill obligations during the term of the bond.

History Note: Authority G.S. 53-92; 53-104; 53-243.04; 53-243.05(f);
Eff. April 1, 2008.

04 NCAC 03M .0301 APPROVAL OF PROVIDERS AND PROGRAMS

(a) A licensee or prospective licensee shall receive credit for participation in a program if it is presented by a provider approved by the Commissioner and the Commissioner has approved the program pursuant to this Rule. The Commissioner shall make available to the public a current listing of approved providers. The list shall indicate whether a provider is approved to present fundamentals programs, continuing education programs, or both.

(b) Any provider desiring to conduct a fundamentals or continuing education program shall, at least 30 days prior to any advertisement, promotion or solicitation of prospective attendees of the program, request that the Commissioner approve the provider's qualifications and approve one or more specific

programs. The application shall be upon a form provided by the Commissioner and shall include the following information:

- (1) the name and address of the provider and date(s) on and locations at which the program is to be offered;
- (2) the qualifications and experience of the provider's principal officers, staff, and instructor(s);
- (3) the costs of all programs for which approval is sought; and
- (4) a description of each program for which approval is sought.

A prospective provider shall be approved if the Commissioner determines that its general business experience, its knowledge of and experience in the mortgage lending and brokerage industries, its experience in the provision of professional educational presentations and the quality of such presentations warrant belief that its fundamentals or continuing education programs will meet the standards set forth in Paragraphs (c) and (d) of this Rule.

(c) Fundamentals programs must provide prospective loan officer licensees with a basic knowledge of and competency in basics of home purchase and ownership, the mortgage industry generally, loan evaluation and documentation, the operation of a mortgage firm, features of various loan products, state and federally required disclosures, and ethical considerations. Fundamentals programs shall consist of a total of at least 24 hours of classroom instruction.

(d) Continuing education programs must enhance the existing professional competence of the target group of licensees by providing updated information or more detailed or narrowly focused information than the fundamentals program.

(e) The Commissioner's approval of any provider or program shall expire one year from the date of issuance and thereafter on each subsequent anniversary of the renewal date. Application for renewal of provider or program approval must be filed by not later than 60 days prior to each such expiration date.

(f) The Commissioner may deny, revoke, suspend, or terminate approval of any provider or any individual program upon a finding that:

- (1) the provider has refused or failed to comply with any applicable provision of this Subchapter or of any contractual agreement with the Commissioner or has refused or failed to submit in a timely manner information or properly completed forms prescribed by the Commissioner;
- (2) any provider officer or employee has obtained or used, or has attempted to obtain or use, in any manner or form, the examination questions;
- (3) during any six month period fewer than 50 percent of the provider's fundamentals program students taking the examination for the first time achieve a passing score;
- (4) the provider has not conducted at least one fundamentals or continuing education program (as applicable) during the preceding 12-month period;

- (5) the provider has knowingly employed in connection with any program any person who has been convicted of any crime described in G.S. 53-243.05(a)(4)(ii) or (iii);
- (6) the provider of an on-line or video course fails to provide evidence of a control system sufficient to certify that licensees participating in the on-line course have personally accessed the course and have met the number of hours required for continuing education requirements.

History Note: Authority G.S. 53-243.05; 53-243.07; 53-243.13;

Temporary Adoption Eff. July 1, 2002;

Eff. April 1, 2003;

Amended Eff. Pending Legislative Review.

04 NCAC 03M .0402 AMENDMENTS TO INFORMATION ON FILE WITH THE COMMISSIONER

(a) A licensee shall notify the Commissioner within 30 days of any material change in any document or information previously submitted to the Commissioner during the application process, upon renewal, upon filing of the annual statement, or otherwise filed with the Commissioner. For purposes above, a material change includes:

- (1) notice of a pending administrative action by any state or federal authority to which the licensee is subject;
- (2) an administrative order by any state or federal authority to which the licensee is subject;
- (3) notice of a pending criminal charge against a person licensed under this statute for actions related to financial services or moral turpitude; or
- (4) a conviction or other plea agreement on a criminal charge against a person licensed under this statute for actions related to financial services or moral turpitude.

(b) Upon a licensee's discovery of an information security breach as defined in G.S. 75-61(14), the licensee shall immediately provide to the Commissioner a copy of any notification which the licensee is required to give under G.S. 75-65.

(c) Notification shall be accomplished by letter or by submission of revised pages of the application or annual report filed pursuant to Rule .0201 and .0401 of this Subchapter.

History Note: Authority G.S. 53-243.04;

Eff. April 1, 2003;

Amended Eff. April 1, 2008.

04 NCAC 03M .0403 TERMINATION OF OPERATIONS

(a) A licensee shall notify the Commissioner in writing of its decision to cease operations as a mortgage banker or mortgage broker in this State, and the anticipated effective date of the cessation of operations, within seven days of such decision.

(b) A mortgage broker or mortgage banker that has not originated a mortgage loan in the prior calendar year is considered to have ceased operations. The Commissioner shall suspend the license of any such mortgage broker or mortgage banker, until such time as the mortgage broker or mortgage banker provides reasonable evidence of intent to restart its operations and the Commissioner determines the mortgage broker or mortgage banker satisfies the requirements for licensure under the Act.

History Note: Authority G.S. 53-243.04;

Eff. April 1, 2003;

Amended Eff. April 1, 2008.

04 NCAC 03M .0501 RECORDS TO BE MAINTAINED

(a) A licensee shall maintain or cause to be maintained a record of all cash, checks or other monetary instruments received in connection with each mortgage loan application showing the identity of the payor, date received, amount, and purpose.

(b) A licensee shall maintain a record showing a sequential listing of checks written for each bank account relating to the licensee's business as a mortgage broker or mortgage lender, showing at least the payee, amount, date, and purpose of payment, including identification of the loan to which it relates, if any. The licensee shall reconcile the bank accounts monthly. Financial records must be kept in a manner to permit efficient review by examiners.

(c) A licensed mortgage banker or mortgage broker shall maintain a current listing of all mortgage applications. The list shall contain all essential information about each application, including the customer's name; current address; telephone number; all prepaid loan fees submitted by the customer; amount of loan; brief description of the proposed loan (including the term, rate, type, and priority); address of the mortgage property; application status; and the expected closing date. The licensee shall create and retain a file for each mortgage loan application which shall contain, as applicable, the applicant's name, date, name of person taking the application, the application itself, and if closed, the HUD-1 Settlement Statement, copies of the loan note, deed of trust, and all agreements or contracts with the applicant, including any commitment and lock-in agreements, and all disclosures required by State and Federal law.

(d) A licensee shall maintain a record of samples of each piece of advertising relating to the licensee's business of mortgage brokerage or mortgage banking in North Carolina for a period of 12 months.

(e) A licensee shall maintain copies of all contracts, agreements and escrow instructions to or with any depository institution, any mortgage lender or mortgage broker, any warehouse lender or other funding facility, any servicer of mortgage loans, and any investor, for a period of not less than three years after expiration of any such contract or agreement.

History Note: Authority G.S. 53-243.13;

Eff. April 1, 2003;

Amended Eff. April 1, 2008.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

SECTION .1600 – RATED CERTIFICATES

10A NCAC 13F .1601 SCOPE

- (a) This Section applies to all licensed adult care homes for seven or more residents that have been in operation for more than one year.
- (b) As used in this Section a "rated certificate" means a certificate issued to an adult care home on or after January 1, 2009 and based on the factors contained in G.S. 131D-10.

History Note: Authority G.S. 131D-4.5; 131D-10; Eff. Pending Legislative Review.

10A NCAC 13F .1602 ISSUANCE OF RATED CERTIFICATES

- (a) A rated certificate shall be issued to a facility by the Division of Health Service Regulation within 45 days completion of a new rating calculation pursuant to Rule .1604 of this Subchapter.
- (b) If the ownership of the facility changes, the rated certificate in effect at the time of the change of ownership shall remain in effect until the next annual survey or until a new certificate is issued pursuant to Rule .1604(b) of this Subchapter.
- (c) The certificate and any worksheet the Division used to calculate the rated certificate shall be displayed in a location visible to the public.
- (d) The facility may contest the rated certificate by requesting a contested case hearing pursuant to G.S. 150B. The rated certificate and any subsequent certificates remain in effect during any contested case hearing process.

History Note: Authority G.S. 131D-4.5; 131D-10; Eff. Pending Legislative Review.

10A NCAC 13F .1603 STATUTORY AND RULE REQUIREMENTS AFFECTING RATED CERTIFICATES

The following Statutes and Rules comprise the standards that contribute to rated certificates:

- (1) G.S. 131D-21 Resident's Rights;
- (2) 10A NCAC 13F .0300 Physical Plant Requirements;
- (3) 10A NCAC 13F .0700 Admission and Discharge Requirements;
- (4) 10A NCAC 13F .0800 Resident Assessment and Care Plan;
- (5) 10A NCAC 13F .0900 Resident Care and Services;
- (6) 10A NCAC 13F .1000 Medication Management;
- (7) 10A NCAC 13F .1300 Special Care Units for Alzheimer's and Related Disorders;
- (8) 10A NCAC 13F .1400 Special Care Units for Mental Health Disorders; and

- (9) 10A NCAC 13F .1500 Use of Physical Restraints and Alternatives.

History Note: Authority G.S. 131D-4.5; 131D-10; Eff. Pending Legislative Review.

10A NCAC 13F .1605 CONTENTS OF RATED CERTIFICATE

- (a) The certificate shall contain a rating determined pursuant to Rule .1604 of this Subchapter.
- (b) The certificate or accompanying worksheet from which the score is derived shall contain a breakdown of the point merits and demerits by the factors listed in Rules .1603 and .1604(c) of this Subchapter in a manner that the public can determine how the rating was assigned and the factors that contributed to the rating.
- (c) The certificate shall be printed on the same type of paper that is used to print the facility's license.
- (d) The Division of Health Service Regulation shall issue the certificate pursuant to Rule .1602 of this Subchapter.

History Note: Authority G.S. 131D-4.5; 131D-10; Eff. Pending Legislative Review.

10A NCAC 13G .1601 SCOPE

- (a) This Section applies to all licensed family care homes for two to six residents that have been in operation for more than one year.
- (b) As used in this Section a "rated certificate" means a certificate issued to a family care home on or after January 1, 2009 and based on the factors contained in G.S. 131D-10.

History Note: Authority G.S. 131D-4.5; 131D-10; Eff. Pending Legislative Review.

10A NCAC 13G .1602 ISSUANCE OF RATED CERTIFICATES

- (a) A rated certificate shall be issued to a facility by the Division of Health Service Regulation within 45 days completion of a new rating calculation pursuant to Rule .1604 of this Subchapter.
- (b) If the ownership of the facility changes, the rated certificate in effect at the time of the change of ownership shall remain in effect until the next annual survey or until a new certificate is issued pursuant to Rule .1604(b) of this Subchapter.
- (c) The certificate and any worksheet the Division used to calculate the rated certificate shall be displayed in a location visible to the public.
- (d) The facility may contest the rated certificate by requesting a contested case hearing pursuant to G.S. 150B. The rated certificate and any subsequent certificates remain in effect during any contested case hearing process.

History Note: Authority G.S. 131D-4.5; 131D-10; Eff. Pending Legislative Review.

10A NCAC 13G .1603 STATUTORY AND RULE REQUIREMENTS AFFECTING RATED CERTIFICATES

The following Statutes and Rules comprise the standards that contribute to rated certificates:

- (1) G.S. 131D-21 Resident's Rights;
- (2) 10A NCAC 13G .0300 The Building;
- (3) 10A NCAC 13G .0700 Admission and Discharge Requirements;
- (4) 10A NCAC 13G .0800 Resident Assessment and Care Plan;
- (5) 10A NCAC 13G .0900 Resident Care and Services;
- (6) 10A NCAC 13G .1000 Medications; and
- (7) 10A NCAC 13G .1300 Use of Physical Restraints and Alternatives.

History Note: Authority G.S. 131D-4.5; 131D-10;
Eff. Pending Legislative Review.

10A NCAC 13G .1605 CONTENTS OF RATED CERTIFICATE

- (a) The certificate shall contain a rating determined pursuant to Rule .1604 of this Subchapter.
- (b) The certificate or accompanying worksheet from which the score is derived shall contain a breakdown of the point merits and demerits by the factors listed in Rules .1603 and .1604(c) of this Subchapter in a manner that the public can determine how the rating was assigned and the factors that contributed to the rating.
- (c) The certificate shall be printed on the same type of paper that is used to print the facility's license.
- (d) The Division of Health Service Regulation shall issue the certificate pursuant to Rule .1602 of this Subchapter.

History Note: Authority G.S. 131D-4.5; 131D-10;
Eff. Pending Legislative Review.

10A NCAC 41A .0101 REPORTABLE DISEASES AND CONDITIONS

(a) The following named diseases and conditions are declared to be dangerous to the public health and are hereby made reportable within the time period specified after the disease or condition is reasonably suspected to exist:

- (1) acquired immune deficiency syndrome (AIDS) - 24 hours;
- (2) anthrax - immediately;
- (3) botulism - immediately;
- (4) brucellosis - 7 days;
- (5) campylobacter infection - 24 hours;
- (6) chancroid - 24 hours;
- (7) chlamydial infection (laboratory confirmed) - 7 days;
- (8) cholera - 24 hours;
- (9) Creutzfeldt-Jakob disease - 7 days;
- (10) cryptosporidiosis - 24 hours;
- (11) cyclosporiasis - 24 hours;
- (12) dengue - 7 days;

- (13) diphtheria - 24 hours;
- (14) Escherichia coli, shiga toxin-producing - 24 hours;
- (15) ehrlichiosis - 7 days;
- (16) encephalitis, arboviral - 7 days;
- (17) foodborne disease, including Clostridium perfringens, staphylococcal, Bacillus cereus, and other and unknown causes - 24 hours;
- (18) gonorrhea - 24 hours;
- (19) granuloma inguinale - 24 hours;
- (20) Haemophilus influenzae, invasive disease - 24 hours;
- (21) Hantavirus infection - 7 days;
- (22) Hemolytic-uremic syndrome - 24 hours;
- (23) Hemorrhagic fever virus infection - immediately;
- (24) hepatitis A - 24 hours;
- (25) hepatitis B - 24 hours;
- (26) hepatitis B carriage - 7 days;
- (27) hepatitis C, acute - 7 days;
- (28) human immunodeficiency virus (HIV) infection confirmed - 24 hours;
- (29) influenza virus infection causing death in persons less than 18 years of age - 24 hours;
- (30) legionellosis - 7 days;
- (31) leprosy - 7 days;
- (32) leptospirosis - 7 days;
- (33) listeriosis - 24 hours;
- (34) Lyme disease - 7 days;
- (35) lymphogranuloma venereum - 7 days;
- (36) malaria - 7 days;
- (37) measles (rubeola) - 24 hours;
- (38) meningitis, pneumococcal - 7 days;
- (39) meningococcal disease - 24 hours;
- (40) monkeypox - 24 hours;
- (41) mumps - 7 days;
- (42) nongonococcal urethritis - 7 days;
- (43) novel influenza virus infection - immediately;
- (44) plague - immediately;
- (45) paralytic poliomyelitis - 24 hours;
- (46) pelvic inflammatory disease - 7 days;
- (47) psittacosis - 7 days;
- (48) Q fever - 7 days;
- (49) rabies, human - 24 hours;
- (50) Rocky Mountain spotted fever - 7 days;
- (51) rubella - 24 hours;
- (52) rubella congenital syndrome - 7 days;
- (53) salmonellosis - 24 hours;
- (54) severe acute respiratory syndrome (SARS) - 24 hours;
- (55) shigellosis - 24 hours;
- (56) smallpox - immediately;
- (57) Staphylococcus aureus with reduced susceptibility to vancomycin - 24 hours;
- (58) streptococcal infection, Group A, invasive disease - 7 days;
- (59) syphilis - 24 hours;
- (60) tetanus - 7 days;
- (61) toxic shock syndrome - 7 days;

- (62) trichinosis - 7 days;
- (63) tuberculosis - 24 hours;
- (64) tularemia - immediately;
- (65) typhoid - 24 hours;
- (66) typhoid carriage (*Salmonella typhi*) - 7 days;
- (67) typhus, epidemic (louse-borne) - 7 days;
- (68) vaccinia - 24 hours;
- (69) vibrio infection (other than cholera) - 24 hours;
- (70) whooping cough - 24 hours;
- (71) yellow fever - 7 days.

(b) For purposes of reporting confirmed human immunodeficiency virus (HIV) infection is defined as a positive virus culture, repeatedly reactive EIA antibody test confirmed by western blot or indirect immunofluorescent antibody test, positive nucleic acid detection (NAT) test, or other confirmed testing method approved by the Director of the State Public Health Laboratory conducted on or after February 1, 1990. In selecting additional tests for approval, the Director of the State Public Health Laboratory shall consider whether such tests have been approved by the federal Food and Drug Administration, recommended by the federal Centers for Disease Control and Prevention, and endorsed by the Association of Public Health Laboratories.

(c) In addition to the laboratory reports for *Mycobacterium tuberculosis*, *Neisseria gonorrhoeae*, and syphilis specified in G.S. 130A-139, laboratories shall report:

- (1) Isolation or other specific identification of the following organisms or their products from human clinical specimens:
 - (A) Any hantavirus or hemorrhagic fever virus.
 - (B) Arthropod-borne virus (any type).
 - (C) *Bacillus anthracis*, the cause of anthrax.
 - (D) *Bordetella pertussis*, the cause of whooping cough (pertussis).
 - (E) *Borrelia burgdorferi*, the cause of Lyme disease (confirmed tests).
 - (F) *Brucella* spp., the causes of brucellosis.
 - (G) *Campylobacter* spp., the causes of campylobacteriosis.
 - (H) *Chlamydia trachomatis*, the cause of genital chlamydial infection, conjunctivitis (adult and newborn) and pneumonia of newborns.
 - (I) *Clostridium botulinum*, a cause of botulism.
 - (J) *Clostridium tetani*, the cause of tetanus.
 - (K) *Corynebacterium diphtheriae*, the cause of diphtheria.
 - (L) *Coxiella burnetii*, the cause of Q fever.
 - (M) *Cryptosporidium parvum*, the cause of human cryptosporidiosis.
 - (N) *Cyclospora cayetanensis*, the cause of cyclosporiasis.

- (O) *Ehrlichia* spp., the causes of ehrlichiosis.
- (P) Shiga toxin-producing *Escherichia coli*, a cause of hemorrhagic colitis, hemolytic uremic syndrome, and thrombotic thrombocytopenic purpura.
- (Q) *Francisella tularensis*, the cause of tularemia.
- (R) Hepatitis B virus or any component thereof, such as hepatitis B surface antigen.
- (S) Human Immunodeficiency Virus, the cause of AIDS.
- (T) *Legionella* spp., the causes of legionellosis.
- (U) *Leptospira* spp., the causes of leptospirosis.
- (V) *Listeria monocytogenes*, the cause of listeriosis.
- (W) Monkeypox.
- (X) *Mycobacterium leprae*, the cause of leprosy.
- (Y) *Plasmodium falciparum*, *P. malariae*, *P. ovale*, and *P. vivax*, the causes of malaria in humans.
- (Z) Poliovirus (any), the cause of poliomyelitis.
- (AA) Rabies virus.
- (BB) *Rickettsia rickettsii*, the cause of Rocky Mountain spotted fever.
- (CC) Rubella virus.
- (DD) *Salmonella* spp., the causes of salmonellosis.
- (EE) *Shigella* spp., the causes of shigellosis.
- (FF) Smallpox virus, the cause of smallpox.
- (GG) *Staphylococcus aureus* with reduced susceptibility to vanomycin.
- (HH) *Trichinella spiralis*, the cause of trichinosis.
- (II) Vaccinia virus.
- (JJ) *Vibrio* spp., the causes of cholera and other vibrioses.
- (KK) Yellow fever virus.
- (LL) *Yersinia pestis*, the cause of plague.
- (2) Isolation or other specific identification of the following organisms from normally sterile human body sites:
 - (A) Group A *Streptococcus pyogenes* (group A streptococci).
 - (B) *Haemophilus influenzae*, serotype b.
 - (C) *Neisseria meningitidis*, the cause of meningococcal disease.
- (3) Positive serologic test results, as specified, for the following infections:

- (A) Fourfold or greater changes or equivalent changes in serum antibody titers to:
 - (i) Any arthropod-borne viruses associated with meningitis or encephalitis in a human.
 - (ii) Any hantavirus or hemorrhagic fever virus.
 - (iii) Chlamydia psittaci, the cause of psittacosis.
 - (iv) Coxiella burnetii, the cause of Q fever.
 - (v) Dengue virus.
 - (vi) Ehrlichia spp., the causes of ehrlichiosis.
 - (vii) Measles (rubeola) virus.
 - (viii) Mumps virus.
 - (ix) Rickettsia rickettsii, the cause of Rocky Mountain spotted fever.
 - (x) Rubella virus.
 - (xi) Yellow fever virus.
 - (B) The presence of IgM serum antibodies to:
 - (i) Chlamydia psittaci
 - (ii) Hepatitis A virus.
 - (iii) Hepatitis B virus core antigen.
 - (iv) Rubella virus.
 - (v) Rubeola (measles) virus.
 - (vi) Yellow fever virus.
 - (4) Laboratory results from tests to determine the absolute and relative counts for the T-helper (CD4) subset of lymphocytes that have a level below that specified by the Centers for Disease Control and Prevention as the criteria used to define an AIDS diagnosis.
- gonorrhea, chlamydia, nongonococcal urethritis, mucopurulent cervicitis, chancroid, lymphogranuloma venereum, and granuloma inguinale. These services shall be provided upon request and at no charge to the patient.
- (b) Persons infected with, exposed to, or reasonably suspected of being infected with gonorrhea, chlamydia, non-gonococcal urethritis, and mucopurulent cervicitis shall:
 - (1) Refrain from sexual intercourse until examined and diagnosed and treatment is completed, and all lesions are healed;
 - (2) Be tested, treated, and re-evaluated in accordance with the STD Treatment Guidelines published by the U.S. Public Health Service. The recommendations contained in the STD Treatment Guidelines are the required control measures for testing, treatment, and follow-up for gonorrhea, chlamydia, nongonococcal urethritis, and mucopurulent cervicitis, and are incorporated by reference including subsequent amendments and editions. A copy of this publication is on file for public viewing with the and a copy may be obtained free of charge by writing the Division of Public Health, 1915 Mail Service Center, Raleigh, North Carolina 27699-1915, and requesting a copy. However, urethral Gram stains may be used for diagnosis of males rather than gonorrhea cultures unless treatment has failed;
 - (3) Notify all sexual partners from 30 days before the onset of symptoms to completion of therapy that they must be evaluated by a physician or local health department.
 - (c) Persons infected with, exposed to, or reasonably suspected of being infected with syphilis, lymphogranuloma venereum, granuloma inguinale, and chancroid shall:
 - (1) Refrain from sexual intercourse until examined and diagnosed and treatment is completed, and all lesions are healed;
 - (2) Be tested, treated, and re-evaluated in accordance with the STD Treatment Guidelines published by the U.S. Public Health Service. The recommendations contained in the STD Treatment Guidelines are the required control measures for testing, treatment, and follow-up for syphilis, lymphogranuloma venereum, granuloma inguinale, and chancroid, except that chancroid cultures are not required;
 - (3) Give names to a disease intervention specialist employed by the local health department or by the Division of Public Health for contact tracing of all sexual partners and others as listed in this Rule:
 - (A) for syphilis:
 - (i) congenital - parents and siblings;
 - (ii) primary - all partners from three months before the

History Note: Authority G.S. 130A-134; 130A-135; 130A-139; 130A-141;

Temporary Rule Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988;

Eff. March 1, 1988;

Amended Eff. October 1, 1994; February 1, 1990;

Temporary Amendment Eff. July 1, 1997;

Amended Eff. August 1, 1998;

Temporary Amendment Eff. February 13, 2003; October 1, 2002; February 18, 2002; June 1, 2001;

Amended Eff. April 1, 2003;

Temporary Amendment Eff. November 1, 2003; May 16, 2003;

Amended Eff. January 1, 2005; April 1, 2004;

Temporary Amendment Eff. June 1, 2006;

Amended Eff. April 1, 2008; November 1, 2007; October 1, 2006.

