

NORTH CAROLINA REGISTER

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October 3, 2016

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Contact List for Rulemaking Questions or Concerns

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

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

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NORTH CAROLINA REGISTER
 Publication Schedule for January 2016 – December 2016

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
30:13	01/04/16	12/08/15	01/19/16	03/04/16	03/21/16	05/01/16	01/2017	09/30/16
30:14	01/15/16	12/21/15	01/30/16	03/15/16	03/21/16	05/01/16	01/2017	10/11/16
30:15	02/01/16	01/08/16	02/16/16	04/01/16	04/20/16	06/01/16	01/2017	10/28/16
30:16	02/15/16	01/25/16	03/01/16	04/15/16	04/20/16	06/01/16	01/2017	11/11/16
30:17	03/01/16	02/09/16	03/16/16	05/02/16	05/20/16	07/01/16	01/2017	11/26/16
30:18	03/15/16	02/23/16	03/30/16	05/16/16	05/20/16	07/01/16	01/2017	12/10/16
30:19	04/01/16	03/10/16	04/16/16	05/31/16	06/20/16	08/01/16	01/2017	12/27/16
30:20	04/15/16	03/24/16	04/30/16	06/14/16	06/20/16	08/01/16	01/2017	01/10/17
30:21	05/02/16	04/11/16	05/17/16	07/01/16	07/20/16	09/01/16	01/2017	01/27/17
30:22	05/16/16	04/25/16	05/31/16	07/15/16	07/20/16	09/01/16	01/2017	02/10/17
30:23	06/01/16	05/10/16	06/16/16	08/01/16	08/22/16	10/01/16	01/2017	02/26/17
30:24	06/15/16	05/24/16	06/30/16	08/15/16	08/22/16	10/01/16	01/2017	03/12/17
31:01	07/01/16	06/10/16	07/16/16	08/30/16	09/20/16	11/01/16	01/2017	03/28/17
31:02	07/15/16	06/23/16	07/30/16	09/13/16	09/20/16	11/01/16	01/2017	04/11/17
31:03	08/01/16	07/11/16	08/16/16	09/30/16	10/20/16	12/01/16	01/2017	04/28/17
31:04	08/15/16	07/25/16	08/30/16	10/14/16	10/20/16	12/01/16	01/2017	05/12/17
31:05	09/01/16	08/11/16	09/16/16	10/31/16	11/21/16	01/01/17	01/2017	05/29/17
31:06	09/15/16	08/24/16	09/30/16	11/14/16	11/21/16	01/01/17	01/2017	06/12/17
31:07	10/03/16	09/12/16	10/18/16	12/02/16	12/20/16	02/01/17	05/2018	06/30/17
31:08	10/17/16	09/26/16	11/01/16	12/16/16	12/20/16	02/01/17	05/2018	07/14/17
31:09	11/01/16	10/11/16	11/16/16	01/03/17	01/20/17	03/01/17	05/2018	07/29/17
31:10	11/15/16	10/24/16	11/30/16	01/17/17	01/20/17	03/01/17	05/2018	08/12/17
31:11	12/01/16	11/07/16	12/16/16	01/30/17	02/20/17	04/01/17	05/2018	08/28/17
31:12	12/15/16	11/22/16	12/30/16	02/13/17	02/20/17	04/01/17	05/2018	09/11/17

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

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



State of North Carolina

PAT McCRORY

GOVERNOR

September 1, 2016

EXECUTIVE ORDER NO. 97

DECLARATION OF A STATE OF EMERGENCY BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA

Section 1.

I hereby declare that a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(19) exists in the State of North Carolina due to the approach of Tropical Storm Hermine. The emergency area as defined in N.C.G.S. §§ 166A-19.3(7) and N.C.G.S. 166A-19.20(b) is Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Gates, Greene, Hertford, Hoke, Hyde, Jones, Lenoir, Martin, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Tyrrell, Washington and Wayne counties.

Section 2.

I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this declaration and the provisions of the North Carolina Emergency Operations Plan.

Section 3.

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

Section 4.

Further, Secretary Perry, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in G. S. § 143B-602.

Section 5.

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

Section 6.

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

Section 7.

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

Section 8.

Pursuant to N.C.G.S. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C.G.S. § 75-37 and 75-38 in the declared emergency area.

Section 9.

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

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


Pat McCrory
Governor



ATTEST:


Elaine F. Marshall
Secretary of State



State of North Carolina

PAT McCRORY
GOVERNOR

September 1, 2016

EXECUTIVE ORDER NO. 98

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

WHEREAS, due to the approach of Tropical Storm Hermine, vehicles bearing equipment and supplies for utility restoration and debris removal, carrying essentials such as food and medicine, transporting livestock, poultry, and feed for livestock and poultry or crops ready to be harvested need to be moved on the highways of North Carolina; and

WHEREAS, I have declared that a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(19) exists in portions of North Carolina due to the approach of Tropical Storm Hermine and the storm's likely impact in this State; and

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

WHEREAS, the prompt restoration of utility services to citizens is essential to their safety and well-being; and

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

WHEREAS, with the concurrence of the Council of State, I have found that vehicles bearing equipment and supplies for utility restoration, carrying essentials and for debris removal must adhere to the registration requirements of N.C.G.S. § 20-86.1 and 20-382, fuel tax requirements of N.C.G.S. § 105-449.47, and the size and weight requirements of N.C.G.S. §§ 20-116, 20-118 and 20-119. I have further found that citizens in this State may suffer losses and will likely suffer imminent further widespread damage within the meaning of N.C.G.S. § 166A-19.3(3) and N.C.G.S. § 166A-19.21(b); and

WHEREAS, pursuant to N.C.G.S. § 166A-19.70(g) on the recommendation of the Commissioner of Agriculture, upon a finding that there is an imminent threat of severe economic loss of livestock or poultry, or crops ready to be harvested the Governor shall direct the Department of Public Safety to temporarily suspend weighing those vehicles used to transport livestock, poultry or crops; and

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

WHEREAS, under N.C.G.S. § 166A-19.70, the Governor may declare that the health, safety, or economic well-being of persons or property requires that the maximum hours of service for drivers prescribed by N.C.G.S. § 20-381 should be waived for vehicles used in the restoration of utility services, and for those transporting essential fuels, food, water, medical supplies, feed for livestock and poultry, transporting livestock and poultry, or transporting crops that have been harvested.

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

Section 1.

The Department of Public Safety in conjunction with the North Carolina Department of Transportation shall waive the maximum hours of service for drivers prescribed by the Department of Public Safety pursuant to N.C.G.S. § 20-381.

Section 2.

The Department of Public Safety in conjunction with the Department of Transportation shall waive certain size and weight restrictions and penalties arising under N.C.G.S. §§ 20-116, 20-118 and 20-119, and certain registration requirements and penalties arising under N.C.G.S. §§ 20-86.1, 20-382, 105-449.47, and 105-449.49 for vehicles transporting equipment and supplies for the restoration of utility services, carrying essentials and for equipment for any debris removal. The Department of Public Safety shall temporarily suspend weighing pursuant to N.C.G.S. § 20-118.1 vehicles used to carry crops that have been harvested or transporting livestock and poultry in the emergency area.

Section 3.

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

- a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- b. When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- c. When a vehicle and vehicle combination exceeds 12 feet in width and a total overall vehicle combination length of 75 feet from bumper to bumper.
- d. Vehicles and vehicle combinations subject to exemptions or permits by authority of this Executive Order shall not be exempt from the requirement of having a yellow banner on the front and rear measuring a total length of 7 feet by 18 inches bearing the legend "Oversized Load" in 10 inch black letters 1.5 inches wide and red flags measuring 18 inches square to be displayed on all sides at the widest point of the load. In addition, when operating between sunset and sunrise, a certified escort shall be required for loads exceeding 8 feet 6 inches in width.

Section 4.

Vehicles referenced under Sections 2 and 3 shall be exempt from the following registration requirements:

- a. The \$50.00 fee listed in N.C.G.S. § 105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. § 105-449.45(a)(1) applies.
- b. The registration requirements under N.C.G.S. § 20-382.1 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.

c. Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.

Section 5.

The size and weight exemption for vehicles will be allowed on all routes designated by the North Carolina Department of Transportation, except those routes designated as light traffic roads under N.C.G.S. § 20-118. This order shall not be in effect on bridges posted pursuant to N.C.G.S. § 136-72.

Section 6.

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

Section 7.

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1 through 6 of this Executive Order in a manner which will implement these provisions without endangering motorists in North Carolina.

Section 8.

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

Section 9.

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

Section 10.

Pursuant to N.C.G.S. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C.G.S. § 75-37 and 75-38 in the declared emergency area.

Section 11.

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

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


Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
Secretary of State





State of North Carolina

PAT McCRORY
GOVERNOR

September 7, 2016

EXECUTIVE ORDER NO. 99

NOTICE OF TERMINATION OF EXECUTIVE ORDERS 97 AND 98

WHEREAS, Executive Order No. 97, was issued on September 1, 2016, declaring a state of emergency due to the approach of Tropical Storm Hermine in the following counties in the State of North Carolina: Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Gates, Greene, Hertford, Hoke, Hyde, Jones, Lenoir, Martin, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Tyrrell, Washington and Wayne; and

WHEREAS, Executive Order No. 98 was issued on September 1, 2016, waiving the maximum hours of service for drivers transporting supplies and equipment for utility restoration and essentials, and with the concurrence of the Council of State temporarily suspended size and weight restrictions on vehicles used for utility restoration, carrying essentials and agricultural commodities on the interstate and intrastate highways due to the anticipated damage and impacts from Tropical Storm Hermine.

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

Section 1.

Pursuant to N.C.G.S. § 166A-19.20(c) the state of emergency that was declared by Executive Order No. 97 is hereby terminated at 11:59 p.m. September 3, 2016.

Section 2.

Executive Order No. 98 will remain in effect until 11:59 p.m. September 7, 2016. The order is amended to repeal the following clause:

WHEREAS, I have declared that a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(19) exists in portions of North Carolina due to the approach of Tropical Storm Hermine and the storm's likely impact in this State

Replacing it with the following clause:

WHEREAS; although I have terminated Executive Order No. 97, issued on September 1, 2016, there continues to be a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(19) for the purposes of responding ongoing impacts from the storm in this state and the mid-Atlantic region of the United States. The emergency area as defined in N.C.G.S. §§ 166A-19.3(7) and N.C.G.S. 166A-19.20(b) is the state of North

Carolina for utility vehicles, the impacted states in the mid-Atlantic United States; and the following North Carolina counties for agricultural vehicles used to harvest crops: Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Gates, Greene, Hertford, Hoke, Hyde, Jones, Lenoir, Martin, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Tyrrell, Washington and Wayne.

Section 3.

Section 10 of Executive Order No. 98 is rewritten to read as follows:

This order will not trigger the prohibitions against excessive pricing in the emergency area in North Carolina, notwithstanding the provisions of N.C.G.S. § 166A-19.23.

Section 4.

The remaining provisions in Executive Order No. 98 will remain in effect for vehicles used for utility restoration until at 11:59 p.m. on Wednesday, September 7, 2016. Furthermore, for vehicles used to harvest crops in the emergency areas the order will remain in effect until 11:59 p.m. on Wednesday, September 14, 2016.

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


Pat McCrory
Governor



ATTEST:


Elaine F. Marshall
Secretary of State



North Carolina Department of Labor
Division of Occupational Safety and Health
1101 Mail Service Center
Raleigh, NC 27699-1101
(919) 807-2875

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

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

- rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0502, to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Part 1917 promulgated as of March 25, 2016, except as specifically described.

This update encompasses the following recent verbatim adoptions:

- Occupational Safety and Health Standards, 29 CFR § 1917.3 Incorporation by reference
(81 FR 16085, March 25, 2016)
- Occupational Safety and Health Standards, 29 CFR § 1917.91 Eye and face protection
(81 FR 16085, March 25, 2016)

The *Federal Register* (FR), as cited above, explains that this final rule updates eye and face protection requirements in OSHA's marine terminals standard. The changes involve incorporation by reference of the latest ANSI/ISEA Z87.1-2010 standard on Occupational and Educational Eye and Face Protection Devices and removal of the oldest ANSI (Z87.1-1989) version of the same standard.

For additional information regarding compliance with this verbatim adoption, please contact:

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

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

Jane Ammons Gilchrist, Agency Rulemaking Coordinator
North Carolina Department of Labor
Legal Affairs Division
1101 Mail Service Center
Raleigh, NC 27699-1101

Summary of Verbatim Adoptions
Effective April 25, 2016

Occupational Safety and Health Standards

The revising amendment published in the Federal Register on March 25, 2016 (81 FR 16085) revises 29 CFR §1917.3 and 29 CFR §1917.91 by updating the references to national consensus standards approved by the American National Standards Institute (ANSI). OSHA's revising amendment was effective April 25, 2016. The changes involve incorporation by reference of the latest ANSI/ISEA Z87.1-2010 standard on Occupational and Educational Eye and Face Protection Devices and removal of the oldest ANSI (Z87.1-1989) version of the same standard.

The attached amendments of 13 NCAC 07F .0502 incorporate OSHA revisions to the provisions of the Occupational Safety and Health Standards at 29 CFR 1917. The amendment is required by 29 CFR 1902.4(a)(1) and G.S. 95-131(a) in order for North Carolina's Occupational Safety and Health program to be as effective as the federal program and to maintain North Carolina's state plan status under the federal Occupational Safety and Health Act of 1970. This rule was adopted in accordance with G.S. 150B-21.5(c). Pursuant to the provisions of G.S. 150B-21.3(e), the effective date of this action is September 2, 2016.



North Carolina Department of Labor
Division of Occupational Safety and Health
1101 Mail Service Center
Raleigh, NC 27699-1101
(919) 807-2875

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

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

- rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0101, .0201, and .0501, to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Parts 1910, 1915, and 1926 promulgated as of March 25, 2016 and Parts 1910, 1915, and 1926 corrections promulgated as of May 18, 2016 and Parts 1910, 1915, and 1926 corrections promulgated as of September 1, 2016.

This update encompasses the following recent verbatim adoption:

- Occupational Safety and Health Standards, 29 CFR 1910.6 Incorporation by reference
(81 FR 16085, March 25, 2016)
- Occupational Safety and Health Standards, 29 CFR 1910.133 Eye and face protection
(81 FR 16085, March 25, 2016)
- Occupational Safety and Health Standards, 29 CFR 1915.5 Incorporation by reference
(81 FR 16085, March 25, 2016)
- Occupational Safety and Health Standards, 29 CFR 1915.153 Eye and face protection
(81 FR 16085, March 25, 2016)
- Occupational Safety and Health Standards, 29 CFR 1926.6 Incorporation by reference
(81 FR 16085, March 25, 2016)
- Occupational Safety and Health Standards, 29 CFR 1926.102 Eye and face protection
(81 FR 16085, March 25, 2016)

The *Federal Register* (FR), as cited above, explains that this final rule updates eye and face protection requirements in OSHA's general industry, construction, and shipyard employment standards. The changes involve incorporation by reference of the latest ANSI/ISEA Z87.1-2010 standard on Occupational and Educational Eye and Face Protection Devices and removal of the oldest ANSI (Z87.1-1989) version of the same standard.

This update encompasses the following recent verbatim adoption:

- Occupational Safety and Health Standards, 29 CFR 1910.1000 Air contaminants (81 FR 16286, March 25, 2016)
- Occupational Safety and Health Standards, 29 CFR 1910.1053 Respirable crystalline silica (81 FR 16286, March 25, 2016)
- Occupational Safety and Health Standards, 29 CFR 1915.1000 Air contaminants (81 FR 16286, March 25, 2016)
- Occupational Safety and Health Standards, 29 CFR 1915.1053 Respirable crystalline silica (81 FR 16286, March 25, 2016)
- Occupational Safety and Health Standards, 29 CFR 1926.55 Gases, vapors, fumes, dusts, and mists (81 FR 16286, March 25, 2016)
- Occupational Safety and Health Standards, 29 CFR 1926.1153 Respirable crystalline silica (81 FR 16286, March 25, 2016)

The *Federal Register* (FR), as cited above, establishes a new permissible exposure limit of 50 micrograms of respirable crystalline silica per cubic meter of air ($50 \mu\text{g}/\text{m}^3$) as an 8-hour time-weighted average in all industries covered by the rule. It also includes other provisions to protect employees, such as requirements for exposure assessment, methods for controlling exposure, respiratory protection, medical surveillance, hazard communication, and recordkeeping. OSHA is issuing two separate standards—one for general industry and maritime, and the other for construction—in order to tailor requirements to the circumstances found in these sectors.

This update encompasses the following recent verbatim adoption:

- Occupational Safety and Health Standards, 29 CFR 1910.1000 Table Z-3 – Mineral Dusts (81 FR 31167, May 18, 2016)
- Occupational Safety and Health Standards, 29 CFR 1915.1000 Table Z – Shipyards (81 FR 31167, May 18, 2016)
- Occupational Safety and Health Standards, 29 CFR 1926.55 Threshold Limit Values of Airborne Contaminants for Construction (81 FR 31167, May 18, 2016)

The *Federal Register* (FR), as cited above, made minor corrections to the Occupational Exposure to Respirable Crystalline Silica rule which was published in the Federal Register on March 25, 2016, 81 FR 16286.

This update encompasses the following recent verbatim adoption:

- Occupational Safety and Health Standards, 29 CFR 1910.1000 Table Z-3 – Mineral Dusts
(81 FR 60272, September 1, 2016)
- Occupational Safety and Health Standards, 29 CFR 1915.1000 Table Z – Shipyards
(81 FR 60272, September 1, 2016)
- Occupational Safety and Health Standards, 29 CFR 1926.55 Threshold Limit Values of Airborne Contaminants for Construction
(81 FR 60272, September 1, 2016)

The *Federal Register* (FR), as cited above, corrected typographical errors to the Occupational Exposure to Respirable Crystalline Silica rule which was published in the Federal Register on March 25, 2016, 81 FR 16286.

For additional information regarding compliance with this verbatim adoption, please contact:

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

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

Jane Ammons Gilchrist, Agency Rulemaking Coordinator
North Carolina Department of Labor
Legal Affairs Division
1101 Mail Service Center
Raleigh, North Carolina 27699-1101

Summary of Verbatim Adoptions
Effective September 2, 2016

(1) Eye and Face Protection

The amendment published in the Federal Register on March 25, 2016 (81 FR 16085) revises 29 CFR 1910.6, 1910.133, 1915.5, 1915.153, 1926.6 and 1926.102 by updating the references to national consensus standards approved by the American National Standards Institute (ANSI). This final rule updates eye and face protection requirements in OSHA's general industry, construction, and shipyard employment standards. The changes involve incorporation by reference of the latest ANSI/ISEA Z87.1-2010 standard on Occupational and Educational Eye and Face Protection Devices and removal of the oldest ANSI (Z87.1-1989) version of the same standard. OSHA's amendment was effective April 25, 2016.

(2) Occupational Exposure to Respirable Crystalline Silica

The final rule published in the Federal Register on March 25, 2016 (81 FR 16286) amends 29 CFR 1910.1000, 1915.1000, and 1926.55 and adopts 29 CFR 1910.1053, 1915.1053, and 1926.1153 for occupational exposure to respirable crystalline silica. This final rule establishes a new permissible exposure limit of 50 micrograms of respirable crystalline silica per cubic meter of air (50 µg/m³) as an 8-hour time-weighted average in all industries covered by the rule. It also includes other provisions to protect employees, such as requirements for exposure assessment, methods for controlling exposure, respiratory protection, medical surveillance, hazard communication, and recordkeeping. OSHA is issuing two separate standards—one for general industry and maritime, and the other for construction—in order to tailor requirements to the circumstances found in these sectors. This final rule was effective June 23, 2016.

(3) Occupational Exposure to Respirable Crystalline Silica

The correcting amendments, published in the Federal Register on May 18, 2016 (81 FR 31167), make minor corrections to Table Z-3-Mineral Dust in 29 CFR 1910.1000, Table Z-Shipyards in 29 CFR 1915.1000 and Threshold Limit Values of Airborne Contaminants for Construction in 29 CFR 1926.55.

(4) Occupational Exposure to Respirable Crystalline Silica

The correcting amendments, published in the Federal Register on September 1, 2016 (81 FR 60272), correct typographical errors in the final rule by revising Table Z-3-Mineral Dust in 29 CFR 1910.1000, Table Z-Shipyards in 29 CFR 1915.1000 and Threshold Limit Values of Airborne Contaminants for Construction in 29 CFR 1926.55.

The attached amendments of 13 NCAC 07F .0101, .0201, and .0501 incorporate recent OSHA revisions to the provisions of the Occupational Safety and Health Standards at 29 CFR 1910, 1915, and 1926. The amendment is required by 29 CFR 1902.4(a)(1) and G.S. 95-131(a) in order for North Carolina's Occupational Safety and Health program to be as effective as the federal program and to maintain North Carolina's state plan status under the federal Occupational Safety and Health Act of 1970. This rule was adopted in accordance with G.S. 150B-21.5(c). Pursuant to the provisions of G.S. 150B-21.3(e), the effective date of this action is September 2, 2016.

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 07 – DEPARTMENT OF NATURAL AND CULTURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Department of Natural and Cultural Resources intends to adopt the rules cited as 07 NCAC 04R .1601 - .1613; amend the rules cited as 07 NCAC 04R .0201, .0202, .0301, .0303, .0501-.0503, .0601-.0602, .0605, .1503; 04T .0104; repeal the rules cited as 07 NCAC 04R .0101, .0302, .0305, .0504, .0603, .0604, .0606, .1501, .1502; and readopt with substantive changes the rules cited as 07 NCAC 04R .0203, .0204-.0206, .0304, .0702-.0718, .0801-.0808, .1002-.1013.

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

Proposed Effective Date: February 1, 2017

Public Hearing:

Date: October 19, 2016

Time: 1-3 PM

Location: North Carolina Department of Natural and Cultural Resources, 109 E. Jones St., Raleigh, NC 27601, Third Floor Conference room

Reason for Proposed Action: *The proposed rules are necessary to carry out the functions of the Historic Preservation Office of State Archaeology. These rules are proposed as either an adoption, readoption, amendment, or repeal as part of the existing rules review process. Specifically, Rules 07 NCAC 04R .1601-.1613 are proposed as adoptions and govern the Agency's authority to issue Archaeology Permits under G.S. 70 & 121.*

Rule 07 NCAC 04T .0104 amends language under the State's Highway Marker Program.

Comments may be submitted to: Ramona Bartos, 4617 Mail Service Center, Raleigh, NC 27699-4617, phone 919-807-6583, email Ramona.bartos@ncdcr.gov

Comment period ends: December 2, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m.

on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4
- No fiscal note required by G.S. 150B-21.3A(d)(2)

SUBCHAPTER 04R - ARCHAEOLOGY AND HISTORIC PRESERVATION SECTION

SECTION .0100 - GENERAL RULES

07 NCAC 04R .0101 STATEMENT OF PURPOSE

~~The Archaeology and Historic Preservation Section has general responsibility for operating programs to identify, evaluate, preserve, protect, and enhance all properties, sites, and resources of historic, architectural, or archaeological significance throughout the State of North Carolina, and to:~~

- ~~(1) conduct a statewide survey of historic, architectural, and archaeological properties, sites, and structures;~~
- ~~(2) prepare nominations to the National Register of Historic Places;~~
- ~~(3) conduct a review of federal and state projects and all other planning activities for conservation and management of historic, architectural, and archaeological resources;~~
- ~~(4) conduct field and technical services for the preservation, stabilization, and restoration of historic properties and for the stabilization, excavation, or salvage of archaeological resources, as appropriate;~~
- ~~(5) conduct a program of public education to develop, distribute, and disseminate throughout North Carolina technical and procedural information, and state and federal laws;~~
- ~~(6) conduct an underwater archaeology program;~~
- ~~(7) conduct historical research for each of the foregoing purposes; and~~
- ~~(8) review construction projects at the state owned historic sites which may affect historic, architectural, or archaeological resources.~~

Authority G.S. 150B-10.

SECTION .0200 - ENVIRONMENTAL REVIEW

07 NCAC 04R .0201 PURPOSE

- (a) ~~The State Historic Preservation Officer (SHPO) assists applicants seeking for state or federal funding, licenses, or permits permits, or approval in developing projects undertakings that are environmentally sound with respect to historic, archaeological, and architectural resources shall seek assistance from the HPO and OSA, as staff to the State Historic Preservation Officer (SHPO) and the North Carolina Historical Commission, pursuant to this Section, by providing comments early in the project planning to help applicants avoid project delays, and by informing them of the federal and state laws requiring their compliance.~~
- (b) ~~The Director, Division of Archives and History, as SHPO establishes environmental review procedures pertinent to historical, archaeological (prehistoric, historic, and underwater), and architectural resources in North Carolina. When federally involved projects are reviewed, the Archaeology and Historic Preservation Section acts as the staff of the SHPO; when state involved projects are reviewed, the section acts as the staff of the North Carolina Historical Commission.~~
- (c) ~~Projects are received through the State Clearinghouse from various federal, state, municipal and county agencies and planning boards, and directly from applicants.~~
- (d) ~~All projects received by the SHPO are reviewed for their possible effect on historically, architecturally, or archaeologically significant structures, sites, districts, or objects. All projects affecting the submerged lands of the State of North Carolina are reviewed to determine the effect on submerged cultural resources.~~

Authority G.S. 113A-4(2); 121-8; 121-9; 121-12(a); 121-23; 143B-62; 42 U.S.C. 4321; 54 U.S.C. 302301; 302303; 36 C.F.R. 800.

07 NCAC 04R .0202 DEFINITIONS

Project proposals received for review by the Archaeology and Historic Preservation Section shall include:

- (1) ~~a description of the exact project location, location;~~
- (2) ~~a map clearly indicating this location,~~
- (3) ~~the project area size in acreage,~~
- (4) ~~a description of the action proposed, and~~
- (5) ~~the applicant's name, address and telephone number. Applicants may also receive a questionnaire requesting information on structures presently located in the project area and previous land use practices.~~

The following definitions apply to this Subchapter unless otherwise indicated:

- (1) "Adverse Effect" is defined as in 36 C.F.R. 800.5(a)(1).
- (2) "Area of Potential Effects" is defined as in 36 C.F.R. 800.16(d).
- (3) "Effect" is defined as in 36 C.F.R. 800.16(i).

- (4) "Historic property" is defined as in 36 C.F.R. 800.16(l).
- (5) "Office of State Archaeology" (OSA) is a section of the Division of Historical Resources, North Carolina Department of Natural and Cultural Resources. The OSA protects archaeological sites in North Carolina. The OSA includes an Underwater Archaeology Branch.
- (6) "State Historic Preservation Office" (HPO) is a section of the Division of Historical Resources, North Carolina Department of Natural and Cultural Resources. The HPO is responsible for administering applicable historic preservation programs pursuant to State and federal law.
- (7) "State Historic Preservation Officer" (SHPO) is the Deputy Secretary, Office of Archives and History, North Carolina Department of Natural and Cultural Resources, and is further defined in 36 C.F.R. 800.16(v).
- (8) "Undertaking" means any project, activity, or program that can result in changes in the character or use of historic properties located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a Federal or State agency, including those carried out by or on behalf of a Federal or State agency; those carried out with Federal or State financial assistance; and those requiring a Federal or State permit, license, or approval. Undertakings include new and continuing projects, activities, or programs and any of their elements, including changes to the project's scope and location.

Authority G.S. 121-8; 121-12(a); 121-23; 143B-62; 54 U.S.C. 302301, 302303, 306108; 36 C.F.R. 800.3-800.6, 800.16.

07 NCAC 04R .0203 SUBMISSIONS FOR REVIEW

- (a) Projects are reviewed for archaeological concerns whenever ground disturbing activity is involved. Examples of ground disturbance include, but are not limited to, construction of dikes, clearing and grubbing of forests, subsurface alterations around standing structures, borrow pits, trenching for water and sewer lines, utility line construction or improvements requiring excavation; construction, widening or improvements of highways; and airport expansions, bridge replacements, housing developments, boat basins and channels, and placement of fill or spoil dirt.
- (b) Evaluation of potential effects on archaeological resources is made by staff archaeologists, taking into consideration known site locations, historical maps and documents, results of previous surveys in the area or similar areas, past and present land uses, the area's topography and hydrology, predictive models of archaeological site locations, and type and extent of proposed land modification activities.

~~(c) After staff evaluation, recommendations are made by the SHPO within the state or federally mandated deadline for review comments:~~

- ~~(1) Clearance. If it is determined that the project area is unlikely to contain significant archaeological remains, the written response is no comment.~~
- ~~(2) Archaeological Survey Recommended. If it is determined that the project area is likely to contain significant archaeological sites and there is no record of systematic archaeological surveys in the project area, an archaeological survey is recommended prior to any ground disturbing activity to determine the presence and significance of archaeological sites that may be damaged or destroyed by the proposed action.~~
- ~~(3) Testing Recommended. If a known site is within the project boundaries, archaeological testing is recommended to determine its significance.~~
- ~~(4) Survey and Testing Recommended. If a project area contains known sites but has not been completely surveyed, testing of the sites and a survey of the remaining project area are recommended.~~
- ~~(5) Avoidance. If archaeological sites listed in or determined eligible for inclusion in the National Register of Historic Places are located in the project area, avoidance by adjustment of the project plans is recommended. New project locations are subject to the review process.~~

~~(d) All archaeological reports submitted to the SHPO in compliance with federal and state historic preservation legislation are reviewed by the Archaeology Branch using standards established by the Department of Cultural Resources outlined in "Guidelines for the Preparation of Reports of Archaeological Surveys and Evaluations". The guidelines:~~

- ~~(1) ensure compliance with pertinent legislation;~~
- ~~(2) ensure fulfillment of contract sponsor needs with regard to archaeology; and~~
- ~~(3) permit the effective and speedy review of compliance surveys and evaluation reports. Reports submitted for review which do not satisfy the requirements defined in the guidelines are considered incomplete and returned for revision and resubmission. Copies of the guidelines are available from the Archaeology and Historic Preservation Section.~~

~~(e) When an archaeological survey report indicates that a site within a project's area of environmental impact is eligible for inclusion in the National Register of Historic Places, the procedures outlined at 36 CFR 800.5-6 (regulations of the Advisory Council on Historic Preservation) are followed.~~

~~(a) Proposed undertakings submitted for review to the HPO shall include:~~

- ~~(1) a description of the project location;~~
- ~~(2) a description of the actions(s) proposed;~~

- ~~(3) the applicant's name, address, telephone number, and email address, if available;~~
- ~~(4) a map indicating the project's location, including named or numbered roads;~~
- ~~(5) the project area size in acres; and~~
- ~~(6) photographs of any buildings 50 years old or older within the area of potential effects.~~

~~(b) Proposed undertakings submitted for review shall be submitted in one of the following methods:~~

- ~~(1) by mail addressed to the HPO, Attention Environmental Review Coordinator, 4617 Mail Service Center, Raleigh, NC 27601;~~
- ~~(2) by internal State mail to the HPO, Attention Environmental Review Coordinator, 4617 Mail Service Center; or~~
- ~~(3) by email to environmental.review@ncdcr.gov.~~

~~(c) All undertakings submitted for review shall be reviewed by the HPO and OSA as staff of the SHPO for their effect on submerged cultural resources as well as historically, architecturally, or archaeologically significant structures, sites districts, or objects. When federally-involved undertakings are reviewed, the HPO and the OSA act as the staff of the SHPO. When State-involved undertakings are reviewed, the HPO and the OSA act as the staff of the North Carolina Historical Commission.~~

~~(d) The OSA shall review all archaeological reports, including documentary research and archaeological investigations, submitted to the SHPO for review in compliance with federal and State historic preservation law by employing the Secretary of the Interior's Standards and Guidelines for Archeological Documentation, available at https://www.nps.gov/history/local-law/arch_stnds_0.htm, and the Abandoned Shipwreck Act Guidelines, available at <https://www.nps.gov/archeology/submerged/intro.htm>.~~

~~(e) The HPO shall issue a project-specific response within 30 days of receipt of the submission.~~

Authority G.S. 121-4(13); 121-8; 121-9; 121-12(a); 143B-62; 16 U.S.C. 470; 54 U.S.C. 302301; 302303; 36 C.F.R. 800.