10A NCAC 41A .0204 CONTROL MEASURES – SEXUALLY TRANSMITTED DISEASES

(a) Local health departments shall provide diagnosis, testing, treatment, follow-up, and preventive services for syphilis,

- onset of symptoms to completion of therapy and healing of lesions;
- (iii) secondary - all partners from six months before the onset of symptoms to completion of therapy and healing of lesions; and
- (iv) latent - all partners from 12 months before the onset of symptoms to completion of therapy and healing of lesions and, in addition, for women with late latent, spouses and children;
- (B) for lymphogranuloma venereum:
 - (i) if there is a primary lesion and no buboes, all partners from 30 days before the onset of symptoms to completion of therapy and healing of lesions; and
 - (ii) if there are buboes all partners from six months before the onset of symptoms to completion of therapy and healing of lesions;
- (C) for granuloma inguinale - all partners from three months before the onset of symptoms to completion of therapy and healing of lesions; and
- (D) or chancroid - all partners from ten days before the onset of symptoms to completion of therapy and healing of lesions.

(d) All persons evaluated or reasonably suspected of being infected with any sexually transmitted disease shall be tested for syphilis, encouraged to be tested confidentially for HIV, and counseled about how to reduce the risk of acquiring sexually transmitted disease, including the use of condoms.

(e) All pregnant women shall be tested for syphilis, chlamydia and gonorrhea at the first prenatal visit. All pregnant women shall be tested for syphilis between 28 and 30 weeks of gestation and at delivery. Hospitals shall determine the syphilis serologic status of the mother prior to discharge of the newborn so that if necessary the newborn can be evaluated and treated as provided in (c)(2) of this rule. Pregnant women 25 years of age and younger shall be tested for chlamydia and gonorrhea in the third trimester or at delivery if the woman was not tested in the third trimester.

(f) Any woman who delivers a stillborn infant shall be tested for syphilis.

(g) All newborn infants shall be treated prophylactically against gonococcal ophthalmia neonatorum in accordance with the STD Treatment Guidelines published by the U.S. Public Health Service. The recommendations contained in the STD Treatment Guidelines are the required prophylactic treatment against gonococcal ophthalmia neonatorum.

History Note: Authority G. S. 130A-135; 130A-144; Eff. December 1, 1991; Amended Eff. April 1, 2008; November 1, 2007; April 1, 2003; July 1, 1993.

10A NCAC 43A .0808 CRITERIA FOR PROJECT SELECTION

(a) The Department shall present funding recommendations to the Commission from among the applicants that meet the minimum standards in Rule .0803 of this Subchapter. A multi-disciplinary committee of public and private health and human services providers who are familiar with adolescent health issues shall review applications based upon the criteria set out below. Recommendations shall also be based upon the best selection of projects according to the following criteria:

- (1) Degree of need of the locality, including that the service area has a significant adolescent pregnancy problem as evidenced by its adolescent pregnancy rate, adolescent birth rate, attributable risk score, and percentage of repeat adolescent births;
- (2) Evidence of selection of a program model that has documented success in the prevention of teen pregnancy;
- (3) A plan to provide comprehensive sexuality education including complete and medically accurate information about contraceptive methods including abstinence to all participants.
- (4) A plan to refer teens who have needs beyond the scope of the program including substance abuse, domestic violence, family planning, and mental health, to an appropriate provider.
- (5) A statewide program evaluation plan that addresses the administration of pre-tests and post-tests that measure participants' knowledge, attitudes and behaviors as compared to a control group; and submission of data in an internet based database;
- (6) Adequacy of agency and staff to meet project objectives;
- (7) Level of community support. There shall be documentation such as letters or statements of commitment from partnering organizations to show strong support for the application;
- (8) Evidence that the proposed budget does not exceed the costs of the planned program activities; and
- (9) Demonstration by existing or formerly TPPI-funded projects that they have provided an effective intervention for reducing adolescent pregnancy rates among their participants.

(b) The Commission shall provide input regarding the proposed funding decisions made by the Department. The Department shall consider the input of the Commission, but is not bound by it. By June 1 of each year the Department shall notify the projects that are to be funded.

*History Note: Authority G.S. 130A-124; 130A-131.15A;
Temporary Adoption Eff. December 1, 2001;
Temporary Adoption Expired September 13, 2002;
Eff. April 1, 2003;
Amended Eff. April 1, 2008; August 1, 2004.*

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 09B .0228 BASIC TRAINING - WILDLIFE ENFORCEMENT OFFICERS

(a) The basic training course for wildlife enforcement officers appointed by the Wildlife Resources Commission as authorized under G.S. 113-136 shall consist of at least 652 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a wildlife enforcement officer.

(b) Each basic training course for wildlife enforcement officers shall include the following identified topical areas and minimum instructional hours for each area:

(1)	Course Orientation	2 Hours
(2)	Arrest Search & Seizure/Constitutional Law	28 Hours
(3)	Law Enforcement Communications and Information System	8 Hours
(4)	Elements of Criminal Law	24 Hours
(5)	Subject Control/Arrest Techniques	48 Hours
(6)	Juvenile Law and Procedures	8 Hours
(7)	First Responder	40 Hours
(8)	Firearms	48 Hours
(9)	Hunter Safety	12 Hours
(10)	Patrol Techniques	16 Hours
(11)	Field Notetaking and Report Writing	12 Hours
(12)	Domestic Violence Response	12 Hours
(13)	Criminal Investigation	12 Hours
(14)	Field & Custodial Interviews	16 Hours
(15)	Controlled Substances	10 Hours
(16)	ABC Laws and Procedures	4 Hours
(17)	Explosives & Hazardous Materials	12 Hours
(18)	Law Enforcement Drivers Training	48 Hours
(19)	Preparing for Court and Testifying in Court	12 Hours
(20)	Game and Fish Laws	36 Hours
(21)	Motorboat Laws	16 Hours
(22)	Boating Procedures & Small Boat Handling	20 Hours
(23)	Dealing with Problem Animal Situations	4 Hours
(24)	Basic Field Identification of Fishes	6 Hours
(25)	Basic Field Identification of Game Animals, Game Birds and Non-Game Animals	2 Hours
(26)	Identification of Migratory Waterfowl	2 Hours
(27)	Endangered Species	2 Hours
(28)	Trapping	8 Hours
(29)	Water Safety and Swimming	20 Hours

(30)	Knotsmanship, A Practical Use of Rope	2 Hours
(31)	Wildlife Law Enforcement and the Media	8 Hours
(32)	Motorboat Accident Investigation	12 Hours
(33)	Crowd Management	12 Hours
(34)	Rapid Deployment	8 Hours
(35)	Covert Activities	2 Hours
(36)	Basic Photography	4 Hours
(37)	Motor Vehicle Laws	20 Hours
(38)	Physical Training	60 Hours
(39)	Standardized Field Sobriety Training	32 Hours
(40)	Ethics	4 Hours

(c) The "Wildlife Basic Training Manual" as published by the North Carolina Wildlife Resources Commission shall be used as the basic curriculum for delivery of wildlife enforcement officer basic training courses. Copies of this publication may be inspected at the office of the agency:

The Division of Enforcement Training Office
North Carolina Wildlife Resources Commission
1751 Varsity Drive
NCSU Centennial Campus
Raleigh, North Carolina 27606-2576

and may be obtained from the Wildlife Resources Commission for ninety-five dollars (\$95.00) per copy.

(d) Commission-accredited schools that are accredited to offer the "Basic Training: Wildlife Enforcement Officers" course are: The Division of Enforcement Training Office of the North Carolina Wildlife Resources Commission.

*History Note: Authority G.S. 17C-6; 17C-10;
Eff. February 1, 1987;
Amended Eff. April 1, 2008; August 1, 2004; August 1, 2000;
August 1, 1995; July 1, 1991; July 1, 1989.*

12 NCAC 09C .0401 CERTIFICATION OF CRIMINAL JUSTICE SCHOOLS

(a) The Commission shall establish a standing subcommittee, called the Certification Committee, of the Education and Training Committee for the purposes of evaluating Request for School Certification applications and making recommendations to the Education and Training committee on the granting of certification to institutions and agencies. The Certification Committee shall be comprised of two members appointed by the School Directors' Advisory Committee and two members who shall be Commission members to include the North Carolina Department of Community Colleges' representative to the Commission. The Chairman of the Commission shall appoint the Chairman of the Certification Committee.

(b) Any school requesting certification meeting the minimum requirements contained in 12 NCAC 09B .0200 must submit a completed Request for School Certification application. Upon receipt of a completed Request for School Certification application:

- (1) The Standards Division staff shall review the application for any omissions and clarifications and conduct a site visit to tour facilities, confirm information on the

application, and determine if and where deficiencies exist;

- (2) The Standards Division Staff shall contact the applying institution or agency concerning deficiencies and shall provide assistance on correcting problem areas;
- (3) The Standards Division staff shall make a recommendation to the Certification Committee when the accredited institution has satisfied the requirements outlined in 12 NCAC 09B .0200;
- (4) The Standards Division staff shall submit the application and staff reports to the Certification Committee for review;
- (5) The Certification Committee shall then submit a recommendation to the Education and Training Committee on the approval or denial of the application; and
- (6) The Education and Training Committee shall recommend to the full Commission at its next regularly scheduled meeting the approval or denial of certification for the applicant institution or agency.

(c) Certification of a school shall remain effective for five years from issuance unless earlier suspended or revoked for failure to maintain compliance with the requirements outlined in 12 NCAC 09B .0200, Minimum Standards for Criminal Justice Schools and Criminal Justice Training Programs or Courses of Instruction.

(d) The identity of those schools certified under this Rule shall be published and distributed annually by the Standards Division together with the name and business address of the school director and the schedule of criminal justice training courses planned for delivery during the succeeding year.

(e) A school may apply for recertification to the Commission by submitting a completed Request for School Certification application. The application for recertification shall contain information on changes in facilities, equipment, and staffing. Upon receipt of a completed application:

- (1) The Standards Division staff shall review the application for any omissions and clarification;
- (2) The Standards Division staff shall attach copies of the reports of site visits conducted during the last period of certification to the application;
- (3) The Standards Division staff shall submit the application and staff reports to the Certification Committee for Review;
- (4) The Certification Committee shall submit a recommendation to the Education and Training Committee on the approval or denial of the application; and
- (5) The Education and Training Committee shall recommend to the full Commission at its next regularly scheduled meeting the approval or denial of certification of the applicant institution or agency.

(f) In instances where certified schools have been found to be in compliance with 12 NCAC 09B .0200 through favorable site

visit reports, Standards Division staff shall recertify on behalf of the Commission. Such action shall be reported to the Commission through the Certification Committee and the Education and Training Committee at its next scheduled meeting.

(g) The Commission may suspend or revoke a school's certification when it finds that the school has failed to meet or continuously maintain any requirement, standard, or procedure for school or course certification.

(h) The certification of a school whose certification is scheduled to expire in calendar year 2006 and who has submitted a request for recertification is extended for a maximum of two years under the following conditions:

- (1) certification has not expired;
- (2) the school has submitted a request for recertification along with the required documentation by December 31, 2006;
- (3) the Standards Division staff is unable to complete the recertification process by December 31, 2006; and
- (4) the school is not denied recertification prior to the expiration of the current certification. Certification or certification extension according to this Paragraph expires when recertification is denied or revoked or the Standards Division staff is able to complete the recertification process and it is determined that the school is in compliance with the Rules for recertification. If the school recertification is denied or revoked, the school must not deliver Commission certified criminal justice courses until such recertification has been granted or reinstated by the Commission.

History Note: Authority G.S. 17C-6; Eff. January 1, 1981; Amended Eff. August 1, 2004, January 1, 1996; Temporary Amendment Eff. January 1, 2007; Temporary Amendment Expired October 13, 2007; Amended Eff. April 1, 2008.

12 NCAC 09E .0102 REQUIRED ANNUAL IN-SERVICE TRAINING TOPICS

The following topical areas are hereby established as minimum topics and hours to be included in the law enforcement officers' annual in-service training program:

- (1) Firearms Training and Qualification (4);
- (2) Legal Update (4);
- (3) Career Survival: Truth or Consequences (2);
- (4) Juvenile Minority Sensitivity: Effects of Juvenile Bullying (2);
- (5) Response to Critical Incidents (4); and
- (6) Department Topics of Choice (8).

History Note: Authority G.S. 17C-6; 17C-10; Eff. July 1, 1989; Amended Eff. January 1, 2005; Temporary Amendment Eff. January 1, 2005; Amended Eff. April 1, 2008; February 1, 2007; January 1, 2006.

12 NCAC 09E .0104 INSTRUCTORS: ANNUAL IN-SERVICE TRAINING

The following requirements and responsibilities are hereby established for instructors who conduct the law enforcement officers' annual in-service training program:

- (1) The instructor shall hold Instructor Certification issued by the Commission as outlined in 12 NCAC 09B .0302, 09B .0304, and 09B .0306, except for instructors delivering Incident Command System training for NIMS (National Incident Management System) compliance. Those instructors must be certified through FEMA as Incident Command Instructors. In addition, each instructor certified by the Commission to teach in a Commission-certified course shall remain competent in his/her specific or specialty areas. Such competence includes remaining current in the instructor's area of expertise, which may be demonstrated by attending and successfully completing all instructor updates issued by the Commission.
- (2) The instructor shall deliver the training consistent with the specifications as established in Rules 09E .0105 and .0106.
- (3) The instructor shall report the successful or unsuccessful completion of training for each officer to the Department head. Such reporting shall be on a Commission form.
- (4) Where the officer fails to successfully qualify with a weapon, the instructor shall inform the officer that the officer did not qualify and the instructor shall deliver a Commission form to the officer which shall be signed by the officer. This form shall instruct the officer not to use the weapon and shall require the officer to notify the Department head or designated representative within 24 hours of the failure to qualify. The instructor shall personally deliver this form or send the form by certified mail to the Department head or designated representative within 72 hours of the failure to qualify.

History Note: Authority G.S. 17C-6; 17C-10; Eff. July 1, 1989; Amended Eff. April 1, 2008; January 1, 2006; January 1, 2005.

12 NCAC 09E .0105 MINIMUM TRAINING SPECIFICATIONS: ANNUAL IN-SERVICE TRAINING

The following specifications shall be incorporated in each law enforcement agency's annual in-service training courses:

- (1) Firearms:
 - (a) Use of Force: review the authority to use deadly force [G.S. 15A-401(d)(2)] including the relevant case law and materials;
 - (b) Safety:
 - (i) range rules and regulations;

- (ii) handling of a firearm; and
 - (iii) malfunctions;
- (c) Review of Basic Marksmanship Fundamentals:
 - (i) grip, stance, breath control and trigger squeeze;
 - (ii) sight and alignment/sight picture; and
 - (iii) nomenclature; and
- (d) The "Specialized Firearms Instructor Training Manual" as published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms training program. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
114 West Edenton Street
Old Education Building
Post Office Drawer 149
Raleigh, North Carolina 27602;

- (2) Legal Update (4);
- (3) Career Survival: Truth or Consequences (2);
- (4) Juvenile Minority Sensitivity: Effects of Juvenile Bullying (2)
- (5) Response to Critical Incidents (4); and
- (6) Department Topics of Choice (8).

The In-Service Lesson Plans as published by the North Carolina Justice Academy shall be applied as a minimum curriculum for conducting the annual in-service training program. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
114 West Edenton Street
Old Education Building
Post Office Drawer 149
Raleigh, North Carolina 27602

and may be obtained at cost from the Academy at the following address:

North Carolina Justice Academy
Post Office Drawer 99
Salemberg, North Carolina 28385

History Note: Authority G.S. 17C-6; 17C-10; Eff. July 1, 1989; Amended Eff. January 1, 2005; November 1, 1998; Temporary Amendment Eff. January 1, 2005; Amended Eff. April 1, 2008; February 1, 2007; January 1, 2006.

12 NCAC 09G .0415 CORRECTIONS SPECIALIZED INSTRUCTOR TRAINING – FIREARMS

- (a) The instructor training course requirement for corrections specialized firearms instructor certification shall consist of at least 80 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each corrections specialized firearms instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a corrections firearms instructor in the "Basic Training–Correctional Officer" course, "Basic Training-Probation/Parole Officer" course, "Basic Training-Probation/Parole Officer-Intermediate" course, and in-service training courses for correctional officers, PERT teams, and probation/parole officers-intermediate.

(c) Each corrections specialized firearms instructor training course shall include the following topical areas:

- (1) Overview;
 - (A) Course Overview
 - (B) Legal Considerations for Firearm Instructors
 - (C) Department of Correction Firearms Training Courses
- (2) Firearms Safety;
- (3) Range Operations;
- (4) Medical Emergencies on the Range;
- (5) Handgun - Operation, Use and Maintenance;
 - (A) Handgun Training-Classroom
 - (B) Standard Handgun Courses of Fire-Range
 - (C) Introduction to Low/Limited Light (LLL) Fire-Classroom and Range
 - (D) Handgun Care and Maintenance
- (6) Advanced Handgun Training;
 - (A) Advanced Handgun Training – Classroom
 - (B) Advanced Handgun Courses of Fire – Range
- (7) Handgun Night Firing;
Handgun Low/Limited Light Fire – Classroom and Range
- (8) Rifle Training and Qualification;
 - (A) Rifle Training – Classroom
 - (B) Rifle Training – Range
 - (C) Rifle Qualification and Low/Limited Light Fire Familiarization Course – Range
- (9) Shotgun Training and Qualification;
 - (A) Shotgun Training – Classroom
 - (B) Shotgun Training - Range
 - (C) Shotgun Low/Limited Light Fire – Range
- (10) Maintenance and Repair of Rifles and Shotguns;
- (11) Special Techniques, Training Aids, and Methods;
Special Techniques for the Reluctant/Frightened Shooter
- (12) Chemical Weapons;
Chemical Agents, Equipment, Tactics and Storage
- (13) Situational Use of Firearms;
 - (A) The Shooting Decision
 - (B) Situational Use of Firearms
 - (C) Situational Exercises - Day

(D) Situational Exercises – Low/Limited Light

(14) Administrative Matters, Testing, and Evaluation

(d) Commission-accredited schools that are accredited to offer the "Corrections Specialized Instructor Training - Firearms" course are: The Office of Staff Development and Training of the North Carolina Department of Correction.

History Note: Authority G.S. 17C-6;

Temporary Adoption Eff. January 1, 2001;

Eff. August 1, 2002;

Amended Eff. April 1, 2008; February 1, 2006; August 1, 2004.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02H .1005 STORMWATER REQUIREMENTS: COASTAL COUNTIES

(a) Notwithstanding the provisions of 15A NCAC 02B .1003(b), all non-residential development activities, which means all development that is not defined in 15A NCAC 02B .0202(54), within the coastal counties that disturb more than 10,000 square feet, including projects that disturb less than 10,000 square feet of land that are part of a larger common plan of development or sale that disturbs more than 10,000 square feet and all residential development activities, as defined in 15A NCAC 02B .0202(54), within the coastal counties which require a stormwater management permit in accordance with Rule .1003 of this Section shall manage stormwater runoff as follows, with exception of NC Department of Transportation activities that shall be regulated in accordance with the provisions of that agency's existing NPDES Stormwater Permit:

- (1) Development activities within the coastal counties draining to Outstanding Resource Waters (ORW) shall meet requirements contained in Rule .1007 of this Section and the provisions of SubPart (2)(A)(i) of this Paragraph;
- (2) Development activities within one-half mile of and draining to SA waters or within one-half mile of SA waters and draining to unnamed freshwater tributaries to SA waters must comply with either the requirements in Parts (a)(2)(A) and (a)(2)(C) of this Rule or the requirements in Parts (a)(2)(B) and (a)(2)(C) of this Rule:
 - (A) Low Density Option: Development shall be permitted pursuant to Rule .1003(d)(1) of this Section if the development has:
 - (i) Built-upon area of 12 percent or less;
 - (ii) Development within 575 feet of the mean high water line of areas designated by the Environmental Management

- Commission as Outstanding Resource Waters (ORW) shall be limited to a built upon area of 25 percent or less, however, development with a built upon area of greater than 12 percent must comply with the requirements of SubPart (B) of this SubParagraph;
- (iii) Stormwater runoff transported primarily by vegetated conveyances. (Conveyance system shall not include a discrete stormwater collection system as defined in Rule .1002 of this Section); and
 - (iv) A 50 foot wide vegetative buffer for new development activities and a 30 foot wide vegetative buffer for redevelopment activities.
- (B) High Density Option: Higher density developments shall be permitted pursuant to Rule .1003(d)(2) of this Section if stormwater control systems meet the following criteria:
- (i) No direct outlet channels or pipes to SA waters unless permitted in accordance with 15A NCAC 02H .0126;
 - (ii) Control systems must be infiltration systems, wet detention ponds, bioretention systems, constructed stormwater wetlands, sand filters, or alternative stormwater management systems designed in accordance with Rule .1008 of this Section to control and treat the runoff from all surfaces generated by one and one-half inches of rainfall or the difference in the stormwater runoff from all surfaces from the predevelopment and post-development conditions for a one-year, 24-hour storm, whichever is greater. Alternatives as described in Rule .1008(h) of this Section may also be approved if they meet the requirements of this Part, (a)(2)(B), and Part (a)(2)(C) of this Rule;
- (iii) Runoff in excess of the design volume must flow overland through a vegetative filter designed in accordance with Rule .1008 of this Section with a minimum length of 50 feet measured from mean high water of SA waters; and
 - (iv) A 50 foot wide vegetative buffer for new development activities and a 30 foot wide vegetative buffer for redevelopment activities.
- (C) In addition to the other measures required in this Rule, all development activities, including both low and high density projects, shall prohibit new points of stormwater discharge to SA waters or expansion (increase in the volume of stormwater flow through conveyances or increase in capacity of conveyances) of existing stormwater conveyance systems that drain to SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net amount or rate of stormwater discharge through existing outfalls to SA waters. Infiltration of stormwater runoff from the one-year, 24-hour storm or diffuse flow of stormwater at a non-erosive velocity to a vegetated buffer or other natural area within the property boundary, that is capable of providing effective infiltration of the runoff from the one-year, 24-hour storm shall not be considered a direct point of stormwater discharge. Permit applicants shall take into consideration soil type, slope, vegetation, and existing hydrology when evaluating infiltration effectiveness.
- (3) Development activities within the coastal counties except those areas defined in Subparagraphs (1) and (2) of this Paragraph:
- (A) Low Density Option: Development shall be permitted pursuant to Rule .1003(d)(1) of this Section if the development has:
 - (i) Built-upon area of 24 percent or less;
 - (ii) Stormwater runoff transported primarily by vegetated conveyances; (Conveyance system shall

- not include a discrete stormwater collection system as defined in Rule .1002 of this Section); and
 - (iii) A 50 foot wide vegetative buffer for new development activities and a 30 foot wide vegetative buffer for redevelopment activities.
 - (B) High Density Option: Higher density developments shall be permitted pursuant to Rule .1003(d)(2) of this Section if stormwater control systems meet the following criteria:
 - (i) Control systems must be infiltration systems, wet detention ponds, bioretention systems, constructed stormwater wetlands, sand filters, or alternative stormwater management systems designed in accordance with Rule .1008 of this Section;
 - (ii) Control systems must be designed to store, control and treat the stormwater runoff from all surfaces generated by one and one-half inch of rainfall; and
 - (iii) A 50 foot wide vegetative buffer for new development activities and a 30 foot wide vegetative buffer for redevelopment activities.
- (4) Structural stormwater controls required under this Rule shall meet the following criteria:
 - (A) Remove an 85 percent average annual amount of Total Suspended Solids.
 - (B) For detention ponds, draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
 - (C) Discharge the storage volume at a rate equal to or less than the pre-development discharge rate for the one-year, 24-hour storm. and
 - (D) Meet the General Engineering Design Criteria set forth in 15A NCAC 02H .1008(c).
- (5) For the purposes of this Rule, all areas defined as jurisdictional wetlands (which means those wetlands that are subject to the jurisdiction of the US Army Corps of Engineers pursuant to Section 404 of the Clean Water Act) or isolated wetlands (as that term is used in 15A NCAC 02H .1301) shall not be included in the overall project area to calculate impervious surface density. Stormwater runoff from built upon areas that is directed to flow through any wetlands must flow through these wetlands in a diffuse manner with the use of a level spreader.
- (6) For structural stormwater controls that are required under this Rule and that require separation from the seasonal high-water table, a minimum separation of two feet is mandated. This separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high-water table with a minimum soil hydraulic conductivity of 0.52 inches per hour.
 - (b) Residential development activities within the 20 Coastal Counties that are within one-half mile and draining to SA waters that have a built upon area greater than 12 percent and that do not require a stormwater management permit in accordance with Rule .1003 of this Section but that disturb more than 10,000 square feet of land shall manage stormwater runoff by implementing the following measures specified in Subparagraph (1), (2), or (3) of this Paragraph:
 - (1) Install rain cisterns or rain barrels designed to collect all rooftop runoff from the one-year, 24-hour storm. Rain barrels and cisterns shall be installed in such a manner as to facilitate the reuse of the collected rain water on site and shall be installed in such a manner that any overflow from these devices is directed to a vegetated area in a diffuse flow. In addition all uncovered driveways, uncovered parking areas, uncovered walkways and uncovered patios shall be constructed out of permeable pavement, or other pervious materials. For the purposes of this Rule, permeable pavement is defined as a paving material that allows for the infiltration of stormwater. Permeable pavement materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, and porous asphalt. Compacted gravel shall not be considered permeable pavement. Other pervious material includes wooden slatted decks; or
 - (2) Direct rooftop runoff from the one-year, 24-hour storm to an appropriately sized and designed rain garden. In addition all uncovered driveways, uncovered parking areas, uncovered walkways and uncovered patios shall be constructed out of permeable pavement, or other pervious materials. For the purposes of this Rule, permeable pavement is defined as a paving material that allows for the infiltration of stormwater. Permeable pavement materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, and porous asphalt. Compacted gravel shall not be considered permeable pavement. Other pervious material includes wooden slatted decks; or
 - (3) Install any other stormwater best management practice that meets the requirements of 15A NCAC 02H .1008 to control and treat the

difference in the stormwater runoff from all built upon areas of the site from the predevelopment and post-development conditions for a one-year, 24-hour storm.

(c) Residential development activities within the 20 Coastal Counties that are not within one-half mile and draining to SA waters that have a built upon area greater than 24 percent and that do not require a stormwater management permit in accordance with Rule .1003 of this Section but that disturb more than 10,000 square feet of land shall manage stormwater runoff by implementing the following measures specified in Subparagraph (1), (2), or (3) of this Paragraph:

- (1) Install rain cisterns or rain barrels designed to collect all rooftop runoff from the first 1.5 inches of rainfall. Rain barrels and cisterns shall be installed in such a manner as to facilitate the reuse of the collected rain water on site and shall be installed in such a manner that any overflow from these devices is directed to a vegetated area in a diffuse flow. In addition all uncovered driveways, uncovered parking areas, uncovered walkways and uncovered patios shall be constructed out of permeable pavement, or other pervious materials. For the purposes of this Rule, permeable pavement is defined as a paving material that allows for the infiltration of stormwater. Permeable pavement materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, and porous asphalt. Compacted gravel shall not be considered permeable pavement. Other pervious material includes wooden slatted decks; or
- (2) Direct rooftop runoff from the first 1.5 inches of rain to an appropriately sized and designed rain garden. In addition all uncovered driveways, uncovered parking areas, uncovered walkways and uncovered patios shall be constructed out of permeable pavement, or other pervious materials. For the purposes of this Rule, permeable pavement is defined as a paving material that allows for the infiltration of stormwater. Permeable pavement materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, and porous asphalt. Compacted gravel shall not be considered permeable pavement. Other pervious material includes wooden slatted decks; or
- (3) Install any other stormwater best management practice that meets the requirements of 15A NCAC 02H .1008 to control and treat the stormwater runoff from the first 1.5 inches of rainfall for all built upon areas of the site.

Amended Eff. Pending Legislative Review.

15A NCAC 07B .0802 PRESENTATION TO COASTAL RESOURCES COMMISSION FOR CERTIFICATION

(a) Re-Certification: If the CRC adopts new CAMA Land Use Plan rules, plans shall be updated within six years of the effective date of the new rules. If a scoping process is held, a summary shall be provided to the CRC along with the request for re-certification of the existing CAMA Land Use Plan.

(b) Committee Designated by CRC to Review Local Land Use Plans:

- (1) The appropriate DCM District Planner shall submit a written report to the committee designated by the CRC as to the type of plan being presented, highlight any unique characteristics of the plan, identify any land use conflicts with adjacent planning jurisdictions or other state/federal agencies, identify any inaccuracy or inconsistency of items in the plan, and recommend certification, conditional certification, or non-certification.
- (2) The local government shall submit its draft Land Use Plan to the committee designated by the CRC.
- (3) The public shall have an opportunity to submit written objections, comments, or statements of support prior to action by the committee designated by the CRC. Written objections shall be received by DCM no less than 15 business days prior to the next scheduled CAMA Land Use Plan review meeting and shall be limited to the criteria for CRC certification as defined in Subparagraph (c)(3) of this Rule. Written objections shall identify the specific plan elements that are opposed. A copy of any objections shall be sent by the DCM to the local government submitting the CAMA Land Use Plan.
- (4) The local government may withdraw the submitted CAMA Land Use Plan from CRC consideration at any time before review.

(c) CRC Certification:

- (1) The CRC shall certify the CAMA Land Use Plan following the procedures and conditions specified in this Rule.
- (2) Provided the locally adopted land use plan has been received by the Executive Secretary no earlier than 45 days and no later than 30 days prior to the next CRC meeting, the CRC shall certify, conditionally certify or not certify the plan at that meeting or mutually agreed upon date. If the CRC fails to take action as specified above the plan shall be certified.
- (3) The CRC shall certify plans which:
 - (A) are consistent with the current federally approved North Carolina Coastal Management Program;

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3 (a); Eff. September 1, 1995;

- (B) are consistent with the Rules of the CRC;
- (C) do not violate state or federal law;
- (D) contain policies that address each Management Topic. If a local government cannot meet any CAMA Land Use Plan requirement contained within Paragraphs (d) and (e) of 15A NCAC 07B .0702 the plan shall include a description of the analysis that was undertaken, explain the reason(s) the requirement could not be met, and the local government's alternative plan of action to address the CAMA Land Use Plan requirements. If such description(s) are not included in the plan, it shall not be certified; and
- (E) contain a local resolution of adoption that includes findings which demonstrate that policy statements and the Future Land Use Plan Map (FLUP) have been evaluated, and determine that no internal inconsistencies exist.

(d) Non- Certification: If the plan is not certified the CRC shall within 30 days inform the local government as to how the plan might be changed so certification can be granted. Until the plan is certified, the pre-existing certified CAMA Land Use Plan shall remain in effect.

(e) Conditional Certification: If the plan is conditionally certified, the CRC shall within 30 days provide the local government with condition(s) that shall be met for certification. Until the condition(s) is met on a conditionally certified plan, the pre-existing certified CAMA Land Use Plan shall remain in effect. When the local government complies with all conditions for a conditionally certified plan, as determined by the Executive Secretary of the CRC, plan certification is automatic with no further action needed by the CRC.

History Note: Authority G.S. 113A-107(a); 113A-110; 113-111; 113A-124;

Eff. August 1, 2002;

Amended Eff. April 1, 2008; September 1, 2006.

15A NCAC 07H .0209 COASTAL SHORELINES

(a) Description. The Coastal Shorelines category includes estuarine shorelines and public trust shorelines. Estuarine shorelines AEC are those non-ocean shorelines extending from the normal high water level or normal water level along the estuarine waters, estuaries, sounds, bays, fresh and brackish waters, and public trust areas as set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Environment and Natural Resources [described in Rule .0206(a) of this Section] for a distance of 75 feet landward. For those estuarine shorelines immediately contiguous to waters classified as Outstanding Resource Waters by the Environmental Management Commission, the estuarine shoreline AEC shall extend to 575 feet landward from the normal high water level or

normal water level, unless the Coastal Resources Commission establishes the boundary at a greater or lesser extent following required public hearing(s) within the affected county or counties. Public trust shorelines AEC are those non-ocean shorelines immediately contiguous to public trust areas, as defined in Rule 07H .0207(a) of this Section, located inland of the dividing line between coastal fishing waters and inland fishing waters as set forth in that agreement and extending 30 feet landward of the normal high water level or normal water level.

(b) Significance. Development within coastal shorelines influences the quality of estuarine and ocean life and is subject to the damaging processes of shore front erosion and flooding. The coastal shorelines and wetlands contained within them serve as barriers against flood damage and control erosion between the estuary and the uplands. Coastal shorelines are the intersection of the upland and aquatic elements of the estuarine and ocean system, often integrating influences from both the land and the sea in wetland areas. Some of these wetlands are among the most productive natural environments of North Carolina and they support the functions of and habitat for many valuable commercial and sport fisheries of the coastal area. Many land-based activities influence the quality and productivity of estuarine waters. Some important features of the coastal shoreline include wetlands, flood plains, bluff shorelines, mud and sand flats, forested shorelines and other important habitat areas for fish and wildlife.

(c) Management Objective. The management objective is to ensure that shoreline development is compatible with the dynamic nature of coastal shorelines as well as the values and the management objectives of the estuarine and ocean system. Other objectives are to conserve and manage the important natural features of the estuarine and ocean system so as to safeguard and perpetuate their biological, social, aesthetic, and economic values; to coordinate and establish a management system capable of conserving and utilizing these shorelines so as to maximize their benefits to the estuarine and ocean system and the people of North Carolina.

(d) Use Standards. Acceptable uses shall be those consistent with the management objectives in Paragraph (c) of this Rule. These uses shall be limited to those types of development activities that will not be detrimental to the public trust rights and the biological and physical functions of the estuarine and ocean system. Every effort shall be made by the permit applicant to avoid, mitigate or reduce adverse impacts of development to estuarine and coastal systems through the planning and design of the development project. In every instance, the particular location, use, and design characteristics shall comply with the general use and specific use standards for coastal shorelines, and where applicable, the general use and specific use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section. Development shall be compatible with the following standards:

- (1) All development projects, proposals, and designs shall preserve and not weaken or eliminate natural barriers to erosion, including, but not limited to, peat marshland, resistant clay shorelines, and cypress-gum protective fringe areas adjacent to vulnerable shorelines.

- (2) All development projects, proposals, and designs shall limit the construction of impervious surfaces and areas not allowing natural drainage to only so much as is necessary to adequately service the major purpose or use for which the lot is to be developed. Impervious surfaces shall not exceed 30 percent of the AEC area of the lot, unless the applicant can effectively demonstrate, through innovative design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. Redevelopment of areas exceeding the 30 percent impervious surface limitation may be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent feasible.
- (3) All development projects, proposals, and designs shall comply with the following mandatory standards of the North Carolina Sedimentation Pollution Control Act of 1973:
 - (A) All development projects, proposals, and designs shall provide for a buffer zone along the margin of the estuarine water which is sufficient to confine visible siltation within 25 percent of the buffer zone nearest the land disturbing development.
 - (B) No development project proposal or design shall permit an angle for graded slopes or fill which is greater than an angle which can be retained by vegetative cover or other erosion-control devices or structures.
 - (C) All development projects, proposals, and designs which involve uncovering more than one acre of land shall plant a ground cover sufficient to restrain erosion within 30 working days of completion of the grading; provided that this shall not apply to clearing land for the purpose of forming a reservoir later to be inundated.
- (4) Development shall not have a significant adverse impact on estuarine and ocean resources. Significant adverse impacts shall include but not be limited to development that would directly or indirectly impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water, or cause degradation of shellfish beds.
- (5) Development shall not interfere with existing public rights of access to, or use of, navigable waters or public resources.
- (6) No public facility shall be permitted if such a facility is likely to require public expenditures for maintenance and continued use, unless it can be shown that the public purpose served by the facility outweighs the required public expenditures for construction, maintenance, and continued use. For the purpose of this standard, "public facility" shall mean a project that is paid for in any part by public funds.
- (7) Development shall not cause irreversible damage to valuable, historic architectural or archaeological resources as documented by the local historic commission or the North Carolina Department of Cultural Resources.
- (8) Established common-law and statutory public rights of access to the public trust lands and waters in estuarine areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.
- (9) Within the AECs for shorelines contiguous to waters classified as Outstanding Resource Waters by the EMC, no CAMA permit shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site-specific information, degrade the water quality or outstanding resource values.
- (10) Within the Coastal Shorelines category (estuarine and public trust shoreline AECs), new development shall be located a distance of 30 feet landward of the normal water level or normal high water level, with the exception of the following:
 - (A) Water-dependent uses as described in Rule 07H .0208(a)(1) of this Section;
 - (B) Pile-supported signs (in accordance with local regulations);
 - (C) Post- or pile-supported fences;
 - (D) Elevated, slatted, wooden boardwalks exclusively for pedestrian use and six feet in width or less. The boardwalk may be greater than six feet in width if it is to serve a public use or need;
 - (E) Crab Shedders, if uncovered with elevated trays and no associated impervious surfaces except those necessary to protect the pump;
 - (F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet;
 - (G) Grading, excavation and landscaping with no wetland fill except when

- required by a permitted shoreline stabilization project. Projects shall not increase stormwater runoff to adjacent estuarine and public trust waters;
- (H) Development over existing impervious surfaces, provided that the existing impervious surface is not increased and the applicant designs the project to comply with the intent of the rules to the maximum extent feasible;
- (I) Where application of the buffer requirement would preclude placement of a residential structure with a footprint of 1,200 square feet or less on lots, parcels and tracts platted prior to June 1, 1999, development may be permitted within the buffer as required in Subparagraph (d)(10) of this Rule, providing the following criteria are met:
- (i) Development shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities such as water and sewer; and
 - (ii) The residential structure development shall be located a distance landward of the normal high water or normal water level equal to 20 percent of the greatest depth of the lot. Existing structures that encroach into the applicable buffer area may be replaced or repaired consistent with the criteria set out in Rules .0201 and .0211 in Subchapter 07J of this Chapter; and
- (J) Where application of the buffer requirement set out in 15A NCAC 07H .0209(d)(10) would preclude placement of a residential structure on an undeveloped lot platted prior to June 1, 1999 that are 5,000 square feet or less that does not require an on-site septic system, or on an undeveloped lot that is 7,500 square feet or less that requires an on-site septic system, development may be permitted within the buffer if all the following criteria are met:
- (i) The lot on which the proposed residential structure is to be located, is located between:
 - (I) Two existing waterfront residential structures, both of which are within 100 feet of the center of the lot and at least one of which encroaches into the buffer; or
 - (II) An existing waterfront residential structure that encroaches into the buffer and a road, canal, or other open body of water, both of which are within 100 feet of the center of the lot;
 - (ii) Development of the lot shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities;
 - (iii) Placement of the residential structure and pervious decking may be aligned no further into the buffer than the existing residential structures and existing pervious decking on adjoining lots;
 - (iv) The first one and one-half inches of rainfall from all impervious surfaces on the lot shall be collected and contained on-site in accordance with the design standards for stormwater management for coastal counties as specified in 15A NCAC 02H .1005. The stormwater management system shall be designed by an individual who meets applicable State occupational licensing requirements for the type of

system proposed and approved during the permit application process. If the residential structure encroaches into the buffer, then no other impervious surfaces will be allowed within the buffer; and

- (v) The lots must not be adjacent to waters designated as approved or conditionally approved shellfish waters by the Shellfish Sanitation Section of the Division of Environmental Health of the Department of Environment and Natural Resources.

(e) The buffer requirements in Paragraph (d) of this Rule shall not apply to Coastal Shorelines where the Environmental Management Commission (EMC) has adopted rules that contain buffer standards, or to Coastal Shorelines where the EMC adopts such rules, upon the effective date of those rules.

(f) Specific Use Standards for Outstanding Resource Waters (ORW) Coastal Shorelines.

- (1) Within the AEC for estuarine and public trust shorelines contiguous to waters classified as ORW by the EMC, all development projects, proposals, and designs shall limit the built upon area in the AEC to no more than 25 percent or any lower site specific percentage as adopted by the EMC as necessary to protect the exceptional water quality and outstanding resource values of the ORW, and shall:
 - (A) have no stormwater collection system;
 - (B) provide a buffer zone of at least 30 feet from the normal high water line or normal water line;
 - (C) otherwise be consistent with the use standards set out in Paragraph (d) of this Rule.
- (2) Development (other than single-family residential lots) more than 75 feet from the normal high water line or normal water line but within the AEC as of June 1, 1989 shall be permitted in accordance with rules and standards in effect as of June 1, 1989 if:
 - (A) the development has a CAMA permit application in process, or
 - (B) the development has received preliminary subdivision plat approval or preliminary site plan approval under applicable local ordinances, and in which financial resources have been invested in design or improvement.
- (3) Single-family residential lots that would not be buildable under the low-density standards

defined in Paragraph (g)(1) of this Rule may be developed for single-family residential purposes so long as the development complies with those standards to the maximum extent possible.

- (4) For an ORW nominated subsequent to June 1, 1989, the effective date in Paragraph (g)(2) of this Rule shall be the dates of nomination by the EMC.

(g) Urban Waterfronts.

- (1) Description. Urban Waterfronts are waterfront areas, not adjacent to Outstanding Resource Waters, in the Coastal Shorelines category that lie within the corporate limits of any municipality duly chartered within the 20 coastal counties of the state. In determining whether an area is an urban waterfront, the following criteria shall be met as of the effective date of this Rule:
 - (A) The area lies wholly within the corporate limits of a municipality; and
 - (B) the area has a central business district or similar commercial zoning classification where there is minimal undeveloped land, mixed land uses, and urban level services such as water, sewer, streets, solid waste management, roads, police and fire protection, or in an area with an industrial or similar zoning classification adjacent to a central business district.

- (2) Significance. Urban waterfronts are recognized as having cultural, historical and economic significance for many coastal municipalities. Maritime traditions and longstanding development patterns make these areas suitable for maintaining or promoting dense development along the shore. With proper planning and stormwater management, these areas may continue to preserve local historical and aesthetic values while enhancing the economy.

- (3) Management Objectives. To provide for the continued cultural, historical, aesthetic and economic benefits of urban waterfronts. Activities such as in-fill development, reuse and redevelopment facilitate efficient use of already urbanized areas and reduce development pressure on surrounding areas, in an effort to minimize the adverse cumulative environmental effects on estuarine and ocean systems. While recognizing that opportunities to preserve buffers are limited in highly developed urban areas, they are encouraged where practical.
- (4) Use Standards:

- (A) The buffer requirement pursuant to Subparagraph (d)(10) of this Rule is not required for development within Urban Waterfronts that meets the following standards:
- (i) The development must be consistent with the locally adopted land use plan;
 - (ii) Impervious surfaces shall not exceed 30 percent of the AEC area of the lot. Impervious surfaces may exceed 30 percent if the applicant can effectively demonstrate, through a stormwater management system design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. The stormwater management system shall be designed by an individual who meets any North Carolina occupational licensing requirements for the type of system proposed and approved during the permit application process. Redevelopment of areas exceeding the 30 percent impervious surface limitation may be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent feasible; and
 - (iii) The development shall meet all state stormwater management requirements as required by the NC Environmental Management Commission;
- (B) Non-water dependent uses over estuarine waters, public trust waters and coastal wetlands may be allowed only within Urban Waterfronts as set out below.
- (i) Existing structures over coastal wetlands, estuarine waters or public trust areas may be used for commercial non-water dependent purposes provided that the structure promotes, fosters, enhances or accommodates public benefit. Commercial, non-water dependent uses shall be limited to restaurants and retail services. Residential uses, lodging and new parking areas shall be prohibited.
 - (ii) For the purposes of this Rule, existing enclosed structures may be replaced and or expanded vertically provided that vertical expansion does not exceed the original footprint of the structure, is limited to one additional story over the life of the structure and is consistent with local requirements or limitations.
 - (iii) New structures built for non-water dependent purposes are limited to pile-supported, single-story, unenclosed decks and boardwalks, and shall meet the following criteria:
 - (I) The proposed development shall provide for enhanced public access to the shoreline;
 - (II) Structures may be roofed but shall not be enclosed by partitions, plastic sheeting, screening, netting, lattice or solid walls of any kind and shall be limited to a single story;
 - (III) Structures shall be pile supported and require no filling of coastal wetlands, estuarine waters or public trust areas;
 - (IV) Structures shall not extend more than 20 feet waterward of the normal high water level or normal water level;
 - (V) Structures shall be elevated at least three feet over the wetland substrate as measured from the

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| | bottom of the decking; | | agency prior to initiating any development; |
| (VI) | Structures shall have no more than six feet of any dimension extending over coastal wetlands; | (VIII) | Structures shall be consistent with the US Army Corps of Engineers setbacks along federally authorized waterways; |
| (VII) | Structures shall not interfere with access to any riparian property and shall have a minimum setback of 15 feet between any part of the structure and the adjacent property owners' 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. Should the adjacent property be sold before construction of the structure commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting | (IX) | Structures shall have no significant adverse impacts on fishery resources, water quality or adjacent wetlands and there must be no reasonable alternative that would avoid wetlands. Significant adverse impacts shall include but not be limited to the development that would directly or indirectly impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water level, or cause degradation of shellfish beds; |
| | | (X) | Structures shall not degrade waters classified as SA or High Quality Waters or Outstanding Resource Waters as defined by the NC Environmental Management Commission; |
| | | (XI) | Structures shall not degrade Critical Habitat Areas or Primary Nursery Areas as defined by the NC Marine |

- Fisheries
Commission; and
(XII) Structures shall not
pose a threat to
navigation.