07 NCAC 04R .0204 UNDERWATER ARCHAEOLOGICAL REVIEW

~~(a) Water related construction activities are defined as major or minor according to the extent of bottom disturbance. Major bottom disturbing activities include, but are not limited to, new or maintenance dredging, extensive bulkheading, jetty or mooring construction, subaqueous power and water line installation, bridge construction, and the dredging of temporary channels. Minor bottom disturbing activities include, but are not limited to, construction of private piers, bulkheads, and docks, and minor dredging.~~

~~(b) Prospective construction projects affecting submerged lands are reviewed by the Underwater Archaeology Unit taking into consideration the project area's potential for submerged cultural resources and whether major or minor bottom disturbance is planned.~~

~~(c) After staff review, recommendations are made by the SHPO in terms of the bottom disturbance involved and the project area's potential for submerged cultural resources.~~

- (1) ~~If major bottom disturbance is to take place in a project area with high or moderate potential, project specific documentary research followed by appropriate archaeological investigation is recommended prior to project construction.~~
- (2) ~~If major bottom disturbance is to take place in an area with low potential, no documentary or archaeological investigation is required. It is recommended that the SHPO be notified should submerged cultural resources be encountered during construction.~~
- (3) ~~If minor bottom disturbance is to take place, documentary and archaeological investigation is only recommended in areas with a high potential for any known submerged cultural resources.~~

(d) ~~Maps and research files enable the Underwater Archaeology Unit to determine the potential for submerged cultural resources within a project area. Criteria used to establish high, moderate, and low potential areas are as follows:~~

- (1) ~~"High potential area" means:~~
 - (A) ~~A known archaeological site or charted wreck of historic age is present; or~~
 - (B) ~~Historical research indicates the project lies in an area with an active maritime history, documented vessel losses or known hazards to navigation. Harbors, major shipping lanes, inlets and shoals are examples of high potential areas.~~
- (2) ~~"Moderate potential area" means:~~
 - (A) ~~No known archaeological sites or charted wrecks are present and documentary research indicates that only marginal maritime activities have taken place; or~~
 - (B) ~~Bottom lands have been partially disturbed, lessening the likelihood that significant cultural resources exist.~~
- (3) ~~"Low potential area" means:~~
 - (A) ~~No known archaeological site or charted wrecks are present and documentary research indicates that little or no maritime activities have taken place historically; or~~
 - (B) ~~Bottom lands have been previously disturbed to the extent that no intact significant cultural resources are likely to exist.~~

(e) ~~Reports of documentary research or archaeological investigations are reviewed under the requirements as established by the Department of Cultural Resources defined in "Guidelines for the Preparation of Reports of Archaeological Surveys and Evaluations," available from the Archaeology and Historic Preservation Section. Reports submitted for review which do not satisfy the requirements are considered incomplete and returned for revision and resubmission.~~

Authority G.S. 121-22 through 121-28; 143B-62(2)g; 16 U.S.C. 470; 36 C.F.R. 800.

07 NCAC 04R .0205 ARCHITECTURAL REVIEW

- (a) ~~Projects are reviewed by the Survey and Planning Branch for their possible effect on historically or architecturally significant buildings, structures, sites, districts, or objects.~~
- (b) ~~Evaluation of a project's potential effect is made by the Survey and Planning Branch staff taking into consideration National Register criteria, known sites, historical maps and documents, results of previous architectural and historic resource surveys, individual properties, districts, and thematic and multiple resource nominations listed in the National Register of Historic Places. Photographs and historical background may be requested from the applicant for projects where there is little in-house information on which to base an evaluation.~~
- (c) ~~After staff evaluation, recommendations are made by the SHPO:~~
 - (1) ~~Clearance. If it is determined that the project area does not contain any significant historical or architectural resources, the written response is no comment.~~
 - (2) ~~Additional Information Requested. If after reviewing the initial materials concerning buildings, structures, sites, districts, or objects in the project area the SHPO is uncertain of their significance, the SHPO will recommend that additional historical and architectural data be submitted in order to determine the resource's eligibility for listing in the National Register of Historic Places. On the basis of the additional information, the SHPO will either clear the project or inform the applicant that the applicant should seek a Determination of Eligibility for listing in the National Register of Historic Places from the Secretary of the Interior in accordance with 36 CFR 63.~~
 - (3) ~~Determination of Effect Required. If historically or architecturally significant properties, listed in or determined eligible for inclusion in the National Register of Historic Places, are located within the project's area of environmental impact, the procedures outlined at 36 CFR 800.5-.6 (regulations of the Advisory Council on Historic Preservation) are followed.~~

Authority G.S. 113-229(e); 113A-4(2); 121-4(13); 136-42.1; 143B-62(1)f,(3); 16 U.S.C. 470.

07 NCAC 04R .0206 PROCEDURES FOR STATE UNDERTAKINGS AFFECTING A NATIONAL REGISTER-LISTED PROPERTY

- (a) State agencies to which own State-owned property is allocated or whose undertaking may affect any property, whether publicly or privately owned, nominated to listed in the National Register of Historic Places shall identify those National Register-listed properties through use of the HPO's Geographic Information System HPOWEB located at <http://gis.ncdcr.gov/hpoweb> or use of the North Carolina Listings in the National Register located at

~~http://www.hpo.ncdcr.gov/NR-PDFs.html. receive notification from the SHPO when the property is nominated, and a certificate when the property has been listed in the National Register. A roster of properties listed in the National Register of Historic Places from North Carolina is distributed to appropriate state agencies at least biennially.~~

(b) ~~The head of any state State agency having direct or indirect jurisdiction over a proposed State-assistedstate assisted undertaking, undertaking or the head of any state State department, board, commission, or independent agency having authority to build, construct, operate, license, authorize, assist, or approve any state State or state-assisted State-assisted undertaking, shall, prior to the approval of state State funds or action for the undertaking, undertakingtake into account consider its effect on any district, site, building, structure, or object which is-listed in the National Register of Historic Places. Undertakings include, but are not limited to:~~

- ~~(1) any alteration, demolition, neglect, repair, renovation, move or other change to a building owned by the State of North Carolina, or to any building in which state assistance or funds are involved;~~
- ~~(2) any state or state-assisted project which will affect buildings not owned by the State of North Carolina; or~~
- ~~(3) any state or state-assisted project which will involve ground disturbance.~~

(c) ~~Prior to the approval of any state State funds and prior to any approval, license, or authorization-permit for any State or State-assisted undertaking covered under Paragraph (b) of this Rule, the head of the agency concerned shall:~~

- ~~(1) submit a statement to the Director, Division of Archives and HistorySHPO that the undertaking will have no effect upon a property listed in the National Register of Historic Places; or~~
- ~~(2) submit a statement that the undertaking will have an effect upon a property listed in the National Register of Historic Places, justify describe the proposed undertaking, and invite review and comment from the Division of Archives and HistorySHPO.~~

~~(d) An For purposes of this Rule, an undertaking shall be deemed to have an adverse effect requiring review is defined when the undertaking creates an effect which meets the definition of "adverse effect" in Rule .0202 of this Section or when the undertaking includes the transfer or sale of a State-owned property listed in the National Register without adequate conditions or restrictions regarding preservation, maintenance, or use of the National Register property, as an adverse effect occurring under conditions which include, but are not limited to:~~

- ~~(1) destruction or alteration of all or part of a property;~~
- ~~(2) isolation from or alteration of a property's surrounding environment;~~
- ~~(3) introduction of visual, audible or atmospheric elements that are out of character with the property or alter its setting;~~

- ~~(4) transfer or sale of a State owned property listed in the National Register without adequate conditions or restrictions regarding preservation, maintenance, or use; and~~
- ~~(5) neglect of a property resulting in its deterioration or destruction.~~

~~(e) These requirements will not apply to Review under this Rule is shall be required if any minor repair that does not affect affects the facade of a building or its structural or overall architectural integrity. Window replacement of existing windows shall be subject to review under this Rule.~~

~~(f) Upon receipt of notice that a proposed undertaking will have an effect upon a property listed in the National Register of Historic Places, the Director or his designee shall determine whether the undertaking has an effect which will require review by the North Carolina Historical Commission. Upon receipt of a notice of no effect or upon receiving information that an undertaking is taking place which might have an effect upon a property listed in the National Register of Historic Places, the Director or his designee shall determine whether the undertaking has an effect which will require review by the North Carolina Historical Commission (Commission).~~

~~(g)(f) If the Director, Division of Archives and History, SHPO finds that an undertaking will have an adverse effect which requires review, review by the Historical Commission, he shall transmit a notice to the Chairman of the Historical Commission, who has the authority to call a meeting of the Historical Commission to discuss the undertaking with the agency head concerned or his designee. The Director, as ex officio Secretary of the Commission shall transmit a notice of the meeting to the agency head. From the time of receipt of the notice until the conclusion of the Historical Commission meeting, the agency shall take no action which would affect a property listed in the National Register of Historic Places without the approval of the Director SHPO acting for and in on behalf of the Historical Commission. Such approval shall only be granted in the case of an emergency, emergency threatening public health and safety.~~

~~(h) If the Commission determines that the agency involved has not adequately considered the effect of its undertaking, and the Commission needs more time to comment upon the proposed undertaking in order that the agency involved may realize all of the competing public interests involved, the Commission may order that the undertaking not take place until it has a reasonable time to comment, the reasonable time to be specified in the order.~~

~~(i)(g) Members of the public who have knowledge of any undertaking by a State agency which would have an effect upon a property listed in the National Register of Historic Places may comment in writing to the Director, Division of Archives and HistorySHPO, Department of Natural and Cultural Resources, MSC 4617, Raleigh, North Carolina 27611- 27699.~~

~~(h) The Commission shall provide its recommendation(s) on the undertaking to the agency head within 30 days following the Commission's meeting.~~

~~(i) The agency head shall respond to the Commission's recommendation in writing and inform the Commission of what action the agency will take with regard to the historic property.~~

Authority G.S. 121-12(a); 143B-62.

SECTION .0300 - NATIONAL REGISTER: PLAN

07 NCAC 04R .0301 NATIONAL REGISTER ADVISORY COMMITTEE

~~(a) The State Historic Preservation Officer (SHPO) is the Director, Division of Archives and History.~~

~~(a)(b) The North Carolina Historical Commission with the addition of an architect, an architectural historian, a prehistoric archaeologist, and a historic archaeologist shall serve as the State Professional Review Committee (SPRC) to fulfill the requirements of the National Park Service, Department of the Interior. The SHPO shall appoint twelve members to the National Register Advisory Committee (NRAC), which serves as the State historic preservation review board required by 54 U.S.C. 302301(2). The NRAC's membership shall include five members of the North Carolina Historical Commission and seven members of the general public. The following professions shall be represented in the membership:~~

- ~~(1) architect;~~
- ~~(2) architectural historian;~~
- ~~(3) professional historian;~~
- ~~(4) prehistoric archaeologist; and~~
- ~~(5) historic archaeologist.~~

~~(b) The State Professional Review Committee NRAC reviews North Carolina nominations to the National Register of Historic places Places (Register) and makes a recommendation to the SHPO on whether the property nominated is eligible for the register-meets the National Register criteria for nomination as set forth in 36 C.F.R. 60.4 and whether the nomination should be signed by the SHPO and forwarded to the U.S. Department of the Interior, which maintains the National Register of Historic Places. Meetings of the committee are called by the SHPO. A majority (50 percent plus 1) of the committee constitutes shall constitute a quorum. Other members may be added as required or as determined appropriate.~~

Authority G.S. 143B-62; 54 U.S.C. 300318, 302104, 302301; 36 C.F.R. 60.3(o), 60.4, 60.6.

07 NCAC 04R .0302 PUBLIC SUGGESTIONS FOR NATIONAL REGISTER

~~Members of the public who seek nomination of sites, structures, or places to the National Register of Historic Places should write:~~

~~Director
Division of Archives and History
Department of Cultural Resources
109 East Jones Street
Raleigh, North Carolina 27611~~

Authority G.S. 121-8(b); 143B-62(1),(3).

07 NCAC 04R .0303 NOMINATION PROCEDURES

The process of nomination to the National Register of Historic Places (Register) requires the following steps:

- (1) ~~Nomination forms are prepared under the supervision of the SHPO, or by property owners, municipal agencies, federal agencies, or other constituents in compliance with state, local and federal guidelines. Before a~~

completed nomination to the National Register of Historic Places (Register) may be submitted for review pursuant to Item (4) of this Rule, a draft of the nomination shall be submitted for review as set forth in 07 NCAC 04R .0304. Draft nominations may be prepared under the supervision of the SHPO or by property owners, municipal agencies, federal agencies, or any person, in compliance with State, local, and federal law.

(2) Nominations submitted for review shall submit a form in accordance with the standards set forth in the National Register Bulletin, "How to Complete the National Register Form," available at <https://www.nps.gov/nr/publications/bulletins/nrb16a/>.

(2)(3) Notice is provided of the intent to nominate the property and written comments are solicited by the SHPO in accord with federal regulations. Owners may object to the listing of private property in a written and notarized statement. The HPO shall provide notice of the intent to nominate a property in accordance with 36 CFR 60.6. Owners may object to the listing of private property by submitting a written and notarized statement in accordance with 36 C.F.R. 60.6(g). Statements of objection on the part of owners of private property which the SHPO finds to meet objection criteria set forth in 36 C.F.R. 60.6(g) will be forwarded within 10 business days of SHPO receipt for consideration by the Keeper of the National Register.

(3)(4) Completed nomination forms are shall be submitted to the SPRC National Register Advisory Committee (NRAC) for approval prior to submission to the National Register review pursuant to 36 C.F.R. 60.6(j).

(4)(5) Nomination forms approved by the SPRC are signed by the SHPO. Individuals, local governments, or local government entities such as historic preservation commissions or historic landmark commissions created under the authority of G.S. 160A-400.7 may provide comments on a proposed nomination to the SHPO in advance of the NRAC meeting. Following NRAC review of nominations, the SHPO reviews the nominations and may submit nominations to the Keeper of the National Register pursuant to 36 C.F.R. 60.6(k) and (l).

(5)(6) The SHPO submits the completed nomination and comments concerning the significance of the property to the Keeper of the National Register, Department of the Interior, National Park Service, Washington, D.C. 20240. Notification letters to property owners and proponents shall be prepared and sent to confirm the action taken by the NRAC and

SHPO in regards to the nomination. Deferral or denial letters shall be accompanied by an explanation of why the action was deferred or denied and what steps might be taken to make a valid re-submission of the nomination, if any.

- (6) ~~Notice is provided in the Federal Register that the nominated property is being considered for listing in the National Register of Historic Places; comments are solicited concerning the significance of the property; and 15 days are allowed for further owner objection or comment.~~
- (7) ~~Nominations must be reviewed by the National Register within 45 days from the date of receipt by the National Register Office.~~
- (8) ~~Owners and interested parties may petition the Keeper, either in support of or in opposition to the nomination. The petitioner must state the grounds of the petition and request in writing that the Keeper substantively review the nomination. The petition must be received before the property is listed.~~

Authority G.S. 121-8(b); 143B-62; 54 U.S.C. 302104; 36 C.F.R. 60.5, 60.6, 60.9.

07 NCAC 04R .0304 REVIEW AND PROCESSING

The following steps assure that North Carolina's procedures for nomination to the National Register of Historic Places are in compliance with the federal requirements:

~~(1)(a) Requests for consideration by the SPRC National Register Advisory Committee (NRAC) of a property's eligibility for the National Register may originate with a staff member, SPRC NRAC member, governmental agency, property owner, or any interested citizen. The ~~report request~~ must shall be in written form and include a slide of the property, the following:~~

- (1) the property name;
- (2) property location;
- (3) ownership information;
- (4) applicant contact information;
- (5) reason for the request;
- (6) physical description and brief history of the property;
- (7) a map or site plan; and
- (8) photographs.

~~(2) Staff begins a file on the site or property, including the information supplied, initial staff opinion concerning the property's eligibility under National Register criteria and any other pertinent material.~~

~~(3)(b) The SHPO and appropriate HPO staff shall present information on the site or property to the SPRC-NRAC for review and recommendation as to whether the site or property appears to be potentially eligible for the National Register and should be placed on a list for study.~~

(c) The NRAC shall make a recommendation to the SHPO as to whether the site or property should be placed on a list for study.

~~(4)(d) The SHPO notifies~~ shall notify the site owner or, if a district, the executive officer of the municipality or affected area,

~~by mail of his intent to study the property. The owner is advised of the effects of listing to the property. The owner is encouraged to submit written questions and comments. The owner is urged to send any relevant information concerning the property's significance for use in study of the property. The owner or executive officer shall be advised of the effects of listing the property. The owner or executive officer may submit written questions, comments, and other relevant information concerning the property's significance for use in studying the property.~~

~~(5)(e) Work is done by staff HPO staff shall provide nomination proponents with an electronic copy of the National Register Bulletin "How to Apply the National Register Criteria for Evaluation," available at <https://www.nps.gov/nr/publications/bulletins/nrb15/> to complete a nomination or to and shall review a completed nomination nomination drafts.~~

~~(6) Not less than 30 nor more than 75 days prior to the SPRC meeting at which the property or district will be reviewed, the SHPO sends a letter, the criteria for evaluating property to be nominated to the National Register, and a statement of the effects of listing in the National Register of Historic Places to the property owner. The text of the letter must be approved by the National Register Office. The chief executive officer of the local governmental unit is also notified by mail of the intent to nominate, as are local historic properties commissions. The letter will notify the person when the SPRC meeting is to be held and will solicit written comments. The owner is also advised that he may object to the nomination of the property to the National Register. In the case of a historic district, each owner must be notified by mail if there are fewer than 50 property owners within the district. If there are more than 50 owners in the district, the SHPO provides legal notice in a local newspaper worded in accordance with a notice provided by the National Register of Historic Places. If a property owner objects to the nomination of his property, or if a majority of owners within a proposed historic district object to the nomination, the SPRC and the SHPO may decide to send the nomination to the National Register of Historic Places for a determination of eligibility.~~

~~(7) SPRC meets and nominations are considered for approval. A majority of the committee must be present, and a majority of the entire committee must vote to approve.~~

~~(8) SHPO signs nomination forms approved by the SPRC.~~

~~(9) SHPO submits the nominations and written comments received concerning the significance of a property to the Keeper of the National Register of Historic Places, National Park Service, Department of the Interior, Washington, D.C. 20240.~~

~~(10)(f) Following review by the Keeper of the National Register, Register and receipt by the SHPO from that office of notice of approval or rejection of the nomination, the SHPO sends shall send to the property owner and chief executive officer of the local governmental unit notification of the disposition of the nomination, nomination and, if approved, a certificate signed by the SHPO stating that the property is listed in the National Register of Historic Places.~~

Authority G.S. 121-8(b); 143B-62; 36 C.F.R. 60.6, 60.11.

07 NCAC 04R .0305 NATIONAL REGISTER NOMINATION PRIORITIES

~~(a) Because of the great number of properties potentially eligible for nomination to the National Register of Historic Places, the following priorities will determine the consideration of nominations:~~

- ~~(1) properties in danger of being demolished, sold, used, or neglected to such an extent that their historical or cultural importance will be destroyed and for which nomination to the National Register may reasonably be expected to effect their preservation;~~
- ~~(2) properties with special preservation needs or opportunities;~~
- ~~(3) properties determined eligible for nomination by the Secretary of the Interior under the provisions of Section 106 of the National Historic Preservation Act of 1966 and the Advisory Council on Historic Preservation procedures, 36 C.F.R. 800; 16 U.S.C. 470;~~
- ~~(4) properties of statewide or national significance;~~
- ~~(5) properties on the study list for the greatest length of time;~~
- ~~(6) properties whose owner is concerned about its preservation and actively seeks nomination.~~

~~A priority list drawn up by the staff will be presented to the SPRC at each January meeting.~~

~~(b) Staff will advise owners whose properties have been certified as significant for purposes of receiving the credit for the rehabilitation of a certified historic structure under the U.S. Internal Revenue Code, but not yet listed on the National Register, that the responsibility for meeting the 30 month limitation on National Register listing is the owner's, not the SHPO's, and that staff will review and process all completed and adequate nominations expeditiously but does not carry the burden of meeting the 30 month schedule. A property owner has 30 months from the date of taking a rehabilitation tax credit to achieve National Register listing of the property.~~

Authority G.S. 121-8(b); 143B-62(3); 36 C.F.R. 60.11.

SECTION .0500 – HISTORIC PRESERVATION COMMISSIONS

07 NCAC 04R .0501 REVIEW OF COMMISSION REPORTS

~~(a) Historic properties and historic district commissions are required to submit reports on the proposed designation of historic~~

~~properties and historic districts, and on proposed changes in the boundaries of existing historic districts, to the Department of Cultural Resources for review. The Department review is intended to provide technical assistance and ongoing support for the work of historic properties and historic district commissions.~~
~~(b) Historic properties or historic district Local governments and local preservation, historic district, or landmark commissions ("commissions") shall submit requests for review of reports pursuant to G.S. 160A-400.4(b) and 160A-400.6(2)-(3) to the Director, Division of Archives and History, State Historic Preservation Officer (SHPO) in care of the State Historic Preservation Office (HPO), North Carolina Department of Natural and Cultural Resources, Resources, 4617 MSC, Raleigh, NC 27699 or emailed to the Local Government Coordinator. The review may be made by an employee of the Division designated by the Secretary of the North Carolina Historical Commission. The Division submits its comments to the historic properties or historic district commission within 30 days.~~

Authority G.S. 121-8(e); 160A-400.4(b)(2); 160A-400.6(2,3).

07 NCAC 04R .0502 REVIEW OF APPEALS

The State of North Carolina and its agencies may appeal decisions of local historic district preservation commissions to the North Carolina Historical Commission. Agencies shall submit requestsRequests for appeals by the state are submitted to the Chairman, North Carolina Historical Commission, Commission c/o Division of Archives and HistoryState Historic Preservation Office, North Carolina Department of Natural and Cultural Resources, Resources, 4617 MSC, Raleigh, NC 27699. The Chairman calls a meeting of the Commission, at which the Commission considers the appeal of the state agency. The Commission renders its decision within 30 days of receiving the notice of appeal from the State agency. Agencies shall submit a copy of the record and decision from the local preservation commission as well as a brief explanation of the grounds for appeal. The Commission may reverse, sustain, or modify the decision of the local commission.

Authority G.S. 143B-62; 160A-400.9(f).

07 NCAC 04R .0503 CERTIFICATES OF APPROPRIATENESS

(a) Historic properties and historic district commissions may seek the advice of the Department of Cultural Resources as they consider applications for certificates of appropriateness. The advice offered by the Department is intended to provide technical assistance and ongoing support for the work of historic properties and historic district commissions.

~~(b)~~(a) Local preservation commissions seeking the advice of the Department of Natural and Cultural Resources for and Requests for requesting review of applications for certificates of appropriateness by the Department of Cultural Resources are submitted shall submit such requests in writing to the Director, Division Office of Archives and History, in care of the State Historic Preservation Office (HPO), North Carolina Department of Natural and Cultural Resources, Resources, 4617 MSC, Raleigh, NC 27699, or by email to the Local Government Coordinator. The review may be made by the directorDirector or

HPO staff as ~~his~~ the Director's designee. The review will be completed within a ~~reasonable period of time~~ 30 days of receipt and conveyed in writing to the Commission requesting the review.

(b) Requests for review of applications for certificates of appropriateness shall include a copy of the certificate of appropriateness application.

Authority G.S. 121-8(e); 160A-400.9(d).

07 NCAC 04R .0504 ADEQUATE INFORMATION

~~In connection with a review by the Department of a proposed historic district, changes in the boundaries of an existing historic district, an application for a certificate of appropriateness or a report on a proposed historic property, the appropriate agency will provide the Department with information it requests in order to make an adequate review.~~

Authority G.S. 160A-395(2); 160A-397; 160A-398.1; 160A-399.5(2); 160A-399.6.

SECTION .0600 – DESIGNATION OF HISTORIC PROPERTIES UNDER THE STATE BUILDING CODE

07 NCAC 04R .0601 STATEMENT OF PURPOSE

~~The State Historic Preservation Officer (SHPO) (the Director, Division of Archives and History, Department of Cultural Resources) may designate identify buildings that possess historic and architectural significance as historic properties for building code purposes. purposes in accordance with the rules of this Section. This designation entitles the owners of such significant buildings to "special consideration" in relation to certain building code requirements if the buildings are adapted for public exhibition or commercial use.~~

Authority G.S. 121-8; 2012 North Carolina Rehab Code, Sec. 1.33; 2015 North Carolina Existing Building Code, Chapter 2, Sec. 202; 54 U.S.C. 302303.

07 NCAC 04R .0602 GENERAL APPLICATION PROCESS; CRITERIA FOR DESIGNATION

(a) Applications for designation of buildings as historic properties for building code purposes may be obtained from the ~~Director, Division of Archives and History~~ State Historic Preservation Officer (SHPO), Attention Preservation Planner ~~Survey and National Register Branch, State Historic Preservation Office (HPO), North Carolina Department of Natural and Cultural Resources, 109 East Jones Street~~ 4617 MSC, Raleigh, N. C. 27611-27699, or by email to the Supervisor of the Survey and National Register Branch of the Historic Preservation Office. Applications shall include the contents required by Rule .0605 of this Section. Applications are submitted to the Director (SHPO) and are reviewed by him or his designee, and division professional staff. The SHPO or his designee shall signs sign the application form, indicating whether or not the property is determined historic. The SHPO forwards the application to the Engineering Division, North Carolina Department of Insurance, with copies to the local building inspector and the property owner. deeming the property historic for the purposes of either the North Carolina

Rehab Code or the 2015 North Carolina Existing Building Code if it meets one or more of the following criteria:

- (1) It is listed in the North Carolina or National Registers of Historic Places either individually or as a contributing building to a historic district;
- (2) It has been issued a Determination of Eligibility pursuant to 36 C.F.R. part 63 by the Keeper of the National Register of Historic Places;
- (3) It is identified as a contributing building to a local historic district which has been certified by the Keeper of the National Register as substantially meeting the National Register Criteria under 36 C.F.R. 67.9; or
- (4) It is certified by the State Historic Preservation Officer using criteria set forth in 36 C.F.R. 60.4, as eligible to be listed on the National Register of Historic Places either individually or as a contributing building to a historic district; property included in the "list for study" under 07 NCAC 04R .0304 qualifies under this category.
- (5) The SHPO shall forward the application with a determination of whether the property has been deemed historic to the property owner, with copies to the local building inspector and the HPO's Restoration Branch.

(b) Any building determined by the SHPO to be individually eligible for listing in the National Register of Historic Places pursuant to Subparagraph (a)(4) of this Section shall be presented for addition to the State Study List at the next meeting of the State Professional Review Committee.

(c) The SHPO's determination of whether the property is designated historic for purposes of the building codes is a final agency decision.

Authority G.S. 121-8; 2012 North Carolina Rehab Code, Sec. 1.33; 2015 North Carolina Existing Building Code, Chapter 2, Sec. 202; 54 U.S.C. 302303.

07 NCAC 04R .0603 CRITERIA FOR DESIGNATION

In reviewing building code applications, the SHPO will consider properties in the following categories:

- (1) Buildings individually listed in the National Register of Historic Places.
- (2) Buildings designated as historic properties by a county or municipality pursuant to G.S. 160A-399.1 through 13.
- (3) Buildings within historic districts listed in the National Register of Historic Places, approved for inclusion on the State Study List by the State Professional Review Committee, or within historic districts designated by a county or municipality pursuant to G.S. 160A-395 through 399, and which contribute to the historic or architectural significance of the district.

- (4) ~~Buildings determined by the SHPO to meet the criteria for individual listing in the National Register of Historic Places.~~

Authority G.S. 121-8(a),(c), and (f); Building Code Authority Chapter 1009.1(a)(1),

07 NCAC 04R .0604 DESIGNATING BUILDINGS AS HISTORIC FOR BUILDING CODE PURPOSES

(a) ~~For applications submitted for buildings falling into criteria categories 1 or 2 in Rule .0603 in this Section, the Preservation Planner in the Archaeology and Historic Preservation Section will review the documentation and prepare a letter for the SHPO or his designee, designating the property as historic for purposes of the North Carolina Building Code. The letter shall be attached to the application form.~~

(b) ~~Applications submitted for buildings falling into criteria categories 3 or 4 in Rule .0603 will require the planner to review the documentation and application with the survey specialist responsible for that particular county and other staff members as appropriate. Once a determination has been made the planner will prepare a letter for the SHPO or his designee which clearly states reasons for designating or not designating the property for building code purposes. The letter shall be attached to the application form.~~

(c) ~~Any building determined by the SHPO or his designee to be individually eligible for listing in the National Register of Historic Places under criteria category 4 will be presented for addition to the State Study List at the next meeting of the State Professional Review Committee. This submission shall not be a precondition to the designation of buildings in category 4.~~

Authority G.S. 121-8(a),(c), and (f); Building Code Authority Chapter 1009.1(a)(1).

07 NCAC 04R .0605 DOCUMENTATION REQUIRED

~~The following documentation must accompany applications for historic designation for building code purposes: In addition to the application required by Rule .0602 of this Section, the following documentation shall be submitted for historic designations for purposes of the 2015 North Carolina Existing Building Code:~~

- (1) ~~For buildings—a building~~ individually listed in the National Register, the applicant ~~must shall~~ submit a photograph of the building and cite the nomination by name and county.
- (2) ~~For buildings—a building~~ individually designated locally by historic properties commissions, the applicant ~~must shall~~ submit a photograph of the building, a copy of the local designation report, and a letter from the local designating authority certifying that the property is ~~locally listed~~ designated as a local historic landmark or is in a local historic district.
- (3) ~~For buildings on a building in a historic district that is listed in the National Register, Register or listed on the State Study List, or in that is in a locally designated historic district, districts, the applicant must shall provide provide:~~ the name

~~of the district and indicate whether it is National Register, Study List, or local level, a photograph of the building, the address of the building, a brief statement of its significance as a contributing or pivotal building in the district a map of the district showing the location of the building. For buildings in local districts, the applicant must also provide a copy of the ordinance designating the district and the material under Subparagraphs (1) and (2) of this Rule relating to the specific property. However, the certification letter from the local designating authority under Subparagraph (2) of this Rule must certify that the property lies within the boundary of a locally designated district.~~

- (a) the name of the district and shall indicate whether the building is designated in the National Register, on the State Study List, or locally;
- (b) a photograph of the building;
- (c) the address of the building;
- (d) a brief statement of the building's significance as a contributing or pivotal building in the district, pursuant to 36 C.F.R. 60.4 or G.S. 160A-400.4 or 160A-400.5;
- (e) whether the building is contributing to the National Register district;
- (f) a map of the district showing the location of the building; and
- (g) for a building in a locally designated district, the applicant shall also provide a copy of the ordinance designating the district and the material required by Items (1) and (2) of this Rule relating to the property. The certification letter from the local designating authority required by Item (2) of this Rule shall certify that the property lies within the boundary of a locally designated district.

- (4) ~~For buildings—a building~~ not falling into any of the categories in this Rule, the applicant ~~must shall~~ submit photographs of the building (including ~~significant~~ interior features), a statement of the historical associations and significance of the building, an architectural description of the building, and a statement of ~~which the~~ National Register criteria under 36 C.F.R. 60.4 it meets and why.

Authority G.S. 121-8; 2012 North Carolina Rehab Code, Sec. 1.33; 2015 North Carolina Existing Building Code, Chapter 2, Sec. 202; 54 U.S.C. 302303.

07 NCAC 04R .0606 APPEALS PROCEDURE

(a) ~~Applicants denied certification by the SHPO or his designee under criteria categories 3 and 4 in Rule .0603 of this Section may~~

~~appeal to the State Professional Review Committee. The appeal may be made in writing or in the form of an appearance before the committee or special subcommittee thereof. Within 15 days of the review or hearing of the appeal by the committee, written recommendation shall be made to the SHPO as to whether the denial should stand or be reversed.~~

~~(b) If, after review by the State Professional Review Committee, the SHPO determines that the denial shall stand, the applicant may make further appeal to the North Carolina Historical Commission. The appeal may be in writing or in the form of an appearance before the Commission or a subcommittee thereof. The Commission shall review the recommendations of the State Professional Review Committee and of the SHPO in the course of its deliberations. Within 15 days of the review or hearing of the appeal, the Commission or designated subcommittee shall issue a written decision as to whether the denial shall stand or be reversed. The decision of the Commission shall be binding and final. If the Commission rules in favor of the applicant, the SHPO shall designate the property in question as historic for purposes of the building code.~~

~~(c) Appeals shall be on the record.~~

Authority G.S. 121-8(a),(c), and (f); 143B-62; Building Code Authority Chapter.

SECTION .0800 – ARCHAEOLOGY SERVICES

07 NCAC 04R .0801 OPERATING HOURS

~~The Office of State Archaeology, or OSA offices, as well as any regional offices and facilities, are open between 8:00 a.m. and 5:00 p.m., Monday through Friday, except on state holidays. These hours may be extended to accommodate public education programs. Visitors under the age of 12 must be accompanied by an adult unless prior arrangements have been made. Pets are not allowed in the facilities. Visitors are not allowed in the offices after hours unless accompanied by, or arrangements have been made with, a member of the staff. Access to areas may be restricted for reasons of safety and security.~~

Authority G.S. 121-5(b); 121-8(b),(f).