History Note: Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124; Eff. September 1, 1977; Amended Eff. April 1, 2001; August 1, 2000; August 3, 1992; December 1, 1991; May 1, 1990; October 1, 1989; Temporary Amendment Eff. October 15, 2001 (exempt from 270 day requirement-S.L. 2000-142); Temporary Amendment Eff. February 15, 2002 (exempt from 270 day requirement-S.L. 2001-494); Amended Eff. April 1, 2008; August 1, 2002.

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

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

- (1) Ocean Beaches. Ocean beaches are lands consisting of unconsolidated soil materials that extend from the mean low water line landward to a point where either:
 - (A) the growth of vegetation occurs, or
 - (B) a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward.
- (2) Nearshore. The nearshore is the portion of the beach seaward of mean low water that is characterized by dynamic changes both in space and time as a result of storms.
- (3) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression behind that same mound of sand (commonly referred to as the dune trough).
- (4) Frontal Dunes. The frontal dune is deemed to be the first mound of sand located landward of the ocean beach having sufficient vegetation, height, continuity and configuration to offer protective value.
- (5) Vegetation Line. The vegetation line refers to the first line of stable and natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. The vegetation line is generally located at or immediately

oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line based on visual observations of plant composition and density. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes rather than planted individual rooted sets. The vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring. In areas where there is no stable natural vegetation present, this line may be established by interpolation between the nearest adjacent stable natural vegetation by on ground observations or by aerial photographic interpretation.

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

Town of Oak Island and the Town of Ocean Isle Beach, the onset of which occurred in 2000, shall be defined by the general trend of the vegetation line established by the Division of Coastal Management from June 1998 aerial orthophotography.

- (7) Beach Fill. Beach fill refers to the placement of sediment along the oceanfront shoreline. Sediment used solely to establish or strengthen dunes shall not be considered a beach fill project under this Rule. A large-scale beach fill project shall be defined as any volume of sediment greater than 300,000 cubic yards or any storm protection project constructed by the U.S. Army Corps of Engineers. The onset of construction shall be defined as the date sediment placement begins with the exception of projects completed prior to the effective date of this Rule, in which case the award of contract date will be considered the onset of construction.
- (8) Erosion Escarpment. The normal vertical drop in the beach profile caused from high tide or storm tide erosion.
- (9) Measurement Line. The line from which the ocean hazard setback as described in Rule .0306(a) of this Section is measured in the unvegetated beach area of environmental concern as described in Rule .0304(4) of this Section. Procedures for determining the measurement line in areas designated pursuant to Rule .0304(4)(a) of this Section shall be adopted by the Commission for each area where such a line is designated pursuant to the provisions of G.S. 150B. These procedures shall be available from any local permit officer or the Division of Coastal Management. In areas designated pursuant to Rule .0304(4)(b) of this Section, the Division of Coastal Management shall establish a measurement line that approximates the location at which the vegetation line is expected to reestablish by:
 - (A) determining the distance the vegetation line receded at the closest vegetated site to the proposed development site; and
 - (B) locating the line of stable natural vegetation on the most current pre-storm aerial photography of the proposed development site and moving this line landward the distance determined in Subparagraph (g)(1) of this Rule.

The measurement line established pursuant to this process shall in every case be located landward of the average width of the beach as determined from the most current pre-storm aerial photography.

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

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. September 9, 1977;
Amended Eff. December 1, 1992; September 1, 1986; December 1, 1985; February 2, 1981;
Temporary Amendment Eff. October 10, 1996;
Amended Eff. January 1, 1997;
Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;
Temporary Amendment Eff. October 22, 1997;
Amended Eff. April 1, 2008; August 1, 2002; August 1, 1998.

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

(a) Ocean Shoreline Erosion Control Activities:

- (1) Use Standards Applicable to all Erosion Control Activities:
 - (A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.
 - (B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters.
 - (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
 - (D) All permitted oceanfront erosion response projects, other than beach bulldozing and temporary placement of sandbag structures, shall demonstrate sound engineering for their planned purpose.
 - (E) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by natural resource agencies during project review, unless mitigation measures are

- incorporated into project design, as set forth in Rule .0306(i) of this Section.
- (F) Project construction shall be timed to minimize adverse effects on biological activity.
 - (G) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
 - (H) Erosion control structures that would otherwise be prohibited by these standards may be permitted on finding that:
 - (i) the erosion control structure is necessary to protect a bridge which 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 provision (a)(2)(B) of this subchapter;
 - (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.
 - (I) Structures that would otherwise be prohibited by these standards may also be permitted on finding 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 provision (a)(2)(B) of this subchapter; and
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site; and
 - (iii) the structure is limited in extent and scope to that necessary to protect the site; and
 - (iv) any permit for a structure under this Part (I) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the short or long range adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.
 - (J) Structures that would otherwise be prohibited by these standards may also be permitted on finding that:
 - (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits; and
 - (ii) dredging alone is not practicable to maintain safe access to the affected channel; and
 - (iii) the structure is limited in extent and scope to that necessary to maintain the channel; and
 - (iv) the structure shall not adversely impact fisheries or other public trust resources; and
 - (v) any permit for a structure under this Part (J) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the short or long range adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.
 - (K) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a

variance granted by the Commission prior to 1 July 1995 if the Commission finds that:

- (i) the structure will not be enlarged beyond the dimensions set out in the permit;
- (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and
- (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

- (L) 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 7M .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 above mean high water and parallel to the shore.
- (B) Temporary erosion control structures as defined in Part (2)(A) of this Subparagraph shall be used to protect only imminently threatened roads and associated right of ways, and buildings and associated septic systems. A structure shall be considered to be 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 such appurtenances as gazebos, decks or

any amenity that is allowed as an exception to the erosion setback requirement.

- (D) Temporary erosion control structures may be placed seaward 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. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads.
- (F) A temporary erosion control structure may remain in place for up to two years after the date of approval if it is protecting a building with a total floor area of 5000 sq. ft. or less, or, for up to five years if the building has a total floor area of more than 5000 sq. ft. A temporary erosion control structure may remain in place for up to five years if it is protecting a bridge or a road. The property owner shall be responsible for removal of the temporary structure within 30 days of the end of the allowable time period. A temporary sandbag erosion control structure with a base width not exceeding 20 feet and a height not exceeding 6 feet may remain in place for up to five years or until May 2008, whichever is later regardless of the size of the structure if the community in which it is located is actively pursuing a beach nourishment project as of October 1, 2001. For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment project if it has:
 - (i) been issued a CAMA permit, where necessary, approving such project; or
 - (ii) been deemed worthy of further consideration by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment

- of local money, when necessary; or
 - (iii) received a favorable economic evaluation report on a federal project approved prior to 1986. If beach nourishment is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void and existing sandbags are subject to all applicable time limits set forth in Parts (A) through (N) of this Subparagraph. Sandbag structures within nourishment project areas that exceed the 20 foot base width and 6 foot height limitation may be reconstructed to meet the size limitation and be eligible for this time extension: otherwise they shall be removed by May 1, 2000 pursuant to Part (N) of this Subparagraph.
 - (G) Once the temporary erosion control structure is determined to be unnecessary due to relocation or removal of the threatened structure or beach nourishment, it shall be removed by the property owner within 30 days of official notification from the Division.
 - (H) Removal of temporary erosion control structures shall not be required if they are covered by dunes with stable and natural vegetation.
 - (I) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
 - (J) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.
 - (K) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
 - (L) An imminently threatened structure may be protected only once, regardless of ownership. 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) of this Subparagraph shall begin at the time the initial erosion control structure is installed. For the purpose of this Rule:
 - (i) a building and septic system shall be considered as separate structures.
 - (ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Part (F) of this Subparagraph.
- (M) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) of this Subparagraph.
- (N) Existing sandbag structures that have been properly installed prior to May 1, 1995 shall be allowed to remain in place according to the provisions of Parts (F), (G) and (H) of this Subparagraph with the pertinent time periods beginning on May 1, 1995.
- (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and type. Sand to be used for beach nourishment shall be taken only from those areas where the resulting environmental impacts will be minimal.
- (4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:
 - (A) The area on which this activity is being performed shall maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth

moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;

- (B) The activity shall not exceed the lateral bounds of the applicant's property unless he has permission of the adjoining land owner(s);
- (C) Movement of material from seaward of the mean low water line will require a CAMA Major Development and State Dredge and Fill Permit;
- (D) The activity shall not increase erosion on neighboring properties and shall not have an adverse effect on natural or cultural resources;
- (E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.

(b) Dune Establishment and Stabilization. Activities to establish dunes shall be allowed so long as the following conditions are met:

- (1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same general configuration as adjacent natural dunes.
- (2) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.
- (3) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas shall be immediately replanted or temporarily stabilized until planting can be successfully completed.
- (4) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand in the area in which it is to be placed.
- (5) No new dunes shall be created in inlet hazard areas.
- (6) Sand held in storage in any dune, other than the frontal or primary dune, may be redistributed within the AEC provided that it is not placed any farther oceanward than the crest of a primary dune or landward toe of a frontal dune.
- (7) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid unnecessary dune impacts.

(c) Structural Accessways:

- (1) Structural accessways shall be permitted across primary dunes so long as they are designed and constructed in a manner that entails negligible alteration on the primary dune. Structural accessways shall not be

considered threatened structures for the purpose of Paragraph (a) of this Rule.

- (2) An accessway shall be conclusively presumed to entail negligible alteration of a primary dune provided that:

- (A) The accessway is exclusively for pedestrian use;
- (B) The accessway is less than six feet in width;
- (C) 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 frontal dune. Where this is deemed impossible, the structure shall touch the dune only to the extent absolutely necessary. In no case shall an accessway be permitted if it will diminish the dune's capacity as a protective barrier against flooding and erosion; and
- (D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.

- (3) An accessway which 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 shall not be deemed to be prohibited by this Rule, provided all other applicable standards are met.

- (4) In order to avoid weakening the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") shall be provided for any off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than 10 feet in width and shall be constructed of wooden sections fastened together over the length of the affected dune area.

(d) Building Construction Standards. New building construction and any construction identified in .0306(a)(5) and 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 adequately designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100-year storm. Cantilevered decks and walkways shall meet this standard 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-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, 2008; February 1, 2006; August 1, 2002.

15A NCAC 07H .0312 TECHNICAL STANDARDS FOR BEACH FILL PROJECTS

Emplacement of sediment along the oceanfront shoreline shall be referred to in this Rule as beach fill. Beach fill projects including beach nourishment, dredged material disposal, habitat restoration, storm protection, and erosion control may be permitted under the following conditions:

- (1) The applicant shall characterize the recipient beach according to the following methodology:
 - (a) Characterization of the recipient beach shall not be required for the placement of sediment directly from and completely confined to a federally or state maintained navigation channel;
 - (b) Sediment sampling and analysis shall be used to capture the three-dimensional spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system;
 - (c) Shore-perpendicular topographic and bathymetric surveying of the recipient beach shall be conducted to determine the beach profile. Topographic and

bathymetric surveying shall occur along a minimum of five (5) shore-perpendicular transects evenly spaced throughout the entire project area. Each transect shall extend from the frontal dune crest seaward to a depth of 20 feet (6.1 meters) or to the shore-perpendicular distance 2,400 feet (732 meters) seaward of mean low water, whichever is in a more landward position. Transect spacing shall not exceed 5,000 feet (1,524 meters) in the shore-parallel direction. Elevation data for all transects shall be referenced to the North American Vertical Datum on 1988 (NAVD 88) and the North American Datum of 1983 (NAD 83);

- (d) No less than 13 sediment samples shall be taken along each beach profile transect. At least one (1) sample shall be taken from each of the following morphodynamic zones where present: frontal dune, frontal dune toe, mid berm, mean high water (MHW), mid tide (MT), mean low water (MLW), trough, bar crest and at even depth increments from 6 feet (1.8 meters) to 20 feet (6.1 meters) or to a shore-perpendicular distance 2,400 feet (732 meters) seaward of mean low water, whichever is in a more landward position. The total number of samples taken landward of MLW shall equal the total number of samples taken seaward of MLW;
- (e) For the purpose of this Rule, sediment grain size categories shall be defined as "fine" (less than 0.0625 millimeters), "sand" (greater than or equal to 0.0625 millimeters and less than 2 millimeters), "granular" (greater than or equal to 2 millimeters and less than 4.76 millimeters) and "gravel" (greater than or equal to 4.76 millimeters and less than 76 millimeters). Each sediment sample shall report percentage by weight of each of these four (4) grain size categories;
- (f) A composite of the simple arithmetic mean for each of the four (4) grain size categories defined in Sub-Item (1)(e) of this Rule shall be calculated for each transect. A grand mean shall be established for each of the four (4) grain size categories by summing the mean for each transect and dividing by the total number of transects. The

- value that characterizes grain size values for the recipient beach shall be the grand mean of percentage by weight for each grain size category defined in Sub-Item (1)(e) of this Rule;
 - (g) Percentage by weight calcium carbonate shall be calculated from a composite of all sediment samples along each transect defined in Sub-Item (1)(d) of this Rule. The value that characterizes the carbonate content of the recipient beach shall be a grand mean calculated by summing the percentage by weight calcium carbonate for each transect and dividing by the total number of transects. For beaches on which fill activities have taken place prior to the effective date of this Rule, the Division of Coastal Management shall consider visual estimates of shell content as a proxy for carbonate weight percent;
 - (h) The total number of sediments and shell material greater than three (3) inches (76 millimeters) in diameter, observable on the surface of the beach between mean low water (MLW) and the frontal dune toe, shall be calculated for an area of 50,000 square feet (4,645 square meters) within the beach fill project boundaries. This area shall be considered a representative sample of the entire project area and referred to as the "background" value;
 - (i) Beaches that have received sediment prior to the effective date of this Rule shall be characterized in a way that is consistent with Sub-Items (1)(a) through (1)(h) of this Rule and shall use data collected from the recipient beach prior to the addition of beach fill. If such data were not collected or are unavailable, a dataset best reflecting the sediment characteristics of the recipient beach prior to beach fill shall be developed in coordination with the Division of Coastal Management; and
 - (j) All data used to characterize the recipient beach shall be provided in digital and hardcopy format to the Division of Coastal Management upon request.
- (2) The applicant shall characterize the sediment to be placed on the recipient beach according to the following methodology:
 - (a) The characterization of borrow areas including submarine sites, upland sites, and dredged material disposal area shall be designed to capture the three-dimensional spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system or dredged material disposal area;
 - (b) The characterization of borrow sites shall include sediment characterization data provided by the Division of Coastal Management;
 - (c) Seafloor surveys shall measure elevation and provide acoustic imagery of the seafloor. Measurement of seafloor elevation at each submarine borrow site shall provide 100 percent coverage and use survey-grade swath sonar in accordance with current US Army Corps of Engineers standards for navigation and dredging. Seafloor imaging without an elevation component shall also provide 100 percent US Army Corps of Engineers standards for navigation and dredging. Because shallow submarine areas can provide technical challenges and physical limitations for acoustic measurements, alternative elevation surveying methods for water depths less than 10 feet (3 meters) may be evaluated on a case-by-case basis by the Division of Coastal Management and seafloor imaging without an elevation component may not be required for water depths less than 10 feet (3 meters). Elevation data shall be tide- and motion-corrected and referenced to the North American Vertical Datum of 1988 (NAVD 88) and the North American Datum of 1983 (NAD 83). Seafloor imaging data without an elevation component shall be referenced to the NAD 83. All final seafloor survey data shall conform to standards for accuracy, quality control and quality assurance as set forth either by the US Army Corps of Engineers, the National Oceanic and Atmospheric Administration, or the International Hydrographic Organization;
 - (d) Geophysical imaging of the seafloor subsurface shall be used to characterize each borrow site and shall use survey grids with a line

- spacing not to exceed 1,000 feet (305 meters). Survey grids shall incorporate at least one (1) tie point per survey line. Because shallow submarine areas can pose technical challenges and physical limitations for geophysical techniques, subsurface data may not be required in water depths less than 10 feet (3 meters). Subsurface geophysical imaging shall not be required for federally or state maintained navigation channels or upland sites. All final subsurface geophysical data shall use accurate sediment velocity models for time-depth conversions and be referenced to the North American Datum of 1983 (NAD 83);
- (e) Sediment sampling of all borrow sites shall use a vertical sampling device no less than 3 inches (76 millimeters) in diameter. Characterization of each borrow site shall use no less than 10 evenly spaced cores or one (1) core per 23 acres (grid spacing of 1,000 feet or 305 meters), whichever is greater. Characterization of borrow sites completely confined to federally or state maintained navigation channels shall use no less than five (5) evenly spaced vertical samples per channel or sample spacing of no more than 5,000 linear feet (1,524 meters), whichever is greater. In submarine borrow sites other than federally or state maintained navigation channels where water depths are no greater than 10 feet (3 meters) geophysical data of and below the seafloor are not acquired, sediment sample spacing shall be no less than one (1) core per six (6) acres (grid spacing of 500 feet or 152 meters). Vertical sampling shall penetrate to a depth equal to or greater than permitted dredge or excavation depth or expected dredge or excavation depths for pending permit applications. All sediment samples shall be integrated with geophysical data to constrain the surficial, horizontal and vertical extent of lithologic units and determine excavation volumes of compatible sediment as defined in Item (3) of this Rule;
- (f) Grain size distributions shall be reported for all sub-samples taken within each vertical sample for each of the four (4) grain size categories defined in Sub-Item (1)(e) of this Rule. Weighted averages for each core shall be calculated based on the total number of samples and the thickness of each sampled interval. A simple arithmetic mean of the weighted averages for each grain size category shall be calculated to represent the average grain size values for each borrow site. Vertical samples shall be geo-referenced and digitally imaged using scaled, color-calibrated photography;
- (g) Percentage by weight of calcium carbonate shall be calculated from a composite sample of each core. A weighted average of calcium carbonate percentage by weight shall be calculated for each borrow site based on the composite sample thickness of each core. Carbonate analysis shall not be required for sediment confined to federally or state maintained navigation channels; and
- (h) All data used to characterize the borrow site shall be provided in digital and hardcopy format to the Division of Coastal Management upon request.
- (3) The Division of Coastal Management shall determine sediment compatibility according to the following criteria:
- (a) Sediment completely confined to the permitted dredge depth of a federally or state maintained navigation channel shall be considered compatible if the average percentage by weight of fine-grained (less than 0.0625 millimeters) sediment is less than 10 percent;
- (b) Sediment used solely to establish or strengthen dunes shall not be considered a beach fill project under this Rule;
- (c) Sediment used solely to re-establish state-maintained transportation corridors across a barrier island breach in a disaster area as declared by the Governor shall not be considered a beach fill project under this Rule;
- (d) The average percentage by weight of fine-grained sediment (less than 0.0625 millimeters) in each borrow site shall not exceed the average percentage by weight of fine-grained sediment of the recipient beach characterization plus five (5) percent;

- (e) The average percentage by weight of granular sediment (greater than or equal to 2 millimeters and <less than 4.76 millimeters) in a borrow site shall not exceed the average percentage by weight of coarse-sand sediment of the recipient beach characterization plus five (5) percent; foot (4,645 square meter) section of beach.
 - (f) The average percentage by weight of gravel (greater than or equal to 4.76 millimeters) in a borrow site shall not exceed the average percentage by weight of gravel-sized sediment for the recipient beach characterization plus five (5) percent;
 - (g) The average percentage by weight of calcium carbonate in a borrow site shall not exceed the average percentage by weight of calcium carbonate of the recipient beach characterization plus 15 percent; and
 - (h) Techniques that take incompatible sediment within a borrow site or combination of sites and make it compatible with that of the recipient beach characterization shall be evaluated on a case-by-case basis by the Division of Coastal Management.
- (4) Excavation and placement of sediment shall conform to the following criteria:
- (a) Sediment excavation depth from a federally or state maintained navigation channel shall not exceed the permitted dredge depth of the channel;
 - (b) Sediment excavation depths for all borrow sites shall not exceed the maximum depth of recovered core at each coring location;
 - (c) In order to protect threatened and endangered species, and to minimize impacts to fish, shellfish and wildlife resources, no excavation or placement of sediment shall occur within the project area during times designated by the Division of Coastal Management in consultation with other State and Federal agencies, and;
 - (d) Sediment and shell material with a diameter greater than three (3) inches (76 millimeters) shall be considered incompatible if it has been placed on the beach during the beach fill project, is observed between mean low water (MLW) and the frontal dune toe, and is in excess of twice the background value of material of the same size along any 50,000-square-

History Note: Authority G.S. 113A -102(b)(1); 113A-103(5)a; 113A-107(a); 113A-113(b)(5) and (6); 113A-118; 113A-124; 113-229; Eff. February 1, 2007; Amended Eff. April 1, 2008.

15A NCAC 18A .2604 INSPECTIONS AND REINSPECTIONS

(a) Upon entry into a food service establishment, Environmental Health Specialists shall identify themselves and their purpose in visiting that establishment. Environmental Health Specialists shall inquire as to the identity of the responsible person and invite the responsible person to accompany them during the inspection. If no employee is identified as the responsible person, Environmental Health Specialists shall invite an employee to accompany them on the inspection. Following the inspection, the Environmental Health Specialist shall offer to review the results of the inspection with the responsible person.

(b) The grading of restaurants, food stands, drink stands, or meat markets shall be done on an inspection form furnished by the Department to local health departments. The form shall provide for the following information:

- (1) the name and mailing address of the facility;
- (2) the name of person to whom permit is issued;
- (3) the permit and score given;
- (4) standards of construction and operation as listed in Rules .2607 through .2644 of this Section;
- (5) a short explanation for all points deducted;
- (6) the signature of the Environmental Health Specialist;
- (7) the date.

(c) In filling out the inspection form, points may be deducted only once for a single occurrence or condition existing within or outside of the food service establishment. Deductions shall be based on actual violations of the rules of this Section observed during the inspection. The Environmental Health Specialist shall take zero, one-half or a full deduction of points depending upon the severity or the recurring nature of the non-critical violations. Critical violations may be corrected during the inspection and no more than one-half of the total point value shall be deducted when the violation meets the following criteria:

- (1) the critical violation was not documented on the previous inspection; and
- (2) correction of the item is documented on the inspection form.

(d) At the time of inspection, if a critical violation is observed and not corrected, the Environmental Health Specialist shall take one-half or a full deduction of points depending upon the severity or the recurring nature of the violation. The Environmental Health Specialist shall specify a time frame of no more than 10 calendar days to correct the critical violation.

(e) In determining whether items or areas of an establishment are clean for purposes of enforcing the rules set forth in this Section and grading an establishment, the Environmental Health Specialist shall consider, among other things: the age of the accumulated material, the relative percentage of items which are clean and not clean, the cleaning practices of the establishment and the health risk posed by the circumstances.

(f) Upon request of the permit holder or his or her representative a reinspection shall be made.

(g) In the case of establishments that have been closed for failure to comply with the Rules of this Section, a reinspection to consider the issuance or reissuance of a permit shall be made at the earliest convenience of the Environmental Health Specialist.

(h) In the case of establishments which request an inspection for the purpose of raising the alphabetical grade, and which hold unrevoked permits, the Environmental Health Specialist shall make an unannounced inspection after the lapse of a reasonable period of time, not to exceed 15 days, from the date of the request.

History Note: Authority G.S. 130A-248;

Eff. May 5, 1980;

Amended Eff. July 1, 2008; August 1, 2007; October 1, 2004; August 1, 1998; May 1, 1991; March 1, 1988.

15A NCAC 18A .2606 GRADING

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

- (1) Violation of Rule .2616 of this Section related to personnel with infectious or communicable diseases shall equal no more than 3 percent.
- (2) Violation of Rules .2616 or .2632 of this Section related to employee tobacco or beverage use shall equal no more than 3 percent.
- (3) Violation of Rules .2616 or .2625 of this Section related to hands clean and properly washed shall equal no more than 4 percent.
- (4) Violation of Rule .2609 of this Section related to minimal bare hand contact with foods shall equal no more than 3 percent.
- (5) Violation of Rule .2625 of this Section related to lavatory facilities provided shall equal no more than 3 percent.
- (6) Violation of Rules .2608, .2612, .2615, and .2622 of this Section related to food obtained from approved source shall equal no more than 4 percent.

- (7) Violation of Rule .2609 of this Section related to food received at proper temperature shall equal no more than 3 percent.
- (8) Violation of Rules .2608 and .2615 of this Section related to food in good condition, safe, and unadulterated shall equal no more than 3 percent.
- (9) Violation of Rule .2612 of this Section related to shellstock tags retained shall equal no more than 2 percent.
- (10) Violation of Rules .2608, .2610, .2612, .2614, .2615 and .2622 of this Section related to food protected during storage, handling, display, service & transportation shall equal no more than 3 percent.
- (11) Violation of Rules .2617, .2618, .2619, and .2622 of this Section related to food contact surfaces cleaned and sanitized, approved and sanitizers required shall equal no more than 3 percent.
- (12) Violation of Rules .2608 and .2611 of this Section related to handling of returned, previously served, and adulterated food shall equal no more than 2 percent.
- (13) Violation of Rule .2609 of this Section related to cooking time and temperature shall equal no more than 4 percent.
- (14) Violation of Rule .2609 of this Section related to cooling shall equal no more than 4 percent.
- (15) Violation Rule .2609 of this Section related to reheating shall equal no more than 3 percent.
- (16) Violation of Rule .2609 of this Section related to hot holding temperatures shall equal no more than 4 percent.
- (17) Violation of Rules .2609 and .2612 of this Section related to cold holding temperatures shall equal no more than 4 percent.
- (18) Violation of Rule .2609 of this Section related to time as a public health control; and approved procedures available shall equal no more than 3 percent.
- (19) Violation of Rules .2618 and .2633 of this Section related to toxic substances properly identified, stored, and used shall equal no more than 3 percent.
- (20) Violation of Rule .2612 of this Section related to consumer advisory provided shall equal no more than 2 percent.
- (21) Violation of Rules .2618, .2622, and .2623 of this Section related to source in accordance with 15A NCAC 18A.1700; and hot and cold water under pressure and meets temperature requirements shall equal no more than 3 percent.
- (22) Violation of Rule .2609 of this Section related to refrigeration and freezer capacity sufficient shall equal no more than 1 percent.

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| <p>(23) Violation of Rule .2609 of this Section related to cooling methods used shall equal no more than 2 percent.</p> <p>(24) Violation of Rule .2609 of this Section related to thawing methods used shall equal no more than 1 percent.</p> <p>(25) Violation of Rule .2609 of this Section related to thermometers provided and accurate shall equal no more than 1 percent.</p> <p>(26) Violation of Rule .2610 of this Section related to dry food stored properly and labeled accordingly shall equal no more than 1 percent.</p> <p>(27) Violation of Rule .2615 of this Section related to original labeled container for storage of milk & shellfish shall equal no more than 1 percent.</p> <p>(28) Violation of Rule .2633 of this Section related to insects, rodents, and animals not present shall equal no more than 2 percent.</p> <p>(29) Violation of Rule .2616 of this Section related to clean clothes, and hair restraints shall equal no more than 1 percent.</p> <p>(30) Violation of Rules .2617 and .2633 of this Section related to linens, clothes and aprons clean, properly used and stored shall equal no more than 1 percent.</p> <p>(31) Violation of Rule .2609 of this Section related to washing fruits and vegetables shall equal no more than 1 percent.</p> <p>(32) Violation of Rule .2633 of this Section related to not used for domestic purposes shall equal no more than 1 percent.</p> <p>(33) Violation of Rules .2620 and .2622 of this Section related to in-use utensils properly stored shall equal no more than 1 percent.</p> <p>(34) Violation of Rules .2620 and .2622 of this Section related to utensils and equipment properly stored, air-dried, handled shall equal no more than 1 percent.</p> <p>(35) Violation of Rules .2612, .2618, and .2620 of this Section related to single use/single service articles properly stored, handled, used shall equal no more than 1 percent.</p> <p>(36) Violation of Rule .2617 of this Section related to food contact & non-food contact surfaces easily cleanable and in good repair shall equal no more than 1 percent.</p> <p>(37) Violation of Rule .2618 of this Section related to approved warewashing facilities of sufficient size shall equal no more than 1 percent.</p> <p>(38) Violation of Rules .2618, and .2619 of this Section related to warewashing facilities maintained, test strips used shall equal no more than 1 percent.</p> <p>(39) Violation of Rules .2612, .2613, .2617, .2618, .2620, and .2621 of this Section related to food</p> | <p>service equipment and utensils approved shall equal no more than 1 percent.</p> <p>(40) Violation of Rules .2617, and .2618 of this Section related to non-food surfaces clean shall equal no more than 1 percent.</p> <p>(41) Violation of Rule .2626 of this Section related to wastewater discharged into approved, properly operating wastewater treatment and disposal system, other by-products disposed of properly shall equal no more than 3 percent.</p> <p>(42) Violation of Rule .2623 of this Section related to no cross connections shall equal no more than 3 percent.</p> <p>(43) Violation of Rules .2624, and .2625 of this Section related to toilet and lavatory facilities: supplied, properly constructed, clean, good repair, signs provided shall equal no more than 2 percent.</p> <p>(44) Violation of Rule .2626 of this Section related to garbage properly handled and disposed; and containers properly maintained shall equal no more than 1 percent.</p> <p>(45) Violation of Rules .2627, and .2628 of this Section related to floors, walls, and ceilings, properly constructed, clean, and in good repair shall equal no more than 1 percent.</p> <p>(46) Violation of Rules .2630, and .2631 of this Section related to meets illumination requirements; shields and; lighting & ventilation clean and in good repair shall equal no more than 1 percent.</p> <p>(47) Violation of Rules .2632, and .2633 of this Section related to storage space clean, storage above floor, and approved storage for brooms, mops, hoses, and other items shall equal no more than 1 percent.</p> <p>(48) Violation of Rule .2633 of this Section related to doors self-closing where required; and all windows screened shall equal no more than 1 percent.</p> <p>One half of the percent value may be assessed for any rule violation in this Section based on the severity or recurring nature of the violation.</p> <p>(b) The grading of restaurants, food stands, drink stands and meat markets shall be based on the standards of operation and construction as set forth in Rules .2607 through .2644 of this Section. An establishment shall receive a credit of two points on its score for each inspection if a manager or other employee responsible for operation of that establishment and who is employed full time in that particular establishment has successfully completed in the past three years a food service sanitation program approved by the Department. Request for approval of food service sanitation programs shall be submitted in writing to the Division of Environmental Health. The course shall include a minimum of 12 contact hours and provide instruction in the following subject areas:</p> <ol style="list-style-type: none"> (1) basic food safety; (2) requirements for food handling personnel; (3) basic HACCP; |
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- (4) purchasing and receiving food;
- (5) food storage;
- (6) food preparation and service;
- (7) facilities and equipment;
- (8) cleaning and sanitizing;
- (9) pest management program; and
- (10) regulatory agencies and inspections.

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

(c) The posted numerical grade shall not be changed as a result of a food sampling inspection.

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

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

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

*History Note: Authority G.S. 130A-248;
Eff. May 5, 1980;*

*Amended Eff. July 1, 2008; January 1, 2006; April 1, 2005;
October 1, 2004; August 1, 2004; August 1, 1998; July 1, 1993;
March 1, 1988.*

15A NCAC 18A .3606 GRADING

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

- (1) Violation of Rule .3608 of this Section regarding site factors for camp facilities and activities and actual or potential health hazards shall be assessed a value of one point.
- (2) Violation of Rule .3609 of this Section regarding water supply, hot and cold water heating facilities in food preparation, utensil and hand washing, and areas required for cleaning shall be assessed a value of three points.

- (3) Violation of Rule .3609(d) of this Section regarding cross-connections shall be assessed a value of three points.
- (4) Violation of Rule .3610 of this Section regarding wastewater disposal shall be assessed a value of four points.
- (5) Violation of Rule .3611 of this Section regarding solid waste storage and cleaning facilities shall be assessed a value of two points.
- (6) Violation of Rule .3612 of this Section regarding swimming pools shall be assessed a value of one point.
- (7) Violation of Rule .3613(1) and (2) of this Section regarding camp building floors walls and ceilings construction, cleanliness and repair shall be assessed a value of one point.
- (8) Violation of Rule .3613(3) of this Section regarding lighting and ventilation adequacy and repair shall be assessed a value of one point.
- (9) Violation of Rule .3614(a) and (c) of this Section regarding sleeping quarters and lodging arrangement, cleanliness and repair shall be assessed a value of two points.
- (10) Violation of Rule .3614(b) of this Section regarding effective vermin exclusion shall be assessed a value of two points.
- (11) Violation of Rule .3614(d) of this Section regarding storage and handling of clean and dirty linen and clothing shall be assessed a value of one point.
- (12) Violation of Rule .3615(a), (b), (c) and (d) of this Section regarding approval, accessibility, adequateness, cleanliness and repair of lavatories, bathing and toilet facilities shall be assessed a value of two points.
- (13) Violation of Rule .3615(e) of this Section regarding cleanliness, repair of laundry facilities and handling of clean and soiled laundry shall be assessed a value of one point.
- (14) Violation of Rule .3616 of this Section regarding approval and cleanliness of drinking water facilities shall be assessed a value of two points.
- (15) Violation of Rule .3617(a) and (d) of this Section regarding storage and handling of pesticides and potentially hazardous materials shall be assessed a value of two points.
- (16) Violation of Rule .3617(b) and (e) of this Section regarding cleanliness of the premises and repair of protective enclosures shall be assessed a value of one point.
- (17) Violation of Rule .3617(c) of this Section regarding location of animal stables and approved manure storage and removal shall be assessed a value of two points.
- (18) Violation of Rule .3618(a) of this Section regarding size and construction of food service

- facilities and dining halls shall be assessed a value of one point.
- (19) Violation of Rule .3618(b) of this Section regarding catering of camp food service shall be assessed a value of two points.
- (20) Violation of Rule .3619 of this Section regarding field sanitation standards and procedures shall be assessed a value of three points.
- (21) Violation of Rule .3620(a) and (c) of this Section regarding food service employee clothing, hair restraints and use of tobacco shall be assessed a value of one point.
- (22) Violation of Rule .3620(b) or (e) of this Section regarding employee handwashing shall be assessed a value of four points.
- (23) Violation of Rule .3620(d) of this Section regarding exclusion of persons with a communicable or infectious disease that can be transmitted by food shall be assessed a value of three points.
- (24) Violation of Rule .3621 of this Section regarding food source, wholesomeness, handling, service and transportation shall be assessed a value of four points.
- (25) Violation of Rule .3622(a) through (f) of this Section regarding food protection during service and storage shall be assessed a value of three points.
- (26) Violation of Rule .3622(g) of this Section regarding storage of dry foods shall be assessed a value of one point.
- (27) Violation of Rule .3623 of this Section regarding milk and milk products shall be assessed a value of two points.
- (28) Violation of Rule .3624 of this Section regarding the source, storage and handling of ice shall be assessed a value of two points.
- (29) Violation of Rule .3625 of this Section regarding shellfish and crustacea meat shall be assessed a value of two points.
- (30) Violation of Rule .3626(a), (b), and (c) of this Section regarding refrigeration and thawing of foods shall be assessed a value of two points.
- (31) Violation of Rule .3626(d) of this Section regarding the protection of food from cross contamination by use of sanitized or gloved hands or utensils, sanitized surfaces and washing of produce shall be assessed a value of three points.
- (32) Violation of Rule 3626(e) through (m) of this Section regarding time and temperature requirements of foods during storage, preparation, cooking, display, service, and transportation shall be assessed a value of four points.
- (33) Violation of Rule 3626(n) of this Section regarding food thermometers shall be assessed a value of two points.
- (34) Violation of Rule .3627 of this Section regarding re-service of foods shall be assessed a value of two points.
- (35) Violation of Rule .3628 of this Section regarding equipment and utensil construction, repair and cleanliness shall be assessed a value of three points.
- (36) Violation of Rule .3629(a) through (c), (e), (f), (k) and (n) of this Section regarding washing, rinsing and sanitizing of utensils and equipment shall be assessed a value of four points.
- (37) Violation of Rule .3629(d), (g) through (j), (l), and (o) of this Section regarding approved dishwashing facilities and methods shall be assessed a value of three points.
- (38) Violation of Rule 3629(m) regarding the hot water heating facilities for food service needs shall be assessed a value of three points.
- (39) Violation of Rule .3630 in this Section regarding storage and handling of utensils and equipment shall be assessed a value of two points.
- (40) Violation of Rule .3631 of this Section regarding food service area storage spaces shall be assessed a value of one point.
- (41) Violation of Rule .3632 of this Section regarding food service area lighting shall be assessed a value of one point.
- (42) Violation of Rule .3633 of this Section regarding food service ventilation shall be assessed a value of one point.
- (43) Violation of Rule .3634 of this Section regarding approved and properly located hand washing lavatory facilities in food service areas shall be assessed a value of three points.
- (44) Violation of Rule .3635 of this Section regarding the food service area toilet facilities shall be assessed a value of one point.
- (45) Violation of Rule .3636 of this Section regarding food service area floor construction, cleanliness and repair shall be assessed a value of one point.
- (46) Violation of Rule .3637 of this Section regarding food service area wall and ceiling construction, cleanliness and repair shall be assessed a value of one point.
- (47) Violation of Rule .3638(a) through (c) of this Section regarding use of trip kitchens, residential style educational kitchens and domestic kitchens shall be assessed a value of one point.
- (48) Violation of Rule .3638(d) through (g) of this Section regarding toxic materials, food service laundry, mop and broom storage shall be assessed a value of one point.
- (49) Violation of Rule .3638(h) and (i) of this Section regarding live animals and pest control

measures in food service areas shall be assessed a value of two points.

(b) The grading of resident camps shall be based on the standards of operation and construction as set forth in Rules .3608 through .3638 of this Section.

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

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

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

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

Eff. October 1, 2007;

Amended Eff. July 1, 2008.

15A NCAC 18A .3801 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Certified laboratory" means the North Carolina State Laboratory of Public Health certified by the US Environmental Protection Agency or a laboratory certified by the Certification Section of the North Carolina Public Health Laboratory pursuant to 10A NCAC 42D to perform tests to determine the presence of coliform bacteria or the chemical constituents to be tested.
- (2) "Coliform bacteria" or "total coliform" means aerobic or facultative anaerobic, gram-negative, non-spore forming, rod shaped bacteria included in the genera *Klebsiella*, *Enterobacter*, *Escherichia* and *Citrobacter*. Coliform bacteria originate in soil, vegetation or the intestinal tract of warm-blooded animals. The presence of coliform bacteria in a water sample indicate the presence of a pathway for bacteria and possibly pathogens to gain entry into a water supply system.
- (3) "Department of Environment and Natural Resources" or "Department" means the North Carolina Department of Environment and Natural Resources. The term also means the authorized representative of the Department.
- (4) "Fecal coliform bacteria" or "fecal coliform" means a sub-group of coliform bacteria that are present in the intestinal tract and feces of warm-blooded animals. The presence of fecal coliform bacteria in a water sample indicate fecal contamination and the presumed presence of pathogens in the water supply

(5) "Local Health Department" means the county or district health department or its successor.

(6) "Private drinking water well" means a private drinking water well as defined in G.S. 87-85(10a).

History Note: Authority G.S. 87-97;

Eff. July 1, 2008.

15A NCAC 18A .3803 SAMPLE ANALYSIS

(a) Water samples shall be analyzed in the North Carolina State Laboratory of Public Health or a certified laboratory.

(b) A water sample shall be tested for total coliform bacteria and if present, further analyzed for the presence of fecal coliform bacteria or *E. coli*.

(c) A water sample shall be analyzed for Arsenic, Barium, Cadmium, Chromium, Copper, Fluoride, Lead, Iron, Magnesium, Manganese, Mercury, Nitrate, Nitrite, Selenium, Silver, Sodium, Zinc and pH.

(d) Testing protocols shall follow EPA methods as published in the applicable sections of the most recent 40 CFR 141 and 143, Federal Register updates and the North Carolina Drinking Water Laboratory Certification rules of Section 10A NCAC 42D. Copies may be obtained from the National Archives and Records Administration through their website at <http://www.gpoaccess.gov/cfr/index.html>.

History Note: Authority G.S. 87-97;

Eff. July 1, 2008.

15A NCAC 18A .3804 REPORTING

(a) Laboratories shall report results of chemical and bacteriological water sample analyses for each new private drinking water well to:

- (1) the local health department;
- (2) the DENR Private Water Supply Protection Branch; and
- (3) the DHHS Division of Public Health, Epidemiology Section, Occupational and Environmental Epidemiology Branch.

(b) Certified laboratories reporting results of sampling required by the rules of this Section shall use the reporting format developed by the North Carolina State Laboratory of Public Health for reporting private well-water sample results and shall include well identification information and a guide for interpreting sample results.

(c) For the purposes of any notices required pursuant to the rules of this Section, notice shall be mailed to "Division of Environmental Health, On-Site Water Protection Section, North Carolina Department of Environment and Natural Resources," 1642 Mail Service Center, Raleigh, NC 27699-1642.

History Note: Authority G.S. 87-97;

Eff. July 1, 2008.

15A NCAC 18A .3805 DATA REVIEW

(a) For all private well sampling data where chemical or biological contaminants are detected exceeding the Maximum Contaminant Levels (MCLs) for public drinking water, as

defined in 15A NCAC 18C, the North Carolina Occupational and Environmental Epidemiology Branch (OEEB) shall provide the following to the local health department from which the sample was collected:

- (1) information about the contaminant(s) exceeding public drinking water MCLs;
- (2) recommendations for water use limitations or treatment options to reduce exposure to a level comparable to meeting public drinking water MCLs; and
- (3) recommendations about the need for and the frequency of repeat sampling.

(b) The local health department shall provide information to the well owner or respective lease holder concerning chemical and biological contaminants exceeding public drinking water MCLs and the need for exposure limitation, remediation, or future sampling.

*History Note: Authority G.S. 87-97;
Eff. July 1, 2008.*

15A NCAC 27 .0110 TYPES OF CERTIFICATION

(a) The following types of certification for well contractors are established:

- (1) Level A certification: this level of certification includes all well contractor activities;
- (2) Level B certification: this level of certification includes all Level C well contractor activities; hydrofracturing; and all well construction and all well drilling techniques except air and mud rotary drilling;
- (3) Level C certification: this level of certification includes all Level D well contractor activities and grouting; well abandonment; rehabilitating a well due to biofouling; well development (eg.-pumping or surging); packer and liner installations; and extending casing above land surface; and
- (4) Level D certification: this level of certification includes breaking a well seal and disinfection.

(b) Each certified well contractor shall be assigned a permanent certification number and shall be issued a certificate with that certification number. Certification numbers are not transferable and shall not be used by another well contractor.

(c) The certification number shall be carried by the well contractor on a card issued by the Commission at all times when performing well contractor activities.

*History Note: Authority G.S. 87-98.2; 87-98.4; 87-98.12; 143B-301.11;
Temporary Adoption Eff. December 15, 1998;
Eff. August 1, 2000;
Amended Eff. May 1, 2008.*

15A NCAC 27 .0201 SCHEDULE OF CERTIFICATION FEES

The following fees are required for well contractor certification applications, renewals and temporary certifications:

- (1) Annual Fee: This fee shall accompany each new application for certification or renewal of certification. The annual fees are as follows:
Level A: two hundred dollars (\$200.00)
Level B: one hundred fifty dollars (\$150.00)
Level C: one hundred twenty five dollars (\$125.00)
Level D: one hundred dollars (\$100.00)
- (2) Examination Fee: A fee of fifty dollars (\$50.00) shall accompany each request for examination. Where an applicant requests an examination to be administered at a time other than a regularly scheduled examination, the fee shall be one hundred dollars (\$100.00).
- (3) Temporary Certification: A fee of one hundred dollars (\$100.00) shall accompany each application for temporary certification.

*History Note: Authority G.S. 87-98.5; 87-98.9;
Temporary Adoption Eff. December 15, 1998;
Eff. August 1, 2000;
Amended Eff. May 1, 2008.*

15A NCAC 27 .0301 APPLICATION FOR CERTIFICATION

(a) The Commission shall accept applications for certification as a well contractor from any person who is at least 18 years of age and whose application meets all the following conditions:

- (1) Each application shall be submitted on forms provided by the Commission, which are designed for requesting certification as a well contractor by way of examination, reexamination, or temporary certification and must be completed and submitted with an appropriate fee to the office of the chairman of the Commission.
- (2) Each application has been determined to be complete by the Commission. Incomplete applications and applications not accompanied by an appropriate fee and attachments shall not be processed and shall be returned to the applicant.
- (3) Each application shall contain proof of experience as provided in Paragraph (f) of this Rule.
- (4) Except for those applications where renewal of certification is requested, each application shall include a request for the well contractor examination.

(b) Applicants who have intentionally supplied false information must wait 12 months before resubmitting an application for certification.

(c) The Commission shall not schedule an applicant to take the required examination until his application has been reviewed and the applicant has met all other conditions for certification. The

applicant must pass the examination within three consecutive attempts or within a one year period of time after application submittal, whichever expires first, or a new application shall be required. An applicant who has failed the examination after three consecutive attempts shall be required to obtain eight PDH units prior to resubmittal of an application for certification.

(d) A certification shall not be issued until the applicant passes the required examination, passes the field observation for Level A if required, and all applicable fees have been received.