07 NCAC 04R .0802 DISPOSITION OF ARTIFACTS; LOANS

~~(a) Accessioned archaeological artifacts shall not be deaccessioned unless they have been certified by the North Carolina Historical Commission to have no further value for scientific research and reference purposes. The Commission must consider:~~

- ~~(1) whether the artifacts possess any new or undiscovered historical or archaeological information to add to the scientific community; and~~
- ~~(2) whether other comparable artifacts exist, so that there is no legitimate reason to retain the artifacts for future scientific research and reference purpose.~~

~~(a)(b) Artifacts possessed by the Division of Archives and History in the custody of the Office of State Archaeology shall not be loaned for uses other than be loaned only for museum purposes,~~

research purposes, or non-museum public display by local, state, or federal agencies or institutions ~~where the use is intended for the~~ purpose of public education.

~~(b)(c) Loaned artifacts, specimens, documents, and records shall remain be maintained in the condition in which they were delivered. The borrower shall insure the articles against loss or damage for two times the amount of its fair market value as of the date of loss. The artifacts must be protectively packaged shall be packaged in a manner that protects them from damage. The artifacts remain the property of the Division of Archives and History State of North Carolina and can may be withdrawn removed by the State with 15 10 days' written notice upon presentation of a written communication by the lender or its duly authorized representative to the borrower.~~

~~(e)(d) Written authorization must be issued by the Office of State Archaeology to permit photography or duplication of any artifact of any kind. An acknowledgment credit shall identify each artifact image with the Office of State Archaeology, North Carolina Division of Archives and History.~~

~~(d)(e) All requests for loans of artifacts shall be submitted in writing to the State Archaeologist at least 30 days in advance before of the requested loan period.~~

~~(e)(f) A written contract between the borrower and the Division of Archives and History containing the period and conditions of the loan shall be signed prior to the lending of any artifact.~~

Authority G.S. 70-18;121-2(8); 121-4(12);121-5(d); 121-7; 121-8.

07 NCAC 04R .0803 CURATION OF ARCHAEOLOGICAL COLLECTIONS

~~(a) All requests to temporarily or permanently store archaeological, archival, and photographic collections at OSA curation facilities shall be submitted in writing to the State Archaeologist. All requests shall include:~~

- ~~(1) a declaration or statement of ownership of the collection;~~
- ~~(2) the name, address, phone number, and email address of the person or agency submitting the collection;~~
- ~~(3) the provenience information for the collection;~~
- ~~(4) the storage size of the collection in cubic feet or by archival boxes measuring 12 x 15 x 10 inches or 6 x 15 x 10 inches; and~~
- ~~(5) the number of items to be stored.~~

~~(b) Decisions on the acceptance of collections will storage requests shall be made in writing by the State Archaeologist, in consultation with the division director-Director of the Office of Archives and History, North Carolina Department of Natural and Cultural Resources, based on factors such as;and other division staff members.~~

- ~~(1) information submitted in the request under Paragraph (a) of this Rule;~~
- ~~(2) the condition of the materials contained in the collection; and~~
- ~~(3) the payment of applicable fees.~~

~~(c) Requests may be approved or denied, depending on available storage space, the condition of the materials, payment of applicable fees.~~

~~(d)(c)~~ Fees may be charged for curation and conservation services in the amount of two hundred dollars (\$200.00) per cubic foot of materials, and the revenue arising from these services shall be used to support the activities of the OSA's curation facilities. Fees may be increased on a biennial basis, adjusted pursuant to the rate of inflation established by the Consumer Price Index.

~~(e)~~ Charges for the conservation, stabilization, analysis, inventory, repackaging, or other treatment of materials may be negotiated on a case by case basis, and set forth in service contracts mutually agreed upon between the OSA and a requesting party, if materials exceed the two hundred dollar (\$200.00) per cubic foot curation fee.

Authority G.S. 70-11; 121-4(8), (9), (13), (14); 121-8(b),(f); 143B-62.

07 NCAC 04R .0804 DEACCESSIONS

~~(a)~~ An accessioned archaeological artifact owned by the Division of Archives and History may not be deaccessioned until it has been certified to have no further value for scientific research and reference purposes by the North Carolina Historical Commission.

~~(b)~~ For an artifact to be deaccessioned, an Artifact Disposal Form giving artifact provenance, condition, and reason for disposal must be approved by the Director, Division of Archives and History, the State Archaeologist, and the Historical Commission.

Authority G.S. 121-8(b),(f); 132-1(a); 132-3(a).

07 NCAC 04R .0805 ACCESS TO ARCHAEOLOGICAL COLLECTIONS

~~Collections of artifacts, photographs, field notes, records, or other data are accessible for examination and study during regular business hours, Tuesday through Thursday. Requests for access should be made in writing to the State Archaeologist at least two weeks in advance, stating as specifically as possible which portions of the collections are to be studied. Unless such access would create a risk of harm to such resources or to the site at which the resources are located, collections shall be examined within branch facilities.~~

Authority G.S. 70-18; 121-8(b),(f); 132-1(a); 132-2; 132-9.

07 NCAC 04R .0806 ARCHAEOLOGICAL SITE FILES

~~(a)~~ Access to archaeological site files and other information relating to the location or nature of archaeological resources shall be granted to persons in the following categories:

- ~~(1)~~ qualified archaeologists who are conducting scientific research or compiling information for use in preservation and planning studies. Qualified archaeologist means a person with:
 - ~~(A)~~ a postgraduate degree, or equivalent training and experience, in archaeology, anthropology, history or another related field with a specialization in archaeology;
 - ~~(B)~~ a minimum of one year's experience in conducting basic archaeological field research; and

~~(C)~~ demonstrable competence in theoretical and methodological design and in collecting, handling, analyzing, evaluating, and reporting archaeological data.

~~(2)~~ authorized representatives of federal, state, or local agencies or institutions which make planning decisions regarding archaeological resources.

~~(b)~~ Persons having access to the archaeological site files must give written assurance that the confidentiality of the information shall be maintained.

~~(c)~~ Persons desiring to review site files shall give at least 24 hours advance notice to the State Archaeologist.

Authority G.S. 70-18; 121-8(b),(d),(e),(f); 132-1(a); 132-2; 132-9.

07 NCAC 04R .0807 PUBLIC ACCESS TO EXCAVATIONS

~~The public is welcome to visit excavations and at times may participate, but these visitation times as well as access to specific areas on sites must be regulated. Such restrictions shall be posted on the site.~~

Authority G.S. 121-4(9); 143B-62(2)d.

07 NCAC 04R .0808 ARCHAEOLOGICAL SURVEY AND EVALUATION REPORT GUIDELINES

~~Guidelines established for the evaluation of archaeological survey reports resulting from investigations conducted in compliance with state and federal regulations are available free of charge from:~~

Chief Archaeologist
Archaeology and Historic Preservation Section
Division of Archives and History
109 East Jones Street
Raleigh, North Carolina 27611

Authority G.S. 143B-62(2)(g);

SECTION .1000 - EXPLORATION: RECOVERY: AND SALVAGE

07 NCAC 04R .1002 DEFINITIONS

~~(a)~~ "Abandoned shipwrecks" shall mean sunken ships, boats, and watercraft and their associated cargoes, tackle, and materials.

~~(b)~~ "Underwater archaeological artifacts" shall mean those materials showing human workmanship or modification or having been used or intended to be used or consumed by humans, including relics, monuments, tools and fittings, utensils, instruments, weapons, ammunition, and treasure trove and precious materials including gold, silver, bullion, jewelry, pottery, ceramic, and similar or related materials.

Authority G.S. 121-22; 121-23; 121-25.

07 NCAC 04R .1003 DEPARTMENT AUTHORIZED TO GRANT PERMITS AND LICENSES

~~(a) The Department of Cultural Resources may grant permits for the exploration, recovery or salvage of abandoned shipwrecks and of underwater archaeological artifacts in given areas of state owned bottoms of navigable waters. No exploration, recovery, or salvage operation on state owned bottoms of navigable waters during which abandoned shipwrecks or underwater archaeological artifacts may be removed, displaced, or destroyed shall be conducted by any person, firm, corporation, institution or agency without having first received the appropriate permit or license from the Department. After issuance no permit, or any part thereof, shall be assigned or sublet.~~

~~(b) Obtain application forms from and submit completed permit applications to:~~

Underwater Archaeology Unit
Division of Archives and History
P.O. Box 58
Kure Beach, North Carolina 28449

Authority G.S. 121-23; 121-25.

07 NCAC 04R .1004 EXCEPTIONS

~~No permit is required for employees of the Department of Cultural Resources for exploration, recovery or salvage operations being conducted as part of the official responsibilities of the Department.~~

Authority G.S. 121-24.

07 NCAC 04R .1005 PERMIT FOR EXPLORATION: RECOVERY OR SALVAGE

~~(a) An exploration, recovery or salvage permit will be issued providing:~~

- ~~(1) the applicant has adequate funds, equipment, and facilities to undertake and complete the operation, is capable of providing supervision of all phases of the operation and has demonstrated the ability to carry out acceptable exploration, recovery or salvage projects;~~
- ~~(2) the proposed activity is undertaken for the purpose of furthering archaeological knowledge in the public interest;~~
- ~~(3) the proposed activity employs accepted techniques of survey, excavation, recovery, recording, preservation, and analysis used in exploration, recovery and salvage projects; and~~
- ~~(4) the underwater archaeological artifacts recovered during the proposed project will be properly conserved and these artifacts and copies of associated archaeological records and data will be curated in an acceptable manner.~~

~~(b) The Department of Cultural Resources shall have decision making authority concerning the issuance of a permit. A permit shall be issued or denied within 30 days of the acceptance by the Department of a completed application. Major inadequacies, such as unacceptable goals, objectives, methodologies or techniques, or the lack of sufficient funding or~~

~~professional staff, shall be reasons for permit denial and will be clearly spelled out in the denial notice.~~

Authority G.S. 121-23; 121-25.

07 NCAC 04R .1006 TERMS AND CONDITIONS OF PERMITS

~~(a) An underwater archaeological permit will contain all conditions governing that particular exploration, recovery or salvage project. Should these conditions conflict with the terms of the application, these permit conditions shall take precedence.~~

~~(b) A permit will normally be granted for a period of one year and may be renewed after review of an extension request and evaluation of past performance.~~

~~(c) The permittee agrees to submit for review to the department a draft report, detailing project activities and results within 120 days after completion of the fieldwork, and a final report 60 days after department approval of the draft.~~

~~(d) The permittee agrees to keep a daily log of all project activities including the types of equipment used, site conditions, and other project specific data and to provide copies to the Department upon request.~~

~~(e) The permittee is responsible to the Department for accuracy and validity of the data contained in the final report submitted to the Department. The report and copies of requested data will become part of the permanent data on file with the Department.~~

~~(f) The Department reserves the right to have a designated agent present during activities carried out under the terms of the permit.~~

~~(g) The Department is not liable or responsible for any accident or injury to any person or the loss or damage to any equipment connected with the permit.~~

~~(h) Failure to diligently pursue the work after it has been started, or to comply with any of the provisions of the permit or of these requirements, may result in revocation of the permit.~~

Authority G.S. 121-23; 121-25;

07 NCAC 04R .1007 APPEALS RELATING TO PERMITS

~~Any person may appeal permit issuance, denial, suspension or revocation through appeals procedures established in Article 3 of G.S. 150B.~~

Authority G.S. 121-23; 121-25; 150B.

07 NCAC 04R .1008 OWNERSHIP AND DIVISION OF RECOVERED ITEMS

~~All abandoned shipwrecks and underwater archaeological artifacts recovered in the waters of the State of North Carolina shall belong to the State of North Carolina. Such underwater archaeological artifacts as are recovered under proper permit may be granted, in whole or in part, to the permittee as proper compensation for his efforts in recovering such objects and the title to and ownership of these objects then is transferred to that permittee. Determination of which of the recovered objects will be granted to the permittee will be made by the Department acting in the best interests of the state and giving due consideration to the fair treatment of the permittee. The terms of the division are to be expressed as a percentage, and the percentage of the state's~~

share and the percentage of permittee's share shall be stated on the permit at the time of its issuance. All recovered artifacts shall be placed and retained in safekeeping. The place or places of safekeeping shall be approved by the secretary or a duly authorized agent of the Department. At the time of the division of items that have been recovered by those having permits for salvage with the Department there shall be present such member or members of the staff of the Department of Cultural Resources as the Secretary of the Department of Cultural Resources shall deem necessary and appropriate.

Authority G.S. 121-23; 121-25.

07 NCAC 04R .1009 PROTECTED AREAS

The Department may designate certain abandoned shipwrecks or underwater archaeological artifacts as areas of primary scientific, archaeological or historical value. No permit for recovery or salvage of these abandoned shipwrecks or underwater archaeological artifacts will be issued unless the proposed project is consistent with the Department's management plan for these areas and unless all recovered artifacts are kept as an intact collection in an appropriate repository.

Authority G.S. 121-23; 121-25.

07 NCAC 04R .1010 SPECIAL AREAS FOR SPORT AND HOBBY OPERATIONS

The Department may designate certain limited areas of state owned bottoms for the exclusive purpose of sport and hobby exploration and recovery under a short term sport and hobby permit if it deems this to be in the best interest of the state. Short term sport and hobby permits may be issued only for those abandoned shipwrecks and underwater archaeological artifacts which are specified in writing by the Secretary of the Department of Cultural Resources. Commercial salvagers, firms, corporations, and individuals seeking to recover and sell underwater archaeological materials, or otherwise make monetary profit with them, shall not be issued a short term sport and hobby permit. All or any part of the materials recovered under the short term sport and hobby permit may be awarded by the Department to the finder after inspection and study by the Archaeology Branch.

Authority G.S. 121-23; 121-25.

07 NCAC 04R .1011 REPORTING REQUIREMENTS

These guidelines for exploration, recovery and salvage projects ensure thorough and consistent data collection and reporting for projects conducted on the state's abandoned shipwrecks and underwater archaeological artifacts. Submission of a draft report for the Department's review and comment enables the permittee to foresee and correct inadequacies prior to the completion of the final report. The permittee shall address the following areas to assure final acceptance:

- (1) a concise description of goals of the study and general approach of the investigation;
- (2) an overview of the prehistory and history of the general area of the project and specific

information relative to the designated project area;

- (3) a concise and specific location of the project area, to include maps that accurately indicate the boundaries of the area identifying nearby landmarks and permanent benchmarks employed in establishing positioning and survey data;
- (4) a brief and concise description of the project area to include environmental information such as water depth, visibility currents, bottom composition and contours, and vegetation;
- (5) a complete description of the work conducted including exploration or recovery projects (research methods, data collection techniques, etc.) and a complete description of the equipment utilized to conduct the investigation;
- (6) a description of the findings, observations and data generated by project activities;
- (7) a detailed description of all archaeological resources within the boundaries of the project area. The archaeological resources shall be precisely located on maps to be submitted to the Department with the draft report;
- (8) a comprehensive statement detailing the conclusions drawn from observations, findings and data generated by project activities;
- (9) a statement of recommendations with regard to continued investigation and management of archaeological resources.

Authority G.S. 121-23; 121-25.

07 NCAC 04R .1012 REPORT REVIEW

(a) The Department shall review all draft and final reports resulting from underwater archaeological permit activities. The Department may request revisions of the draft or final reports. Terms and conditions of the permit are considered satisfied only after revisions have been completed and the final report accepted. (b) The Department has 60 days after receipt to review and comment on all reports and return written comments to the permittee.

Authority G.S. 121-23; 121-25.

07 NCAC 04R .1013 TERMINATION OF PERMIT

Notification of permit termination will be sent to the permittee upon acceptable completion of all terms of the permit or upon permit expiration.

Authority G.S. 121-23; 121-25.

SECTION .1500 - SURVEY AND PLANNING SERVICES

07 NCAC 04R .1501 OPERATING HOURS

The Survey and Planning Branch offices are open between 8:30 AM and 5:30 PM, Monday through Friday, except on state holidays. Visitors under the age of 12 must be accompanied by an adult. Pets are not allowed in the facilities. Visitors are not

~~allowed in the offices after hours unless accompanied by a member of the staff and with written permission of the branch supervisor. Access to areas may be restricted for reasons of safety and security.~~

Authority G.S. 121-4; 121-8(b),(c),(f); 143B-62(2d); 150B-2(8a).

07 NCAC 04R .1502 HISTORIC STRUCTURE SITE FILES AND MAPS

~~The Survey and Planning Branch is the repository of photographs, field notes, research reports, drawings, National Register of Historic Places nominations, maps, computer databases, and other materials related to the North Carolina inventory of historic structures. Survey materials are public records and are available for public inspection during office hours under staff supervision. Access to locational information may be granted by the branch supervisor to:~~

- ~~(1) authorized representatives of federal, state, or local agencies which make planning decisions regarding historic resources; and~~
- ~~(2) faculty or students of institutions of higher learning, staff of public history institutions, or historic preservation consultants or researchers conducting academic or professional research in North Carolina history or architecture.~~

Authority G.S. 70-18; 121-2(8); 121-4(13),(14); 121-4.1(a); 121-5(d); 121-8(b),(c),(f); 143B-62(2b).

07 NCAC 04R .1503 VISITATION POLICY

(a) The Survey and National Registry Branch is the repository of photographs, field notes, research reports, drawings, National Register of Historic Places nominations, maps, computer databases, and other materials related to the North Carolina inventory of historic structures. Visitors seeking access to Survey and Planning National Register Branch maps and files shall make an appointment through the branch supervisor or his or her designee at least 24 hours in advance of the time of the proposed visit. Information on how to contact the Survey and National Register Branch may be found at <http://www.hpo.dcr.state.nc.us/spbranch.htm>.

~~(b) Appointments for the map collection and the file collection shall be made separately.~~

~~(c) When multiple visitors seek access to the maps or files on the same day, the branch supervisor or his or her designee may limit duration of visits and limit the number of visitors using the map collection and file collection. The branch supervisor or his or her designee may limit access to the files if:~~

- ~~(1) the files are in use by the Agency;~~
- ~~(2) space is unavailable to view the files;~~
- ~~(3) the files would be damaged or harmed by exposure to environmental elements, such as air, light, or moisture; and~~
- ~~(4) any other circumstances that will ensure the preservation of the files, as determined by the branch supervisor or his or her designee.~~

~~(d) Visitors shall switch off cell phones, pagers, and other electronic communication devices in the office area.~~

~~(e)(d) Survey and Planning National Register Branch staff shall have priority for in using the copy machine usage.~~

Authority G.S. 121-4(13); 121-8(b),(c),(f); 143B-62(3).

SECTION .1600 – ARCHAEOLOGICAL PERMITS

07 NCAC 04R .1601 DEFINITIONS

The following definitions, as well as the definitions set forth in G.S. 70-12, shall apply to Section .0800 and Section .1600 of this Subchapter, unless otherwise indicated:

- (1) "Abandoned shipwrecks" means sunken ships, boats, and watercraft and their associated cargoes, tackle, and materials to which the owner has relinquished ownership rights with no retention.
- (2) "Applicant" means a person or entity applying for a permit or license to conduct any archaeological investigations on State lands or archeological sites, or any type of exploration, recovery, or salvage operations of any part of an Abandoned shipwreck or its contents.
- (3) "Emergency archaeological investigation" means any surface collection, subsurface test, excavation, or other activity that results in the disturbance or removal of archaeological resources undertaken because of:
 - (a) the accidental discovery of archaeological resources during construction or other ground disturbing activities; or
 - (b) of damage or destruction to archaeological resources caused by events including, but not limited to, vandalism, fire, erosion, land clearing, road construction, dredging, flood, or hazardous contamination.
- (4) "Ground disturbance" means any activity that compacts or disturbs the ground including, but not limited to, ground disturbance related to the construction, alteration, trenching or expansion of dikes, borrow pits, utility lines, airports, bridges, housing developments, boat basins and channels, and the placement of fill or spoil dirt.
- (5) "Land controlling agency" means the State agency with management responsibilities for State land.
- (6) "Permit" means written authorization under law to conduct archaeological investigation on state lands.
- (7) "Protected Area" means an area identified by the Department of Natural and Cultural Resources as having scientific, archaeological, or historical value, as evaluated by criteria set forth in 36 C.F.R. 60.4.
- (8) "Qualified archaeologist" means a person possessing the following:
 - (a) a postgraduate degree or equivalent training and experience in

- archaeology, anthropology, history, or another related field with a specialization in archaeology;
- (b) a minimum of one year's experience in conducting archaeological field research; and
- (c) a minimum of five years' experience in theoretical and methodological design and in collecting, handling, analyzing, evaluating, and reporting archaeological data.
- (9) "Risk of harm" means any disclosure of the nature or location of any archaeological resource that results or may result in the loss or destruction of archaeological context or information or the loss of historical, scientific, environmental, monetary, or religious attributes and values attributable to in archeological sites and artifacts.
- (10) "State Archaeologist" means the head of the Office of State Archaeology (Archaeology Section), Division of Historical Resources, Office of Archives and History, Department of Natural and Cultural Resources.
- (11) "State lands" shall mean "land" as defined in G.S. 146-64.
- (12) "Archaeological artifacts" means those materials showing human workmanship or modification or having been used or intended to be used or consumed by humans, including relics, monuments, tools and fittings, utensils, instruments, weapons, ammunition, and treasure trove and precious materials including gold, silver, bullion, pottery, ceramic, and similar or related materials.

Authority G.S. 70-12; 70-14; 121-4; 121-22; 121-23.

07 NCAC 04R .1602 ARCHAEOLOGICAL INVESTIGATIONS ON STATE LANDS

(a) Any person conducting archeological investigations on State lands shall obtain a permit. Upon consultation with the Department of Administration and subject to the criteria and discretion set forth in this Section, Article 2 of G.S. 70 and Article 3 of G.S. 121, the State Archaeologist, as designee of the Secretary of the Department of Natural and Cultural Resources, may grant permits to any person wishing to conduct terrestrial or underwater archaeological investigations on State lands, the exploration, recovery, or salvage of abandoned shipwrecks, and of underwater archaeological artifacts of state-owned bottoms in navigable waters. No person, firm, corporation, institution, or agency shall conduct any archaeological investigation, exploration, recovery, or salvage operations on terrestrial State lands, or State-owned bottoms of navigable waters during which abandoned shipwrecks or underwater archaeological artifacts may be removed, displaced, or destroyed, without having first received a permit from the Department of Natural and Cultural Resources. After issuance, no permit or any part thereof shall be assigned or sublet.

(b) Permits shall be either General or Specific, as follows:

- (1) General Permits shall be issued to those land controlling agencies that employ qualified archaeologists on a full time permanent basis to conduct archaeological investigations on state lands directly under the agency's control; and
- (2) All other permits shall be Specific Permits.

(c) No permit is required for employees of the Department of Natural and Cultural Resources to conduct investigations being conducted as part of the Department's official responsibilities.

Authority G.S. 70-13; 70-14; 121-23; 121-25; 143B-10.

07 NCAC 04R .1603 APPLICATION FOR ARCHAEOLOGICAL PERMITS

(a) General Permit. A General Permit may be issued to a land controlling agency to conduct archaeological investigations and emergency archaeological investigations on land directly controlled by that agency. Each General Permit application for a land controlling agency shall include the following information:

- (1) a written description of the lands controlled by the agency, including the county and township;
- (2) a general description of the nature and objectives of the investigation(s);
- (3) the name, address, telephone number, and qualifications of the principal investigator archaeologist;
- (4) evidence that the requirements of Rule .1604 of this Section are met;
- (5) written protocols and procedures, for access to records and artifacts, of the facility where such records and artifacts are to be curated;
- (6) the facility identified for curation of all artifacts, records, data, photographs, and other documents or information resulting from the investigations;
- (7) facilities and plans for stabilization and preservation of perishable or unstable artifacts;
- (8) the person or position in the institution or agency with responsibility for curation of artifacts and, records, and other documentation or information as to who shall determine access to this material; and
- (9) the principal investigator's plans, if any, for dissemination of the results of the investigation in addition to the reporting requirements of Rule .1611 of this Section.

(b) Specific Permit. Applicants for Specific Permits shall submit applications to the State Archaeologist at least 30 days prior to the proposed start date of the archaeological investigations. Each Specific Permit application shall include:

- (1) a written description of the location of the proposed investigation, including the county and township;
- (2) a 1: 24,000 or larger scale map depicting the location of the proposed investigation;
- (3) a description of the nature, objectives and scope of the proposed investigation, including the

- methods to be employed and the requirements for clearing of vegetation;
- (4) the schedule for the investigation, including hours of the day and days of the week, as well as beginning and completion dates. The schedule shall include 60 days for review and comment of the draft report by the State Archaeologist and the land-controlling agency and a maximum of 30 days for response, revisions, and submittal of the final report by the applicant;
 - (5) the name, address, telephone number, institutional affiliation, and qualifications of the principal investigator archaeologist;
 - (6) the name, address, telephone number, and qualifications of the field director, if different from the principal investigator;
 - (7) the approximate number of people proposed to carry out the investigation;
 - (8) evidence of the applicant's capability to initiate, conduct, and complete the proposed investigation;
 - (9) written criteria for evaluation of requests for access to records and artifacts at the facility where the records and artifacts are to be curated;
 - (10) the facility identified for curation of all artifacts, records, data, photographs, and other documents or information resulting from the investigation;
 - (11) written concurrence from the land-controlling agency regarding the applicant's proposed curatorial arrangements;
 - (12) facilities and plans for stabilization and preservation of perishable or unstable artifacts;
 - (13) the person or position in the institution or agency with responsibility for curation of artifacts and records, and other documentation or information as to who will determine access to this material;
 - (14) a description of the type and timing of all access needs on State property, vehicular or otherwise, required to conduct the investigations;
 - (15) a description of how the project will be coordinated with the site-specific land manager, including the applicant's documentation that initial contact has been made and the name of the person contacted;
 - (16) a description of the provisions to be made to secure the permit area to assure the safety of non-project personnel who may visit the permit area during and after project hours;
 - (17) an indication of the length of time each excavation unit will be open and a schedule for reclaiming all areas disturbed by any aspect of the archaeological investigations; and
 - (18) the applicant's plans, if any, for dissemination of the results of the investigations in addition to

the reporting requirements noted in Rule .1612 of this Section.

(c) Applications shall be sent to the State Archaeologist, Office of State Archaeology, 4619 MSC, Raleigh, NC 27699-4619, via U.S. Mail.

Authority G.S. 70-13; 70-14; 121-4(13); 121-23; 121-25; 143B-10.

07 NCAC 04R .1604 REQUIREMENTS FOR AND ISSUANCE OF PERMITS

(a) Applicants for permits to conduct archaeological investigations shall:

- (1) have a postgraduate degree, or equivalent training and experience, in archaeology, anthropology, history, or another related field with a specialization in archaeology;
- (2) have a minimum of one year's experience in conducting archaeological field research;
- (3) have obtained and submitted for review by the State Archaeologist a criminal record check by the State Bureau of Investigation as set forth in G.S. 70-13.1 and G.S. 121-25.1;
- (4) have funds, equipment, and facilities to undertake and complete the operation, provide supervision of all phases of the operation, and demonstrate the ability to carry out acceptable investigations that meet current professional standards, including those promulgated by the National Park Service, Society for American Archaeology, and other professional archaeology organizations;
- (5) undertake the proposed activity for the purpose of furthering archaeological knowledge;
- (6) employ accepted techniques of survey, excavation, recovery, recording, preservation, and analysis used in investigations, including those promulgated by the National Park Service, Society for American Archaeology, and other professional archaeology organizations;
- (7) conserve the archaeological artifacts recovered during the proposed project and ensure that those artifacts and all original archaeological records and data associated with the undertaking shall be conserved and curated in an acceptable manner; at a minimum, artifacts and associated records are conserved and maintained in accordance with professionally-accepted curation standards or in the absence of such standards by the National Park Service as set forth in 36 CFR 79; and
- (8) any other qualification deemed necessary by the State Archaeologist as dictated by the particular project, such as documented expertise in subfields of archaeology (prehistory, history, maritime, forensic), professional publications, and evidence of successful completion of

similar investigations in North Carolina or in the southeastern United States.

(b) General Permits shall be issued to a land-controlling agency within 90 days following submission of the completed Application provided the terms and requirements of the rules in this Section pertaining to General Permits are fulfilled.

(c) The Specific Permit shall be issued or denied within 90 days after submission of the completed application. The reason for the denial shall be specified in the denial notice.

(d) Specific Permits shall not be issued to any person who has conducted emergency archaeological investigations until the State Archaeologist receives and accepts a final report pursuant to Rule .1612 of this Section.

Authority G.S. 70-11; 70-13; 70-13.1; 121-4(13); 121-23; 121-25; 121-25.1; 143B-10.

07 NCAC 04R .1605 DURATION, EXTENSION, AND RENEWAL OF PERMITS

(a) Permits shall be renewed or extended pursuant to the procedures set forth in Rule .1604 of this Section.

(b) General Permits shall be valid for a period of five years from the date of issuance. General Permits may be renewed for a period of five years, after review of extension requests or renewal applications and evaluation of the past performance of the applicant.

(c) Specific Permits shall be issued for a period not to exceed three years. Specific Permits may be extended for up to six months or renewed for up to three additional years. Specific Permits may be extended only once, but may be renewed any number of times.

(d) No General or Specific Permit shall be considered valid until a signed and dated original copy is returned to the State Archaeologist by the Principal Investigator Archaeologist or other designated permit applicant.

Authority G.S. 70-13; 70-14; 121-23; 121-25.

07 NCAC 04R .1606 TERMS AND CONDITIONS OF PERMITS

(a) All permits shall specify:

- (1) the nature and extent of the investigations allowed under the permit, including the time, duration, scope, location, and purpose of the investigations;
- (2) the name of the individual responsible for conducting the investigations and, if different, the name of the individual responsible for carrying out the terms and conditions of the permit;
- (3) the name of the land-controlling agency, university, museum, or other scientific or educational institution in which any collected materials and data will be deposited; and
- (4) the reporting requirements and schedule.

(b) All permits shall specify terms and conditions necessary to ensure public safety, protect natural and cultural resources, safeguard legitimate land uses, and limit activities incidental to investigations authorized under the permit.

(c) Any agency involved in consultation or approval of a permit under this Section may make inspections at the location specified in the permit as necessary to ensure that the terms and conditions of the permit are being met.

(d) The permittee shall secure the project area and shall hold the State harmless from all claims arising out of the project, including any claims of trespass or damage to adjacent private property caused by the permittee related to the permit. The permittee shall also:

- (1) sign a waiver of claims against the State;
- (2) be held responsible for damage to State property resulting from the permitted investigations; and
- (3) submit evidence of liability insurance upon acceptance of the terms and conditions of a permit.

(e) Archaeological investigations conducted under a permit shall comply with all applicable state, federal, and local regulations and the rules and regulations of the land-controlling agency, including its management plans and operation practices.

(f) All access to State-owned lands during permitted investigations shall be controlled by and coordinated with the land-controlling agency and the site-specific land manager.

(g) Applicants shall restore all project lands to their pre-project condition by the conclusion of the field investigations.

Authority G.S. 70-13; 70-14; 121-23; 121-25.

07 NCAC 04R .1607 PERMIT DENIAL, SUSPENSION AND REVOCATION

(a) A permit may be denied if the State Archaeologist, in consultation with the Department of Administration, finds that:

- (1) the proposed investigations would represent an adverse effect to a unique or fragile natural resource;
- (2) the proposed investigations would interfere with the operation and management of an area;
- (3) the proposed investigations would pose a threat to public safety;
- (4) the applicant has not completed the terms and conditions of a previous permit; or
- (5) the results of the required criminal record check reveal one or more convictions listed in G.S. 70-13.1 or G.S. 125-25.1.

(b) A permit may be suspended or revoked if the State Archaeologist, in consultation with the Department of Administration, finds that:

- (1) the terms and conditions of the permit have been or are being violated;
- (2) the permit applicant is convicted of a crime enumerated in G.S. 70-13.1 or G.S. 125-25.1;
- (3) the permit holder fails to comply with the rules in this Section or applicable State or federal laws; or
- (4) the confidentiality of information relating to the nature and location of the archaeological resources is not maintained in accordance with G.S. 70-18.

Authority G.S. 70-13; 70-14; 121-23; 121-24; 121-25; 143B-10.

07 NCAC 04R .1608 APPEALS RELATING TO PERMITS

An applicant or permittee may appeal the denial, suspension or revocation of a permit as set forth in Article 3 of G.S. 150B.

Authority G.S. 70-13; 70-14; 121-23; 121-25; 150B-23.

07 NCAC 04R .1609 EMERGENCY ARCHAEOLOGICAL INVESTIGATIONS

(a) Emergency archaeological investigations on State lands do not require a Specific Permit if the person conducting the investigation meets the qualifications of Rule .1604 of this Section and the land-controlling agency has notified the Department of Administration and the State Archaeologist of the emergency investigation. Reporting requirements for emergency archaeological investigations are those set forth in Rule .1612 of this Section.

(b) All artifacts and associated records recovered during emergency archaeological investigations remain the property of the State of North Carolina and shall be maintained in a repository approved by the State Archaeologist. Facilities where State-owned collections are maintained must comply federal curation standards as set forth at 36 C.F.R. 79.

Authority G.S. 70-13; 70-14; 121-23; 123-25; 143B-10.