(e) Proof of full-time experience meeting the requirements specified in 15A NCAC 27 .0701 in well contractor activities shall be demonstrated by providing one of the following:

- (1) An affidavit on a form provided by the Commission from at least one currently North Carolina certified well contractor, who has not committed any violation of 15A NCAC 02C or 15A NCAC 27 within the past two years, attesting that the applicant has been working in well contractor activities under the supervision of a certified well contractor of the desired level or higher for a minimum of the required quantity of experience; or
- (2) Any other proof of working in well contractor activities for a minimum of the required quantity of experience. At a minimum, the proof submitted shall demonstrate that the applicant has received a level of instruction in well construction techniques and practices found in publications used as the basis for a course of study or apprenticeship program, as shown in Paragraph (g) of this Rule. Proof submitted must also show that the applicant has a working knowledge of the 15A NCAC 02C .0100 (Well Construction Rules), the 15A NCAC 27 (Well Contractor Certification Rules) and applicable statutes.

(g) The WCCC shall approve a course of study or apprenticeship program whose educational materials or program meets technical aspects of well construction. The course of study or apprenticeship program shall provide the level of instruction in well construction techniques and practices found in publications recognized by the National Ground Water Association (NGWA) or other publications determined by the Commission to be equivalent to those recognized by NGWA.

History Note: Authority G.S. 87-98.5; 87-98.6; 87-98.9; 143B-301.11; S.L. 2001-440;

Temporary Adoption Eff. December 15, 1998;

Eff. August 1, 2000;

Codifier determined that findings did not meet criteria for temporary rule on July 12, 2002;

Temporary Adoption Eff. September 12, 2002;

Amended Eff. May 1, 2008; August 1, 2004.

15A NCAC 27 .0401 SUBMITTAL AND PROCESSING OF APPLICATIONS FOR EXAMINATIONS

(a) An application for examination shall be received by the Commission, at least 30 days prior to the date upon which the

examination is scheduled to be administered and the appropriate fee must accompany the application.

(b) Upon receipt of the application by the Commission, the application shall be reviewed by the designee(s) of the Commission for eligibility to take the examination. The designee(s) shall notify the applicant of his or her eligibility in writing and advise of the date, time and place of the examination.

(c) If the designee(s) of the Commission determines that the applicant is not eligible for examination, the designee(s) shall notify the applicant in writing and advise of the reason for ineligibility. In the event that the applicant is determined to be ineligible for the examination, the annual fee and examination fee shall be refunded. Upon learning of ineligibility, the applicant may request a meeting with the Commission, relative to the ineligibility, if the applicant so desires. Such requests must be in writing and shall be submitted no later than 30 days following the date of receipt of the letter of notification. The Commission shall review the request and grant or deny it no later than the second Commission meeting following receipt of the request. The applicant shall be given written notice of the decision to grant or deny the request and the reasons therefore.

(d) Any applicant who knowingly supplies false information on the application for certification for the purpose of gaining eligibility, shall be ineligible for the examination and must forfeit the examination fee.

History Note: Authority G.S. 87-98.6; 87-98.9; 143B-301.11; Temporary Adoption Eff. December 15, 1998;

Eff. August 1, 2000;

Amended Eff. May 1, 2008.

15A NCAC 27 .0410 WELL CONTRACTOR EXAMINATIONS

(a) Well contractor examinations shall be comprehensive examinations that are standardized statewide. The examinations shall be designed to determine the applicant's knowledge of applicable rules; the ability to perform well contractor activities; and the ability to supervise, direct, manage and control the contracting activities of the well contracting business.

(b) The Commission shall administer a written examination orally or on an individual basis upon submission by the applicant of a request form provided by the commission wherein the applicant states that he or she does not read, does not read well, or has a medical condition necessitating oral examination.

(c) If any other request for an accommodation in taking the examination is based on a medical condition, the applicant shall submit, in addition to a request form, supporting documentation from a physician.

(d) A grade on the examination of 70 percent or more shall be passing. Results of the examination shall be reported as either passing or failing.

(e) The eligible applicant shall show photo identification for admittance to the exam.

History Note: Authority G.S. 87-98.6; 143B-301.11;

Temporary Adoption Eff. December 15, 1998;

Eff. August 1, 2000;

Amended Eff. May 1, 2008.

**15A NCAC 27 .0501 CERTIFICATION BY
LEGISLATIVE EXEMPTION**

History Note: Authority G.S. 87-98.7; 143B-301.11; S.L. 1997, c. 358, s. 9;
Temporary Adoption Eff. December 15, 1998;
Eff. August 1, 2000;
Repealed Eff. May 1, 2008.

**15A NCAC 27 .0702 REQUIREMENTS OF
CERTIFICATION**

- (a) Level A- To obtain Level A certification, an applicant must:
 - (1) Submit proof of 18 months of well contractor experience as specified in 15A NCAC 27 .0301;
 - (2) Satisfactorily complete the well contractor certification field observation; and
 - (3) Pass the Level A exam.
- (b) Level B- To obtain Level B certification, an applicant must:
 - (1) Submit proof of 12 months experience in related well contractor activities as specified in 15A NCAC 27 .0301; and
 - (2) Pass the Level B exam.
- (c) Level C- To obtain Level C certification, an applicant must:
 - (1) Submit proof of 6 months experience in related well contractor activities as specified in 15A NCAC 27 .0301; and
 - (2) Pass the Level C exam.
- (d) Level D- To obtain Level D certification, an applicant must:
 - (1) Submit proof of 6 months experience in related well contractor activities as specified in 15A NCAC 27 .0301; and
 - (2) Pass the Level D exam.
- (e) If a certificate issued under this Section is not renewed under G.S. 87-98.7, or is revoked, the well contractor must apply for certification by examination in order to be recertified.

History Note: Authority G.S. 87-98.5; 143B-301.11;
Eff. May 1, 2008.

**15A NCAC 27 .0703 LEVEL D CERTIFICATION
WITHOUT EXAMINATION**

- (a) Unless an applicant is found to have engaged in an act that would constitute grounds for disciplinary action, the Commission shall issue a Level D certificate without examination to any person who since April 1, 2003 has been actively and continuously engaged in well contractor activities including breaking the well seal, and has been continuously registered as a pump installer with the Department or employed by a firm or corporation that has been continuously registered with the Department.
- (b) To obtain certification under this Section, a person must submit an application for Level D to the Commission and pay the annual fee prior to June 30, 2008.
- (c) A well contractor who is certified under this Section must continuously maintain the certification in good standing in order to remain certified.
- (d) If a certificate issued under this Section is not renewed under G.S. 87-98.7, is suspended, or is revoked, the well

contractor must apply for certification by examination in order to be recertified.

History Note: Authority G.S. 87-98.5; 143B-301.11;
Eff. May 1, 2008.

**15A NCAC 27 .0704 CERTIFICATION WITHOUT
EXAMINATION IN 2008**

The Commission shall issue a certificate to the level appropriate to the applicants' experience without additional examination to any person currently certified as a well contractor as of June 30, 2008 upon receipt of their annual renewal request with fee and required PDH for that renewal.

History Note: Authority G.S. 87-98.5; 143B-301.11;
Eff. May 1, 2008.

15A NCAC 27 .0830 RECORDKEEPING

The responsibility of maintaining records to be used to support credits claimed is the responsibility of the contractor. Records required include, but are not limited to:

- (1) A log showing the type of activity claimed, sponsoring organization, location, duration, instructors or speakers name and PDH credits earned; and
- (2) Attendance verification records in the form of completion certificates or other documents supporting evidence of attendance.

History Note: Authority G.S. 87-98.12; 143B-301.11;
Temporary Adoption Eff. December 15, 1998;
Eff. August 1, 2000;
Amended Eff. May 1, 2008.

**15A NCAC 27 .0901 REVOCATION,
RELINQUISHMENT OR EXPIRATION OF
CERTIFICATION**

- (a) The Commission may issue a letter of reprimand, suspend, or revoke the certification of a well contractor in accordance with the provisions of G.S. 87-98.8, G.S. 150B-3, and G.S. Chapter 150B, Article 3A.
- (b) The disciplinary committee is delegated the authority to propose disciplinary action of suspension or revocation of the certification of a well contractor. The Chairman shall convene a disciplinary committee to review the circumstances of any proposed revocation or suspension. Written notice of the meeting of the committee shall be served on the well contractor personally or by certified mail at least 15 days prior to the meeting, and shall contain the following: the date, time, and place of the meeting; the disciplinary action proposed; notice of the reasons for the proposed disciplinary action; and an invitation to attend the committee meeting and present facts and reasons why the disciplinary action should not be taken. If served by mail, the notice shall be addressed to the well contractor at his or her last business address on file with the Commission.
- (c) The disciplinary committee shall consist of the following:

- (1) The Chairman;

- (2) Two members of the Commission, appointed by the Chairman:
 - (A) a member who is a certified well contractor; and
 - (B) a member who is an environmental health professional actively engaged in well inspection and permitting.

(d) The disciplinary committee members shall consider the facts and reasons in support of or against the proposed disciplinary action, and within 10 working days of the conclusion of the committee meeting, the committee shall make and issue a decision. The disciplinary committee shall report the decision to the Commission at its next scheduled meeting.

(e) The well contractor shall be informed of the disciplinary committee's decision in writing, which shall contain the following: the disciplinary action, if any, which is proposed to be taken; notice of the reasons for the action; and a statement giving the well contractor the opportunity for a hearing under G.S. Chapter 150B, Article 3A.

(f) The notice shall be served on the well contractor personally or by certified mail. If notice cannot be given personally or by certified mail, then notice shall be given in the manner provided in G.S. 1A-1, Rule 4(j1). The notice shall also state that, to obtain a hearing, the well contractor must file a written request for a hearing with the Commission at its business address no later than the 30th day following the date of receipt of the disciplinary committee's written decision. A hearing request which is mailed satisfies the 30 days' filing requirement if the hearing request is postmarked no later than the 30th day following the date of the receipt of the written decision.

(g) The disciplinary action shall become the final action of the Commission if the well contractor does not request a hearing in 30 days.

(h) Certification may be relinquished by submission to the Certification Commission of the original certificate and a notarized statement of relinquishment.

(i) The Certification Commission or its delegate(s) may issue a written reprimand to a well contractor in accordance with G.S. 87-98.8. The reprimand shall be delivered personally or by certified mail. A copy of the letter shall be kept in the well contractor's file and a copy must be sent to the well contractor's employer of record. The well contractor shall be given the opportunity to put a letter of rebuttal into the file when a reprimand has been issued.

History Note: Authority G.S. 87-98.8; 143B-300; 150B-3; 150B-38; 150B-40; 150B-43; Temporary Adoption Eff. December 15, 1998; Eff. August 1, 2000; Amended Eff. May 1, 2008.

TITLE 17 – DEPARTMENT OF REVENUE

17 NCAC 04C .0504 OUT-OF-STATE SALES: NONRESIDENT REGISTRATION

(a) Sales of non-tax-paid cigarettes by a licensed North Carolina distributor to nonresident retail or wholesale dealers must be

delivered by the North Carolina distributor to the business location of the nonresident in another state to qualify as an out-of-state sale exempted from the North Carolina cigarette excise tax. A nonresident dealer may accept delivery of cigarette purchases in this State provided:

- (1) The nonresident dealer has no place of business in North Carolina;
- (2) The nonresident dealer is purchasing cigarettes for the purpose of resale outside of North Carolina;
- (3) The nonresident dealer is registered with the Documents and Payments Processing Division, Tobacco Tax Unit of this department as a nonresident retail and wholesale cigarette dealer; and
- (4) The nonresident dealer's cigarette purchases must have affixed thereto by the North Carolina distributor the taxpaid cigarette indicia of the state of the nonresident purchaser where required.

(b) Registration of the nonresident retail or wholesale cigarette dealer is not required where the North Carolina resident cigarette distributor delivers cigarette purchases of such nonresident dealer to the nonresident business location outside this state.

(c) Cigarettes sold and delivered outside this state must have affixed thereto by the North Carolina cigarette distributor selling same the taxpaid cigarette indicia of the state of the nonresident purchaser where required.

(d) The North Carolina cigarette distributor shall be held responsible for the accuracy and authenticity of the nonresident retail or wholesale dealer's registration number. Verification may be made at any time by inquiry to the Documents and Payments Processing Division, Tobacco Tax Unit of this department. It is also the distributor's responsibility to keep and retain in his records the executed certificate, Form B-A-52, for examination and audit and the distributor shall be required to identify each invoice or bill of sale made to such nonresident retail or wholesale cigarette dealer by noting thereon his registration number.

History Note: Authority G.S. 105-113.9; 105-262; Eff. September 20, 1977; Amended Eff. April 1, 2008; January 1, 1994; October 30, 1981.

17 NCAC 04E .0601 BOND REQUIRED OF WHOLESALER AND IMPORTER

Proper bond shall be posted by resident wholesalers and importers subject to the beer or wine excise levies. This bond may vary yearly, based upon a review by the Documents and Payments Processing Division, Alcoholic Beverage and Amusements Tax Unit of the wholesaler's or importer's tax payments during the best 3 months of the previous 12 month period, and shall not be less than five thousand dollars (\$5,000), nor more than fifty thousand dollars (\$50,000). Bond requirements are as follows:

- (1) where the combined tax due for any three months of the previous 12 months exceeds forty thousand dollars (\$40,000), the amount

of the bond shall be fifty thousand dollars (\$50,000);

- (2) where the combined tax due for any three months of the previous 12 months exceeds twenty-five thousand dollars (\$25,000) but does not exceed forty thousand dollars (\$40,000), the amount of the bond shall be forty thousand dollars (\$40,000);
- (3) where the combined tax due for any three months of the previous 12 months exceeds twelve thousand five hundred dollars (\$12,500) but does not exceed twenty-five thousand dollars (\$25,000), the amount of the bond shall be twenty-five thousand dollars (\$25,000);
- (4) where the combined tax due for any three months of the previous 12 months exceeds five thousand dollars (\$5,000) but does not exceed twelve thousand five hundred dollars (\$12,500), the amount of the bond shall be twelve thousand five hundred dollars (\$12,500);
- (5) where the combined tax due for any three months of the previous 12 months does not exceed five thousand dollars (\$5,000), the amount of the bond shall be five thousand dollars (\$5,000).

History Note: Authority G.S. 105-113.86; 105-262;
Eff. February 1, 1976;
Amended Eff. April 1, 2008; January 1, 1994; April 1, 1986.

17 NCAC 05D .0114 REMEDY

(a) If the Secretary finds that the statutory formula does not fairly represent the corporation's business activity in North Carolina, he may require:

- (1) separate accounting;
- (2) the exclusion of any one or more of the factors;
- (3) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this State, or
- (4) the employment of any other method to effectuate and equitable allocation and apportionment of the taxpayer's income.

(b) In the case of a request for relief from the statutory apportionment formula for both franchise tax and income tax, the Secretary shall make separate determinations as to whether an alternative apportionment method is warranted.

History Note: Authority G.S. 105-122(c1)(2); 105-130.4(t1); 105-262;
Eff. April 1, 2008.

CHAPTER 32 – MEDICAL BOARD

21 NCAC 32B .0204 CERTIFIED PHOTOGRAPH AND CERTIFICATION OF GRADUATION

History Note: Authority G.S. 90-9;
Eff. February 1, 1976;
Amended Eff. November 1, 1985;
Recodified from 21 NCAC 32B .0104 Eff. April 5, 1989;
Amended Eff. July 1, 2004; May 1, 1989;
Repealed Eff. April 1, 2008.

21 NCAC 32B .0206 APPLICATION FORMS 21 NCAC 32B .0207 LETTERS OF RECOMMENDATION

History Note: Authority G.S. 90-9; 90-11;
Eff. February 1, 1976;
Amended Eff. November 1, 1985;
Recodified from 21 NCAC 32B .0106 Eff. April 5, 1989;
Recodified from 21 NCAC 32B .0107 Eff. April 5, 1989;
Amended Eff. July 1, 2004; May 1, 1989;
Repealed Eff. April 1, 2008.

21 NCAC 32B .0209 FEE

History Note: Authority G.S. 90-15;
Eff. February 1, 1976;
Amended Eff. December 1, 1984;
Temporary Amendment Eff. January 31, 1985 for a period of 120 days to expire on May 30, 1985;
Amended Eff. March 1, 1989; December 1, 1985; May 1, 1985;
Recodified From 21 NCAC 32B .0109 Eff. April 5, 1989;
Amended Eff. July 1, 2007; July 1, 2004; April 1, 1994; July 1, 1993; May 1, 1989;
Repealed Eff. April 1, 2008.

21 NCAC 32B .0210 REQUIRED APPLICATION MATERIALS

History Note: Authority G.S. 90-9;
Eff. February 1, 1976;
Temporary Amendment Eff. January 31, 1985 for a period of 120 days to expire on May 30, 1985;
Amended Eff. September 1, 1987; November 1, 1985; May 1, 1985;
Recodified from 21 NCAC 32B .0110 Eff. April 5, 1989;
Amended Eff. July 1, 2004; July 1, 1993; May 1, 1989;
Repealed Eff. April 1, 2008.

21 NCAC 32B .0211 PASSING SCORE

History Note: Authority G.S. 90-9; 90-12; 90-15;
Eff. February 1, 1976;
Amended Eff. January 1, 1983; November 8, 1977;
Temporary Amendment Eff. January 31, 1985 for a period of 120 days to expire on May 30, 1985;
Amended Eff. November 1, 1985; May 1, 1985;

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

*Recodified from 21 NCAC 32B .0111 Eff. April 5, 1989;
Amended Eff. September 1, 2007; July 1, 2004; July 1, 1993;
May 1, 1989;
Repealed Eff. April 1, 2008.*

21 NCAC 32B .0212 EXAMINATION TIMES

*History Note: Authority G.S. 90-5;
Eff. February 1, 1976;
Recodified from 21 NCAC 32B .0112 Eff. April 5, 1989;
Amended Eff. July 1, 2004; April 1, 1994; July 1, 1993; May 1, 1985;
Repealed Eff. April 1, 2008.*

**21 NCAC 32B .0213 GRADUATE MEDICAL
EDUCATION AND TRAINING FOR LICENSURE**

*History Note: Authority G.S. 90-9;
Eff. November 8, 1977;
Amended Eff. November 1, 1985;
Recodified from 21 NCAC 32B .0113 Eff. April 5, 1989;
Amended Eff. July 1, 2007; July 1, 2004; July 1, 1993; May 1, 1989;
Repealed Eff. April 1, 2008.*

21 NCAC 32B .0214 PERSONAL INTERVIEW

*History Note: Authority G.S. 90-6;
Eff. May 1, 1985;
Temporary Rule Eff. January 31, 1985 for a period of 120 days
to expire on May 30, 1985;
Amended Eff. November 1, 1985;
Recodified from 21 NCAC 32B .0114 Eff. April 5, 1989;
Amended Eff. May 1, 1989;
Temporary Amendment Eff. September 5, 1989 for a period of
180 days to expire on March 3, 1990;
ARRC Objection Lodged October 19, 1989;
Temporary Amendment Eff. February 16, 1990, for a period of
135 days to expire on July 1, 1990;
ARRC Objection Lodged March 15, 1990;
Amended Eff. July 1, 2004; September 1, 1995; July 1, 1993;
May 1, 1990;
Repealed Eff. April 1, 2008.*

21 NCAC 32M .0107 CONTINUING EDUCATION (CE)

In order to maintain nurse practitioner approval to practice, the nurse practitioner shall earn 50 contact hours of continuing education each year beginning with the first renewal after initial approval to practice has been granted. Continuing Education hours are those hours for which approval has been granted by the American Nurses Credentialing Center (ANCC) or Accreditation Council on Continuing Medical Education (ACCME), other national credentialing bodies or practice relevant courses in an institution of higher learning. Documentation shall be maintained by the nurse practitioner and made available upon request to either Board.

History Note: Authority G.S. 90-6; 90-18(14); 90-171.23(14);

*Eff. January 1, 1996;
Amended Eff. August 1, 2004; May 1, 1999;
Recodified from Rule .0106 Eff. August 1, 2004;
Amended Eff. April 1, 2008.*

21 NCAC 32W .0101 DEFINITIONS

The following definitions apply to this Subchapter:

- (1) "Anesthesiologist" means a physician who has successfully completed an anesthesiology training program approved by the Accreditation Committee on Graduate Medical Education or the American Osteopathic Association or who is credentialed to practice anesthesiology by a Hospital or an Ambulatory Surgical Facility.
- (2) "Anesthesiologist Assistant" means a person licensed by and registered with the Board pursuant to Rule .0102 of this Subchapter to provide anesthesia services under the supervision of a Supervising Anesthesiologist.
- (3) "Anesthesiologist Assistant License" means the authority for the Anesthesiologist Assistant to provide anesthesia services under North Carolina law.
- (4) "Board" means the North Carolina Medical Board.
- (5) "Certifying Examination" means the Certifying Examination for Anesthesiologist Assistants administered by the National Commission for Certification of Anesthesiologist Assistants or its successor organization.
- (6) "Primary Supervising Anesthesiologist" means the Supervising Anesthesiologist who accepts primary responsibility for the Anesthesiologist Assistant's professional activities, including developing and implementing the Anesthesiologist Assistant's Supervision Agreement and assuring the Board that the Anesthesiologist Assistant is qualified by education and training to perform all anesthesia services delegated to the Anesthesiologist Assistant.
- (7) "Renewal" means paying the annual renewal fee and providing the information requested by the Board as outlined in Rule .0104 of this Subchapter.
- (8) "Supervising Anesthesiologist" means an anesthesiologist who is responsible for supervising the Anesthesiologist Assistant in providing anesthesia services. A Supervising Anesthesiologist must be licensed by the Board, actively engaged in clinical practice as an anesthesiologist, and immediately available onsite to provide assistance to the Anesthesiologist Assistant.
- (9) "Supervision" means overseeing the activities of, and accepting responsibility for, the

anesthesia services rendered by an Anesthesiologist Assistant.

- (10) "Supervision Agreement" means a written agreement between the Primary Supervising Anesthesiologist(s) and an Anesthesiologist Assistant that describes the anesthesia services delegated to the Anesthesiologist Assistant consistent with the Anesthesiologist Assistant's qualifications, training, skill, competence, and the rules in this Subchapter.

History Note: Authority G.S. 90-9.4; 90-18(c)(20); 90-18.5; Temporary Adoption Eff. January 28, 2008; Eff. April 1, 2008.

21 NCAC 32W .0102 QUALIFICATIONS FOR LICENSE

(a) Except as otherwise provided in this Subchapter, an individual shall obtain a license from the Board before practicing as an Anesthesiologist Assistant. The Board may grant an Anesthesiologist Assistant license to an applicant who has met all the following criteria:

- (1) submits a completed license application on forms provided by the Board;
- (2) pays the license fee established by Rule .0113 in this Subchapter;
- (3) submits to the Board proof of completion of a training program for Anesthesiologist Assistants accredited by the Commission on Accreditation of Allied Health Education Programs or its preceding or successor organization;
- (4) submits to the Board proof of current certification by the National Commission for Certification of Anesthesiologist Assistants (NCCAA) or its successor organization, including passage of the Certifying Examination for Anesthesiologist Assistants administered by the NCCAA within 12 months after completing training;
- (5) certifies that he or she is mentally and physically able to safely practice as an Anesthesiologist Assistant;
- (6) has no license, certificate, or registration as an Anesthesiologist Assistant currently under discipline, revocation, suspension, or probation;
- (7) has good moral character; and
- (8) submits to the Board any other information the Board deems necessary to determine if the applicant meets the requirements of the rules in this Subchapter.