07 NCAC 04R .1610 PROTECTED AREAS

The Department of Natural and Cultural Resources may issue permits for the archaeological investigation of sites formally designated as protected areas by the Secretary of a State agency. All artifacts and associated records recovered from protected areas remain the property of the State of North Carolina and shall be maintained in a repository approved by the State Archaeologist and in compliance with federal curation standards set forth at 36 C.F.R. 79.

Authority G.S. 70-13; 70-14; 121-23; 121-25; 143-10.

07 NCAC 04R .1611 REPORTING REQUIREMENTS FOR GENERAL PERMITS; REVIEW

(a) Reports of archaeological investigations conducted under the terms of a General Permit shall be submitted to the State Archaeologist.

(b) The principal investigator archaeologist shall submit a summary of the results of all archaeological investigations as part of the report(s) required by the permit.

(c) The land-controlling agency shall report in writing to the Secretary of the Department of Administration and State Archaeologist any change in either the principal investigator archaeologist or the field director named in a General Permit within 10 days of that change.

(d) Final reports concerning archaeological investigations and emergency archaeological investigations shall be submitted by the end of the calendar year that immediately follows the year in which the archaeological investigations were conducted.

(e) The principal investigator archaeologist, in consultation with the State Archaeologist, shall delay the submission of a final

report, under circumstances described in this Paragraph, until an agreed-upon date is determined with the land-controlling agency. Delays shall be considered for events including environmental changes, changes in project specifications by the project sponsor, or unforeseen discoveries of complex or fragile archaeological materials, including human remains.

(f) The principal investigator archaeologist shall provide in the report to OSA:

(1) information concerning the permanent physical location of artifacts, records, and all other documentation for all archaeological investigations;

(2) itemized list of all recovered archaeological resources by type, variety, material, or other description and a list of accession numbers or other permanent identifiers applied to the recovered resources; and

(3) an itemized list of records, photographs, and other documents and a list of accession numbers or other permanent identifiers applied to the records and data.

(g) The State Archaeologist, in consultation with the Department of Administration and head of the land-controlling agency or designee, shall review at least once a year the permittee's performance under any General Permit issued for a period greater than one year. The State Archaeologist shall review the final reports for General Permits to ensure that the reports meet the federal Secretary of the Interior's Standards for Archaeological Documentation and may request revisions of the final report if said standards are not met.

(h) The State Archaeologist shall have 60 days following receipt of any report to review and return written comments on the report to the land-controlling agency and the principal investigator archaeologist.

(i) Taking into account the State Archaeologist's written comments, the principal investigator shall revise and submit the final report within 30 days of receipt of review and comments by the State Archaeologist.

Authority G.S. 70-13; 70-14; 121-4; 121-23; 121-25; 143-10.

07 NCAC 04R .1612 REPORTING REQUIREMENTS FOR SPECIFIC PERMITS; REVIEW

(a) Permittees shall prepare and submit to the State Archaeologist and the head of the land-controlling agency reports for all archaeological investigations conducted under Specific Permits.

(b) The permittee shall maintain a daily log of all project activities, including the types of equipment used and site conditions, and provide copies to the State Archaeologist upon request.

(c) The permittee shall submit a preliminary field report within 60 days after completion of the on-site archaeological investigation. Preliminary field reports of from emergency archaeological investigations shall specify the date for submission of the draft report.

(d) The permittee shall submit draft reports according to the schedule established in the permit or, in the case of emergency archaeological investigations, by the date specified in the preliminary field report. Draft reports submitted for emergency

archaeological investigations shall include information on storage and curation of artifacts, records, and other data in accordance with the specifications in Rule .1603(b)(9) through (13) of this Section.

(e) The permittee shall submit final reports no later than 90 days after submission of the draft report.

(f) If the specified submission date for a draft report of emergency archaeological investigations extends beyond one year from the date of submission of the preliminary field report, progress reports shall be submitted annually.

(g) Upon request by the State Archaeologist, the permittee or, in the case of an emergency archaeological investigation, the principal investigator shall provide in the final report the following information:

- (1) the permanent physical location of artifacts, records, and all other documentation;
- (2) an itemized list of all recovered archaeological resources by type, variety, material, or other description and a list of accession numbers or other permanent identifiers applied to the recovered resources; and
- (3) an itemized list of records, photographs, and other documents and a list of accession numbers or other permanent identifiers applied to the records and data.

(h) The permittee is responsible for the accuracy and validity of the data contained in the final report submitted to the Department of Natural and Cultural Resources.

(i) For any Specific Permit issued for a period greater than one year, the State Archaeologist, in consultation with the Department of Administration and head of the land-controlling agency or designee, shall review at least once a year the permittee's performance through interim reports submitted by the permittee or compliance inspections conducted at the investigation location.

(j) The State Archaeologist and the land-controlling agency shall review all draft and final reports for Specific Permits to ensure that the investigations serve the public interest and the reports meet the federal Secretary of the Interior's Standards for Archaeological Documentation. The State Archaeologist may request revisions of the draft or final reports. Terms and conditions of a Specific Permit shall be considered satisfied only after report revisions, if requested by the State Archaeologist, have been completed and the report has been accepted by the State Archaeologist.

(k) The State Archaeologist and the land-controlling agency have 60 days after receipt to review and comment on draft reports and return written comments to the permittee.

(l) Taking into account the State Archaeologist's written comments, the permittee shall revise and submit the final report within 30 days of receipt of review and comments by the State Archaeologist.

Authority G.S. 70-13; 70-14; 121-4; 121-23; 121-25; 143B-10.

07 NCAC 04R .1613 CUSTODY OF RESOURCES UNDER TERMS OF PERMITS

(a) The archaeological resources which are collected, excavated, or removed from State lands and related records and data shall remain the property of the State of North Carolina.

(b) All abandoned shipwrecks and underwater archaeological artifacts recovered in the waters of the State of North Carolina shall remain the property of the State of North Carolina.

(c) The location of all records, artifacts, or other materials shall not be changed from that approved in the permit without prior approval of the State Archaeologist and, in the case of Specific Permits, the land-controlling agency. This restriction does not apply to the temporary removal and relocation of artifacts or records for the purposes of scientific, historical, or educational research nor for purposes of public display or education, so long as the artifacts or records remain:

- (1) In the case of General Permits, under the direct custody or control of the principal investigator archaeologist or the land-controlling agency; or
- (2) In the case of Specific Permits, under the custody or control of the museum, university, or scientific or educational institution approved in the permit.

(d) Transfers or loans of records and artifacts between universities, museums, and scientific or educational institutions shall be approved by the State Archaeologist and shall be preceded with written affirmation from the principal investigator or permittee that the receiving institution conforms to the conditions set forth in this Rule. In addition, the permittee shall provide the State Archaeologist with information outlined in Rule .1603(a) of this Section for General Permits and in Rule .1603(b) of this Section for Specific Permits. However, in the case of General Permits this Paragraph shall not apply to the movement of artifacts in the custody of a land-controlling agency so long as the artifacts remain under the control of the principal investigator archaeologist and the land-controlling agency.

(e) All records and artifacts shall be accessible for scientific, historical, or educational research if such access does not compromise the confidentiality of the nature and location of any archaeological resources or pose a risk of harm to the resources or site. The principal investigator archaeologist, in consultation with the State Archaeologist, shall determine when items under this section can be accessed.

Authority G.S. 70-13; 70-14; 121-23; 121-25; 143B-10.

SUBCHAPTER 04T - HIGHWAY HISTORICAL MARKER PROGRAM

SECTION .0100 – HIGHWAY HISTORICAL MARKER PROGRAM

07 NCAC 04T .0104 CRITERIA

(a) All highway historical markers shall designate ~~places~~ places, events, or persons of statewide significance. ~~Subjects of local or regional importance shall not be approved for highway historical markers. No highway historical markers. markers will be approved for subjects of local or regional importance.~~ Statewide historical significance must be documented by the ~~presenter~~ applicant.

(b) ~~An individual is eligible for consideration of a historical marker only after a waiting period of 25 years following that individual's death. No marker will be erected for an individual within 25 years of his death.~~

(c) ~~Markers for representatives in the U.S. Congress shall not be approved automatically; automatically. The nominee must have served at least two terms, or served as a chairman of a standing committee or sponsored key legislation, or have been recognized as having served with distinction elsewhere, such as in the military, as an ambassador, as a member or volunteer in a social, civic or political organization, in addition to serving in Congress the individual must have served with distinction elsewhere.~~

(d) Houses of worship are primarily of local importance. For the marking of Protestant churches, the date of establishment is key to consideration: in the East congregations established prior to 1776; in the Piedmont prior to 1800; and in the West prior to 1820. African American churches and Roman Catholic churches shall be judged by dates that are relevant to the development of the denomination. The age of a congregation alone does not mean that the committee will approve a marker. Other evidence of significance must be presented, such as notable ministers or other worship leaders, important events, and the age and architectural importance of the religious building. The same criteria shall apply to brush arbors and religious campgrounds. Brush arbors, religious campgrounds, schools, and academies will not be considered unless established prior to the following dates: coastal plains—1776; piedmont 1800; mountain region 1820. Churches established after the dates set out in this Paragraph generally do not have statewide historical significance.

(e) Cemeteries shall not~~Markers for cemeteries will not be approved for a historical marker unless a number of persons of statewide historical significance are buried there.~~

(f) ~~Markers will not be approved for~~The committee shall not approve markers for cities or towns, former county seats, abandoned courthouses, jails, jail sites, post offices, former building sites, colleges or universities unless they are of statewide historical significance.

(g) Stagecoach roads, king's highways, stagecoach stops, plank roads, old brick roads, baggage roads, Indian trails, trails, ferries, and military routes will not be marked unless of statewide historical significance.

(h) Visits to a site by George Washington, the Marquis de Lafayette, Nathanael Greene, Lord Cornwallis, William T. Sherman, George Stoneman, Francis Asbury, Griffith Rutherford, or other historical figures will not automatically make the site eligible for a marker.

(i) ~~Markers will not be erected to mark a town or solely to list its date of incorporation.~~

~~(j)~~(i) Public schools, of local importance, shall not approved for state markers. Private schools and academies shall be judged based on the date of establishment, length of operation, employment of prominent teachers, enrollment of prominent graduates, and if the region served is of statewide historical significance. No marker will be approved for individual sites within a historical complex which has its own marker system.

~~(k)~~(j) Marker requests will shall be rejected where it is impossible to authenticate or verify the documentation to the satisfaction of the committee. "Firsts" and other superlatives will shall not be automatically approved, marked unless there is sufficient documentary evidence to establish unquestionable authenticity.

~~(l)~~(k) The committee shall not single out individuals to mark when many persons have shared equally in an event of historical

~~importance. Individuals will not be singled out for marking if they were part of a group involved in a historical event.~~

~~(m)~~(l) If an individual appears on an existing North Carolina Highway Historical Marker, that individual shall not be considered for a second marker. An individual will not be marked a second time if his birthplace has been marked, except in cases of statewide historical significance.

~~(n)~~(m) If a person is cited on one marker, no individual marker will be approved except in cases of special historical significance. If a person is named in the text of a marker, that individual will not be approved as the subject of a separate marker.

Authority G.S. 100-8; 121-4(7).

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Radiation Protection Commission intends to amend the rules cited as 10A NCAC 15 .0302, .0304, .0305, .0307-.0310, .0316, .0317, .0327-.0332, .0335, .0337, .0338, .0343, .0344, .0353-.0355, .0357, .0359, .0521, .1004, .1613, .1645, and .1653.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www2.ncdhhs.gov/dhsr/ruleactions.html>

Proposed Effective Date: March 1, 2017

Public Hearing:

Date: November 18, 2016

Time: 10:00 a.m.

Location: Dorothea Dix Campus, Wright Building, Room 131, 1201 Umstead Drive, Raleigh, NC 27603

Reason for Proposed Action: *The rules are being amended to comply with federal requirements of the US Nuclear Regulatory Commission (NRC). NC entered into an agreement with the US Atomic Energy Commission (now the NRC) effective 8/1/64. This agreement provided for the discontinuance of US Atomic Energy Commission regulatory authority in the state. This Commission had to determine the NC program for radiation protection was compatible with federal regulations and was adequate to protect public health and safety for the agreement to be approved. The agreement was signed by the Governor, therefore NC is an Agreement State. The agreement requires NC to continue to maintain compatibility with NRC radiation protection rules. The NC Radiation Protection Section is inspected by NRC every four years to verify the radiation program remains compatible and adequate to protect public health and safety, including federal rule compatibility. In most cases NC radiation protection program rules must be identical with the federal rules. Failure to maintain compatibility with appropriate federal rules could result in NC losing its NRC Agreement Status. In that event, the NRC would resume regulatory authority over radioactive materials used in NC. Reverting back to federal control would result in fee increases for NC business entities that require use of radioactive materials. NRC radioactive materials license fees are at least double the current NC fees in most cases.*

Comments may be submitted to: *Nadine Pfeiffer, 2701 Mail Service Center, Raleigh, NC 27699-2700, email DHSR.RulesCoordinator@dhhs.nc.gov*

Comment period ends: *December 2, 2016*

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

Fiscal impact (check all that apply).

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

CHAPTER 15 – RADIATION PROTECTION

SECTION .0300 - LICENSING OF RADIOACTIVE MATERIAL

10A NCAC 15 .0302 EXEMPTIONS FOR SOURCE MATERIAL

(a) Any person possessing source material, or devices containing source material, in quantities not exceeding the limits of 10 CFR 40.13(a) through (c)(8) shall be exempt from the requirement for a radioactive materials license and shall comply with the provisions of 10 CFR 40.13.

(b) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beeece594411a03e50b2468ae31f89b&pitd=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.

~~(a) Any person is exempt from licensure to the extent that any person receives, possesses, uses, or transfers source material in any chemical mixture, compound, solution, or alloy in which the source material is by weight less than 0.05 percent of the mixture, compound, solution, or alloy.~~

~~(b) Any person is exempt from licensure to the extent that any person receives, possesses, uses, or transfers unrefined and~~

~~unprocessed ore containing source material; provided that, except as authorized in a specific license, no person shall refine or process ore containing source material.~~

~~(e) Any person is exempt from licensure to the extent that any person receives, possesses, uses, or transfers:~~

- ~~(1) any quantities of thorium contained in:

 - ~~(A) incandescent gas mantles;~~
 - ~~(B) vacuum tubes;~~
 - ~~(C) welding rods;~~
 - ~~(D) electric lamps for illuminating purposes provided that each lamp does not contain more than 50 milligrams of thorium;~~
 - ~~(E) germicidal lamps, sunlamps, and lamps for outdoor or industrial lighting provided that each lamp does not contain more than two grams of thorium;~~
 - ~~(F) rare earth metals and compounds, mixtures, and products containing not more than 0.04 percent by weight thorium, uranium or any combination of these;~~
 - ~~(G) personnel neutron dosimeters, provided that each dosimeter does not contain more than 50 milligrams of thorium;~~~~
- ~~(2) source material contained in the following products:

 - ~~(A) glazed ceramic tableware, provided that the glaze contains not more than 20 percent by weight source material;~~
 - ~~(B) glassware containing not more than ten percent by weight source material; but not including commercially manufactured glass brick, pane glass, ceramic tile, or other glass, or ceramic used in construction;~~
 - ~~(C) piezoelectric ceramic containing not more than two percent by weight source material;~~
 - ~~(D) glass enamel or glass enamel frit containing not more than ten percent by weight source material imported or ordered for importation into the United States, or initially distributed by manufacturers in the United States before July 25, 1983;~~~~
- ~~(3) photographic film, negatives, and prints containing uranium or thorium;~~
- ~~(4) any finished product or part fabricated of, or containing, tungsten or magnesium thorium alloys; provided that the thorium content of the alloy does not exceed four percent by weight and that the exemption contained in this Rule shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of the product or part;~~

- (5) ~~uranium contained in counterweights installed in aircraft, rockets, projectiles and missiles, or stored or handled in connection with installation or removal of the counterweights when:~~
- (A) ~~the counterweights are manufactured in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, authorizing distribution by the licensee pursuant to 10 CFR 40;~~
- (B) ~~each counterweight has been impressed with the following legend clearly legible through any plating or other covering, which states, "DEPLETED URANIUM";~~
- (C) ~~each counterweight is durably and legibly labeled or marked with the identification of the manufacturer and the statement: "UNAUTHORIZED ALTERATIONS PROHIBITED";~~
- (D) ~~the exemption contained in this Subparagraph shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of any counterweights other than repair or restoration of any plating or other covering;~~
- (E) ~~the requirements specified in Subparagraphs (c)(5)(B) and (C) of this Rule need not be met by counterweights manufactured prior to December 31, 1969; provided, that the counterweights are impressed with the legend, "CAUTION RADIOACTIVE MATERIAL URANIUM";~~
- (6) ~~natural or depleted uranium metal used as shielding constituting part of any shipping container; provided that:~~
- (A) ~~The shipping container is conspicuously and legibly impressed with the legend, "CAUTION RADIOACTIVE SHIELDING URANIUM"; and~~
- (B) ~~The uranium metal is encased in mild steel or equally fire resistant metal with a minimum wall thickness of one eighth inch or 3.2 mm;~~
- (7) ~~thorium contained in finished optical lenses, provided that each lens does not contain more than 30 percent by weight of thorium; and that the exemption contained in this Subparagraph shall not be deemed to authorize either:~~
- (A) ~~the shaping, grinding, or polishing of the lens or manufacturing processes other than the assembly of the lens into optical systems and devices without any alteration of the lens; or~~

- (B) ~~the receipt, possession, use, or transfer of thorium contained in contact lenses, or in spectacles, or in eye pieces in binoculars or other optical instruments;~~
- (8) ~~uranium contained in detector heads for use in fire detection units, provided that each detector head contains not more than 0.005 microcurie of uranium;~~
- (9) ~~thorium contained in any finished aircraft engine part containing nickel-thoria alloy, provided that:~~
- (A) ~~The thorium is dispersed in the nickel thoria alloy in the form of finely divided thoria (thorium dioxide);~~
- (B) ~~The thorium content in the nickel thoria alloy does not exceed four percent by weight.~~

Authority G.S. 104E-7; 104E-10(b).

10A NCAC 15 .0304 EXEMPT QUANTITIES: OTHER THAN SOURCE MATERIAL

(a) Any person possessing radioactive material in individual quantities specified in 10 CFR 30.18(a) or (b) shall be exempt from the requirements for a radioactive materials license and shall comply with the provisions of 10 CFR 30.18(c) through (e).

(b) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beeece594411a03e50b2468ae31f89b&pitd=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.

(a) Any person who possesses radioactive material received or acquired under the general license formerly provided in Rule .0303(b) of this Section is exempt from the requirements for a license set forth in this Section to the extent that such person possesses, uses, transfers or owns such radioactive material.

(b) This Rule does not authorize the production, packaging or repackaging of radioactive material for purposes of commercial distribution, or the incorporation of radioactive material into products intended for commercial distribution.

(c) No person shall, for the purposes of commercial distribution, transfer individual quantities of radioactive materials to persons exempt from regulation in Paragraph (a) of this Rule except in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to Section 32.18 of 10 CFR Part 32 for source and byproduct material.

(d) Licensees for commercial distribution shall not transfer the quantities of radioactive material to persons exempt under Paragraph (f) of this Rule if the licensee knows or has reason to believe that the recipient will redistribute the quantities to persons exempt under Paragraph (f) of this Rule.

(e) No person may, for purposes of producing an increased radiation level, combine quantities of radioactive material covered by this exemption so that the aggregate quantity exceeds the limits in Paragraph (f) of this Rule, except for radioactive

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material combined within a device placed in use before May 3, 1999, or as otherwise permitted by the rules in this Section.

(f) Except as provided in Paragraphs (b) and (c) of this Rule, any person is exempt from the rules of this Chapter to the extent that such person receives, possesses, uses, transfers, owns or acquires radioactive material in individual quantities each of which does not exceed the applicable quantity set forth in the following table:

EXEMPT QUANTITIES

Radioactive Material	Microcuries
Antimony 122 (Sb 122)	100
Antimony 124 (Sb 124)	10
Antimony 125 (Sb 125)	10
Arsenic 73 (As 73)	100
Arsenic 74 (As 74)	10
Arsenic 76 (As 76)	10
Arsenic 77 (As 77)	100
Barium 131 (Ba 131)	10
Barium 133 (Ba 133)	10
Barium 140 (Ba 140)	10
Bismuth 210 (Bi 210)	1
Bromine 82 (Br 82)	10
Cadmium 109 (Cd 109)	10
Cadmium 115m (Cd 115m)	10
Cadmium 115 (Cd 115)	100
Calcium 45 (Ca 45)	10
Calcium 47 (Ca 47)	10
Carbon 14 (C 14)	100
Cerium 141 (Ce 141)	100
Cerium 143 (Ce 143)	100
Cerium 144 (Ce 144)	1
Cesium 129 (Cs 129)	100
Cesium 131 (Cs 131)	1,000
Cesium 134m (Cs 134m)	100
Cesium 134 (Cs 134)	1
Cesium 135 (Cs 135)	10
Cesium 136 (Cs 136)	10
Cesium 137 (Cs 137)	10
Chlorine 36 (Cl 36)	10
Chlorine 38 (Cl 38)	10
Chromium 51 (Cr 51)	1,000
Cobalt 57 (Co 57)	100
Cobalt 58m (Co 58m)	10
Cobalt 58 (Co 58)	10
Cobalt 60 (Co 60)	1
Copper 64 (Cu 64)	100
Dysprosium 165 (Dy 165)	10
Dysprosium 166 (Dy 166)	100
Erbium 169 (Er 169)	100
Erbium 171 (Er 171)	100
Europium 152 (Eu 152) 9.2h	100
Europium 152 (Eu 152) 13 yr	1
Europium 154 (Eu 154)	1
Europium 155 (Eu 155)	10
Fluorine 18 (F 18)	1,000
Gadolinium 153 (Gd 153)	10
Gadolinium 159 (Gd 159)	100

Gallium 67 (Ga 67)	100
Gallium 72 (Ga 72)	10
Germanium 68 (Ge 68)	10
Germanium 71 (Ge 71)	100
Gold 195 (Au 195)	10
Gold 198 (Au 198)	100
Gold 199 (Au 199)	100
Hafnium 181 (Hf 181)	10
Holmium 166 (Ho 166)	100
Hydrogen 3 (H 3)	1,000
Indium 111 (In 111)	100
Indium 113m (In 113m)	100
Indium 114m (In 114m)	10
Indium 115m (In 115m)	100
Indium 115 (In 115)	10
Iodine 123 (I 123)	100
Iodine 125 (I 125)	1
Iodine 126 (I 126)	1
Iodine 129 (I 129)	0.1
Iodine 131 (I 131)	1
Iodine 132 (I 132)	10
Iodine 133 (I 133)	1
Iodine 134 (I 134)	10
Iodine 135 (I 135)	10
Iridium 192 (Ir 192)	10
Iridium 194 (Ir 194)	100
Iron 52 (Fe 52)	10
Iron 55 (Fe 55)	100
Iron 59 (Fe 59)	10
Krypton 85 (Kr 85)	100
Krypton 87 (Kr 87)	10
Lanthanum 140 (La 140)	10
Lutetium 177 (Lu 177)	100
Manganese 52 (Mn 52)	10
Manganese 54 (Mn 54)	10
Manganese 56 (Mn 56)	10
Mercury 197m (Hg 197m)	100
Mercury 197 (Hg 197)	100
Mercury 203 (Hg 203)	10
Molybdenum 99 (Mo 99)	100
Neodymium 147 (Nd 147)	100
Neodymium 149 (Nd 149)	100
Nickel 59 (Ni 59)	100
Nickel 63 (Ni 63)	10
Nickel 65 (Ni 65)	100
Niobium 93m (Nb 93m)	10
Niobium 95 (Nb 95)	10
Niobium 97 (Nb 97)	10
Osmium 185 (Os 185)	10
Osmium 191m (Os 191m)	100
Osmium 191 (Os 191)	100
Osmium 193 (Os 193)	100
Palladium 103 (Pd 103)	100
Palladium 109 (Pd 109)	100
Phosphorus 32 (P 32)	10
Platinum 191 (Pt 191)	100
Platinum 193m (Pt 193m)	100
Platinum 193 (Pt 193)	100
Platinum 197m (Pt 197m)	100

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Platinum 197 (Pt 197)	100
Polonium 210 (Po 210)	0.1
Potassium 42 (K 42)	10
Potassium 43 (K 43)	10
Praseodymium 142 (Pr 142)	100
Praseodymium 143 (Pr 143)	100
Promethium 147 (Pm 147)	10
Promethium 149 (Pm 149)	10
Rhenium 186 (Re 186)	100
Rhenium 188 (Re 188)	100
Rhodium 103m (Rh 103m)	100
Rhodium 105 (Rh 105)	100
Rubidium 81 (Rb 81)	10
Rubidium 86 (Rb 86)	10
Rubidium 87 (Rb 87)	10
Ruthenium 97 (Ru 97)	100
Ruthenium 103 (Ru 103)	10
Ruthenium 105 (Ru 105)	10
Ruthenium 106 (Ru 106)	1
Samarium 151 (Sm 151)	10
Samarium 153 (Sm 153)	100
Scandium 46 (Sc 46)	10
Scandium 47 (Sc 47)	100
Scandium 48 (Sc 48)	10
Selenium 75 (Se 75)	10
Silicon 31 (Si 31)	100
Silver 105 (Ag 105)	10
Silver 110m (Ag 110m)	1
Silver 111 (Ag 111)	100
Sodium 22 (Na 22)	10
Sodium 24 (Na 24)	10
Strontium 85 (Sr 85)	10
Strontium 89 (Sr 89)	1
Strontium 90 (Sr 90)	0.1
Strontium 91 (Sr 91)	10
Strontium 92 (Sr 92)	10
Sulfur 35 (S 35)	100
Tantalum 182 (Ta 182)	10
Technetium 96 (Tc 96)	10
Technetium 97m (Tc 97m)	100
Technetium 97 (Tc 97)	100
Technetium 99m (Tc 99m)	100
Technetium 99 (Tc 99)	10
Tellurium 125m (Te 125m)	10
Tellurium 127m (Te 127m)	10
Tellurium 127 (Te 127)	100
Tellurium 129m (Te 129m)	10
Tellurium 129 (Te 129)	100
Tellurium 131m (Te 131m)	10
Tellurium 132 (Te 132)	10
Terbium 160 (Tb 160)	10
Thallium 200 (Tl 200)	100
Thallium 201 (Tl 201)	100
Thallium 202 (Tl 202)	100
Thallium 204 (Tl 204)	10
Thulium 170 (Tm 170)	10
Thulium 171 (Tm 171)	10
Tin 113 (Sn 113)	10
Tin 125 (Sn 125)	10

Tungsten 181 (W 181)	10
Tungsten 185 (W 185)	10
Tungsten 187 (W 187)	100
Vanadium 48 (V 48)	10
Xenon 131m (Xe 131m)	1,000
Xenon 133 (Xe 133)	100
Xenon 135 (Xe 135)	100
Ytterbium 175 (Yb 175)	100
Yttrium 87 (Y 87)	10
Yttrium 88 (Y 88)	10
Yttrium 90 (Y 90)	10
Yttrium 91 (Y 91)	10
Yttrium 92 (Y 92)	100
Yttrium 93 (Y 93)	100
Zinc 65 (Zn 65)	10
Zinc 69m (Zn 69m)	100
Zinc 69 (Zn 69)	1,000
Zirconium 93 (Zr 93)	10
Zirconium 95 (Zr 95)	10
Zirconium 97 (Zr 97)	10
Any radioactive material not listed above other than alpha emitting radioactive material	0.1

Authority G.S. 104E-7; 104E-10(b); 104E-20; 10 CFR 30.71.

10A NCAC 15 .0305 EXEMPT ITEM CONTAINING OTHER THAN SOURCE MATERIAL

(a) Any person possessing items containing radioactive material listed in 10 CFR 30.15(a)(1) through (9) shall be exempt from the requirements for a radioactive materials license and shall comply with the provisions of 10 CFR 30.15.

(b) Any person possessing self-luminous products listed in 10 CFR 30.19(a) shall be exempt from the requirements for a radioactive materials license and shall comply with the provisions of 10 CFR 30.19.

(c) Any person possessing gas and aerosol detectors listed in 10 CFR 30.20(a) shall be exempt from the requirements for a radioactive materials license and shall comply with the provisions of 10 CFR 30.20.

(d) Any person possessing radioactive drugs containing carbon-14 urea for diagnostic use in humans listed in 10 CFR 30.21(a) shall be exempt from the requirements for a radioactive materials license and shall comply with the provisions of 10 CFR 30.21.

(e) Any person possessing industrial devices listed in 10 CFR 30.22(a) shall be exempt from the requirements for a radioactive materials license and shall comply with the provisions of 10 CFR 30.22.

(f) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beece594411a03e50b2468ae31f89b&pid=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.

(a) Authority must be obtained from the U.S. Nuclear Regulatory Commission to transfer possession or control by the manufacturer, processor, or producer of any equipment, device,

commodity, or other product containing source, byproduct, or special nuclear material whose subsequent possession, use, transfer, and disposal are exempted from the rules of this Chapter.

(b) Except for persons who apply radioactive material to, or persons who incorporate radioactive material into, the following products, or persons who initially transfer for sale or distribution the following products, any person is exempt from the rules of this Chapter to the extent that he receives, possesses, uses, transfers, owns, or acquires the following products:

- (1) Timepieces or hands or dials containing not more than the following quantities of radioactive material and not exceeding the following levels of radiation:
 - (A) 25 millicuries of tritium per timepiece;
 - (B) five millicuries of tritium per hand;
 - (C) 15 millicuries of tritium per dial (bezels when used shall be considered as part of the dial);
 - (D) 100 microcuries of promethium 147 per watch or 200 microcuries of promethium 147 per any other timepiece;
 - (E) 20 microcuries of promethium 147 per watch hand or 40 microcuries of promethium 147 per other timepiece hand;
 - (F) 60 microcuries of promethium 147 per watch dial or 120 microcuries of promethium 147 per other timepiece dial (bezels when used shall be considered as part of the dial);
 - (G) the levels of radiation from hands and dials containing promethium 147, when measured through 50 milligrams per square centimeter of absorber:
 - (i) for wrist watches, 0.1 millirad per hour at 10 centimeters from any surface;
 - (ii) for pocket watches, 0.1 millirad per hour at one centimeter from any surface;
 - (iii) for any other timepiece, 0.2 millirad per hour at 10 centimeters from any surface; or
 - (iv) one microcurie of radium 226 per timepiece in intact timepieces manufactured prior to November 30, 2007.
- (2) Balances of precision containing not more than one millicurie of tritium per balance or not more than 0.5 millicurie of tritium per balance part manufactured before December 17, 2007;
- (3) Marine compasses containing not more than 750 millicuries of tritium gas and other marine navigational instruments containing not more than 250 millicuries of tritium gas manufactured before December 17, 2007;

- (4) Ionization chamber smoke detectors containing not more than one microcurie of americium 241 per detector in the form of a foil and designed to protect life and property from fires.
 - (5) Electron tubes, provided that each tube does not contain more than one of the following specified quantities of radioactive material and provided further, that the levels of radiation from each electron tube containing radioactive material does not exceed one millirad per hour at one centimeter from any surface when measured through seven milligrams per square centimeter of absorber. For purposes of this Subparagraph, "electron tubes" include spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pickup tubes, radiation detection tubes and any other completely sealed tube that is designed to conduct or control electrical currents:
 - (A) 150 millicuries of tritium per microwave receiver protector tube or 10 millicuries of tritium per any other electron tube;
 - (B) one microcurie of cobalt 60;
 - (C) five microcuries of nickel 63;
 - (D) 30 microcuries of krypton 85;
 - (E) five microcuries of cesium 137; and
 - (F) 30 microcuries of promethium 147; and
 - (6) Ionizing radiation measuring instruments containing for purposes of internal calibration or standardization, sources of radioactive material each not exceeding the applicable quantity set forth in Rule .0304(f) of this Section, and each instrument contains no more than 10 exempt quantities.
- (c) For purposes of Subparagraph (b)(5) of this Rule, where there is involved a combination of radionuclides, the limit for the combination shall be derived as follows:
- (1) Determine for each radionuclide in an ionizing radiation measuring instrument the ratio between the quantity present in the instrument and the exempt quantity established in Rule .0304 (f) of this Section for the specific radionuclide when not in combination;
 - (2) No ratio shall exceed one and the sum of such ratios shall not exceed 10; and
 - (3) For the purpose of Part (b)(8), 0.05 microcurie of americium 241 is considered an exempt quantity under Rule .0304 of this Section.
- (d) Self luminous products are exempt as provided in this Paragraph.
- (1) Except for persons who manufacture, process, or produce self luminous products containing tritium, krypton 85, or promethium 147, any person is exempt from the rules of this Chapter to the extent that the person receives, possesses, uses, transfers, owns, or acquires tritium,

~~krypton 85 or promethium 147 in self-luminous products manufactured, processed, produced, imported, or transferred in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to Section 32.22 of 10 CFR Part 32, which license authorizes the transfer of the product to persons who are exempt from regulatory requirements.~~

~~(2) The exemption in Subparagraph (d)(1) of this Rule does not apply to tritium, krypton 85, or promethium 147 used in products for frivolous purposes or in toys or adornments.~~

~~(e) Gas and aerosol detectors are exempt as provided in this Paragraph.~~

~~(1) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution gas and aerosol detectors containing radioactive material, any person is exempt from the rules of this Chapter to the extent that the person receives, possesses, uses, transfers, owns or acquires radioactive material in gas and aerosol detectors designed to protect life or property from fires and airborne hazards provided that detectors containing radioactive material shall be manufactured, processed, produced, or initially transferred in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to Section 32.26 of 10 CFR 32, which authorizes the transfer of the detectors to persons who are exempt from regulatory requirements.~~

~~(2) Gas and aerosol detectors previously manufactured and distributed to general licensees before November 30, 2007 in accordance with a specific license issued by an agreement state are exempt from the rules in this Chapter, provided that the devices are labeled in accordance with the specific license authorizing distribution of the general licensed device, and providing further that the devices meet the requirements of Rule .0327 of this Section.~~

~~(f) Except as follows, any person is exempt from the requirements for a license set forth in this Section provided that such person receives, possesses, uses, transfers, owns or acquires capsules containing approximately one microcurie (37kBq) Carbon 14 urea each for "in vivo" diagnostic use for humans:~~

~~(1) Any person who desires to use the capsules for research involving human subjects shall apply for and receive a specific license from the agency; and~~

~~(2) Any person who desires to manufacture, prepare, process, produce, package, repackage, or transfer for commercial distribution such capsules shall apply for and receive a specific license from the U.S. Nuclear Regulatory Commission.~~

~~(g) Nothing in this Rule relieves persons from complying with applicable FDA and other federal regulations, and North Carolina requirements governing the receipt, administration, and use of drugs.~~

~~Authority G.S. 104E-7; 104E-10(b); 104E-20; 10 CFR 30.15; 10 CFR 30.19; 10 CFR 30.20.~~

10A NCAC 15 .0307 GENERAL LICENSES: SOURCE MATERIAL

(a) Any person possessing source material in quantities equal to or less than the quantities shown in 10 CFR 40.22(a) shall be issued a general license in accordance with Rule .0306(a) of this Section, and shall comply with the provisions of 10 CFR 40.22(b) through (e).