(b) The Board may deny any application for licensure for any enumerated reason contained in G.S. 90-14 or for any violation of the Rules of this Subchapter.

(c) An applicant may be required to appear, in person, for an interview with the Board, or its representatives upon completion of all credentials.

History Note: Authority G.S. 90-9.4; 90-18(c)(20); 90-18.5; Temporary Adoption Eff. January 28, 2008; Eff. April 1, 2008.

21 NCAC 32W .0103 INACTIVE LICENSE STATUS

(a) By notifying the Board in writing, any Anesthesiologist Assistant may elect to place his or her license on inactive status. An Anesthesiologist Assistant with an inactive license shall not practice as an Anesthesiologist Assistant. Any Anesthesiologist Assistant who engages in practice while his or her license is on inactive status shall be considered to be practicing without a license.

(b) An Anesthesiologist Assistant who has been inactive for less than six months may request reactivation of his or her license. He or she shall pay the current annual fee as defined in Rule .0113 of this Subchapter, provide documentation to the Board verifying current certification by the National Commission for Certification of Anesthesiologist Assistants and shall complete the Board's registration form.

(c) An Anesthesiologist Assistant who has been inactive for more than six months shall submit an application for a license and pay the application fee as defined in Rule .0113 of this Subchapter. The Board may deny any such application for any enumerated reason contained in G.S. 90-14 or for any violation of the Rules of this Subchapter.

History Note: Authority G.S. 90-18(c)(20); 90-18.5; Temporary Adoption Eff. January 28, 2008; Eff. April 1, 2008.

21 NCAC 32W .0104 ANNUAL RENEWAL

(a) Each person who holds a license as an Anesthesiologist Assistant in this state shall renew his or her Anesthesiologist Assistant License each year no later than 30 days after his or her birthday by:

- (1) completing the Board's registration form;
- (2) verifying that he or she is currently certified by the National Commission for Certification of Anesthesiologist Assistants (NCCAA), or its successor organization; and
- (3) submitting the annual renewal fee under Rule .0113 of this Subchapter.

(b) The license of any Anesthesiologist Assistant who does not renew for a period of 30 days after certified notice of the failure to the licensee's last known address of record shall automatically become inactive.

History Note: Authority G.S. 90-9.4; 90-13.1(f); 90-18(c)(20); 90-18.5; Temporary Adoption January 28, 2008; Eff. April 1, 2008.

21 NCAC 32W .0105 CONTINUING MEDICAL EDUCATION

(a) In order to maintain Anesthesiologist Assistant licensure, each Anesthesiologist Assistant shall complete at least 40 hours of continuing medical education (CME) as required by the National Commission for Certification of Anesthesiologist Assistants (NCCAA), or its successor organization, for every

two year period. CME documentation must be available for inspection by the Board or an agent of the Board upon request.

(b) Each licensed Anesthesiologist Assistant shall comply with all recertification requirements of the NCCAA, or its successor organization, including registration of CME credit and successful completion of the Examination for Continued Demonstration of Qualifications of Anesthesiologist Assistants administered by the NCCAA.

*History Note: Authority G.S. 90-18(c)(20); 90-18.5;
Temporary Adoption Eff. January 28, 2008;
Eff. April 1, 2008.*

21 NCAC 32W .0106 STUDENT ANESTHESIOLOGIST ASSISTANTS

Student Anesthesiologist Assistants may provide anesthesia services under the supervision of a Supervising Anesthesiologist, provided a qualified anesthesia provider is present at all times while the patient is under anesthesia care.

*History Note: Authority G.S. 90-18.5;
Temporary Adoption Eff. January 28, 2008;
Eff. April 1, 2008.*

21 NCAC 32W .0107 EXEMPTION FROM LICENSE

Nothing in this Subchapter shall be construed to require licensure for:

- (1) a Student Anesthesiologist Assistant enrolled in an Anesthesiologist Assistant training program accredited by the Commission on Accreditation of Allied Health Education Programs or its successor organization; or
- (2) agents or employees of physicians who perform delegated tasks in the office of a physician consistent with G.S. 90-18(c)(13) and who are not rendering services as Anesthesiologist Assistants or identifying themselves as Anesthesiologist Assistants.

*History Note: Authority G.S. 90-18.5;
Temporary Adoption Eff. January 28, 2008;
Eff. April 1, 2008.*

21 NCAC 32W .0108 SCOPE OF PRACTICE

(a) Anesthesiologist Assistants may provide anesthesia services only under the supervision of a Supervising Anesthesiologist and consistent with the Anesthesiologist Assistant's Supervision Agreement as defined by Rule .0101(10) of this Subchapter and the rules of this Subchapter. No Anesthesiologist Assistant shall practice where a Supervising Anesthesiologist is not immediately available onsite to provide assistance to the Anesthesiologist Assistant.

(b) Anesthesiologist Assistants may perform those duties and responsibilities that are delegated by their Supervising Anesthesiologist(s). The duties and responsibilities delegated to an Anesthesiologist Assistant shall be consistent with the Anesthesiologist Assistant's Supervision Agreement and the rules of this Subchapter.

*History Note: Authority G.S. 90-18(c)(20); 90-18.5;
Temporary Adoption Eff. January 28, 2008;
Eff. April 1, 2008.*

21 NCAC 32W .0109 SUPERVISION OF ANESTHESIOLOGIST ASSISTANTS

(a) The Primary Supervising Anesthesiologist shall ensure that the Anesthesiologist Assistant's scope of practice is identified; that delegation of anesthesia services is appropriate to the level of competence of the Anesthesiologist Assistant; that the relationship of, and access to, each Supervising Anesthesiologist is defined; and that a process for evaluation of the Anesthesiologist Assistant's performance is established.

(b) The Supervision Agreement defined in Rule .0101(10) of this Subchapter must be signed by the Primary Supervising Anesthesiologist(s) and Anesthesiologist Assistant and shall be made available upon request by the Board or its agents. A list of all Supervising Anesthesiologists, signed and dated by each Supervising Anesthesiologist, the Primary Supervising Anesthesiologist, and the Anesthesiologist Assistant, must be retained as part of the Supervision Agreement and shall be made available upon request by the Board or its representatives.

(c) A Supervising Anesthesiologist, who need not be the Primary Supervising Anesthesiologist, shall supervise the Anesthesiologist Assistant and ensure that all anesthesia services delegated to the Anesthesiologist Assistant are consistent with the Anesthesiologist Assistant's Supervision Agreement.

(d) A Supervising Anesthesiologist may supervise no more than two Anesthesiologist Assistants or Student Anesthesiologist Assistants at one time. The limitation on the number of Anesthesiologist Assistants or Student Anesthesiologist Assistants that an anesthesiologist may supervise does not affect the number of other qualified anesthesia providers an anesthesiologist may concurrently supervise.

(e) Entries by an Anesthesiologist Assistant into patient charts of inpatients (hospital, long term care institutions) must comply with the rules and regulations of the institution.

*History Note: Authority G.S. 90-18(c)(20); 90-18.5;
Temporary Adoption Eff. January 28, 2008;
Eff. April 1, 2008.*

21 NCAC 32W .0110 LIMITATIONS ON PRACTICE

An Anesthesiologist Assistant shall not:

- (1) perform a task which has not been listed and delegated in the Supervision Agreement;
- (2) prescribe drugs, medications, or devices of any kind; however, this Rule does not preclude the Anesthesiologist Assistant from implementing or administering a treatment or pharmaceutical regimen prescribed by the Supervising Anesthesiologist.

*History Note: Authority G.S. 90-18.5;
Temporary Adoption Eff. January 28, 2008;
Eff. April 1, 2008.*

21 NCAC 32W .0111 TITLE AND PRACTICE PROTECTION

Any person who is licensed to provide anesthesia services as an Anesthesiologist Assistant under this Subchapter may use the title "Anesthesiologist Assistant," "AA," "Anesthesiologist Assistant-Certified," or "AA-C." An Anesthesiologist Assistant who is doctorally prepared shall not use the title "Doctor," or the appellation "Dr.," on a name badge or other form of identification when practicing in a clinical setting.

History Note: Authority G.S. 90-18(c)(20); 90-18.5; 90-640; Temporary Adoption Eff. January 28, 2008; Eff. April 1, 2008.

21 NCAC 32W .0112 IDENTIFICATION REQUIREMENTS

An Anesthesiologist Assistant licensed under this Subchapter shall keep proof of current licensure and registration available for inspection at the primary place of practice and shall, when engaged in professional activities, wear a name tag identifying the licensee as an "Anesthesiologist Assistant," which may be abbreviated as "AA," or as an "Anesthesiologist Assistant – Certified," which may be abbreviated as "AA-C."

History Note: Authority G.S. 90-18.5; 90-640; Temporary Adoption Eff. January 28, 2008; Eff. April 1, 2008.

21 NCAC 32W .0113 FEES

The Board requires the following fees:

- (1) Anesthesiologist Assistant License Application Fee—one hundred fifty dollars (\$150.00).
- (2) Annual Renewal Fee—one hundred fifty dollars (\$150.00), except that an Anesthesiologist Assistant who registers not later than 30 days after his or her birthday shall pay an annual registration fee of one hundred twenty-five dollars (\$125.00).

History Note: Authority G.S. 90-13.1(f); 90-18.5; Temporary Adoption Eff. January 28, 2008; Eff. April 1, 2008.

21 NCAC 32W .0114 VIOLATIONS

The Board pursuant to G.S. 90-14 may place on probation with or without conditions, impose limitations and conditions on, publicly reprimand, assess monetary redress, issue public letters of concern, mandate free medical services, require satisfactory completion of treatment programs or remedial or educational training, fine, deny, annul, suspend, or revoke the license, or other authority to function as an anesthesiologist assistant in this State. The following acts constitute violations:

- (1) Failure to function in accordance with the rules of this Subchapter or with any provision of G.S. 90-14;
- (2) Representing oneself as a physician; or
- (3) Allowing one's certification with the National Commission for Certification of

Anesthesiologist Assistants (NCCAA) or its successor organization to lapse at any time.

History Note: Authority G.S. 90-18.5; Temporary Adoption Eff. January 28, 2008; Eff. April 1, 2008.

21 NCAC 32W .0115 PRACTICE DURING A DISASTER

An Anesthesiologist Assistant licensed in this State or in any other state may practice as an Anesthesiologist Assistant under the supervision of an Anesthesiologist licensed to practice medicine in North Carolina during a disaster within a county in which a state of disaster has been declared or counties contiguous to a county in which a state of disaster has been declared (in accordance with G.S. 166A-6). A team of Anesthesiologist(s) and Anesthesiologist Assistant(s) practicing pursuant to this Rule shall not be required to maintain on-site documentation describing supervisory arrangements as otherwise required in Rules .0109 of this Subchapter. The Board may waive other regulatory requirements regarding licensure and practice to facilitate an Anesthesiologist Assistant practicing during a disaster consistent with G.S. 90-12.2.

History Note: Authority G.S. 90-12.2; 166A-6; Temporary Adoption Eff. January 28, 2008; Eff. April 1, 2008.

CHAPTER 36 – BOARD OF NURSING**21 NCAC 36 .0221 LICENSE REQUIRED**

(a) No cap, pin, uniform, insignia or title shall be used to represent to the public, that an unlicensed person is a registered nurse or a licensed practical nurse as defined in G.S. 90-171.43.
(b) The repetitive performance of a common task or procedure which does not require the professional judgment of a registered nurse or licensed practical nurse shall not be considered the practice of nursing for which a license is required. Tasks that may be delegated to the Nurse Aide I and Nurse Aide II shall be established by the Board of Nursing pursuant to 21 NCAC 36 .0403. Tasks may be delegated to an unlicensed person which:

- (1) frequently recur in the daily care of a client or group of clients;
- (2) are performed according to an established sequence of steps;
- (3) involve little or no modification from one client-care situation to another;
- (4) may be performed with a predictable outcome; and
- (5) do not inherently involve ongoing assessment, interpretation, or decision-making which cannot be logically separated from the procedure(s) itself.

Client-care services which do not meet all of these criteria shall be performed by a licensed nurse

(c) The registered nurse or licensed practical nurse shall not delegate the professional judgment required to implement any

treatment or pharmaceutical regimen which is likely to produce side effects, toxic effects, allergic reactions, or other unusual effects; or which may rapidly endanger a client's life or well-being and which is prescribed by a person authorized by state law to prescribe such a regimen. The nurse who assumes responsibility for implementing a treatment or pharmaceutical regimen shall be accountable for:

- (1) recognizing side effects;
- (2) recognizing toxic effects;
- (3) recognizing allergic reactions;
- (4) recognizing immediate desired effects;
- (5) recognizing unusual and unexpected effects;
- (6) recognizing changes in client's condition that contraindicates continued administration of the pharmaceutical or treatment regimen;
- (7) anticipating those effects which may rapidly endanger a client's life or well-being; and
- (8) making judgments and decisions concerning actions to take in the event such effects occur.

(d) When health care needs of an individual are incidental to the personal care needs of the individual, nurses shall not be accountable for care performed by clients themselves, their families or significant others, or by caretakers who provide personal care to the individual.

(e) Pharmacists may administer drugs in accordance with 21 NCAC 46 .2507.

History Note: Authority G.S. 90-85.3; 90-171.23(b); 90-171.43; 90-171.83;

Eff. May 1, 1982;

Amended Eff. July 1, 2004; April 1, 2002; December 1, 2000; July 1, 2000; January 1, 1996; February 1, 1994; April 1, 1989; January 1, 1984;

Emergency Amendment Eff. September 10, 2004;

Amended Eff. April 1, 2008; December 1, 2004.

21 NCAC 36 .0228 CLINICAL NURSE SPECIALIST PRACTICE

(a) A registered nurse who meets the qualifications as outlined in Paragraph (b) of this Rule may be recognized by the Board as a clinical nurse specialist, and perform nursing activities at an advanced skill level as outlined in Paragraph (c) of this Rule.

(b) In order to be recognized as a Clinical Nurse Specialist, the Board of Nursing shall require an applicant to meet the following qualifications:

- (1) has an unrestricted license to practice as a registered nurse in North Carolina or a party state;
- (2) has completed a master's or higher degree program consisting of a minimum of 500 hours of clinical experience in the clinical nursing specialty as defined in 21 NCAC 36 .0120(41) and consistent with G.S. 90-171.21(d)(4). For a dual track graduate program, if less than 500 hours per track, a requirement that there must be documentation of any crossover which would justify less than an additional 500 hours for the second track; and

- (3) has current certification in the clinical nursing specialty from a national credentialing body approved by the Board of Nursing, as defined in Paragraph (e) of this Rule and 21 NCAC 36 .0120(26).

(c) Clinical nurse specialist scope of practice incorporates the basic components of nursing practice as defined in Rule .0224 of this Section as well as the understanding and application of nursing principles at an advanced level in his/her area of clinical nursing specialization which includes:

- (1) assessing clients' health status, synthesizing and analyzing multiple sources of data, and identifying alternative possibilities as to the nature of a healthcare problem;
- (2) diagnosing and managing clients' acute and chronic health problems within a nursing framework;
- (3) formulating strategies to promote wellness and prevent illness;
- (4) prescribing and implementing therapeutic and corrective nursing measures;
- (5) planning for situations beyond the clinical nurse specialist's expertise, and consulting with or referring clients to other health care providers as appropriate;
- (6) promoting and practicing in collegial and collaborative relationships with clients, families, other health care professionals and individuals whose decisions influence the health of individual clients, families and communities;
- (7) initiating, establishing and utilizing measures to evaluate health care outcomes and modify nursing practice decisions;
- (8) assuming leadership for the application of research findings for the improvement of health care outcomes; and
- (9) integrating education, consultation, management, leadership and research into the advanced clinical nursing specialist role.

(d) The registered nurse who seeks recognition by the Board as a clinical nurse specialist shall:

- (1) complete the appropriate application, which shall include:
 - (A) evidence of the appropriate masters, post-master's certificate or doctoral degree as set out in Subparagraph (b)(2) of this Rule; and
 - (B) evidence of current certification in a clinical nursing specialty from a national credentialing body as set out in Subparagraph (b)(3) of this Rule;
- (2) submit a processing fee of twenty-five dollars (\$25.00) to cover the costs of duplicating and distributing the application materials; and
- (3) submit evidence of initial certification and re-certification at the time such occurs in order to maintain Board of Nursing recognition

consistent with Paragraphs (b) and (e) of this Rule.

(e) The Board of Nursing may approve those national credentialing bodies offering certification and recertification in a clinical nursing specialty which have established the following minimum requirements:

- (1) an unencumbered registered nurse license; and
- (2) certification as a clinical nurse specialist is limited to masters, post-master's certificate or doctoral prepared applicant effective January 1, 2010.

History Note: Authority G.S. 90-171.20(4); 90-171.20(7); 90-171.21(d)(4); 90-171.23(b); 90-171.27(b); 90-171.42(b);

Eff. April 1, 1996;

Amended Eff. April 1, 2008; January 1, 2007; November 1, 2005; August 1, 2005; April 1, 2003.

21 NCAC 36 .0233 OUT OF STATE STUDENTS

(a) Unlicensed nursing students enrolled in out of state nursing education programs who are requesting utilization of North Carolina clinical facilities shall be allowed such experiences following approval by the Board of Nursing. Upon receiving such a request, the chief nursing administrator of a North Carolina clinical facility shall provide the Board with the following at least 30 days prior to the start of the requested experience:

- (1) Letter of request for approval to provide the clinical offering including proposed starting and completion dates;
- (2) Documentation that the nursing program is currently approved by the Board of Nursing in the state in which the parent institution is located;
- (3) Name, qualifications and evidence of current RN licensure of the faculty responsible for coordinating the student's experience; and
- (4) Name, qualifications and evidence of current license to practice as an RN in NC for preceptor or on-site faculty.

(b) Copies of the following shall be distributed by the chief nursing administrator of the clinical facility to all students and faculty involved in the clinical experiences:

- (1) North Carolina Nursing Practice Act;
- (2) North Carolina administrative rules and related interpretations regarding the role of the RN, LPN, and unlicensed nursing personnel; and
- (3) North Carolina Board of Nursing developed Suggestions for Utilization of Preceptors.

(c) Failure to continue in compliance with the requirements in Paragraph (a) of this Rule shall result in the immediate withdrawal of the Board's approval of the clinical offering and student status consistent with G.S. 90-171.43(2).

History Note: Authority G.S. 90-85.3; 90-171.23(b) 90-171.43; 90-171.83;

Eff. April 1, 2008.

21 NCAC 36 .0317 ADMINISTRATION

(a) The controlling institution of a nursing program shall provide those human, physical, technical and financial resources and services essential to support program processes, outcomes and maintain compliance with Section .0300 of this Chapter.

(b) A full time registered nurse qualified pursuant to Paragraph (c) of this Rule shall have the authority for the direction of the nursing program. This authority must encompass responsibilities for maintaining compliance with rules and other legal requirements in all areas of the program. The program director shall have non-teaching time sufficient to allow for program organization, administration, continuous review, planning and development.

(c) Program director qualifications in a program preparing for nurse licensure shall include:

- (1) faculty qualifications as specified in 21 NCAC 36 .0318;
- (2) two years of full-time experience as a faculty member in an approved nursing program. Beginning January 1, 2015 this experience is as a faculty with a master's degree;
- (3) for a program preparing individuals for registered nurse practice, a master's degree; and
- (4) for a program leading to a baccalaureate, a doctoral degree in nursing; or a master's degree in nursing and a doctoral degree in a health or education field.

(d) The nursing education program shall implement, for quality improvement, a comprehensive program evaluation which shall include:

- (1) students' achievement of program outcomes;
- (2) evidence of program resources including fiscal, physical, human, clinical and technical learning resources; student support services, and the availability of clinical sites and the viability of those sites adequate to meet the objectives of the program;
- (3) measures of program outcomes for graduates;
- (4) evidence that accurate program information for consumers is readily available;
- (5) evidence that the head of the academic institution and the administration support program outcomes;
- (6) evidence that program director and program faculty meet board qualifications and are sufficient in number to achieve program outcomes;
- (7) evidence that the academic institution assures security of student information;
- (8) evidence that collected evaluative data is utilized in implementing quality improvement activities; and
- (9) evidence of student participation in program planning, implementation, evaluation and continuous improvement.

(e) The controlling institution and the nursing education program shall communicate information describing the nursing education program that is accurate, complete, consistent across

mediums and accessible by the public. At least the following must be made known to all applicants and students:

- (1) admission policies and practices;
- (2) policy on advanced placement, transfer of credits;
- (3) number of credits required for completion of the program;
- (4) tuition, fees and other program costs;
- (5) policies and procedures for withdrawal, including refund of tuition/fees;
- (6) grievance procedure;
- (7) criteria for successful progression in the program including graduation requirements; and
- (8) policies for clinical performance.

History Note: Authority G.S. 90-171.23(b)(8); 90-171.38; Eff. June 1, 1992; Amended Eff. April 1, 2008; March 1, 2006.

21 NCAC 36 .0406 MEDICATION AIDE TRAINING REQUIREMENTS

(a) Faculty for the medication aide training program are required to:

- (1) have a current, unrestricted license to practice as a registered nurse in North Carolina;
- (2) have had at least two years of practice experience as a registered nurse that includes medication administration;
- (3) have successfully completed an instructor training program approved by the Board according to these Rules; and
- (4) maintain Board of Nursing certification as a medication aide instructor.

(b) The medication aide instructor certification shall be renewed every two years provided the following requirements are met:

- (1) the individual has taught at least one medication aide training program within the preceding two years; and
- (2) the individual successfully completes a review program approved by the Board according to these Rules.

(c) The applicant for a medication aide training program approved by the Board must have a high school diploma or GED.

History Note: Authority G.S. 90-171.56; 131E-114.2; 131E-270; Eff. September 1, 2006; Amended Eff. April 1, 2008.

21 NCAC 36 .0807 CONTINUING EDUCATION (CE)

In order to maintain nurse practitioner approval to practice, the nurse practitioner shall earn 50 contact hours of continuing education each year beginning with the first renewal after initial approval to practice has been granted. Continuing Education hours are those hours for which approval has been granted by the American Nurses Credentialing Center (ANCC) or Accreditation Council on Continuing Medical Education (ACCME), other

national credentialing bodies or practice relevant courses in an institution of higher learning. Documentation shall be maintained by the nurse practitioner and made available upon request to either Board.

History Note: Authority G.S. 90-6; 90-18(14); 90-171.23(b)(14); 90-171.42; Recodified from 21 NCAC 36 .0227(f) Eff. August 1, 2004; Amended Eff. April 1, 2008; August 1, 2004.