(b) Any person possessing depleted uranium for the purpose authorized in 10 CFR 40.25(a) shall be issued a general license in accordance with Rule .0306(a) of this Section, and shall comply with the provisions of 10 CFR 40.25(b) through (e).

(c) Reports required by 10 CFR 40.22(b)(4) or 40.25(c) shall be sent to the agency at the address shown in Rule .0111 of this Chapter.

(d) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beece594411a03e50b2468ae31f89b&pid=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.

(a) A general license shall be issued authorizing use and transfer of not more than 15 pounds of source material at any one time by persons in the following categories:

- (1) pharmacists using the source material solely for the compounding of medicinals;
- (2) physicians using the source material for medicinal purposes;
- (3) persons receiving possession of source material from pharmacists and physicians in the form of medicinals or drugs;
- (4) commercial and industrial firms, and research, educational, and medical institutions, and state and local governmental agencies for research, development, educational, commercial or operational purposes.

(b) Pursuant to this general license no person shall receive more than a total of 150 pounds of source material in any one calendar year.

(c) Persons who receive, possess, use, or transfer source material pursuant to the general license issued in Paragraph (a) of this Rule are exempt from the provisions of Sections .1000 and .1600 of this Chapter to the extent that the receipt, possession, use, or transfer is within the terms of the general license, provided that this exemption shall not be deemed to apply to any person who is also in possession of source material under a specific license issued pursuant to the rules in this Section.

(d) A general license shall be issued authorizing the receipt of title to source material without regard to quantity. This general license does not authorize any person to receive, possess, use, or transfer source material.

~~(e) A general license shall be issued to receive, acquire, possess, use, or transfer in accordance with the provisions of Subparagraphs (e)(2), (3), (4) and (5) of this Rule, depleted uranium contained in industrial products or devices for the purpose of providing a concentrated mass in a small volume of the product or device.~~

- ~~(1) The general license in Paragraph (e) of this Rule applies only to industrial products or devices which have been manufactured either in accordance with a specific license issued to the manufacturer of the products or devices pursuant to Rule .0336 of this Section or in accordance with a specific license issued to the manufacturer by the U.S. Nuclear Regulatory Commission or an agreement state which authorizes manufacture of the products or devices for distribution to persons generally licensed by the U.S. Nuclear Regulatory Commission or an agreement state.~~
- ~~(2) Persons who receive, acquire, possess, or use depleted uranium pursuant to the general license established by Paragraph (e) of this Rule shall file with the agency appropriate form(s) provided by the agency. The form shall be submitted within 30 days after the first receipt or acquisition of such depleted uranium. The registrant shall furnish on appropriate form(s) provided by the agency the following information and such other information as may be required by that form:

 - ~~(A) name and address of the registrant;~~
 - ~~(B) a statement that the registrant has developed and will maintain procedures designed to establish physical control over the depleted uranium described in Paragraph (e) of this Rule and designed to prevent transfer of such depleted uranium in any form, including metal scrap, to persons not authorized to receive the depleted uranium; and~~
 - ~~(C) name, title, address, and telephone number of the individual duly authorized to act for and on behalf of the registrant in supervising the procedures identified in Part (e)(2)(B) of this Rule.~~~~
- ~~(3) The registrant possessing or using depleted uranium under the general license established by Paragraph (e) of this Rule shall report in writing to the agency any changes in information furnished by him on the appropriate form(s) provided by the agency. The report shall be submitted within 30 days after the effective date of such change.~~
- ~~(4) A person who receives, acquires, possesses, or uses depleted uranium pursuant to the general license established by Paragraph (e) of this Rule shall:~~

- ~~(A) not introduce such depleted uranium, in any form, into a chemical, physical or metallurgical treatment or process, except a treatment or process for repair or restoration of any plating or other covering of the depleted uranium;~~
- ~~(B) not abandon such depleted uranium;~~
- ~~(C) transfer or dispose of such depleted uranium only by transfer in accordance with the provisions of Rule .0343 of this Section;

 - ~~(i) In the case where the transferee receives the depleted uranium pursuant to the general license established by Paragraph (e) of this Rule, the transferor shall furnish the transferee a copy of this Rule and a copy of the appropriate agency form described in Subparagraph (e)(2) of this Rule;~~
 - ~~(ii) In the case where the transferee receives the depleted uranium pursuant to a general license contained in the U.S. Nuclear Regulatory Commission or agreement state regulations equivalent to Paragraph (e) of this Rule, the transferor shall furnish the transferee a copy of this Rule and a copy of the appropriate agency form accompanied by a note explaining that use of the product or device is regulated by the U.S. Nuclear Regulatory Commission or agreement state under requirements substantially the same as those in this Rule;~~~~
- ~~(D) within 30 days of any transfer, report in writing to the agency the name and address of the person receiving the depleted uranium pursuant to such transfer;~~
- ~~(E) not export such depleted uranium except in accordance with a license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 CFR Part 110.~~
- ~~(5) Any person receiving, acquiring, possessing, using, or transferring depleted uranium pursuant to the general license established by Paragraph (e) of this Rule is exempt from the requirements of Sections .1000 and .1600 of~~

~~this Chapter with respect to the depleted uranium covered by that general license.~~

Authority G.S. 104E-7; 104E-10(b).

10A NCAC 15 .0308 GENERAL LICENSES: OTHER THAN SOURCE MATERIAL

Any person possessing static elimination devices, or ion generating tubes containing 500 microcuries or less of Polonium-210, or ion generating tubes containing 50 millicuries or less of tritium, shall comply with Rule .0305(a) of this Section.

~~(a) A general license shall be issued to transfer, receive, acquire, own, possess, and use radioactive material incorporated in the following devices or equipment which have been manufactured, tested and labeled by the manufacturer in accordance with a specific license issued to the manufacturer by the U.S. Nuclear Regulatory Commission for use pursuant to Section 31.3 of 10 CFR Part 31:~~

- ~~(1) static elimination devices designed for use as static eliminators which contain as a sealed source or sources, radioactive material consisting of a total of not more than 500 microcuries of polonium 210 per device;~~
- ~~(2) ion generating tube designed for ionization of air and containing, as a sealed source or sources, radioactive material consisting of a total of not more than 500 microcuries of polonium 210 per device or a total of not more than 50 millicuries of hydrogen 3 (tritium) per device.~~

~~(b) The general license in Paragraph (a) of this Rule is subject to the provisions of Rules .0107 to .0111, .0303(a), .0338, .0342, .0343 and .0345 of this Chapter and to labeling requirements in Section .1600 of this Chapter.~~

Authority G.S. 104E-7; 104E-10(b).

10A NCAC 15 .0309 GENERAL LICENSES: MEASURING GAUGING: CONTROLLING DEVICES

(a) Any person possessing devices listed in 10 CFR 31.5(a) meeting the requirements of 10 CFR 31.5(b) shall be issued a general license in accordance with Rule .0306(a) of this Section, and shall comply with the provisions of 10 CFR 31.5(c) and (d), except that the fees specified in 10 CFR 31.5(c)(13)(ii) shall not apply to persons issued a general license under this Rule.

(b) Reports, requests for prior approval to transfer devices authorized under this Rule, and any other correspondence required by 10 CFR 31.5 shall be sent to the agency at the address listed in Rule .0111 of this Chapter.

(c) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beece594411a03e50b2468ae31f89b&pidt=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.

~~(a) A general license shall be issued to acquire, receive, possess, use, or transfer in accordance with Paragraphs (b), (c), and (d) of this Rule, radioactive material contained in devices designed and~~

~~manufactured for the purpose of detecting, measuring, gauging, or controlling thickness, density, level, interface location, radiation leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere to:~~

- ~~(1) commercial and industrial firms;~~
- ~~(2) research, educational and medical institutions;~~
- ~~(3) individuals in the conduct of their business; and~~
- ~~(4) federal, state, or local government agencies.~~

~~(b) The general license in Paragraph (a) of this Rule applies only to radioactive material contained in devices which have been:~~

- ~~(1) manufactured or initially transferred and labeled in accordance with the specifications contained in a specific license issued pursuant to Rule .0328 of this Section or in accordance with the specifications contained in a specific license issued by the U.S. Nuclear Regulatory Commission or an agreement state which authorizes distribution of the devices to persons generally licensed pursuant to equivalent regulations; and~~
- ~~(2) received from one of the specific licensees referenced in Subparagraph (b)(1) of this Rule or through a transfer completed in accordance with Subparagraph (c)(8) or (c)(9) of this Rule.~~

~~(c) Any person who acquires, receives, possesses, uses or transfers radioactive material in a device pursuant to the general license issued under Paragraph (a) of this Rule shall:~~

- ~~(1) assure that all labels, affixed to the device at the time of receipt and bearing a statement that removal of the label is prohibited, are maintained thereon and shall comply with all instructions and precautions provided by the labels;~~
- ~~(2) assure that the device is tested for leakage of radioactive material and proper operation of the on-off mechanism and indicator, if any, at six-month intervals or at alternative intervals as are specified in the label, except as follows:~~
 - ~~(A) Devices containing only krypton need not be tested for leakage of radioactive material; and~~
 - ~~(B) Devices containing only tritium or not more than 100 microcuries of other beta, gamma, or beta and gamma emitting material or 10 microcuries of alpha emitting material and devices held in storage in the original shipping container prior to initial installation need not be tested for any purpose;~~
- ~~(3) assure that the tests required by Subparagraph (c)(2) of this Rule and other testing, installation, servicing and removal from installation involving the radioactive materials, its shielding or containment are performed:~~
 - ~~(A) in accordance with the instructions provided on labels affixed to the device, except that tests for leakage or contamination may be performed by the general licensee using leak test kits~~

- provided and analyzed by a specific licensee who is authorized to provide leak test kit services; or
- (B) ~~by a person holding a specific license or registration which authorizes the providing of services required by this Rule and which is issued pursuant to Rules .0205 and .0306 of this Chapter or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state;~~
- (4) ~~maintain records, showing compliance with the requirements in Subparagraphs (c)(2) and (3) of this Rule, including:~~
- (A) ~~the name of the person(s) performing the test(s) and the date(s) of the test(s);~~
- (B) ~~the name of the person(s) performing installation, servicing and removal of any radioactive material, shielding or containment;~~
- (C) ~~the retention of leakage or contamination, on off mechanism and on off indicator test records shall be retained for three years after the required test is performed or until the sealed source is disposed of or transferred; and~~
- (D) ~~the retention of other records of tests required in Subparagraph (c)(3) of this Rule shall be retained for three years from the date of the recorded test or until the device is disposed of or transferred.~~
- (5) ~~upon the occurrence of a failure of or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the on off mechanism or indicator, or upon the detection of 0.005 microcurie or more removable radioactive material, immediately suspend operation of the device until it has been:~~
- (A) ~~repaired by the manufacturer or other person authorized to repair the device(s) by a specific license issued by the agency, the U.S. Nuclear Regulatory Commission, or an agreement state; or~~
- (B) ~~disposed of by transfer to a person authorized by a specific license to receive the radioactive material contained in the device; and within 30 days, the transferor will furnish to the agency at the address in Rule .0111 of this Chapter a report containing a description of the event and the remedial action taken. If 0.005 microcurie or more of removable radioactive contamination is detected, or if the failure of or damage to a~~
- source of radiation is likely to result in the contamination of the facility or the environment, a plan for ensuring that the facility and the environment are acceptable for unrestricted use shall be submitted to the agency at the address in Rule .0111 of this Chapter.
- (6) ~~not abandon the device containing radioactive material;~~
- (7) ~~except as provided in Subparagraph (e)(8) or (e)(9) of this Rule, transfer or dispose of the device containing radioactive material only by export in accordance with 10 CFR Part 110 or by transfer to a person holding a specific license authorizing receipt of the device; and, within 30 days after transfer of a device to a specific licensee or export of a device, shall furnish to the agency at the address in Rule .0111 of this Chapter, a report that contains:~~
- (A) ~~the identification of the device by manufacturer's or initial transferor's name, model number, and serial number;~~
- (B) ~~the name, address and specific license number of the person receiving the device (the license number not applicable if exported); and~~
- (C) ~~the date of the transfer; and~~
- (8) ~~obtain written approval by the Agency before transferring the device to any other specific licensee not identified in this Rule. However, a holder of a specific license may transfer a device for possession and use under its own specific license without prior approval, if the holder:~~
- (A) ~~verifies that the specific license authorizes the possession and use, or applies for and obtains an amendment to the license authorizing the possession and use;~~
- (B) ~~removes, alters, covers, or clearly and unambiguously augments as defined in 10 CFR 31.5 the existing label otherwise required by Paragraph (e)(1) of this Rule so that the device is labeled in compliance with Rule .0328(a)(3) of this Chapter; however, the manufacturer, model number, and serial number must be retained;~~
- (C) ~~obtains the manufacturer's or initial transferor's information concerning maintenance that are applicable under the specific license (such as leak testing procedures); and~~
- (D) ~~reports the transfer under Subparagraph (e)(7) of this Rule.~~
- (9) ~~transfer or dispose of the device by export as provided by Subparagraph (e)(7) of this Rule,~~

or by transfer to another general licensee only where the device:

- (A) ~~remains in use at a particular location. The transferor shall give the transferee a copy of this Rule and any safety documents identified in the label of the device. The transferor shall, within 30 days of the transfer, report to the agency at the address in Rule .0111 of this Chapter the manufacturer's or initial transferor's name, serial number, and model number of device transferred; the name and mailing address of the transferee; and the name, title, and telephone number of the individual identified by the transferee pursuant to Subparagraph (e)(11) of this Rule; or~~
 - (B) ~~is held in storage by the licensee or an intermediate person in the original shipping container at its intended location of use prior to initial use by a general licensee;~~
 - (10) ~~comply with the provisions of Sections .0100 and .1600 of this Chapter for reporting radiation incidents, theft or loss of licensed material, but is exempt from the other requirements of Section .1600 of this Chapter;~~
 - (11) ~~appoint an individual responsible for having knowledge of the requirements contained in these Rules and the authority for taking the actions required to comply with these Rules. The general licensee, through this individual, shall ensure the day to day compliance with these Rules. The appointment of such an individual does not relieve the general licensee of any of its responsibility in this regard;~~
 - (12) ~~register, when required by the agency, any source of radiation subject to a general license in accordance with the rules in this Section. Each address for a location of use represents a separate general license and requires a separate registration action;~~
 - (13) ~~register, on an annual basis, all devices containing, based on the activity indicated on the label, at least 10 mCi (370 MBq) of cesium-137, 0.1 mCi (3.7 MBq) of strontium 90, 1 mCi (37MBq) of cobalt 60, 1 mCi (37 MBq) of americium 241, 0.1 mCi (3.7 MBq) of radium-226, or any other transuranic isotope. Each address for a location of use represents a separate general license and requires a separate registration action. Annual registration consists of verifying, correcting, or adding to the information provided in a request for annual registration within 30 days of a request from the agency. The general licensee shall furnish the following information for annual registration:~~
 - (A) ~~the name and mailing address of the general licensee;~~
 - (B) ~~information about each device to include the manufacturer or initial transferor, model number, serial number, the radioisotope, and the activity indicated on the label;~~
 - (C) ~~the name, title, and telephone number of the responsible person designated as a representative of the general licensee in accordance with Subparagraph (e)(11) of this Rule;~~
 - (D) ~~the address or location at which the device(s) are to be used or stored. For portable devices that are granted a general license by the agency, the address of the primary place of storage;~~
 - (E) ~~certification by the responsible person designated by the general licensee that the information concerning the device(s) has been verified through a physical inventory and a check of label information; and~~
 - (F) ~~certification by the responsible person designated by the general licensee that they are aware of the requirements of the general license;~~
 - (14) ~~report changes to the mailing address to the agency within 30 days of the effective date of the change;~~
 - (15) ~~report changes to the name of the general licensee to the agency within 30 days of the effective date of the change;~~
 - (16) ~~respond to written requests from the agency to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by providing the agency a written justification for the request;~~
 - (17) ~~not hold devices that are not in use for longer than two years. If devices that have shutters are not in use, the shutter shall be locked in the closed position. Leak testing is not required during the period of storage; however, when devices are returned to service or transferred to another person, the devices must be tested for leakage and shutter operation. Devices kept in standby for future use shall be excluded from the two year time limit if quarterly physical inventories of these devices are performed while in standby.~~
- (d) ~~The general license in Paragraph (a) of this Rule does not authorize the manufacture or import of devices containing radioactive material.~~

~~(e) The general license in Paragraph (a) of this Rule is subject to the provisions of Rules .0107 to .0111, .0303(a), .0338, .0342, .0343 and .0345 of this Chapter and to labeling requirements in Section .1600 of this Chapter.~~

Authority G.S. 104E-7; 104E-10(b).

**10A NCAC 15 .0310 GENERAL LICENSES:
MANUFACTURE, TRANSFER, INSTALL GENERALLY
LICENSED DEVICES**

~~(a) Any person who is authorized to manufacture, install, or service a device described in Rule .0309 of this Section, pursuant to a specific license issued by the agency, the U.S. Nuclear Regulatory Commission, or another Agreement State shall be authorized to install, service, and uninstall these devices in accordance with the provisions of 10 CFR 31.6.~~

~~(b) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beece594411a03e50b2468ae31f89b&pidt=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.~~

~~Any person who is authorized to manufacture, install or service a device described in Rule .0309 of this Section pursuant to a specific license issued by the agency, the U.S. Nuclear Regulatory Commission or an agreement state is hereby granted a general license to install and service the device described in Rule .0309, provided the following requirements are met:~~

- ~~(1) The person shall file a report with the agency within 30 days after the end of each calendar quarter in which any device is transferred to or installed in this state. Each report shall identify each general licensee, to whom the device is transferred by name and address, the type of device transferred, and the quantity and type of radioactive material contained in the device;~~
- ~~(2) The device is manufactured, labeled, installed, and serviced in accordance with applicable provisions of the specific license issued to the person by the U.S. Nuclear Regulatory Commission or an agreement state;~~
- ~~(3) The person shall assure that any labels satisfy the requirements in Rule .0309 of this Section and shall furnish to each general licensee, to whom he transfers a device or on whose premises he installs a device, a copy of the general license contained in Rule .0309 of this Section;~~
- ~~(4) The person shall ensure that each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model and serial number, the isotope and quantity, the words "Caution: Radioactive Material," the radiation symbol described in Rule .1623 of this Chapter, and the name of the manufacturer or initial transferor;~~

~~(5) The person shall ensure that each device meeting the criteria of Rule .0309 of this Chapter bears a permanently embossed, etched, stamped or engraved label affixed to the source housing, if separable, or the device if the source housing is not separable. The label shall include the words, "Caution: Radioactive Materials," and, if space and accessibility permit, the radiation symbol described in Rule .1623 of this Chapter;~~

~~(6) If a device is to be transferred for use under the general license granted in Rule .0309(c)(12) of this Chapter, each person that is licensed under this Rule shall provide the following information to each person to whom the device is being transferred prior to the device being transferred. In the case of a transfer through an intermediate person, the information shall also be provided to the intended user prior to the initial transfer to the intermediate person. The required information includes:~~

- ~~(a) a copy of the general license document referenced in Rule .0306 of this Chapter or if no license document is issued, a copy of the letter issued by the agency indicating a license exists in accordance with Rule .0309 of this Chapter. If the prospective general licensee is in the jurisdiction of the Nuclear Regulatory Commission or another Agreement State, the notification shall include a statement advising the person receiving the device of the agency that has jurisdiction over the device;~~
- ~~(b) a copy of Rule .0309 of this Section. If the prospective general licensee is in the jurisdiction of the Nuclear Regulatory Commission or another Agreement State, the notification of transfer shall include the name or title, address, and telephone number of the contact at the proper regulatory agency that has jurisdiction over the person receiving the device;~~
- ~~(c) a list of services, as provided by the manufacturer, that can be performed only by a specific licensee;~~
- ~~(d) information on acceptable disposal options, including estimated cost of disposal; and~~
- ~~(e) a statement that loss or improper disposal of the device may result in formal enforcement actions.~~
- ~~(7) Each device transferred after January 1, 2005 shall meet the labeling requirements;~~
- ~~(8) Each person specifically licensed to initially transfer generally licensed devices to other~~

persons shall comply with the requirements of this Paragraph.

(a) ~~The person shall report, on a quarterly basis, all transfers of devices to persons for use under a general license and all receipts of devices from generally licensed persons. For devices transferred for use under the general license granted in Rule .0309(c)(12) of this Chapter, the reports shall be provided to the agency at the address listed in Rule .0111. For devices transferred outside the jurisdiction of the agency, the reports shall be provided to the Nuclear Regulatory Commission or to the Agreement State which has jurisdiction over the general licensee. The information shall be provided either on the Nuclear Regulatory Commission's Form 653 "Transfers of Industrial Devices Report" or in a clear and legible report that contains all of the information required by the form. The required information includes:~~

- ~~(i) the identity of each general licensee by name and mailing address for the location of use. If there is no mailing address at the location of use, an alternate address for the general licensee shall be submitted along with the information on the actual location of use;~~
- ~~(ii) the name, title and telephone number of the person identified by the general licensee as having knowledge of, and authority to ensure compliance with, these rules;~~
- ~~(iii) the date of transfer;~~
- ~~(iv) the type, model number, and serial number of the device transferred; and~~
- ~~(v) the quantity and type of radioactive material contained in the device.~~

(b) ~~If one or more intermediate persons will temporarily possess the device at the intended use location prior to its use by the end user, the report shall include the same information for both the intended end user and each intermediate person, and designate the intermediate person(s).~~

- ~~(c) If the licensee makes changes to a device possessed by a general licensee such that the label must be changed to update required information, the report shall identify the general licensee, the device, and the changes to the information on the label.~~
- ~~(d) The report shall cover a calendar quarter and must be filed within 30 days of the end of the calendar quarter. The report shall identify the period covered by the report.~~
- ~~(e) The report shall identify the specific licensee submitting the report and include the license number of the specific licensee.~~
- ~~(f) In providing information on devices received from a general licensee, the report shall include the identity of the general licensee by name and address, the type, model number and serial number of the device received, and, in the case of devices not initially transferred by the licensee submitting the report, the name of the manufacturer or initial transferor.~~
- ~~(g) If no transfers have been made to or from persons generally licensed during the reporting period, the report shall so indicate.~~

(9) ~~The person providing the reports shall maintain all information concerning the transfers and receipts of devices required by this Rule for a period of three years following the date of the recorded event.~~

Authority G.S. 104E-7; 104E-10(b).

**10A NCAC 15 .0316 GENERAL LICENSES:
TRANSPORTATION**

(a) Any person transporting or storing byproduct material for transportation shall be exempt as authorized by 10 CFR 30.13.

(b) Any person transporting or storing source material for transportation shall be exempt as authorized by 10 CFR 40.12. Any person not exempt under 10 CFR 40.12 shall be issued a general license in accordance with Rule .0306(a) of this Section.

(c) Any person transporting or storing special nuclear material for transportation shall be exempt as authorized by 10 CFR 70.12. Any person not exempt shall be issued a general license in accordance with Rule .0306(a) of this Section.

(d) Any person preparing radioactive material for shipment or transporting radioactive material shall be subject to the provisions of 10 CFR Part 71 as applicable to the shipment and mode of transportation. Notwithstanding Rule .0117(a)(2)(J) of this Chapter, 10 CFR 71.85(a) through (c), and 71.91(b) are excluded from incorporation by reference.

(e) Notifications required by 10 CFR 71.97 and 10 CFR 73.37(b)(2) shall be made to the Governor's designee as follows:

- (1) designee: N.C. Highway Patrol Headquarters, Operations Officer;
- (2) mailing address: P.O. Box 27687, Raleigh, North Carolina 27611-7687;
- (3) telephone: (919) 733-4030 from 8 a.m. to 5 p.m. Monday through Friday except State holidays, and (919) 733-3861 at all other times.

(f) Transportation of special nuclear material by aircraft shall be prohibited in accordance with 10 CFR 150.21.

(g) Notifications of incidents, accidents, or the loss of control of radioactive material while in transit or while being stored for transportation shall be made to the agency in accordance with Rule .0357 of this Section. Notification of the theft, or loss of radioactive material while in transit, or while being stored for transportation shall be made to the agency in accordance with Rule .1645 of this Chapter.

(h) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beece594411a03e50b2468ae31f89b&pid=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.

~~(a) Except for persons exempt from these Rules, a general license is hereby issued to any common, contract or other carrier to transport and store radioactive material in the regular course of their carriage for another or storage incident thereto; provided the transportation and storage is in accordance with the applicable requirements of the regulations appropriate to the mode of transport of the U.S. Department of Transportation in 49 CFR Part 170-189 and the U.S. Postal Service in the Postal Service Manual, (Domestic Mail Manual), Section 124.3; insofar as, such regulations relate to the packaging of radioactive material, marking and labeling of the package, loading and storage of packages, placarding of the transportation vehicle, monitoring requirements and accident reporting. Any common, contract or other carrier transporting nuclear waste or spent nuclear fuel under this general license shall comply with the provisions in Paragraph (c) of this Rule. Persons who transport and store radioactive material pursuant to the general license in this Paragraph are exempt from the requirements of Sections .1000 and .1600 of this Chapter.~~

~~(b) Except for persons exempt from these Rules, a general license is hereby issued to any private carrier to transport radioactive material; provided, the transportation is in accordance with the applicable requirements of the regulations, appropriate to the mode of transport of the U.S. Department of Transportation in 49 CFR Part 170-189 and the U.S. Postal Service in the Postal Service Manual, (Domestic Mail Manual), Section 124.3; insofar as, such regulations relate to the packaging, loading and storage of packages, placarding of the transportation vehicle, monitoring requirements and accident reporting. The following exemptions and requirements shall apply to transportation of radioactive material under this general license:~~

- ~~(1) Persons who transport radioactive material pursuant to the license in Paragraph (b) of this Rule are exempt from the requirements in Sections .1000 and .1600 of this Chapter to the extent that they transport radioactive material.~~

~~Any notification of incidents referred to in those requirements shall be filed with, or made to, the agency.~~

~~(2) Physicians, as defined in Rule .0104 of this Chapter, are exempt from the requirements in Paragraph (b) of this Rule to the extent that they transport in their private vehicle radioactive material for use in the practice of medicine.~~

~~(3) Any person who transports nuclear waste within or through this state under this general license shall comply with the provisions in Paragraph (c) of this Rule.~~

~~(c) No carrier shall transport within or through this state any nuclear waste or spent nuclear fuel unless the shipper has notified the "governor's designee" in accordance with the requirements of 10 CFR Part 71.97 for nuclear waste and 10 CFR 73.37(f) for spent nuclear fuel. The governor's designee and contact information is as follows:~~

- ~~(1) designee: N.C. Highway Patrol Headquarters, Operations Officer;~~
- ~~(2) mailing address: P.O. Box 27687, Raleigh, North Carolina 27611-7687;~~
- ~~(3) telephone 919/733-4030 from 8 a.m. to 5 p.m. workdays and 919/733-3861 all other times.~~

~~(d) As used in Paragraphs (a) through (c) of this Rule:~~

~~(1) "Shipment" means any single vehicle carrying one or more containers of nuclear waste.~~

- ~~(2) "Nuclear Waste" means:~~
 - ~~(A) any quantity of radioactive material required by 10 CFR Part 71 to be in Type B packaging or subject to advance notification requirements of 10 CFR §§ 71.97 while transported within or through this state to a disposal site, or to a collection point for transport to a disposal site; or~~
 - ~~(B) any quantity of irradiated fuel required by 10 CFR Part 71 to be in Type B packaging while transported within or through this state irrespective of destination if the quantity of irradiated fuel is less than that subject to advance notification requirements of 10 CFR Part 73.~~

~~(3) "Spent Nuclear Fuel" means a quantity of irradiated reactor fuel in excess of 100 grams in net weight of irradiated fuel exclusive of cladding or other structural or packaging material which has a total external radiation dose rate in excess of 100 rems per hour at a distance of three feet from any accessible surface without intervening shielding.~~

Authority G.S. 20-167.1; 104E-7; 104E-10(b); 104E-15(a); 150B-21.6.

10A NCAC 15 .0317 SPECIFIC LICENSES: FILING APPLICATION AND GENERAL REQUIREMENT

(a) Applications for specific licenses shall be filed on an agency form in accordance with G.S. 104E-10(b) in lieu of NRC Form 313, and shall meet the requirements of 10 CFR 30.32, 30.37, or 30.38 as applicable for the type of licensing action, except that:

- (1) 10 CFR 30.32(e), 35.18(a)(2), the portions of 36.11 and 39.11 pertaining to payment of fees, 40.31(e), 61.20(c) and 70.21(e) are not incorporated by reference;
- (2) the agency may require an applicant to submit an environmental impact statement to the agency in accordance with Rule .0108 of this Chapter in lieu of the requirements of 10 CFR 30.32(f), 40.31(f), 40.32(e), 61.10, or 70.23(a); and
- (3) applications for activities listed in 10 CFR 150.7 or excepted activities listed in 10 CFR 150.10 shall be filed on NRC Form 313 and submitted to the U.S. Nuclear Regulatory Commission at the address shown in 10 CFR 150.4 in lieu of the agency.

(b) In addition to Paragraph (a) of this Rule, applications for a specific license to:

- (1) manufacture items containing exempt quantities of radioactive material or to manufacture exempt quantities of radioactive material that is not incorporated into a manufactured item shall meet the applicable requirements of 10 CFR Part 32, Subpart A;
- (2) manufacture or initially transfer generally licensed devices containing byproduct material shall meet the applicable requirements of 10 CFR Part 32, Subpart B;
- (3) manufacture radioactive drugs, sources, or devices not containing exempt quantities of radioactive material for medical use shall meet the applicable requirements of 10 CFR Part 32, Subpart C;
- (4) conduct broad scope activities shall meet the requirements of 10 CFR 33.12 and 33.16, as applicable to licensed activities. Broad scope medical licensees meeting the criteria of 10 CFR 33.13(a) shall be exempt from certain licensing and regulatory requirements as specified in 10 CFR 35.15. 10 CFR 33.11 is not incorporated by reference;
- (5) perform industrial radiography shall meet the requirements of 10 CFR 34.11;
- (6) administer radioactive material or radiation from a licensed source to humans for medical use when a license is required by 10 CFR 35.11 shall meet the requirements of 10 CFR 35.12 and 35.13, as applicable to licensed activities. Notifications required by 10 CFR 35.14 shall be sent to the agency at the address shown in Rule .0111 of this Chapter;
- (7) irradiate material using gamma radiation from sealed sources in facilities listed in 10 CFR

36.1(b) shall meet the requirements of 10 CFR 36.1;

- (8) conduct well logging activities shall meet the requirements of 10 CFR 39.11;
- (9) possess, use, or transfer source material shall meet the requirements of 10 CFR 40.31;
- (10) dispose of radioactive waste received from another person shall meet the requirements of Section .1200 of this Chapter;
- (11) receive, possess, or use special nuclear material shall meet the requirements of 10 CFR 70.22(a), 70.22(d), and 70.22(e), 70.33, or 70.34 as applicable to licensed activities; or
- (12) manufacture or initially transfer calibration or reference sources containing plutonium to persons generally licensed under Rule .0312 of this Section shall meet the requirements of 10 CFR 70.39.

(c) Applications for sealed source and device registration certification, amendment of sealed source and device registration certificates, and inactivation of previously issued sealed source and device registration certificates shall comply with the provisions of 10 CFR Part 32, Subpart D.

(d) Completed applications shall be sent to the agency at the address shown in Rule .0111 of this Chapter.

(e) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beece594411a03e50b2468ae31f89b&pid=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.

(a) Applications for specific licenses shall be filed on an agency form. Completed applications shall include the following information and other information necessary for the agency to determine if the applicant meets the requirements for that license:

- (1) name, address and use location of the applicant;
- (2) training and experience of radioactive material users and of the person responsible for radiation protection;
- (3) types, quantities and uses of radioactive materials;
- (4) description of facilities, equipment and safety program;
- (5) procedures for disposal of radioactive material; and
- (6) how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practical, the generation of radioactive waste.

(b) The agency may at any time after the filing of the original application, and before the expiration of the license, require further statements in order to enable the agency to determine whether the application should be granted or denied or whether a license should be modified or revoked.

(c) Each application shall be signed by the applicant or licensee or a person authorized to act on his behalf.

(d) An application for a license may include a request for a license authorizing one or more activities.

(e) An application for a specific license to use byproduct material in the form of a sealed source or in a device that contains the sealed source must:

- (1) identify the source or device by manufacturer and model number as registered with the US Nuclear Regulatory Commission under 10 CFR 32.210, with an Agreement State. A source or device containing radium 226 or accelerator produced radioactive material must identify the manufacturer and model number if registered with a state under provisions comparable to 10 CFR 32.210;
- (2) contain the information identified in 10 CFR 32.210(e); or
- (3) for sources or devices containing naturally occurring or accelerator produced radioactive material manufactured prior to November 30, 2007 that are not registered with the U.S. Nuclear Regulatory Commission under 10 CFR 32.210 or with an Agreement State, and for which the applicant is unable to provide all categories of information specified in 10 CFR 32.210(e), the applicant must provide:
 - (A) all available information identified in 10 CFR 32.210(e) concerning the source, and, if applicable, the device; and
 - (B) sufficient additional information to demonstrate that there is reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property. Such information must include a description of the source or device, a description of radiation safety features, the intended use and associated operating experience, and the results of a recent leak test.

(f) Applications and documents submitted to the agency shall be made available for public inspection except as are determined otherwise by the agency pursuant to the provisions of G.S. 104E-9(4).

(g) A license application shall be approved if the agency determines that:

- (1) the applicant is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these Rules in such a manner as to minimize danger to public health and safety or property;
- (2) the applicant's proposed equipment, facilities, and procedures are adequate to protect public health from radiation hazards and minimize radiological danger to life or property;
- (3) the issuance of the license will not be inimical to the health and safety of the public; and

(4) the applicant satisfies any applicable special requirements in Rules .0318 to .0336 of this Section.

(h) If required by Rule .0353 of this Section, applications for specific licenses filed under this Section must contain a proposed decommissioning funding plan or a certification of financial assurance for decommissioning.

Authority G.S. 104E-7; 104E-10(b); 104E-12; 104E-18.

10A NCAC 15 .0327 SPECIFIC LICENSES: EXEMPT GAS AND AEROSOL DETECTORS

An application for a specific license authorizing the manufacture and initial distribution of devices containing byproduct material to persons exempt from licensing under Rule .0305(c) of this Section shall comply with the provisions of Rule .0317(a), (b)(1), (c), and (d) of this Section as applicable to licensed activities.

An application for a specific license authorizing the incorporation of radioactive material other than source material into gas and aerosol detectors to be distributed to persons exempt under Rule .0305(d) of this Section will be approved if the application satisfies requirements contained in Section 32.26 of 10 CFR Part 32 for source and byproduct material.

Authority G.S. 104E-7; 104E-10(b).

10A NCAC 15 .0328 SPECIFIC LICENSES: MANUFACTURE DEVICES TO PERSONS LICENSED

An application for a specific license authorizing the manufacture and initial transfer of devices containing byproduct material to persons generally licensed under Rule .0309 of this Section shall comply with the provisions of Rule .0317(a), (b)(2), (c), and (d) of this Section as applicable to licensed activities.

(a) An application for a specific license to manufacture or distribute devices containing radioactive material, excluding special nuclear material, to persons generally licensed under Rule .0309 of this Section or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state shall be approved if:

- (1) the applicant satisfies the general requirements of Rule .0317 of this Section;
- (2) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:
 - (A) the device can be safely operated by persons not having training in radiological protection;
 - (B) under ordinary conditions of handling, storage, and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that any person will receive in any period of one calendar year a dose in excess of 10 percent of the limits specified in the

table of Rule .1604 of this Chapter; and

- (C) under accident conditions (such as fire and explosion) associated with handling, storage, and use of the device, it is unlikely that any person would receive an external radiation dose or dose commitment in excess of the following organ doses:
- (i) whole body, head and trunk, active blood-forming organs, gonads, or lens of eye: 15 rems;
 - (ii) hands and forearms, feet and ankles, localized areas of skin averaged over areas no larger than one square centimeter: 200 rems; or
 - (iii) other organs: 50 rems; and
- (3) each device bears a durable, legible, visible label or labels approved by the agency, which contain in a clearly visible and separate statement:
- (A) instructions and precautions necessary to assure safe installation, operation, and servicing of the device (documents such as operating and service manuals may be identified in the label and used to provide this information);
 - (B) the requirement, or lack of requirement, for leak testing, or for testing any on off mechanism and indicator, including the maximum time interval for such testing, and the identification of radioactive material by isotope, quantity of radioactivity, and date of determination of the quantity; and
 - (C) the information called for in the following statement in the same or substantially similar form: "The receipt, possession, use, and transfer of this device Model _____, Serial No. _____, are subject to a general license or the equivalent and the regulations of the U.S. Nuclear Regulatory Commission or an agreement state. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited."

(name of manufacturer or distributor)"

The model, serial number, and name of manufacturer or distributor may be omitted

from this label provided they are elsewhere specified in labeling affixed to the device.

- (b) If the applicant desires that the device be tested at intervals longer than six months, either for proper operation of any on off mechanism and indicator, or for leakage of radioactive material, he or she shall include in his or her application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the device or similar devices and by design features which have a bearing on the probability or consequences of leakage of radioactive material from the device or failure of the on-off mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the agency shall consider information which includes:

- (1) primary containment (source capsule);
- (2) protection of primary containment;
- (3) method of sealing containment;
- (4) containment construction materials;
- (5) form of contained radioactive material;
- (6) maximum temperature withstood during prototype test;
- (7) maximum pressure withstood during prototype tests;
- (8) maximum quantity of contained radioactive material;
- (9) radiotoxicity of contained radioactive material; and
- (10) the applicant's operating experience with identical devices or similarly designed and constructed devices.

- (c) If the applicant desires that the general licensee under Rule .0309 of this Section, or under equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state, be authorized to install the device, collect the sample for analysis by a specific licensee for leakage of radioactive material, service the device, test the on off mechanism and indicator, or remove the device from installation, he or she shall include in his or her application:

- (1) Written instructions for each activity to be followed by the general licensee;
- (2) Estimated calendar year doses associated with the activity or activities by an individual untrained in radiological protection, in addition to other handling, storage and use of devices under the general license; and
- (3) information to demonstrate that performance of the activity or activities is unlikely to cause that individual to receive a calendar year dose in excess of 10 percent of the limits specified in Rule .1604 of this Chapter.

- (d) Each person licensed under this Rule to distribute devices shall furnish a copy of the general license contained in Section 31.5 of 10 CFR Part 31 to each person to whom he or she directly or through an intermediate person transfers radioactive material in a device for use pursuant to the general license contained in Rule .0309 of this Section, or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state. The copy of Section 31.5 of 10 CFR Part 31 shall be accompanied by a note explaining that the use of the device is regulated by agreement states under requirements substantially the same as those in

Section 31.5 of 10 CFR Part 31. Alternatively, when transferring the devices to persons in a specific agreement state, a copy of that agreement state's equivalent regulations shall be furnished by the licensee.

(e) Each person licensed under this Rule to distribute devices shall report to the agencies specified in Subparagraphs (e)(1), (2) and (3) of this Rule all transfers of the devices to persons generally licensed under the rules of those agencies. The reports shall cover each calendar quarter and shall be filed within 30 days thereafter. If no transfers have been made to generally licensed persons during the reporting period, the reports shall so indicate. Such reports shall identify each general licensee by name and address, an individual by name or position who may constitute a contact with the general licensee, the type and model number of the device transferred, and the quantity and type of radioactive material contained in the device. If one or more intermediate persons will possess the device at the intended place of use prior to its possession by the user, the reports shall include identification of each intermediate person by name, address, contact and relationship to the intended user. The reports shall be submitted to:

- (1) the agency for devices transferred to persons generally licensed under Rule .0309 of this Section;
- (2) each agreement state for devices transferred to persons generally licensed under rules equivalent to Rule .0309 of this Section; and
- (3) the U.S. Nuclear Regulatory Commission for devices transferred to persons generally licensed under Section 31.5 of 10 CFR Part 31.

(f) Each person licensed under this Rule to distribute devices shall maintain for agency inspection either copies of all reports required in Paragraph (e) of this Rule or a record containing the same information. Such copies or records of transfer shall be maintained for at least five years after the date of each transfer of a device to a generally licensed person.

Authority G.S. 104E-7; 104E-10(b).

**10A NCAC 15 .0329 SPECIFIC LICENSES:
LUMINOUS SAFETY DEVICES IN AIRCRAFT**

An application for a specific license authorizing the manufacture, assembly, repair, and initial transfer devices containing byproduct material to persons generally licensed under Rule .0311 of this Section shall comply with the provisions of Rule .0317(a), (b)(2), (c), and (d) of this Section as applicable to licensed activities.

An application for a specific license to manufacture, assemble, or repair luminous safety devices containing tritium or promethium 147 for use in aircraft, for distribution to persons generally licensed under Rule .0311 of this Section will be approved subject to the following conditions:

- (1) the applicant satisfies the general requirements specified in Rule .0317 of this Section; and
- (2) the applicant satisfies the requirements of Sections 32.53, 32.54, 32.55, 32.56, and 32.101 of 10 CFR Part 32 or their equivalent.

Authority G.S. 104E-7; 104E-10(b).

**10A NCAC 15 .0330 SPECIFIC LICENSES:
MANUFACTURE OF CALIBRATION SOURCES**

An application for a specific license authorizing the manufacture and initial transfer of calibration or reference sources for distribution to persons generally licensed under Rule .0312 of this Section shall comply with the provisions of:

- (1) Rule .0317(a), (c), and (d) of this Section;
- (2) Rule .0317(b)(2) of this Section for calibration or reference sources containing byproduct material; and
- (3) Rule .0317(b)(12) of this Section for calibration or reference sources containing plutonium.

An application for a specific license to manufacture calibration sources containing americium 241 and plutonium for distribution to persons generally licensed under Rule .0312 of this Section will be approved subject to the following conditions:

- (1) the applicant satisfies the general requirements of Rule .0317 of this Section; and
- (2) the applicant satisfies the requirements of Sections 32.57, 32.58, 32.59, 32.60 and 32.102 of 10 CFR Part 32 and Section 70.39 of 10 CFR Part 70 or their equivalent.

Authority G.S. 104E-7; 104E-10(b).

10A NCAC 15 .0331 SPECIFIC LICENSES-MANUFACTURE OF IN VITRO TEST KITS

An application for a specific license authorizing the manufacture and initial transfer of devices containing byproduct material to persons generally licensed under Rule .0314 of this Section shall comply with the provisions of Rule .0317(a), (b)(2), (c), and (d) of this Section as applicable to licensed activities.

An application for a specific license to manufacture or distribute radioactive material for use under the general license in Rule .0314 of this Section shall be approved if all of the following requirements are satisfied:

- (1) The applicant satisfies the general requirements specified in Rule .0317 of this Section.
- (2) The radioactive material is to be prepared for distribution in prepackaged units of:
 - (a) iodine 125 in units not exceeding 10 microcuries each;
 - (b) iodine 131 in units not exceeding 10 microcuries each;
 - (c) carbon 14 in units not exceeding 10 microcuries each;
 - (d) hydrogen 3 (tritium) in units not exceeding 50 microcuries each;
 - (e) iron 59 in units not to exceed 20 microcuries each;
 - (f) cobalt 57 in units not to exceed 10 microcuries each;
 - (g) selenium 75 in units not exceeding 10 microcuries each; or
 - (h) mock iodine 125 in units not exceeding 0.05 microcurie of iodine-129 and 0.005 microcurie of americium 241 each.

- (3) ~~Each prepackaged unit bears a durable, visible label:~~
 - (a) ~~identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed the appropriate limit in Item (2) of this Rule; and~~
 - (b) ~~displaying the radiation caution symbol described in Rule .1623 of this Chapter and the words, "CAUTION, RADIOACTIVE MATERIAL," and "NOT FOR INTERNAL OR EXTERNAL USE IN HUMANS OR ANIMALS."~~
- (4) ~~The following statement, or a statement which contains the information called for in the following statement, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:~~

~~This radioactive material may be received, acquired, possessed, and used only by physicians, clinical laboratories or hospitals and only for *in vitro* clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use, and transfer are subject to the regulations and a general license of the U.S. Nuclear Regulatory Commission or a state with which the Commission has entered into an agreement for the exercise of regulatory authority. (Name of Manufacturer.)~~

- (5) ~~The label affixed to the unit, or the leaflet or brochure which accompanies the package, contains information as to the precautions to be observed in handling and storing such radioactive material. In the case of the molybdenum-99 reference or calibration source, the information accompanying the source must also contain directions to the licensee regarding the waste disposal requirements set out in Rule .1628 of this Chapter.~~

Authority G.S. 104E-7; 104E-10(b).

**10A NCAC 15 .0332 SPECIFIC LICENSES:
MANUFACTURE OF ICE DETECTION DEVICES**

An application for a specific license authorizing the manufacture and initial transfer of generally licensed ice detection devices for transfer to a person generally licensed under Rule .0315 of this Section shall comply with the provisions of Rule .0317(a), (b)(2), (c), and (d) of this Section as applicable to licensed activities.

~~An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed under Rule .0315 of this Section will be approved subject to the following conditions:~~

- (1) ~~the applicant satisfies the general requirements of Rule .0317 of this Section, and~~
- (2) ~~the applicant satisfies the requirements of Sections 32.61, 32.62, 32.63 and 32.103 of 10 CFR Part 32 or their equivalent.~~

Authority G.S. 104E-7; 104E-10(b).

**10A NCAC 15 .0335 SPECIFIC LICENSES:
PRODUCTS CONTAINING DEPLETED URANIUM**

An application for a specific license authorizing the manufacture and initial transfer of products containing depleted uranium to persons generally licensed under Rule .0307(b) of this Section, shall comply with the provisions of Rule .0317(a), (b)(9), (c), and (d) of this Section as applicable to licensed activities.

~~(a) An application for a specific license to manufacture industrial products and devices containing depleted uranium for use pursuant to Rule .0307(e) of this Section or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state will be approved if:~~

- (1) ~~the applicant satisfies the general requirements specified in Rule .0317 of this Section;~~
- (2) ~~the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses, and potential hazards of the industrial product or device to provide reasonable assurance that possession, use, or transfer of the depleted uranium in the product or device is not likely to cause any individual to receive in any period of one calendar quarter a radiation dose in excess of ten percent of the limits specified in Rule .1604 of this Chapter; and~~
- (3) ~~the applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.~~

~~(b) In the case of an industrial product or device whose unique benefits are questionable, the agency will approve an application for a specific license under this Rule only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.~~

~~(c) The agency may deny any application for a specific license under this Rule if the end use(s) of the industrial product or device cannot be reasonably foreseen.~~

~~(d) Each person licensed pursuant to Paragraph (a) of this Rule shall:~~

- (1) ~~maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;~~
- (2) ~~label or mark each unit to:~~
 - (A) ~~identify the manufacturer of the product or device and the number of the license under which the product or device was manufactured, the fact that the product or device contains depleted uranium, and the quantity of~~

depleted uranium in each product or device; and

(B) state that the receipt, possession, use, and transfer of the product or device are subject to a general license or the equivalent and the regulations of the U.S. Nuclear Regulatory Commission or of an agreement state;

(3) assure that the depleted uranium before being installed in each product or device has been impressed with the following legend clearly legible through any plating or other covering: "Depleted Uranium".

(e) Each person, licensed under this Rule to distribute devices, shall furnish a copy of the general license contained in Section 40.25 of 10 CFR Part 40 to each person to whom he directly or through an intermediate person transfers radioactive material in a device for use pursuant to the general license contained in Rule .0307(e) of this Section, or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state. The copy of Section 40.25 of 10 CFR Part 40 shall be accompanied by a note explaining that the use of the device is regulated by agreement states under requirements substantially the same as those in Section 40.25 of 10 CFR Part 40. Alternatively, when transferring the devices to persons in a specific agreement state, a copy of that agreement state equivalent regulations shall be furnished.

(f) Each person, licensed under this Rule to distribute devices, shall report to the agencies specified in Subparagraphs (f)(1),(2) and (3) of this Rule all transfers of the devices to persons generally licensed under the rules of those agencies. Such reports shall identify each general licensee by name and address, an individual by name or position who may constitute a contact with the general licensee, the type and model number of the device transferred, and the quantity and type of radioactive material contained in the device. If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the reports shall include identification of each intermediate person by name, address, contact and relationship to the intended user. If no transfers have been made to generally licensed persons during the reporting period, the reports shall so indicate. The reports shall cover each calendar quarter and shall be filed within 30 days thereafter. The reports shall be submitted to:

- (1) the agency for devices transferred to persons generally licensed under Rule .0307(e) of this Section;
- (2) each agreement state for devices transferred to persons generally licensed under rules equivalent to Rule .0307(e) of this Section; and
- (3) the U.S. Nuclear Regulatory Commission for devices transferred to persons generally licensed under Section 40.25 of 10 CFR Part 40.

(g) Each person, licensed under this Rule to distribute devices, shall maintain for agency inspection either copies of all reports required in Paragraph (f) of this Rule or a record containing substantially the same information. Such copies or records of transfer shall be maintained for at least five years after the date of each transfer of a device to a generally licensed person.

Authority G.S. 104E-7; 104E-10(b).

10A NCAC 15 .0337 ISSUANCE OF SPECIFIC LICENSES AND SEALED SOURCE AND DEVICE REGISTRATION CERTIFICATES

(a) An application for a specific license shall be approved, and a specific license issued, or amended by the agency if the agency determines that the applicant satisfies the provisions of 10 CFR 30.33(a)(1) through (4), 30.39, 40.32(a) through (f), and 70.23(a)(1) through (6) as applicable to licensed activities, and any additional requirements in:

- (1) 10 CFR 32.11, 32.14, 32.18, 32.21, 32.22, 32.26, and 32.30 as applicable to the manufacture of exempt concentrations of byproduct material, and items containing exempt concentrations of byproduct material listed in 10 CFR Part 32, Subpart A;
- (2) 10 CFR 32.51, 32.53, 32.57, 32.61, and 32.71 as applicable to the manufacturing and distribution of generally licensed items and devices listed in 10 CFR Part 32, Subpart B;
- (3) 10 CFR 32.72 and 32.74 as applicable to the manufacturing and distribution of radioactive drugs, sources, or devices listed in 10 CFR Part 32, Subpart C;
- (4) 10 CFR 33.13 through 33.15, and 33.17 as applicable to activities of broad scope;
- (5) 10 CFR 34.13 for industrial radiography;
- (6) 10 CFR 35.18 for the medical use of radioactive materials;
- (7) 10 CFR 36.13 for the use of sealed sources to irradiate materials;
- (8) 10 CFR 39.13, 39.15, and 39.17 for the use of radioactive materials in well logging;
- (9) 10 CFR 40.34 for the use of source material in the manufacture and initial transfer of devices containing depleted uranium to a person generally licensed under Rule .0307(b) of this Section;
- (10) 10 CFR 40.52 for the use of source material in the manufacture of exempt devices listed in Rule .0305 of this Section;
- (11) 10 CFR 40.54 for the initial transfer of source material to a person generally licensed under Rule .0307(a) of this Section;
- (12) 10 CFR 61.23(a) through (h), and (k), and Section .1200 of this Chapter for the receipt, possession, transfer, or disposal of radioactive waste received from another person; and
- (13) 10 CFR 70.31(a) and (b) for the use of special nuclear material.

(b) An application for a new or amended Sealed Source and Device Registration certificate shall be approved by the agency, and a new or amended Sealed Source and Device Registration certificate issued in accordance with 10 CFR 32.210(d) and (e).

(c) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and

editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beece594411a03e50b2468ae31f89b&pitd=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.

(a) Upon a determination that an application meets the requirements of the Act and the rules of this Section, the agency will issue a specific license authorizing the proposed activity in such form and containing such conditions and limitations as it deems appropriate or necessary.

(b) The agency may amend any license, when not in conflict with any law, to waive any requirement in these Rules or to impose additional requirements in accordance with 46 FR 7540, with respect to the licensee's receipt, possession, use and transfer of radioactive material subject to the rules in this Chapter as it deems appropriate or necessary in order to:

- (1) minimize danger to public health and safety or property;
- (2) require such reports and the keeping of such records, and provide for such inspections of activities under the license as may be appropriate or necessary; and
- (3) prevent loss or theft of radioactive material subject to this Section.

Authority G.S. 104E-7; 104E-10(b); 10 C.F.R. Chapter 1, Commission Notices, Policy Statements, Agreement States, 46 F.R. 7540.

10A NCAC 15 .0338 SPECIFIC TERMS AND CONDITIONS OF LICENSES

(a) All licenses issued by the agency for activities authorized under the Rules of this Section are subject to the terms and conditions listed in 10 CFR 30.34(a) through (d), and 30.34(e)(2) through (j)(4). In addition to these terms and conditions, licenses of broad scope are subject to the terms and conditions listed in 10 CFR 33.17.

(b) All licenses issued by the agency authorizing the possession and use of source material are subject to the terms and conditions listed in 10 CFR 40.35, 40.41, 40.46, 40.53, 40.55, and 40.56.

(c) All licenses issued by the agency authorizing the receipt, possession, or disposal of radioactive waste received from another person are subject to the terms and conditions listed in 10 CFR 61.24, 61.25, and the Rules in Section .1200 of this Chapter.

(d) All licenses issued by the agency authorizing the possession and use of special nuclear material are subject to the terms and conditions of 10 CFR 70.32.

(e) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beece594411a03e50b2468ae31f89b&pitd=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.

(a) Each person licensed by the agency pursuant to this Section shall confine his or her use and possession of the radioactive material licensed to the locations and purposes authorized in the license.

(b) Each licensee shall notify the agency in writing immediately following the filing of a voluntary or involuntary petition for

bankruptcy under any Chapter of Title 11 (Bankruptcy) of the United States Code by or against:

- (1) the licensee;
- (2) an entity [as that term is defined in 11 U.S.C. 101(14)] controlling the licensee or listing the license or licensee as property of the estate; or
- (3) an affiliate [as that term is defined in 11 U.S.C. 101(2)] of the licensee.

(c) The notification in Paragraph (b) of this Rule shall indicate:

- (1) the bankruptcy court in which the petition for bankruptcy was filed; and
- (2) the date of the filing of the petition.

(d) Licensees required to submit emergency plans pursuant to Rule .0352 of this Section shall follow the emergency plan approved by the agency. The licensees may change the approved plan without prior agency approval only if the licensee believes the changes do not decrease the effectiveness of the plan and are submitted to the agency no later than 20 calendar days after the changes are made. The licensee shall furnish the change to affected off site response organizations within six months after the change is made. Proposed changes that the licensee believes are likely to decrease, or may potentially decrease, the effectiveness of the approved emergency plan shall not be implemented without prior application to and approval by the agency.

(e) Each licensee preparing technetium 99m radiopharmaceuticals from molybdenum 99/technetium 99m generators or rubidium 82 from strontium 82/rubidium 82 generators shall test the generator eluates for molybdenum 99 breakthrough or strontium 82 and strontium 85 contamination, respectively, in accordance with Rule .0361 of this Section. The licensee shall record the results of each test and retain each record for three years after the record is made.

(f) Each portable nuclear gauge licensee shall use at least two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever portable gauges are not under the control and constant surveillance of the licensee.

Authority G.S. 104E-7; 104E-10(b).

10A NCAC 15 .0343 TRANSFER OF MATERIAL

(a) Any person licensed under the Rules of this Section transferring byproduct material shall comply with the provisions of 10 CFR 30.41.

(b) Any person licensed under the Rules of this Section transferring source material shall comply with the provisions of 10 CFR 40.51.

(c) Any person licensed under the Rules of this Section transferring special nuclear material shall comply with the provisions of 10 CFR 70.42.

(d) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beece594411a03e50b2468ae31f89b&pitd=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.

- ~~(a) No licensee shall transfer radioactive material except as authorized pursuant to this Section.~~
- ~~(b) Except as otherwise provided in his license and subject to the provisions of Paragraphs (c), (d) and (e) of this Rule any licensee may transfer radioactive material to:~~
- ~~(1) the agency;~~
 - ~~(2) the U.S. Department of Energy;~~
 - ~~(3) any person exempt from the rules in this Section to the extent permitted under the exemption;~~
 - ~~(4) any person authorized to receive the radioactive material under terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the agency, the U.S. Nuclear Regulatory Commission, or an agreement state, or any person otherwise authorized to receive the radioactive material by the federal government or any agency thereof, the agency, or an agreement state; or~~
 - ~~(5) as otherwise authorized by the agency in writing.~~
- ~~(c) A licensee may transfer material to the agency only after receiving prior approval from the agency.~~
- ~~(d) Before transferring radioactive material to a specific licensee of the agency, the U.S. Nuclear Regulatory Commission, or an agreement state, or to a general licensee who is required to register with the agency, the U.S. Nuclear Regulatory Commission, or an agreement state prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.~~
- ~~(e) The following methods for the verification required by Paragraph (d) of this Rule are acceptable:~~
- ~~(1) The transferor may have in his possession, and read, a current copy of the transferee's specific license or registration certificate;~~
 - ~~(2) The transferor may have in his possession a written certificate by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date;~~
 - ~~(3) For emergency shipments the transferor may accept oral certification by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date; provided the oral certification is confirmed in writing within 10 days after the date of the oral certification;~~
 - ~~(4) The transferor may obtain other sources of information compiled by a reporting service from official records of the agency, the U.S. Nuclear Regulatory Commission, or the licensing agency of an agreement state as to the identity of licensees and the scope and expiration dates of licenses and registration; or~~

- ~~(5) When none of the methods of verification described in this Rule are readily available or when a transferor desires to verify that information received by one of the methods is correct or updated, the transferor may obtain and record confirmation from the agency, the U.S. Nuclear Regulatory Commission, or the licensing agency of an agreement state that the transferee is licensed to receive the radioactive material.~~
- ~~(f) Preparation for shipment and transport of radioactive material shall be in accordance with the provisions of Rule .0346 of this Section.~~

Authority G.S. 104E-7; 104E-10(b).

**10A NCAC 15 .0344 MODIFICATION:
REVOCATION: AND TERMINATION OF LICENSES
AND SEALED SOURCE AND DEVICE REGISTRATION
CERTIFICATES**

- (a) All licenses authorizing the receipt, possession, use, and transfer of byproduct material, and all sealed source and device registration certificates issued by the agency under the Rules of this Section, are subject to modification by the agency in accordance with 10 CFR 30.61.
- (b) All licenses issued by the agency for the receipt, possession, use, and transfer of source material under the Rules of this Section, are subject to modification by the agency in accordance with 10 CFR 40.71.
- (c) All licenses issued by the agency for the receipt, possession, transfer, or disposal of radioactive waste from another person are subject to modification by the agency in accordance with the provisions of 10 CFR 61.24.
- (d) All licenses issued by the agency for the receipt, possession, use, and transfer of special nuclear material are subject to modification by the agency in accordance with 10 CFR 70.81.
- (e) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beece594411a03e50b2468ae31f89b&pid=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.
- ~~(a) The terms and conditions of all licenses are subject to amendment, revision or modification and all licenses are subject to suspension or revocation by reason of:~~
- ~~(1) amendments to the Act,~~
 - ~~(2) rules adopted pursuant to provisions of the Act,~~
 - ~~or~~
 - ~~(3) orders issued by the agency pursuant to provisions of the Act and rules adopted pursuant to provisions of the Act.~~
- ~~(b) Any license may be revoked, suspended, or modified, in whole or in part:~~
- ~~(1) for any material false statement in the application or in any statement of fact required by provisions of this Section;~~

- (2) ~~because of conditions which would warrant the agency to refuse to grant a license or an original application revealed by:~~
 - (A) ~~the application;~~
 - (B) ~~any statement of fact;~~
 - (C) ~~any report, record, inspection or other means; or~~
 - (3) ~~for violation of, or failure to observe any of the terms and conditions of the Act, the license, the rules of this Chapter, or order of the agency.~~
- (e) ~~Except in cases of willfulness or those in which the public health, interest or safety requires otherwise, prior to the institution of proceedings for modification, revocation, or suspension of a license, the agency shall:~~
- (1) ~~call to the attention of the licensee in writing the facts or conduct which may warrant these actions, and~~
 - (2) ~~provide an opportunity for the licensee to demonstrate or achieve compliance with all lawful requirements.~~
- (d) ~~The agency may terminate a specific license upon request submitted by the licensee to the agency in writing.~~

Authority G.S. 104E-7; 104E-10(b); 104E-13.

10A NCAC 15 .0353 FINANCIAL ASSURANCE AND RECORD-KEEPING FOR DECOMMISSIONING

- (a) Applications for a new license filed with the agency under Rule .0317 of this Section, and applications for the renewal of a license filed with the agency under Rule .0340 of this Section, shall include an evaluation of the need for financial assurance based upon the quantity of radioactive material requested in the application.
- (b) Applications for amendment of a license filed with the agency under Rule .0341 of this Section, changing the quantity of radioactive material authorized for possession by a licensee, shall include an evaluation of the need for financial assurance based upon the quantity of radioactive material that shall be authorized by the amended license.
- (c) Evaluation of the need for financial assurance shall be performed by the applicant based upon the type of application listed in Paragraph (a) or (b) of this Rule, using one or more the methods shown in Paragraph (d) of this Rule.
- (d) Applicants shall require financial assurance to possess the following types and quantities of radioactive material:
- (1) byproduct material in the quantities shown in 10 CFR 30.35(a) or (b);
 - (2) source material in the quantities shown in 10 CFR 40.36(a) or (b); and
 - (3) special nuclear material in the quantities shown in 10 CFR 70.25(a)(2) or (b).
- (e) Applicants requiring financial assurance shall:
- (1) comply with the provisions of 10 CFR 30.35(c) for the possession of byproduct material;
 - (2) comply with the provisions of 10 CFR 40.36(c) for the possession of source material; and
 - (3) comply with the provisions of 10 CFR 70.25(c) for the possession of special nuclear material.

(f) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beece594411a03e50b2468ae31f89b&pid=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.