CHAPTER 61 - NORTH CAROLINA RESPIRATORY CARE BOARD

21 NCAC 61 .0201 APPLICATION PROCESS

(a) Each applicant for a respiratory care practitioner license shall complete an application form provided by the Board. This form shall be submitted to the Board and shall be accompanied by:

- (1) one head and shoulders passport type photograph of the applicant of acceptable quality for identification, two inches by two inches in size;
- (2) the fee established in Rule .0204 of this Chapter;
- (3) evidence, verified by oath, that the applicant has successfully completed the minimum requirements of a respiratory care education program approved by the Commission for Accreditation of Allied Health Educational Programs or the Canadian Council on Accreditation for Respiratory Therapy Education;
- (4) evidence, verified by oath, that the applicant has successfully completed the requirements for certification in Basic Life Support which includes Adult, Child and Infant Cardiopulmonary Resuscitation (CPR), the Heimlich Maneuver, and Automatic External Defibrillator (AED) use by the American Heart Association, the American Red Cross or the American Safety and Health Institute; and
- (5) evidence from the National Board for Respiratory Care (NBRC) of successful completion of the Certified Respiratory Therapist (CRT) examination administered by it.

(b) Applicants for initial licensure in North Carolina, who have been inactive and who have not practiced respiratory care for a period of time greater than one year, must complete the following requirements in addition to the requirements in Paragraph (a) of this Rule:

- (1) for applicants who have not practiced respiratory care for a period of time greater than one year, but less than five years, the applicant must provide evidence of twelve hours of continuing education, that meet the

- requirements of 21 NCAC 61 .0401, for each full year of inactivity; and
- (2) for applicants who have not practiced respiratory care for a period of time greater than five years, the applicant must provide evidence of either:
- (A) sixty hours of continuing education that meet the requirements of 21 NCAC 61 .0401 and evidence from the National Board for Respiratory Care (NBRC) of successful completion of the Certified Respiratory Therapist (CRT) examination taken as an assessment examination within the 90-day period

- before issuance of a license, or
- (B) completion of a Respiratory Care refresher course offered through a Respiratory Care Education program accredited by the Commission for the Accreditation of Allied Health Educational Programs.

History Note: Authority G.S. 90-652 (1),(2) and (13); 90-653(a);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002;
Amended Eff. April 1, 2008; November 1, 2004; March 1, 2004.

This Section contains information for the meeting of the Rules Review Commission on Thursday May 15, 2008, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS**Appointed by Senate**

Jim R. Funderburke - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Keith O. Gregory
Jerry R. Crisp
Jeffrey P. Gray

Appointed by House

Jennie J. Hayman - Chairman
John B. Lewis
Clarence E. Horton, Jr.
Daniel F. McLawhorn

RULES REVIEW COMMISSION MEETING DATES

May 15, 2008 June 19, 2008
July 17, 2008 August 21, 2008

AGENDA**RULES REVIEW COMMISSION**

Thursday, May 15, 2008, 10:00 A.M.

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-Up Matters:
 - A. Mental Health Commission – 10A NCAC 27G .0212 (DeLuca)
 - B. Social Service Commission – 10A NCAC 67A .0107 (DeLuca)
 - C. Alarm Systems Licensing Board – 12A NCAC 11 .0210 (DeLuca)
 - D. Soil and Water Conservation Commission – 15A NCAC 06E .0107 (DeLuca)
 - E. Soil and Water Conservation Commission – 15A NCAC 06I .0107 (DeLuca)
 - F. Wildlife Resource Commission – 15A NCAC 10C .0107 (DeLuca)
 - G. Wildlife Resource Commission – 15A NCAC 10I .0104 (DeLuca)
 - H. State Board of Barber Examiners – 21 NCAC 06A .0103 (Bryan)
 - I. State Board of Barber Examiners – 21 NCAC 06J .0109 (Bryan)
 - J. State Board of Barber Examiners – 21 NCAC 06K .0110 (Bryan)
 - K. State Board of Barber Examiners – 21 NCAC 06L .0106, .0115, .0118, .0119(Bryan)
 - L. State Board of Barber Examiners – 21 NCAC 06O .0112, .0115 (Bryan)
 - M. State Board of Barber Examiners – 21 NCAC 06P .0103 (Bryan)
 - N. State Board of Barber Examiners – 21 NCAC 06Q .0101 (Bryan)
 - O. State Personnel Commission – 25 NCAC 01L .0102 (DeLuca)
- IV. Review of Log of Permanent Rule filings for rules filed between March 21, 2008 and April 21, 2008(attached)
- V. Review of Temporary Rules
- VI. Commission Business

- Next meeting: June 19, 2008
-

Commission Review

Log of Permanent Rule Filings

March 21, 2008 through April 21, 2008

GASOLINE AND OIL INSPECTION BOARD

The rules in Chapter 42 concern the gasoline and oil inspection board including purpose and definitions (.0100); quality of liquid fuel products (.0200); sale of gasoline (.0300); dispensing devices and pumps (.0400); registration and branding (.0500); condemned motor fuels and liquid fuels (.0600); and oxygenated gasoline.

<u>Definitions</u>	02	NCAC	42	.0102
Amend/*				
<u>Standard Specifications</u>	02	NCAC	42	.0201
Amend/*				
<u>Gasoline Sold Under Label Name or Brand</u>	02	NCAC	42	.0301
Amend/*				
<u>Labeling of Dispensing Devices</u>	02	NCAC	42	.0401
Amend/*				
<u>Branding and Registration of Motor Fuels</u>	02	NCAC	42	.0501
Amend/*				
<u>Purpose and Applicability</u>	02	NCAC	42	.0801
Repeal/*				
<u>Oxygen Content</u>	02	NCAC	42	.0802
Repeal/*				
<u>Record Keeping and Transfer Requirements</u>	02	NCAC	42	.0803
Repeal/*				
<u>Gasoline Dispenser Labeling</u>	02	NCAC	42	.0804
Repeal/*				
<u>Sampling, Testing and Oxygen Content Calculations</u>	02	NCAC	42	.0805
Repeal/*				
<u>Compliance and Enforcement</u>	02	NCAC	42	.0806
Repeal/*				

SOCIAL SERVICES COMMISSION

The rules in Chapter 72 concern educational assistance including general rules (.0100); eligibility (.0200); and application (.0300).

<u>Scope</u>	10A	NCAC	72	.0101
Adopt/*				
<u>Definitions</u>	10A	NCAC	72	.0102
Adopt/*				
<u>General Rule</u>	10A	NCAC	72	.0201
Adopt/*				
<u>Satisfactory Progress Requirement</u>	10A	NCAC	72	.0202
Adopt/*				
<u>Limitations of Award</u>	10A	NCAC	72	.0203
Adopt/*				
<u>Scholarship Application Procedures</u>	10A	NCAC	72	.0301
Adopt/*				

ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Subchapter 2D are air pollution control requirements including definitions and references (.0100); air pollution sources (.0200); air pollution emergencies (.0300); ambient air quality standards (.0400); emission control standards (.0500); air pollutants monitoring and reporting (.0600); complex sources (.0800); volatile organic compounds (.0900); motor vehicle emission control standards (.1000); control of toxic air pollutants (.1100); control of emissions from incinerators (.1200); oxygenated gasoline standard (.1300); nitrogen oxide standards (.1400); transportation conformity (.1500); general conformity for federal actions (.1600); emissions at existing municipal solid waste landfills (.1700); control of odors (.1800); open burning (.1900); transportation conformity (.2000); risk management program (.2100); special orders (.2200); emission reduction credits (.2300); clean air interstate rules (.2400); mercury rules for electric generators (.2500); and source testing (.2600).

<u>Compliance With Emission Control Standards</u> Amend/*	15A	NCAC	02D	.0501
<u>Fluoride Emissions from Primary Aluminum Reduction Plants</u> Amend/*	15A	NCAC	02D	.0529
<u>Excess Emissions Reporting and Malfunctions</u> Amend/*	15A	NCAC	02D	.0535
<u>Particulate Emissions From Electric Utility Boilers</u> Amend/*	15A	NCAC	02D	.0536
<u>Control of Particulate Emissions From Cotton Ginning Oper...</u> Amend/*	15A	NCAC	02D	.0542
<u>Sources Covered by Appendix P of 40 CFR 51</u> Amend/*	15A	NCAC	02D	.0606
<u>Other Large Coal or Residual Oil Boilers</u> Amend/*	15A	NCAC	02D	.0608
<u>Definitions</u> Amend/*	15A	NCAC	02D	.0901
<u>General Provisions On Test Methods and Procedures</u> Amend/*	15A	NCAC	02D	.0912
<u>Determination of Volatile Content of Surface Coatings</u> Repeal/*	15A	NCAC	02D	.0913
<u>Determination of Voc Emission Control System Efficiency</u> Repeal/*	15A	NCAC	02D	.0914
<u>Determination of Solvent Metal Cleaning Voc Emissions</u> Repeal/*	15A	NCAC	02D	.0915
<u>Determination: Voc Emissions from Bulk Gasoline Terminals</u> Repeal/*	15A	NCAC	02D	.0916
<u>Gasoline Truck Tanks and Vapor Collection Systems</u> Amend/*	15A	NCAC	02D	.0932
<u>Determination of Volatile Organic Compound Emissions</u> Repeal/*	15A	NCAC	02D	.0939
<u>Determination of Leak Tightness and Vapor Leaks</u> Repeal/*	15A	NCAC	02D	.0940
<u>Alternative Method for Leak Tightness</u> Repeal/*	15A	NCAC	02D	.0941
<u>Determination of Solvent in Filter Waste</u> Repeal/*	15A	NCAC	02D	.0942
<u>Synthetic Organic Chemical and Polymer Manufacturing</u> Amend/*	15A	NCAC	02D	.0943
<u>Petroleum Dry Cleaning</u> Amend/*	15A	NCAC	02D	.0945
<u>Toxic Air Pollutant Guidelines</u>	15A	NCAC	02D	.1104

Amend/*				
<u>National Emission Standards For Hazardous Air Pollutants</u>	15A	NCAC	02D	.1110
Amend/*				
<u>Hazardous Waste Incinerators</u>	15A	NCAC	02D	.1203
Amend/*				
<u>Sewage Sludge and Incinerators</u>	15A	NCAC	02D	.1204
Amend/*				
<u>Hospital, Medical, and Infectious Waste Incinerators</u>	15A	NCAC	02D	.1206
Amend/*				
<u>Other Incinerators</u>	15A	NCAC	02D	.1208
Amend/*				
<u>Commercial and Industrial Solid Waste Incineration Units</u>	15A	NCAC	02D	.1210
Amend/*				
<u>Applicability</u>	15A	NCAC	02D	.1402
Amend/*				
<u>Recordkeeping: Reporting: Monitoring</u>	15A	NCAC	02D	.1404
Amend/*				
<u>Boilers and Indirect-Fired Process Heaters</u>	15A	NCAC	02D	.1407
Amend/*				
<u>Stationary Combustion Turbines</u>	15A	NCAC	02D	.1408
Amend/*				
<u>Stationary Internal Combustion Engines</u>	15A	NCAC	02D	.1409
Amend/*				
<u>Emissions Averaging</u>	15A	NCAC	02D	.1410
Amend/*				
<u>Seasonal Fuel Switching</u>	15A	NCAC	02D	.1411
Amend/*				
<u>Petition for Alternative Limitations</u>	15A	NCAC	02D	.1412
Amend/*				
<u>Test Methods and Procedures</u>	15A	NCAC	02D	.1415
Amend/*				
<u>Emission Allocations for Utility Companies</u>	15A	NCAC	02D	.1416
Repeal/*				
<u>Emission Allocations for Large Combustion Sources</u>	15A	NCAC	02D	.1417
Repeal/*				
<u>New Electric Generating Units, Large Boilers, and Large I...</u>	15A	NCAC	02D	.1418
Amend/*				
<u>Nitrogen Oxide Budget Trading Program</u>	15A	NCAC	02D	.1419
Repeal/*				
<u>Periodic Review and Reallocations</u>	15A	NCAC	02D	.1420
Repeal/*				
<u>Allocations for New Growth of Major Point Sources</u>	15A	NCAC	02D	.1421
Repeal/*				
<u>Compliance Supplement Pool Credits</u>	15A	NCAC	02D	.1422
Repeal/*				
<u>Purpose and Scope</u>	15A	NCAC	02D	.2601
Adopt/*				
<u>General Provisions on Test Methods and Procedures</u>	15A	NCAC	02D	.2602
Adopt/*				
<u>Testing Protocol</u>	15A	NCAC	02D	.2603
Adopt/*				
<u>Number of Test Points</u>	15A	NCAC	02D	.2604

<u>Adopt/*</u>				
<u>Velocity and Volume Flow Rate</u>	15A	NCAC	02D	.2605
<u>Adopt/*</u>				
<u>Molecular Weight</u>	15A	NCAC	02D	.2606
<u>Adopt/*</u>				
<u>Determination of Moisture Content</u>	15A	NCAC	02D	.2607
<u>Adopt/*</u>				
<u>Number of Runs and Compliance Determination</u>	15A	NCAC	02D	.2608
<u>Adopt/*</u>				
<u>Particulate Testing Methods</u>	15A	NCAC	02D	.2609
<u>Adopt/*</u>				
<u>Opacity</u>	15A	NCAC	02D	.2610
<u>Adopt/*</u>				
<u>Sulfur Dioxide Testing Methods</u>	15A	NCAC	02D	.2611
<u>Adopt/*</u>				
<u>Nitrogen Oxide Testing Methods</u>	15A	NCAC	02D	.2612
<u>Adopt/*</u>				
<u>Volatile Organic Compound Testing Methods</u>	15A	NCAC	02D	.2613
<u>Adopt/*</u>				
<u>Determination of Voc Emission Control System Efficiency</u>	15A	NCAC	02D	.2614
<u>Adopt/*</u>				
<u>Determination of Leak Tightness and Vapor Leaks</u>	15A	NCAC	02D	.2615
<u>Adopt/*</u>				
<u>Fluorides</u>	15A	NCAC	02D	.2616
<u>Adopt/*</u>				
<u>Total Reduced Sulfur</u>	15A	NCAC	02D	.2617
<u>Adopt/*</u>				
<u>Mercury</u>	15A	NCAC	02D	.2618
<u>Adopt/*</u>				
<u>Arsenic, Beryllium, Cadmium, Hexavalent Chromium</u>	15A	NCAC	02D	.2619
<u>Adopt/*</u>				
<u>Dioxins and Furans</u>	15A	NCAC	02D	.2620
<u>Adopt/*</u>				
<u>Determination of Fuel Heat Content Using F-Factor</u>	15A	NCAC	02D	.2621
<u>Adopt/*</u>				

The rules in Subchapter 2Q are rules relating to applying for and obtaining air quality permits and include general information (.0100); fees (.0200); application requirements (.0300); acid rain program requirements (.0400); establishment of an air quality permitting program (.0500); transportation facility requirements (.0600); toxic air pollutant procedures (.0700); exempt categories (.0800); and permit exemptions (.0900).

<u>Permit Content</u>	15A	NCAC	02Q	.0508
<u>Amend/*</u>				
<u>Changes Not Requiring Permit Revisions</u>	15A	NCAC	02Q	.0523
<u>Amend/*</u>				
<u>Emission Rates Requiring a Permit</u>	15A	NCAC	02Q	.0711
<u>Amend/*</u>				
<u>Emergency Generators</u>	15A	NCAC	02Q	.0903
<u>Adopt/*</u>				

COMMUNITY COLLEGES, BOARD OF

The rules in Subchapter 2D cover the fiscal affairs of community colleges including salaries (.0100), student fees (.0200) and budgeting, accounting and fiscal management (.0300).

<u>Limitations in Reporting Student Membership Hours</u>	23	NCAC	02D	.0325
Amend/*				

The rules in Subchapter 2E cover educational programs including program classification (.0100); curriculum programs (.0200); adult, extension, and community service programs (.0300); industrial services (.0400); articulation (.0500); and vocational curriculum (.0600).

<u>Training for Public Safety Agencies</u>	23	NCAC	02E	.0405
Amend/*				

STATE PERSONNEL COMMISSION

The rules in Chapter 1 are from the State Personnel Commission.

The rules in Subchapter 1C concern personnel administration including employment (.0100); general employment policies (.0200); personnel records and reports (.0300); appointment (.0400); work schedule (.0500); competitive service (.0600); secondary employment (.0700); requirements for teleworking programs (.0800); employee recognition programs (.0900); and separation (.1000).

<u>Employment Contracts</u>	25	NCAC	01C	.0215
Amend/*				

<u>Contractual Worker</u>	25	NCAC	01C	.0414
Adopt/*				

The rules in Subchapter 1H concern recruitment and selection including general provisions (.0600); general provision for priority consideration (.0700); promotional priority (.0800); reduction-in-force-priority reemployment (.0900); exempt priority consideration (.1000); and veteran's preference (.1100).

<u>General Provisions</u>	25	NCAC	01H	.0701
Amend/*				

<u>Claiming Veterans' Preference</u>	25	NCAC	01H	.1102
Amend/*				

<u>Allegation of Denial of Veterans Preference</u>	25	NCAC	01H	.1103
Amend/*				

<u>Application of Veterans Preference</u>	25	NCAC	01H	.1104
Amend/*				

The rules in Subchapter 1I concern service to local government including local government employment policies (.1700); general provisions (.1800); recruitment and selection (.1900); appointment and separation (.2000); compensation (.2100); hours of work and overtime compensation (.2200); disciplinary action suspension dismissal and appeals (.2300); and basic requirements for a substantially equivalent personnel system (.2400).

<u>Just Cause for Disciplinary Action</u>	25	NCAC	01I	.2301
Amend/*				

BUILDING CODE COUNCIL

<u>Energy Conservation Code</u>	2009 Energy Conservation Code
Adopt/*	

<u>NC Fire Code</u>	2009 Fire code
Adopt/*	

NC Fuel Gas Code

Adopt/*

2009 Fuel Gas Code

NC Mechanical Code

Adopt/*

2009 Mechanical Code

NC Plumbing Code

Adopt/*

2009 Plumbing Code

NC Building Code

Adopt/*

2009 Building Code

NC Residential Code

Adopt/*

2009 Residential Code

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

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Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray
Selina Brooks
Melissa Owens Lassiter
Don Overby

Randall May
A. B. Elkins II
Joe Webster
Shannon Joseph

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Senora Kemp v. OAH	07 OAH 0776	Lassiter	09/06/07	
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OFFICE OF STATE PERSONNEL

Monty Steven Poarch v. Crime Control and Public Safety, State Highway Patrol	03 OSP 2004	Lassiter	09/17/07	
Willie G. Shaw v. Division of Forest Resources	05 OSP 0414	Overby	04/13/07	
Shirley Barnes v. Murdoch Center	06 OSP 0230	Elkins	01/11/08	22:18 NCR 1621
Deona R. Hooper v. NCCU	06 OSP 1071	Lassiter	04/25/07	
Franklin Leaven v. DHHS, DDH	06 OSP 1132	Lassiter	10/17/07	
Patrice Bernard v. NC A&T State University	06 OSP 1550	Elkins	06/05/07	
Angelia Davis v. UNC-Charlotte	06 OSP 1908	Gray	03/08/07	
Toni Edwards v. UNC Greensboro Police Department	06 OSP 2219	Gray	10/04/07	
Keith Dial v. Dept. of Juvenile Justice and Delinquency Prevention	06 OSP 2346	Gray	04/20/07	
Cornelia Yvette Taylor v. Currituck County Department of Social Services	06 OSP 2384	Webster	01/07/08	
Larry L. Deyton v. Mitchell County Commission Board	06 OSP 2415	Gray	04/19/07	
Rose M. Baltezure v. City of Brevard	07 OSP 0009	Gray	04/03/07	
Dorothy H. Williams v. John Umstead Hospital	07 OSP 0265	Lassiter	04/24/07	
Pei Wang v. UNC-Chapel Hill	07 OSP 0273	Lassiter	04/19/07	
Candace R. Berguson v. Caswell County DSS and Mr. Jeff Earp, County Manager	07 OSP 0294	Lassiter	04/20/07	
Angela Townsend v. DOC	07 OSP 0365	Lassiter	01/14/08	
Shannon Harris Tadlock v. Wilson County, Department of Public Health	07 OSP 0491	Lassiter	05/07/07	
Patricia G. Flanigan v. Fayetteville State University	07 OSP 0503	Overby	05/10/07	
Tobias M. Guilluame v. FSU Police & Public Safety	07 OSP 0565	Overby	05/10/07	
Archie Andrew Copeland v. Dept. of Juvenile Justice & Delinquency Prevention	07 OSP 0976	Lassiter	08/29/07	
Patricia Bethea Williams v. NC A&T State University	07 OSP 1053	Overby	08/28/07	
Amy M. Peck v. NC A&T State University Police Department	07 OSP 1346	Lassiter	11/29/07	
Kathleen E. Kicinski v. NC A&T State University	07 OSP 1347	Lassiter	11/29/07	
Kevin Edral Douglas v. NCSU	07 OSP 1465	Joseph	12/03/07	
Bobby R. Davis v. Dept. of Labor, Bureau of Education, Training and Tech. Assistance	07 OSP 1492	Overby	01/04/08	
Terence G. Westry v. NC A&T State University	07 OSP 1497	Webster	12/17/07	
Richard Allen Kono v. DOCC and Adult Probation and Parole	07 OSP 1563	Elkins	01/29/08	
Angela N. Mewborn v. Office of State Auditor	07 OSP 1668	Lassiter	12/07/07	
Darrin Ball v. Wildlife Resources Commission	07 OSP 1678	Elkins	12/11/07	
Herman L. Colvin v. Industrial Commission	07 OSP 1724	Lassiter	01/11/08	
Samuel A. Aghimien v. DOT	07 OSP 1753	Lassiter	01/10/08	
Mahatam S. Jailall v. DPI	07 OSP 1978	Overby	12/21/07	
Lasonya L. Howell v. Cherry Hospital – DHHS	07 OSP 2344	Gray	02/26/08	
Ricco A. Raynor v. Cherry Hospital	08 OSP 0013	Gray	02/26/08	
Lysheaka Pullen v. DHHS	08 OSP 0156	Gray	02/18/08	

CONTESTED CASE DECISION

SECRETARY OF STATE

Mary C. Brandon v. Department of the Secretary of State	06 SOS 1839	Elkins	04/02/07
Samuel Abraham , pro-se v. SOS, General Counsel Ann Wall	07 SOS 0224	Overby	04/27/07
Mr. Tim Rhodes, President, Event Marketing Services, Inc. v. SOS	07 SOS 0374	Overby	06/14/07
Angela Dozier v. SOS	07 SOS 0912	Gray	08/30/07
Timeka Rene' Jones v. SOS	07 SOS 1309	Lassiter	12/12/07

UNC HOSPITALS

Layton Leach v. UNC Hospital	05 UNC 0449	Bryan	09/07/07
Mary Lawson v. UNC Hospital	05 UNC 0467	Bryan	09/28/07
Kenneth Trivette v. UNC Hospitals	06 UNC 2014	Elkins	04/02/07
Mark A. Parrish v. UNC Hospitals	06 UNC 2406	Elkins	06/15/07
Carolyn Parker v. UNC Hospitals	07 UNC 0924	Lassiter	09/06/07
Debra B. Davis v. UNC Hospitals	07 UNC 1169	Brooks	10/01/07
James P. Dunn v. UNC Hospitals	07 UNC 1559	Gray	01/03/08