(a) ~~For the purposes of this Rule, R is defined as the sum of the ratios of the quantity of each isotope with half life greater than 120 days to the applicable value in the table in Appendix C to 10 CFR §§ 20.1001–20.2401, as shown in the following formula:~~

$$R = \sum_{i=1}^n \left(\frac{\text{Possession limit of Isotope 1}}{\text{Appendix C value for Isotope 1}} + \frac{\text{Possession limit of Isotope 2}}{\text{Appendix C value for Isotope 2}} + \dots + \frac{\text{Possession limit of Isotope } n}{\text{Appendix C value for Isotope } n} \right)$$

(b) ~~For unsealed radioactive materials, other than source material, the quantities requiring financial assurance and the financial assurance amounts are as follows:~~

- (1) ~~If R divided by 10⁵ is greater than one, then the minimum financial assurance amount is one million one hundred twenty five thousand dollars (\$1,125,000) and shall be as stated in a decommissioning funding plan as described in Paragraph (i) of this Rule;~~
- (2) ~~If R divided by 10⁴ is greater than one, but R divided by 10⁵ is less than or equal to one, then the financial assurance amount is one million one hundred twenty five thousand dollars (\$1,125,000); or~~
- (3) ~~If R divided by 10³ is greater than one, but R divided by 10⁴ is less than or equal to one, then the financial assurance amount is two hundred twenty five thousand dollars (\$225,000).~~

(c) ~~For sealed radioactive materials, the quantities requiring financial assurance and the financial assurance amounts are as follows:~~

- (1) ~~If R divided by 10¹² is greater than one, the licensee shall submit a decommissioning funding plan in accordance with Paragraph (i) of this Rule; or~~
- (2) ~~If R divided by 10¹⁰ is greater than one, but R divided by 10¹² is less than or equal to one, then the financial assurance amount is one hundred thirteen thousand dollars (\$113,000).~~

(d) ~~For source material in a readily dispersible form, the quantities requiring financial assurance and the financial assurance amounts are as follows:~~

- (1) ~~If a specific license authorizes possession and use of more than 100 millicuries, then the minimum financial assurance amount is one million one hundred twenty five thousand dollars (\$1,125,000) and shall be as stated in a decommissioning funding plan as described in Paragraph (i) of this Rule; or~~
- (2) ~~If a specific license authorizes possession and use of more than 10 millicuries, but less than or equal to 100 millicuries, then the licensee shall either:~~
 - (a) ~~submit a decommissioning funding plan in accordance with Paragraph (i) of this Rule; or~~

~~(b) submit certification of financial assurance in the amount of two hundred twenty five thousand dollars (\$225,000).~~

~~(e) Each applicant for a specific license authorizing possession and use of radioactive material of half life greater than 120 days and in quantities specified in Paragraphs (b) or (c) or source material in quantities specified in Paragraph (d) of this Rule shall either:~~

- ~~(1) submit a decommissioning funding plan as described in Paragraph (i) of this Rule; or~~
- ~~(2) submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by Paragraphs (b) through (d) of this Rule using one of the methods described in Rule .0354 of this Section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but prior to the receipt of licensed material. As part of the certification, the applicant shall submit to this agency, a copy of the financial instrument obtained to satisfy the requirements of Paragraph (i) of this Rule.~~

~~(f) Each holder of a specific license issued before the effective date of this Rule, and of a type described in Paragraphs (b)(1), (b)(2), (c)(1), or (d)(1) of this Rule shall submit, no later than May 1, 2007, a certification of financial assurance for decommissioning or a decommissioning funding plan in accordance with the criteria set forth in this Rule.~~

~~(g) Each holder of a specific license issued before the effective date of this Rule, and of a type described in Paragraphs (b)(3), (c)(2) or (d)(2) of this Rule shall submit, no later than November 1, 2007, a certification of financial assurance in accordance with the criteria set forth in this Rule.~~

~~(h) Each holder of a specific license issued on or after the effective date of this Rule, which is of a type described in Paragraphs (b) through (d) of this Rule, shall provide financial assurance for decommissioning in accordance with the criteria set forth in this Rule.~~

~~(i) Each decommissioning funding plan shall contain a cost estimate for decommissioning and documentation of an approved method assuring funds for decommissioning as referenced in Rule .0354 of this Section, including means of adjusting cost estimates and associated funding levels at intervals not to exceed three years.~~

~~(j) Each person licensed under this Section of this Chapter shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the agency. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the agency considers important to decommissioning includes:~~

- ~~(1) Records of spills or other occurrences involving the spread of contamination in and around the facility, equipment, or site.~~
- ~~(A) These records may be limited to instances when contamination remains after any cleanup procedures or when~~

~~there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete.~~

~~(B) These records shall include any known information on identification of involved nuclides, quantities, forms, and concentrations.~~

~~(2) As built drawings and modifications of structures and equipment in restricted areas where radioactive materials are being used or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination.~~

~~(A) If required drawings are referenced, each relevant document need not be indexed individually.~~

~~(B) If drawings are not available, the licensee shall substitute records of available information concerning these areas and locations.~~

~~(3) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.~~

~~(4) Except for areas containing only sealed sources (provided the sealed sources have not leaked or no contamination remains after cleanup of any leak) or radioactive materials having only half-lives of less than 65 days, or depleted uranium used only for shielding, licensees shall be required to establish and maintain a list, contained in a single document. The list shall be updated every two years, and include the following information:~~

~~(A) All areas designated and formerly designated as restricted areas as defined in Rule .0104 of this Chapter;~~

~~(B) All areas outside of restricted areas that require documentation under Paragraph (j) of this Rule;~~

~~(C) All areas outside of restricted areas where current and previous wastes have been buried as documented in Rule .1642 of this Chapter; and~~

~~(D) All areas outside of restricted areas which contain material that, if the license expired, the licensee would be required to decontaminate either the area to unrestricted release levels or to apply to the agency for approval for disposal as required in Rule .1629 of this Chapter.~~

~~(k) Prior to license termination, each licensee authorized to possess radioactive material in an unsealed form, shall forward to the agency the records required in Paragraph (j) of this Rule.~~

~~(l) Before licensed activities are transferred, licensees shall transfer all records required in Paragraph (j) of this Rule. In this case, the new licensee shall maintain the records until the license is terminated.~~

Authority G.S. 104E-7; 104E-18.

10A NCAC 15 .0354 METHODS OF FINANCIAL ASSURANCE FOR DECOMMISSIONING

(a) Licensees or applicants for a radioactive materials license authorizing the use of:

- (1) byproduct material shall provide for financial assurance in compliance with 10 CFR 30.35(f);
- (2) source material shall provide for financial assurance in compliance with 10 CFR 40.36(e); and
- (3) special nuclear material shall provide for financial assurance in compliance with 10 CFR 70.25(f).

(b) Licensees or applicants for a radioactive materials license authorizing the use of any combination of radioactive material listed in Paragraph (a) of this Rule, shall provide for financial assurance in accordance with the evaluation performed for Rule .0353(c) of this Section.

(c) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beece594411a03e50b2468ae31f89b&pidt=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.

(a) Financial assurance for decommissioning as required by Rule .0353 of this Section must be provided by one or more of the following methods:

- (1) prepayment, where:
 - (A) Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs; and
 - (B) Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.
- (2) a surety method, insurance, or other guarantee method, where:
 - (A) These methods guarantee that decommissioning costs will be paid should the licensee default;
 - (B) A surety method may be in the form of a surety bond, letter of credit, or line of credit;
 - (C) A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the parent company and guarantee meet the

~~criteria contained in Rule .0355 of this Section;~~

~~(D) A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this Section; and~~

~~(E) Any surety method or insurance used to provide financial assurance for decommissioning shall contain the following conditions:~~

~~(i) The surety method or insurance shall be open ended or, if written for a specified term, such as five years, shall be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the agency, the beneficiary, and the licensee of its intention not to renew;~~

~~(ii) The surety method or insurance shall provide that the full face amount be paid to the beneficiary automatically prior to the expiration date without proof of forfeiture if the licensee fails to provide a replacement acceptable to the agency within 30 days after receipt of notification of cancellation;~~

~~(iii) The surety method or insurance shall be payable to a trust established for decommissioning costs. The trustee and trust shall be acceptable to the agency. An acceptable trust includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;~~

~~(iv) The surety method or insurance shall remain in effect until the agency has terminated the license.~~

~~(3) an external sinking fund where:~~

~~(A) Deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund;~~

~~(B) An external sinking fund is a fund established and maintained by setting~~

~~aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected;~~

~~(C) An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit or deposits of government securities; and~~

~~(D) The surety or insurance provisions shall be as stated in Subparagraph (a)(2) of this Rule.~~

~~(4) in the case of federal, state or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on the provisions of Rule .0353 of this Section, and indicating that funds for decommissioning shall be obtained when required by the agency.~~

Authority G.S. 104E-7; 104E-18.

10A NCAC 15 .0355 FINANCIAL TESTS: SELF- AND PARENT CO. GUARANTEES: DECOMMISSIONING FUNDING

(a) Licensees or applicants for a radioactive materials license requiring financial assurance under Rule .0353 of this Section may self-guarantee funds, or provide a guarantee of funds by their parent company for decommissioning funding in accordance with the provisions of Rule .0354 of this Section, except that:

(1) parent companies guaranteeing funds for decommissioning shall have a tangible net worth of at least ten million dollars (\$10,000,000) to meet the asset requirement set forth in Section II, Paragraphs A.1(iii), or A.2(iii), of Appendix A to 10 CFR Part 30;

(2) licensees self-guaranteeing funds for decommissioning who issue bonds, and whose bonds meet the bond rating requirements of Section II, Paragraph A(3) of Appendix C to 10 CFR Part 30 shall have a tangible net worth of at least ten million dollars (\$10,000,000), and at least six times the amount of decommissioning funds being assured by the self-guarantee to meet the asset requirements set forth in Section II, Paragraph A.(2) and A.(3) of Appendix C to 10 CFR Part 30;

(3) licensees self-guaranteeing funds for decommissioning who do not issue bonds, or whose bonds do not meet the bond rating requirements of Section II, Paragraph A(3) of Appendix C to 10 CFR Part 30, shall have a tangible net worth of at least ten million dollars (\$10,000,000), and at least six times the amount of decommissioning funds being assured by the self-guarantee to meet the asset requirements

set forth in Section II, Paragraph A.(1) and A.(2) of Appendix D to 10 CFR Part 30;

(4) licensees self-guaranteeing funds for decommissioning who are nonprofit publicly funded colleges, universities, or hospitals shall meet the funding requirements set forth in 10 CFR 30.35(f)(4). For the purpose of this Rule, publicly funded trade schools, technical institutes, technical colleges, technical universities, or other publicly funded educational institutions are to be interpreted as "nonprofit publicly funded colleges;"

(5) licensees self-guaranteeing funds for decommissioning who are nonprofit privately funded, or nonprofit semi-privately funded colleges, or universities who do not issue bonds, or whose bonds do not meet the bond rating requirements of Section II, paragraph A.(1) of Appendix E to Part 30 shall have an unrestricted endowment consisting of assets worth of at least ten million dollars (\$10,000,000), and at least six times the amount of decommissioning funds being assured by the self-guarantee to meet the asset requirements set forth in Section II, Paragraph A.(2) of Appendix E to 10 CFR Part 30; or

(6) licensees self-guaranteeing funds for decommissioning who are nonprofit privately funded, or nonprofit semi-privately funded hospitals who do not issue bonds, or whose bonds do not meet the bond rating requirements of Section II, Paragraph B.(1) of Appendix E to 10 CFR Part 30 shall have a tangible net worth of at least ten million dollars (\$10,000,000), and at least six times the amount of decommissioning funds being assured by the self-guarantee to meet the asset requirements set forth in Section II, Paragraph B.(2) of Appendix E to 10 CFR Part 30.

(b) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beece594411a03e50b2468ae31f89b&pidt=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.

~~(a) An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on obtaining a parent company guarantee that funds will be available for decommissioning costs and on a demonstration that the parent company passes a financial test. This Rule establishes criteria for passing the financial test and for obtaining the parent company guarantee.~~

~~(b) To pass the financial test, the parent company shall meet the criteria of either Subparagraph (b)(1) or (b)(2) of this Rule as follows:~~

~~(1) The parent company shall have:
(A) two of the following three ratios: A ratio of total liabilities to net worth~~

less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

- (B) net working capital and tangible net worth each at least six times the current decommissioning cost estimates (or prescribed amount if a certification is used); and
 - (C) tangible net worth of at least ten million dollars (\$10,000,000); and
 - (D) assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates (or prescribed amount if a certification is used).
- (2) The parent company shall have:
- (A) a current rating for its most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
 - (B) tangible net worth at least six times the current decommissioning cost estimate (or prescribed amount if a certification is used); and
 - (C) tangible net worth of at least ten million (\$10,000,000); and
 - (D) assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates (or prescribed amount if certification is used).

(e) The parent company's independent certified public accountant shall have compared the data used by the parent company in the financial test, which is derived from the independently audited, year end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure the licensee shall inform the agency within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

(d) After the initial financial test, the parent company shall repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

(e) If the parent company no longer meets the requirements of Paragraph (b) of this Rule, the licensee shall send notice to the agency of intent to establish alternate financial assurance as specified in this Section. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year end financial data show that the parent company no longer meets the financial test requirements. The licensee shall provide alternate financial assurance within 120 days after the end of such fiscal year.

~~(f) The terms of a parent company guarantee which an applicant or licensee obtains shall provide that:~~

- ~~(1) the parent company guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the agency. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the agency, as evidenced by the return receipts.~~
- ~~(2) if the licensee fails to provide alternate financial assurance as specified in this Section within 90 days after receipt by the licensee and the agency of a notice of cancellation of the parent company guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee.~~

~~(g) The parent company guarantee and financial test provisions shall remain in effect until the agency has terminated the license.~~

~~(h) If a trust is established for decommissioning costs, the trustee and trust shall be acceptable to the agency. An acceptable trustee includes an appropriate state or federal agency or an entity to act as a trustee whose trust operations are regulated and examined by a federal or state agency.~~

Authority G.S. 104E-7; 104E-18.

10A NCAC 15 .0357 REPORTING REQUIREMENTS

(a) All reports required by this Rule shall be made to the agency in accordance with Rule .0111 of this Chapter.

(b) Reports of incidents involving exposure, or incidents threatening to cause exposure to radiation in excess of the annual occupational limits of Rule .1604 of this Chapter shall be made to the agency in accordance with the provisions of 10 CFR 20.2202.

(c) Reports of an event that prevents taking protective actions to avoid exposure to radiation or to radioactive material that could cause exposures in excess of the regulatory limits of this Chapter shall be made to the agency in accordance with the provisions of:

- (1) 10 CFR 30.50 for licensees authorized for the possession and use of byproduct material;
- (2) 10 CFR 40.60 for licensees authorized for the possession and use of source material; and
- (3) 10 CFR 70.50 of this Chapter for licensees authorized for the possession and use of special nuclear material.

(d) Reports of exposure to radiation exceeding the exposure limits in Section .1600 of this Chapter, or to concentrations of radioactive material in any restricted or unrestricted area in excess of licensed or regulatory limits of 10 CFR Part 20.2203(a)(3) shall be made to the agency in accordance with 10 CFR 20.2203.

(e) Reports of incidents or events occurring at irradiation facilities licensed under the provisions of 10 CFR 36.1(b) shall be made to the agency in accordance with 10 CFR 36.83.

(f) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at <http://www.ecfr.gov/cgi-bin/text>

[idx?SID=2beeece594411a03e50b2468ae31f89b&pitd=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl](http://www.ncac.gov/ncac/ncac.nsf/00000000-0000-0000-0000-000000000000?SID=2beeece594411a03e50b2468ae31f89b&pitd=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl)

~~(a) Immediate report. Each licensee shall notify the agency as soon as possible but not later than four hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to sources of radiation that could exceed regulatory limits or releases of licensed radioactive material that could exceed regulatory limits. These events include but are not limited to fires, explosions and toxic gas releases.~~

~~(b) Twenty four hour report. Each licensee shall notify the agency within 24 hours after the discovery of any of the following events involving licensed radioactive material:~~

- ~~(1) an unplanned contamination event that:

 - ~~(A) requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;~~
 - ~~(B) involves a quantity of material greater than five times the lowest annual limit on intake specified in Appendix B to 10 CFR §§ 20.1001-20.2401 for the material; and~~
 - ~~(C) causes the licensee to restrict access to the area for a reason other than to allow isotopes with a half life of less than 24 hours to decay prior to decontamination;~~~~
- ~~(2) an event in which equipment is disabled or fails to function as designed when:

 - ~~(A) the equipment is required by rule or license condition to:

 - ~~(i) prevent releases exceeding regulatory limits;~~
 - ~~(ii) prevent exposures to sources of radiation exceeding regulatory limits; or~~
 - ~~(iii) to mitigate the consequences of an accident;~~~~
 - ~~(B) the equipment is required to be available and operable at the time that it is disabled or fails to function; and~~
 - ~~(C) no redundant equipment is available and operable to perform the required safety function;~~~~
- ~~(3) an event that requires unplanned medical treatment at a medical facility of an individual with removable radioactive contamination on the individual's clothing or body; or~~
- ~~(4) an unplanned fire or explosion damaging any licensed material or any device, container or equipment containing licensed radioactive material when:

 - ~~(A) the quantity of material involved is greater than five times the lowest annual limit on intake specified in Appendix B to 10 CFR §§ 20.1001-20.2401 for the material; and~~~~

~~(B) the damage affects the integrity of the licensed radioactive material or its container.~~

~~(c) Preparation and submission of reports. Reports made by licensees in response to the requirements of this Rule shall be made as follows:~~

- ~~(1) Licensees shall make reports required by Paragraphs (a) and (b) of this Rule by telephone as specified in Rule .0111(b) of this Chapter. To the extent that the information is available at the time of notification, the information provided in these reports shall include:

 - ~~(A) the caller's name and call back telephone number;~~
 - ~~(B) a description of the event, including date and time;~~
 - ~~(C) the exact location of the event;~~
 - ~~(D) the isotopes, quantities, and chemical and physical form of the licensed radioactive material involved; and~~
 - ~~(E) any personnel radiation exposure data available.~~~~
- ~~(2) Each licensee who makes a report required by Paragraph (a) or (b) of this Rule shall submit a written follow up report within 30 days of the initial report. Written reports prepared pursuant to other rules may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports shall be submitted to the agency as specified in Rule .0111(a) of this Chapter. The reports shall include the following:

 - ~~(A) a description of the event, including the probable cause and the manufacturer and model number, if applicable, of any equipment that failed or malfunctioned;~~
 - ~~(B) the exact location of the event;~~
 - ~~(C) the isotopes, quantities and chemical and physical form of the licensed material involved;~~
 - ~~(D) the date and time of the event;~~
 - ~~(E) the corrective actions taken or planned and the result of any evaluations or assessments; and~~
 - ~~(F) the extent of exposure of individuals to sources of radiation without identification of individuals by name.~~~~

Authority G.S. 104E-7(a)(2); 104E-10(b).

10A NCAC 15 .0359 MEASUREMENTS/DOSAGES OF UNSEALED RADIOACTIVE MATERIAL FOR MEDICAL USE

(a) Licensees shall comply with the provisions of 10 CFR 35.63, except that dosage determination shall be made by direct measurement for all unsealed photon-emitting radioactive drugs prior to administration to any person. Licensees shall ensure that

instruments used to measure dosages under this Rule are calibrated in accordance with the provisions of 10 CFR 35.60.

(b) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beece594411a03e50b2468ae31f89b&pitd=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.

~~(a) A licensee shall possess and use a dose calibrator to measure the radioactivity of dosages of photon-emitting radionuclides prior to administration to each individual. A licensee shall:~~

- ~~(1) develop, maintain, and implement written procedures for use of the dose calibrator;~~
- ~~(2) calibrate each dose calibrator in accordance with the requirements of 10 CFR 35.60(b).~~

~~(b) A licensee shall retain a record of each check, test, and calibration performed in accordance with this Rule for a period of three years following the test.~~

Authority G.S. 104E-7; 104E-10(b); 104E-12;

10A NCAC 15 .0521 PERFORMANCE REQUIREMENTS FOR RADIOGRAPHY EQUIPMENT

(a) Equipment used in industrial radiographic operations shall meet the performance requirements of 10 CFR 34.20.

(b) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beece594411a03e50b2468ae31f89b&pitd=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.

Equipment used in industrial radiographic operations shall meet the following minimum criteria:

- ~~(1) Each radiographic exposure device, source assembly or sealed source, and all associated equipment shall meet the requirements specified in American National Standard N432-1980 "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography". This publication is incorporated by reference in Rule .0117 of this Chapter.~~
- ~~(2) Engineering analysis may be submitted to the agency to demonstrate the applicability of previously performed testing on similar individual radiography equipment components. Upon review by the agency, this may be an acceptable alternative to actual testing of the component pursuant to the above referenced standard.~~
- ~~(3) In addition to the requirements specified in Item (1) of this Rule, the following requirements apply to radiographic exposure devices, source changers, source assemblies, and sealed sources:

 - ~~(a) Each radiographic exposure device shall have attached to it by the user a~~~~

~~durable, legible, clearly visible label bearing the following:~~

- ~~(i) Chemical symbol and mass number of the radionuclide in the device;~~
- ~~(ii) Activity and the date on which this activity was last measured;~~
- ~~(iii) Model number (or product code) and serial number of the sealed source;~~
- ~~(iv) Manufacturer's identity of the sealed source; and~~
- ~~(v) Licensee's name, address, and telephone number.~~

~~(b) Radiographic exposure devices intended for use as Type B transport containers shall meet the applicable requirements of 10 CFR Part 71.~~

~~(c) Modification of radiographic exposure devices, source changers and source assemblies and associated equipment is prohibited, unless the design of any replacement component, including sealed source holder, source assembly, controls or guide tubes would not compromise the design safety features of the system.~~

~~(4) In addition to the requirements specified in Items (1) and (3) of this Rule, the following requirements apply to radiographic exposure devices, source assemblies, and associated equipment that allow the sealed source to be moved out of the device for radiographic operations or to source changers.~~

- ~~(a) The coupling between the source assembly and the control cable shall be designed in such a manner that the source assembly will not become disconnected if cranked outside the guide tube. The coupling shall be such that it cannot be unintentionally disconnected under normal and reasonably foreseeable abnormal conditions.~~
- ~~(b) The device shall automatically secure the source assembly when it is cranked back into the fully shielded position within the device. This securing system shall be designed to only allow release of the sealed source by means of a deliberate operation on the exposure device.~~
- ~~(c) The outlet fittings, lock box, and drive cable fittings on each radiographic exposure device shall be equipped with safety plugs or covers which shall be installed during storage and transportation to protect the source~~

- ~~assembly from water, mud, sand or other foreign matter.~~
- (d) ~~Each sealed source or source assembly shall have attached to it or engraved in it, a durable, legible, visible label with the words: "DANGER—RADIOACTIVE." The label shall not interfere with the safe operation of the exposure device or associated equipment.~~
- (e) ~~The guide tube must be able to withstand a crushing test that closely approximates the crushing forces that are likely to be encountered during use, and be able to withstand a kinking resistance test that closely approximates the kinking forces that are likely to be encountered during use.~~
- (f) ~~Guide tubes shall be used when moving the sealed source out of the device.~~
- (g) ~~An exposure head or similar device designed to prevent the source assembly from passing out of the end of the guide tube shall be attached to the outermost end of the guide tube during radiographic operations.~~
- (h) ~~The guide tube exposure head connection shall be able to withstand the tensile test for control units specified in ANSI N432.~~
- (i) ~~Source changers shall provide a system for assuring that the sealed source will not be accidentally withdrawn from the changer when connecting or disconnecting the drive cable to or from a source assembly.~~
- (5) ~~All associated equipment acquired after January 10, 1996 shall be labeled to identify that the components have met the requirements of this Rule.~~

Authority G.S. 104E-7.

SECTION .1000 - NOTICES: INSTRUCTIONS: REPORTS AND INSPECTIONS

10A NCAC 15 .1004 NOTIFICATIONS AND REPORTS TO INDIVIDUALS

(a) Licensees and registrants shall report radiation exposure data for any occupationally exposed person to that person or their designee in accordance with the provisions of 10 CFR 19.13, except that the report shall contain the following statement in lieu of the statement appearing in 19.13(a): "This report is furnished to you under the provisions of 10A NCAC 15 Section .1000: NOTICES: INSTRUCTIONS: REPORTS AND INSPECTIONS. You should preserve this report for future reference."

(b) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beece594411a03e50b2468ae31f89b&pid=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.

~~(a) Radiation exposure data for an individual and the results of any measurements, analyses, and calculations of radioactive material deposited or retained in the body of any individual shall be reported to the individual as specified in this Rule. The information reported shall include data and results obtained pursuant to rules of this Chapter, orders, or license conditions, as shown in records maintained by the licensee or registrant pursuant to provisions of this Chapter. Each notification and report shall:~~

- ~~(1) be in writing;~~
- ~~(2) include identifying data such as the name of the licensee or registrant, the name of the individual, and the individual's social security number;~~
- ~~(3) include the individual's exposure information; and~~
- ~~(4) contain the following statement: This report is furnished to you under the provisions of Section 15A NCAC 11 .1000: NOTICES: INSTRUCTIONS: REPORTS AND INSPECTIONS. You should preserve this report for further reference.~~

~~(b) Each licensee or registrant shall make dose information available to workers as shown in records maintained by the licensee or registrant under the provisions of Rule .1640 of this Chapter. The licensee or registrant shall provide an annual report to each individual monitored under Rule .1614 of this Chapter of the dose received in that monitoring year if:~~

- ~~(1) the individual's occupational dose exceeds 1 mSv (100 mrem) TEDE or 1 mSv (100 mrem) to any individual organ or tissue; or~~
- ~~(2) the individual requests his or her annual dose report.~~

~~(c) At the request of a worker formerly engaged in work controlled by the licensee or the registrant, each licensee or registrant shall furnish to the worker a report of the worker's radiation dosage and exposure to radioactive materials. The report shall:~~

- ~~(1) be furnished within 30 days from the time any request is made, or within 30 days after the information has been obtained by the licensee or registrant, whichever is later;~~
- ~~(2) cover, within the period of time specified in the request, each calendar quarter in which the worker's activities involved exposure to radiation from radioactive material licensed by, or radiation machines registered with the agency; and~~
- ~~(3) include the dates and locations of work under the license or registration in which the worker participated during this period.~~

~~(d) When a licensee or registrant is required pursuant to Rules .1646, .1647, or .1648 of this Chapter to report to the agency any~~

overexposure of an individual to radiation or radioactive material, the licensee or the registrant shall also provide the individual a report on his or her exposure data included in the report to the agency. The reports shall be transmitted at a time no later than the transmittal to the agency.

Authority G.S. 104E-7; 104E-10(b); 104E-12.

SECTION .1600 - STANDARDS FOR PROTECTION AGAINST RADIATION

10A NCAC 15 .1613 SURVEYS

(a) Licensees and registrants shall conduct surveys, and monitor for radiation and radiation exposure in accordance with the provisions of 10 CFR 20.1501.

(b) The exposure of individual monitoring devices, individual monitoring equipment, or personnel monitoring equipment to radiation from any source for the purpose of falsifying exposure records shall be prohibited.

(c) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beece594411a03e50b2468ae31f89b&pitd=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.

(a) Each licensee or registrant shall make or cause to be made, surveys that:

- (1) — may be necessary for the licensee or registrant to comply with the rules in this Section; and
- (2) — are reasonable under the circumstances to evaluate:
 - (A) — the magnitude and extent of radiation levels;
 - (B) — concentrations or quantities of radioactive material; and
 - (C) — the potential radiological hazards that could be present.

(b) The licensee or registrant shall ensure that instruments and equipment used for quantitative radiation measurements (e.g., dose rate and effluent monitoring) are calibrated at the frequency committed to in accordance with the requirements of Rules .0207 or .0317 of this Chapter for the radiation measured.

(c) All personnel dosimeters (except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to the extremities) that require processing to determine the radiation dose and that are used by licensees or registrants to comply with Rule .1604 of this Section, with other applicable provisions of this Chapter, or with conditions specified in a license shall be processed and evaluated by a dosimetry processor:

- (1) — Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and
- (2) — Approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely

approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

(d) Exposure of a personnel monitoring device to deceptively indicate a dose delivered to an individual is prohibited.

Authority G.S. 104E-7(a)(2).

10A NCAC 15 .1645 REPORTS OF THEFT OR LOSS OF LICENSED RADIOACTIVE MATERIAL

(a) Reports of the theft or loss of radioactive material shall be made to the agency in accordance with the provisions of 10 CFR 20.2201, at the telephone numbers and addresses shown in Rule .0111 of this Chapter.

(b) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beece594411a03e50b2468ae31f89b&pitd=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.

(a) Each licensee shall report by telephone as follows:

- (1) — immediately after its occurrence becomes known to the licensee, any lost, stolen, or missing licensed radioactive material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in Appendix C to 10 CFR §§ 20.1001–20.2401 under such circumstances that it appears to the licensee that an exposure could result to persons in unrestricted areas; or
- (2) — within 30 days after the occurrence of any lost, stolen, or missing licensed radioactive material becomes known to the licensee, all licensed radioactive material in a quantity greater than 10 times the quantity specified in Appendix C to 10 CFR §§ 20.1001–20.2401 that is still missing at this time.

(b) Telephone reports in Paragraph (a) of this Rule shall be made to the agency as specified in Rule .0111 of this Chapter.

(c) Each licensee required to make a report under Paragraph (a) of this Rule shall, within 30 days after making the telephone report, make a written report setting forth the following information:

- (1) — a description of the licensed radioactive material involved, including kind, quantity, and chemical and physical form;
- (2) — a description of the circumstances under which the loss or theft occurred;
- (3) — a statement of disposition, or probable disposition, of the licensed radioactive material involved;
- (4) — exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas;
- (5) — actions that have been taken, or will be taken, to recover the material; and

- ~~(6) Procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed radioactive material.~~
- ~~(d) Written reports shall be addressed to the agency as specified in Rule .0111 of this Chapter.~~
- ~~(e) Subsequent to filing the written report, the licensee shall also report any additional substantive information on the loss or theft within 30 days after the licensee learns of such information.~~
- ~~(f) The licensee shall prepare any report filed with the agency pursuant to this Rule so that names of individuals who may have received exposure to radiation are stated in a separate and detachable part of the report.~~

Authority G.S. 104E-7(a)(2); 104E-12(a).

10A NCAC 15 .1653 RADIOLOGICAL REQUIREMENTS FOR LICENSE TERMINATION

(a) Licensees shall comply with the provisions of 10 CFR Part 20, Subpart E, to meet the requirements for license termination and decommissioning.

(b) The agency shall not publish a notice in the Federal Register of the receipt of a license termination plan or decommissioning plan as required by 10 CFR 20.1405(b), but shall make other notices and solicit comments from interested parties as required by 10 CFR 20.1405.

(c) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beece594411a03e50b2468ae31f89b&pid=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.

(a) General provisions and scope:

- ~~(1) The requirements in this Rule apply to the decommissioning of facilities licensed under the rules of this Chapter. For low level radioactive waste disposal facilities licensed under Section .1200 of this Chapter, the requirements apply only to ancillary surface facilities that support radioactive waste disposal facilities.~~
- ~~(2) The requirements in this Rule do not apply to sites which:

 - ~~(A) have been decommissioned prior to the effective date of this Rule in accordance with criteria approved by the agency; or~~
 - ~~(B) have previously submitted and received agency approval for a license termination plan or for a decommissioning plan.~~~~
- ~~(3) After a site has been decommissioned and the license terminated in accordance with the requirements set forth in this Rule, the agency may require additional cleanup only if, based on new information, the agency determines that the requirements of this Rule were not met and residual radioactivity remaining at the site~~

~~could result in a significant threat to the public health and safety.~~

~~(4) When calculating Total Effective Dose Equivalent (TEDE) to the average member of the critical group, the licensee shall determine the peak annual TEDE expected within the first 1,000 years after decommissioning.~~

~~(b) Radiological criteria for unrestricted use of a site shall be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radioactivity results in a TEDE to an average member of the critical group that does not exceed 25 millirem (0.25 millisievert) per year, including that from groundwater sources of drinking water, and the residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA). Determination of the levels, which are ALARA, may take into account consideration of detriments, such as deaths from transportation accidents, expected to potentially result from decontamination and waste disposal.~~

~~(c) A site shall be considered acceptable for license termination under restricted conditions if:~~

- ~~(1) the licensee can demonstrate that further reductions in residual radioactivity necessary to comply with the provisions of Paragraph (b) of this Rule would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are ALARA. Determination of the levels which are ALARA may take into account consideration of detriments, such as traffic accidents, expected to result from decontamination and waste disposal;~~
- ~~(2) the licensee has made provisions for legally enforceable institutional controls that provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background radioactivity, to the average member of the critical group, will not exceed 25 millirem (0.25 millisievert) per year;~~
- ~~(3) the licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site. Acceptable financial assurance mechanisms to meet the requirements of Subparagraph (c)(3) of this Rule are described in Rule .0354 of this Chapter.~~
- ~~(4) the licensee has submitted to the agency a decommissioning plan or license termination plan, as described in Rule .0339 of this Chapter, indicating the licensee's intent to decommission in accordance with the requirements of this Chapter, and specifying that the licensee intends to decommission by restricting use of the site;~~
- ~~(5) the licensee has documented in the license termination plan or decommissioning plan how~~

the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and incorporated, as appropriate, following analysis of that advice:

(A) licensees proposing to decommission by restricting use of the site shall have sought advice from such affected parties regarding the following matters concerning the proposed decommissioning:

(i) whether provisions for institutional controls proposed by the licensee will provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background radioactivity to the average member of the critical group will not exceed 25 millirem (0.25 millisievert) TEDE per year, will be enforceable and will not impose undue burdens on the community or other affected parties; and

(ii) whether the licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site.

(B) the licensee has provided for:

(i) participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(ii) an opportunity for a comprehensive, collective discussion of the issues by the participants represented; and

(iii) a publicly available summary of the results of all such discussions, and the extent of agreement and disagreement among the participants on the issues.

(6) residual radioactivity at the site has been reduced so that if the institutional controls were no longer in effect, there is reasonable assurance that the TEDE from residual radioactivity distinguishable from background radioactivity to the average member of the

critical group is as low as reasonably achievable and would not exceed either:

(A) 100 millirem (1 millisievert) per year; or

(B) 500 millirem (5 millisievert) per year provided the licensee:

(i) demonstrates that further reductions in residual radioactivity necessary to comply with the 100 millirem per year (1 millisievert per year) value described in Part (c)(6)(A) of this Rule, are not technically achievable, would be prohibitively expensive, or would result in net public or environmental harm;

(ii) makes provisions for durable institutional controls; or

(iii) provides sufficient financial assurance to enable a responsible government entity or independent third party, including a governmental custodian of a site, both to carry out periodic rechecks of the site no less frequently than every five years to assure that the institutional controls remain in place as necessary to meet the requirements of Subparagraph (c)(2) of this Rule and to assume and carry out responsibilities for any necessary control and maintenance of those controls.

(d) Alternate criteria for license termination:

(1) The agency may terminate a license using alternate criteria greater than the dose requirements of Paragraph (b), Subparagraph (c)(2), and Subpart (c)(5)(A)(i) of this Rule, if the licensee:

(A) provides assurance that public health and safety would continue to be protected, and that it is unlikely that the dose from all man-made sources combined, other than medical, would be more than 100 millirem TEDE per year (1 millisievert per year) limit described in Rule .1611 of this Section, by submitting an analysis of possible sources of exposure;

(B) has employed, to the extent practical, restrictions on site use according to the provisions of Paragraph (c) of this

Rule in minimizing exposures at the site;

- (C) ~~reduces doses to ALARA levels, taking into consideration detriments such as traffic accidents expected to potentially result from decontamination and waste disposal;~~
- (D) ~~has submitted a decommissioning plan or license termination plan to the agency indicating the licensee's intent to decommission in accordance with the requirements of this Chapter, and specifying that the licensee proposes to decommission by use of alternate criteria;~~
- (E) ~~has documented in the decommissioning plan or license termination plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and addressed; and~~
- (F) ~~in seeking such advice, the licensee has provided for:~~
 - (i) ~~participation by representatives of a broad cross-section of community interests who may be affected by the decommissioning;~~
 - (ii) ~~an opportunity for a comprehensive, collective discussion of the issues by the participants represented; and~~
 - (iii) ~~a publicly available summary of the results of such discussions, including a description of the extent of agreement and disagreement among the participants on the issues.~~

~~(2) The use of alternate criteria to terminate a license requires the consideration of any comments provided by any other interested state agencies and any public comments submitted pursuant to Paragraph (e) of this Rule.~~

~~(e) Upon the receipt of a license termination plan or decommissioning plan from the licensee, or a proposal by the licensee for release of a site pursuant to Paragraphs (c) and (d) of this Rule, or whenever the agency deems such notice to be in the public interest, the agency shall notify and solicit comments from:~~

- ~~(1) local governments in the vicinity of the site, appropriate state agencies, the U.S. Environmental Protection Agency, and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning; and~~

- ~~(2) publish a notice in a forum, such as local newspapers, letters to state or local organizations or other appropriate forum that is readily accessible to individuals in the vicinity of the site, and solicit comments from affected parties.~~

Authority G.S. 104E-7(a)(2); 104E-10(b).

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02L .0507.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://deq.nc.gov/about/divisions/waste-management/underground-storage-tanks-section/whats-new>

Proposed Effective Date: *March 1, 2017*

Public Hearing:

Date: *October 20, 2016*

Time: *2:00 p.m.*

Location: *Green Square Building, Room 1210, 217 West Jones Street, Raleigh, NC 27603*

Reason for Proposed Action: *The Division of Waste Management has received a request to clarify requirements for remedial action when contamination has migrated offsite. This modification does not change the legal requirements for remedial action or the Division's implementation and enforcement of the statute.*

Comments may be submitted to: *Linda L. Smith, NCDEQ/DWM/UST Section, 1646 Mail Service Center, Raleigh, NC 27699-1646, phone 919-707-8150, fax 919-715-1117, email Linda.L.Smith@ncdenr.gov*

Comment period ends: *December 2, 2016*

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

Fiscal impact (check all that apply).

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

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02L - GROUNDWATER CLASSIFICATION AND STANDARDS

SECTION .0500 – RISK-BASED ASSESSMENT AND CORRECTIVE ACTION FOR PETROLEUM RELEASES FROM ABOVEGROUND STORAGE TANKS AND SOURCES

15A NCAC 02L .0507 RECLASSIFICATION OF RISK LEVELS

(a) The Department may reclassify the risk posed by a release if warranted by further information concerning the potential exposure of receptors to the discharge or release or upon receipt of new information concerning changed conditions at the site. After initial classification of the discharge or release, the Department may require limited assessment, interim corrective action, or other actions that the Department believes may result in a lower risk classification. It shall be a continuing obligation of each responsible party to notify the Department of any changes that may affect the level of risk assigned to a discharge or release by the Department if the change is known or should be known by the responsible party. Such changes may include changes in zoning of real property, use of real property, or the use of groundwater that has been contaminated or is expected to be contaminated by the discharge or release.

(b) Remediation of sites with off-site migration shall be subject to the provisions of G.S. 143-215.104AA.

~~(b)(c)~~ If the risk posed by a discharge or release is determined by the Department to be high risk, the responsible party shall comply with the assessment and cleanup requirements of Rule .0106(c), (g), and (h) of this Subchapter. The goal of any required corrective action for groundwater contamination shall be restoration to the level of the groundwater standards set forth in Rule .0202 of this Subchapter, or as closely thereto as is economically and technologically feasible as determined by the Department. In any corrective action plan submitted pursuant to this Paragraph, natural attenuation may be used when the benefits of its use shall not increase the risk to the environment and human health as determined by the Department. If the responsible party demonstrates that natural attenuation prevents the further migration of the plume, the Department may approve a groundwater monitoring plan.

~~(c)(d)~~ If the risk posed by a discharge or release is determined by the Department to be an intermediate risk, the responsible party shall comply with the assessment requirements of Rule .0106(c) and (g) of this Subchapter. As part of the comprehensive site assessment, the responsible party shall evaluate, based on site

specific conditions, whether the release poses a significant risk to human health or the environment. If the Department determines, based on the site-specific conditions, that the discharge or release does not pose a significant threat to human health or the environment, the site shall be reclassified as a low risk site. If the site is not reclassified, the responsible party shall, at the direction of the Department, submit a groundwater monitoring plan or a corrective action plan, or a combination thereof, meeting the cleanup standards of this Paragraph and containing the information required in Rule .0106(h) of this Subchapter. Discharges or releases that are classified as intermediate risk shall be remediated, at a minimum, to a cleanup level of 50 percent of the solubility of the contaminant at 25 degrees Celsius or 1,000 times the groundwater standard or interim standard established in Rule .0202 of this Subchapter, whichever is lower for any groundwater contaminant except ethylene dibromide, benzene, and alkane and aromatic carbon fraction classes. Ethylene dibromide and benzene shall be remediated to a cleanup level of 1,000 times the federal drinking water standard as referenced in 15A NCAC 18C .1518 is hereby incorporated by reference including subsequent amendments and editions and is available free of charge at <http://reports.oah.state.nc.us/ncac/title 15a - environmental quality/chapter 18 - environmental health/subchapter c/15a ncac 18c .1518.pdf>. Additionally, if a corrective action plan or groundwater monitoring plan is required under this Paragraph, the responsible party shall demonstrate that the groundwater cleanup levels are sufficient to prevent a violation of:

- (1) the rules contained in 15A NCAC 02B;
- (2) the standards contained in Rule .0202 of this Subchapter in a deep aquifer as described in Rule .0506(2)(b) of this Section; and
- (3) the standards contained in Rule .0202 of this Subchapter at a location no closer than one year time of travel upgradient of a well within a designated wellhead protection area, based on travel time and the natural attenuation capacity of the subsurface materials or on a physical barrier to groundwater migration that exists or will be installed by the person making the request.

In any corrective action plan submitted pursuant to this Paragraph, natural attenuation may be used when the benefits of its use shall not increase the risk to the environment and human health and shall not increase the costs of the corrective action.

~~(d)(e)~~ If the risk posed by a discharge or release is determined by the Department to be a low risk, the Department shall notify the responsible party that no cleanup, no further cleanup, or no further action will be required by the Department, unless the Department later determines that the discharge or release poses an unacceptable risk or a potentially unacceptable risk to human health or the environment. No notification shall be issued pursuant to this Paragraph, however, until the responsible party has completed soil remediation pursuant to Rule .0508 of this Section or as closely thereto as economically or technologically feasible as determined by the Department; has submitted proof of public notification and has recorded any land-use restriction(s), if required; and paid any applicable statutorily authorized fees. The issuance by the Department of a notification under this Paragraph

shall not affect any private right of action by any party that may be affected by the contamination.

Authority G.S. 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Marine Fisheries Commission intends to adopt the rule cited as 15A NCAC 03M .0522 and amend the rules cited as 15A NCAC 03H .0103; 03J .0104; 03K .0110, .0201, .0202, .0302; 03L .0102, 03O .0114, .0201, .0208, .0501, .0503; 03P .0101 and 03R .0103.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://portal.ncdenr.org/web/mf/mfc-proposed-rules-links>

Proposed Effective Date: May 1, 2017

Public Hearing:

Date: October 26, 2016

Time: 6:00 p.m.

Location: Division of Marine Fisheries, 5285 Highway 70 West, Morehead City, NC 28557

Reason for Proposed Action:

15A NCAC 03H .0103 PROCLAMATIONS, GENERAL

Proposed amendments add a variable condition for the protection of public health to the list of variable conditions for the use of the Fisheries Director's proclamation authority that is set forth in other rules of the Marine Fisheries Commission. This more comprehensively addresses the authority of the Marine Fisheries Commission following the adoption of Session Law 2011-145 that transferred the Shellfish Sanitation and Recreational Water Quality section of the Division of Environmental Health to the Division of Marine Fisheries.

15A NCAC 03J .0104 TRAWL NETS

In accordance with the N.C. Shrimp Fishery Management Plan Amendment 1, proposed amendments provide an exception for a holder of a Permit for Weekend Trawling for Live Shrimp to use trawl nets in Internal Coastal Waters during weekends as specified in 15A NCAC 03O .0503. Additional amendments modify existing dates to account for leap years.

15A NCAC 03K .0110 PUBLIC HEALTH AND CONTROL OF OYSTERS, CLAMS, SCALLOPS, AND MUSSELS

In accordance with the National Shellfish Sanitation Program Guide for Control of Molluscan Shellfish, Section II: Model Ordinance and to protect public health, proposed amendments provide the authority for the Division of Marine Fisheries to set sanitary harvest and handling practices for harvesters and enforce issues relating to the contamination of shellfish (oysters, clams, scallops, and mussels) during harvest.

15A NCAC 03K .0201 OYSTER HARVEST MANAGEMENT

In accordance with the N.C. Oyster Fishery Management Plan Amendment 4, proposed amendments reduce the daily

commercial possession limit for oysters from 50 bushels to 20 bushels to align it with current management. Additional proposed amendments make the rule consistent with other rules containing proclamation authority.

15A NCAC 03K .0202 CULLING REQUIREMENTS FOR OYSTERS

In accordance with the N.C. Oyster Fishery Management Plan Amendment 4, proposed amendments reduce the culling tolerance from 10 percent to five percent for the possession of accumulated dead shell, oyster cultch material, a shell length less than that specified by proclamation, or in any combination for oysters possessed from public bottom.

15A NCAC 03K .0302 MECHANICAL HARVEST OF CLAMS FROM PUBLIC BOTTOM

In accordance with the N.C. Hard Clam Fishery Management Plan Amendment 2, proposed amendments remove the clam mechanical harvest area on public bottom in Pamlico Sound that is no longer opened to harvest. Additional proposed amendments make the rule consistent with other rules containing proclamation authority.

15A NCAC 03L .0102 WEEKEND SHRIMPING PROHIBITED

In accordance with the N.C. Shrimp Fishery Management Plan Amendment 1, proposed amendments provide an exception for a holder of a Permit for Weekend Trawling for Live Shrimp to take shrimp during weekends as specified in 15A NCAC 03O .0503.

15A NCAC 03M .0522 SPOTTED SEATROUT

This rule is proposed for adoption to establish a rule of the Marine Fisheries Commission for the management of spotted seatrout, independent of the authority for interjurisdictional management under the Atlantic States Marine Fisheries Commission. The rule delegates proclamation authority to the Fisheries Director to specify time, area, means and methods, season, size, and quantity of spotted seatrout harvested in North Carolina. Current management measures will remain in place in accordance with the N.C. Spotted Seatrout Fishery Management Plan. The proposed rule adoption will only change the mechanism by which those same measures are implemented.

15A NCAC 03O .0114 SUSPENSION, REVOCATION, AND REISSUANCE OF LICENSES

In accordance with the N.C. Hard Clam Fishery Management Plan Amendment 2 and the N.C. Oyster Fishery Management Plan Amendment 4, proposed amendments add convictions of theft on shellfish leases and franchises to the rule which subjects licensees with convictions to license suspension and revocation. This puts in place stricter penalties as a deterrent to theft on shellfish leases and franchises. Additionally, proposed amendments provide for an appropriate penalty against a licensee for convictions of G.S. 14-72 Larceny of property; receiving stolen goods or possessing stolen goods when related to fishing gear or G.S. 113-268 Injuring, destroying, stealing or stealing from nets, seines, buoys, pots, etc. to serve as a deterrent to theft of fishing gear, vandalism to fishing gear, and theft of fish

from fishing gear. These penalties would be consistent with penalties under other similar marine fisheries laws.

15A NCAC 03O .0201 STANDARDS AND REQUIREMENTS FOR SHELLFISH BOTTOM LEASES AND FRANCHISES AND WATER COLUMN LEASES

In accordance with the N.C. Hard Clam Fishery Management Plan Amendment 2 and the N.C. Oyster Fishery Management Plan Amendment 4, proposed amendments clarify how the production and marketing rates are calculated for shellfish bottom leases and franchises and water column leases, including calculations for an extension period. Proposed amendments also expand the maximum proposed initial lease area from five to 10 acres in all waters. Additional proposed amendments reorganize the rule for improved clarity.

15A NCAC 03O .0208 TERMINATION OF SHELLFISH BOTTOM LEASES AND FRANCHISES AND WATER COLUMN LEASES

In accordance with the N.C. Hard Clam Fishery Management Plan Amendment 2 and the N.C. Oyster Fishery Management Plan Amendment 4, proposed amendments specify criteria that allow a single extension period for shellfish leases of no more than two years per contract period to meet production and marketing requirements. Additional proposed amendments reorganize the rule for improved clarity.

15A NCAC 03O .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS

In accordance with the N.C. Shrimp Fishery Management Plan Amendment 1, proposed amendments require a holder of a Permit for Weekend Trawling for Live Shrimp to hold a valid Standard or Retired Standard Commercial Fishing License and clarify the responsible party for an assigned license and also for a corporation. Additionally, proposed amendments clarify the requirement to hold a Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement to obtain a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises. Additional proposed amendments provide an exemption from license requirements for certain designees of the holder of a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises in accordance with G.S. 113-169.2.

15A NCAC 03O .0503 PERMIT CONDITIONS; SPECIFIC

In accordance with the N.C. Shrimp Fishery Management Plan Amendment 1, proposed amendments establish the Permit for Weekend Trawling for Live Shrimp and set specific conditions of the permit. Additionally, proposed amendments relocate a 2003 requirement for a permit for dealers transacting in spiny dogfish from proclamation into rule. Spiny dogfish are monitored under a quota and dealers are required to report daily landings during the open season. Placing the permit requirement in rule has no real impact on holders of the permit as the reporting requirements, application process, and cost of the permit will not change. Seasonal openings as well as trip limits will continue to be stipulated in proclamation due to the variable nature of the provisions for the fishery.

15A NCAC 03P .0101 LICENSE, PERMIT, OR CERTIFICATE DENIAL: REQUEST FOR REVIEW

Proposed amendments align the method of commencement of proceedings to suspend or revoke a fishing license, permit, or certificate with other similar administrative proceedings by the Division of Marine Fisheries and Marine Fisheries Commission. This would require affected stakeholders to submit information in writing to the division instead of having an informal meeting with division staff.

15A NCAC 03R .0103 PRIMARY NURSERY AREAS

Proposed amendments correct a coordinate error for the Wade Creek primary nursery area made when the coordinate format changed in 2004.

Comments may be submitted to: Catherine Blum, P.O. Box 769, Morehead City, NC 28557, phone (252) 808-8014, fax (252) 726-0254, email catherine.blum@ncdenr.gov

Comment period ends: December 2, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

Fiscal impact (check all that apply).

- State funds affected** (15A NCAC 03K .0201, .0202, .0302; 03O .0114, .0201, .0208, .0501, .0503)
- Environmental permitting of DOT affected Analysis submitted to Board of Transportation**
- Local funds affected**
- Substantial economic impact (≥\$1,000,000)**
- Approved by OSBM** (15A NCAC 03K .0201, .0202, .0302; 03O .0114, .0201, .0208, .0501, .0503)
- No fiscal note required by G.S. 150B-21.4** (15A NCAC 03H .0103, 03J .0104, 03K .0110, 03L .0102, 03M .0522; 03P .0101; 03R .0103)

CHAPTER 03 – MARINE FISHERIES

SUBCHAPTER 03H - SCOPE OF MANAGEMENT

SECTION .0100 - SCOPE OF MANAGEMENT

15A NCAC 03H .0103 PROCLAMATIONS, GENERAL

(a) It is unlawful to violate the provisions of any proclamation issued by the authority of Marine Fisheries Commission ~~Rule-rule.~~

(b) ~~Unless~~ If specific variable conditions are not set forth in a rule ~~granting~~ of the Marine Fisheries Commission that grants proclamation authority to the Fisheries Director, possible variable conditions ~~triggering the use of the Fisheries Director's proclamation authority~~ may include any of the following:

- (1) compliance with changes mandated by the Fisheries Reform Act and its amendments;
- (2) biological impacts;
- (3) environmental conditions;
- (4) compliance with Fishery Management Plans;
- (5) user conflicts;
- (6) bycatch issues; ~~and~~
- (7) variable spatial ~~distributions~~ distributions; and
- (8) protection of public health related to the public health programs that fall under the authority of the Marine Fisheries Commission.

Authority G.S. 113-134; 113-135; 113-182; 113-221.1; 113-221.2; 113-221.3; 143B-289.52.

SUBCHAPTER 03J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES

SECTION .0100 - NET RULES, GENERAL

15A NCAC 03J .0104 TRAWL NETS

(a) It is unlawful to possess aboard a vessel while using a trawl in ~~internal waters~~ Internal Coastal Waters more than 500 pounds of finfish from December 1 through ~~February 28, March 1,~~ and 1,000 pounds of finfish from March ~~1-2~~ through November 30.

(b) It is unlawful to use trawl nets:

- (1) ~~In internal coastal waters, in Internal Coastal Waters, from 9:00 p.m. on Friday through 5:00 p.m. on Sunday, except that in the areas listed in Subparagraph (b)(5) of this Rule, trawling is prohibited from December 1 through February 28 from one hour after sunset on Friday to one hour before sunrise on Monday; except:~~
 - (A) from December 1 through March 1 from one hour after sunset on Friday to one hour before sunrise on Monday in the areas listed in Subparagraph (b)(5) of this Rule; and
 - (B) for a holder of a Permit for Weekend Trawling for Live Shrimp in accordance with 15A NCAC 03O .0503;
- (2) ~~For~~ for the taking of oysters;
- (3) ~~In~~ in Albemarle Sound, Currituck Sound, and their tributaries, west of a line beginning on the south shore of Long Point at a point 36° 02.4910' N – 75° 44.2140' W; running southerly to the north shore on Roanoke Island to a point 35° 56.3302' N – 75° 43.1409' W; running

northwesterly to Caroon Point to a point 35° 57.2255' N – 75° 48.3324' W;

- (4) ~~In~~ in the areas described in 15A NCAC 03R .0106, except that the Fisheries Director may, by proclamation, open the area designated in Item (1) of 15A NCAC 03R .0106 to peeler crab trawling;
 - (5) ~~From~~ from December 1 through ~~February 28~~ March 1 from one hour after sunset to one hour before sunrise in the following areas:
 - (A) In Pungo River, north of a line beginning on Currituck Point at a point 35° 24.5833' N – 76° 32.3166' W; running southwesterly to Wades Point to a point 35° 23.3062' N – 76° 34.5135' W;
 - (B) In Pamlico River, west of a line beginning on Wades Point at a point 35° 23.3062' N – 76° 34.5135' W; running southwesterly to Fulford Point to a point 35° 19.8667' N – 76° 35.9333' W;
 - (C) In Bay River, west of a line beginning on Bay Point at a point 35° 11.0858' N – 76° 31.6155' W; running southerly to Maw Point to a point 35° 09.0214' N – 76° 32.2593' W;
 - (D) In Neuse River, west of a line beginning on the Minnesott side of the Neuse River Ferry at a point 34° 57.9116' N – 76° 48.2240' W; running southerly to the Cherry Branch side of the Neuse River Ferry to a point 34° 56.3658' N – 76° 48.7110' W; and
 - (E) In New River, all waters upstream of the N.C. Highway 172 Bridge when opened by proclamation; and
 - (6) ~~In~~ in designated pot areas opened to the use of pots by 15A NCAC 03J .0301(a)(2) and described in 15A NCAC 03R .0107(a)(5), (a)(6), (a)(7), (a)(8) and (a)(9) within an area bound by the shoreline to the depth of six feet.
- (c) Minimum mesh sizes for shrimp and crab trawls are ~~presented~~ provided in 15A NCAC 03L .0103 and .0202.
- (d) The Fisheries Director may, with prior consent of the Marine Fisheries Commission, by proclamation, require bycatch reduction devices or codend modifications in trawl nets to reduce the catch of finfish that do not meet size limits or are unmarketable as individual foodfish by reason of size.
- (e) It is unlawful to use shrimp trawls for recreational purposes unless the trawl is marked by attaching to the codend (tailbag), one floating buoy, any shade of hot pink in color, which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The owner shall always be identified on the buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. Such identification shall include owner's last name and initials and if a vessel is used, one of the following:

- (1) gear owner's current motor boat registration number; or
 - (2) owner's U.S. vessel documentation name.
- (f) It is unlawful to use shrimp trawls for the taking of blue crabs in ~~internal waters, Internal Coastal Waters,~~ except that it shall be permissible to take or possess blue crabs incidental to shrimp trawling in accordance with the following limitations:
- (1) ~~For~~ for individuals using shrimp trawls authorized by a Recreational Commercial Gear License, 50 blue ~~crabs, crabs per day,~~ not to exceed 100 blue crabs if two or more Recreational Commercial Gear License holders are on ~~board, board a vessel; and~~
 - (2) ~~For~~ for commercial operations, crabs may be taken incidental to lawful shrimp trawl operations provided that the weight of the crabs shall not exceed the greater of:
 - (A) 50 percent of the total weight of the combined crab and shrimp catch; or
 - (B) 300 pounds.
- (g) The Fisheries Director may, by proclamation, close any area to trawling for specific time periods in order to secure compliance with this Rule.

Authority G.S. 113-134; 113-173; 113-182; 113-221.1; 143B-289.52.

SUBCHAPER 03K - OYSTERS, CLAMS, SCALLOPS AND MUSSELS

SECTION .0100 - SHELLFISH, GENERAL

15A NCAC 03K .0110 PUBLIC HEALTH AND CONTROL OF OYSTERS, CLAMS, SCALLOPS, AND MUSSELS

~~(a) To protect public health, the Fisheries Director may, by proclamation, impose any or all of the following restrictions on oysters, clams, scallops, and mussels to ensure the sale or distribution of shellfish from approved areas or shellstock dealers as defined in Rule 15A NCAC 18A .0301 and to ensure that shellfish have not been adulterated or mislabeled during cultivation, harvesting, processing, storage and transport, in compliance with the National Shellfish Sanitation Program Guide for Control of Molluscan Shellfish, Section II: Model Ordinance:~~

(a) The National Shellfish Sanitation Program Guide for Control of Molluscan Shellfish, Section II: Model Ordinance (Model Ordinance) includes minimum requirements for the sale or distribution of shellfish from approved areas or shellstock dealers, as defined in 15A NCAC 18A .0301, and to ensure that shellfish have not been adulterated or mislabeled during:

- (1) cultivation;
- (2) harvesting;
- (3) processing;
- (4) storage; and
- (5) transport.

(b) To protect public health and to address variable conditions of the Model Ordinance, the Fisheries Director may, by proclamation, impose requirements as set forth in Paragraph (c) of this Rule on any of the following:

- (1) oysters;
- (2) clams;
- (3) scallops;
- (4) mussels;
- (5) areas used to store shellfish;
- (6) means and methods to take shellfish;
- (7) vessels used to take shellfish; and
- (8) shellstock conveyances as defined in 15A NCAC 18A .0301.

(c) Proclamations issued under this Rule may impose any of the following requirements:

- (1) specify time and temperature controls;
- (2) specify sanitation requirements to prevent a food safety hazard, as defined in 15A NCAC 18A .0301, or cross-contamination or adulteration of shellfish;
- ~~(2)~~(3) specify sanitation control procedures as specified in 21 Code of Federal Regulations (CFR) Part 123.11;
- ~~(3)~~(4) specify Hazard Analysis Critical Control Point (HACCP) requirements as specified in 21 CFR Part:
 - (A) 123.3 Definitions;
 - (B) 123.6 HACCP Plan;
 - (C) 123.7 Corrective Actions;
 - (D) 123.8 Verification;
 - (E) 123.9 Records; and
 - (F) 123.28 Source Controls;
- ~~(4)~~(5) specify tagging and labeling requirements;
- ~~(5)~~(6) implement the National Shellfish Sanitation Program's training requirements for shellfish harvesters and certified shellfish dealers;
- ~~(6)~~(7) require sales records and collection and submission of information to provide a mechanism for shellfish product to be traced back to the water body of origin; and
- ~~(7)~~(8) require implicated product recall and specify recall procedures.

21 CFR 123.3 (2015), 123.6-9 (1997), 123.11 (2015), and 123.28 (1997) are hereby incorporated by reference. A copy of the reference materials can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=f4cdd666e75f54ccda1d9938f4edd9ab&mc=true&tpl=/ecfrbrowse/Title21/21tab_02.tpl, free of charge. A copy of the CFR in effect on the date of this Rule can be found at <http://portal.ncdenr.org/web/mf/rules-and-regulations>, free of charge.

~~(b)~~(d) Proclamations issued under this Rule shall suspend appropriate rules or portions of rules under the authority of the Marine Fisheries Commission as specified in the proclamation. The provisions of 15A NCAC 03I .0102 terminating suspension of a rule pending the next Marine Fisheries Commission meeting and requiring review by the Marine Fisheries Commission at the next meeting shall not apply to proclamations issued under this Rule.

Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 113-221.2; 143B-289.52.

SECTION .0200 - OYSTERS

15A NCAC 03K .0201 OYSTER HARVEST MANAGEMENT

(a) ~~It is unlawful to take or possess oysters from public bottoms bottom except from October 15 through March 31.~~

(b) ~~The Fisheries Director may, by proclamation, close and open the season within the time period stated herein or close and open any of the various waters to the taking of oysters depending on the need to protect small oysters and their habitat, the amount of saleable oysters available for harvest, the number of days harvest is prevented due to unsatisfactory bacteriological samples and weather conditions, and the need to prevent loss of oysters due to parasitic infections and thereby reduce the transmission of parasites to uninfected oysters or other variable conditions and may impose any or all of the following restrictions on the taking of commercial and recreational oyster harvest: oysters:~~

- (1) ~~Specify days of the week harvesting will be allowed; specify time;~~
- (2) ~~Specify areas; specify area;~~
- (3) ~~Specify specify means and methods which may be employed in the taking; methods;~~
- (4) ~~Specify time period; specify season within the period set forth in Paragraph (a) of this Rule;~~
- (5) ~~Specify the quantity, but shall not exceed possession of more than 50 bushels in a commercial fishing operation; and~~
- (6) ~~Specify the minimum size limit by shell length, but not less than 2 1/2 inches.~~
- (5) specify size, but the minimum size specified shall not be less than three inches, except the minimum size specified shall not be less than two and one-half inches to prevent loss of oysters due to predators, pests, or infectious oyster diseases; and
- (6) specify quantity, but shall not exceed possession of more than 20 standard U.S. bushels in a commercial fishing operation per day.

Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 143B-289.52.

15A NCAC 03K .0202 CULLING REQUIREMENTS FOR OYSTERS

(a) It is unlawful to possess oysters which have accumulated dead shell, accumulated oyster cultch material, a shell length less than that specified by ~~proclamation, proclamation issued under the authority of Rule .0201 of this Section,~~ or any combination thereof that exceeds a ~~40 percent five-percent~~ tolerance limit by volume. In determining whether the tolerance limit is exceeded, the Fisheries Director and his agents may grade all, or any portion, or any combination of portions of the entire quantity being graded, and in cases of violations, may seize and return to public bottom or otherwise dispose of the oysters as authorized by law.

(b) All oysters shall be culled ~~by the catcher~~ where harvested and all oysters of less than legal size, accumulated dead ~~shell shell,~~ and cultch ~~material, material~~ shall be immediately returned to the bottom from which taken.

(c) This Rule shall not apply to oysters imported from out-of-state solely for shucking by shucking and packing plants currently permitted by the ~~Shellfish Sanitation Section of the Division of Environmental Health~~ Division of Marine Fisheries.

Authority G.S. 113-134; 113-182; 143B-289.52

15A NCAC 03K .0302 MECHANICAL HARVEST OF CLAMS FROM PUBLIC BOTTOM

(a) It is unlawful to take, buy, sell, or possess any clams taken by mechanical methods from public bottom unless the season is open.

(b) ~~except that the~~ The Fisheries Director may, by proclamation, open and close the season at any time in the Atlantic Ocean and only between from December 1 through March 31 in Internal Coastal Waters, internal waters for the use of mechanical clam harvesting gear. The Fisheries Director is further empowered to impose any or all of the following restrictions:

- (1) ~~specify number of days;~~
- (2) ~~specify areas;~~
- (3) ~~specify time period; (4) specify quantity or size; and~~
- (5) ~~specify means/methods. Any proclamation specifying means or methods must be approved by the Marine Fisheries Commission prior to issuance.~~

(b)(c) The Fisheries Director may, by proclamation, open to the taking of clams by mechanical methods from public bottom during open seasons only areas that have been opened at any time from January 1979 through September 1988 in:

- (1) Newport, North, White Oak, and New rivers;
- (2) Core and Bogue sounds;
- (3) the Intracoastal Waterway north of "BC" Marker at Topsail Beach; and
- (4) the Atlantic Ocean.

~~in Core and Bogue Sounds, Newport, North, White Oak and New Rivers and the Intracoastal Waterway north of "BC" Marker at Topsail Beach which have been opened at any time from January, 1979, through September, 1988, to the harvest of clams by mechanical methods. The Fisheries Director may, by proclamation, open the Atlantic Ocean and the area or any portion of the area in Pamlico Sound bounded by a line beginning on Portsmouth Island at a point 35° 01.5000' N 76° 06.0000' W; running northerly to a point 35° 06.0000' N 76° 06.0000' W; running westerly to a point 35° 06.0000' N 76° 10.0000' W; running southerly to a point 35° 01.5000' N 76° 10.0000' W; running easterly to the point of beginning to the harvest of clams by mechanical methods. Other areas opened for purposes as set out in 15A NCAC 03K .0301(b) shall open only for those purposes. A list of areas as described in this Paragraph is available upon request at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557.~~

(d) The Fisheries Director may, by proclamation, impose any or all of the following additional restrictions for the taking of clams by mechanical methods from public bottom during open seasons:

- (1) specify time;
- (2) specify means and methods;
- (3) specify size; and
- (4) specify quantity.

Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52.

SUBCHAPTER 03L – SHRIMPS, CRAB, AND LOBSTER

SECTION .0100 - SHRIMP

15A NCAC 03L .0102 WEEKEND SHRIMPING PROHIBITED

It is unlawful to take shrimp by any method from 9:00 P.M.-p.m. on Friday through 5:00 P.M.-p.m. on Sunday, except:

- (1) in the Atlantic Ocean; ~~or~~
(2) with the use of fixed and channel nets, hand seines, shrimp pots and cast ~~nets-nets~~; and
(3) for a holder of a Permit for Weekend Trawling for Live Shrimp in accordance with 15A NCAC 03O .0503.

Authority G.S. 113-134; 113-182; 143B-289.52.

SUBCHAPTER 03M - FINFISH

SECTION .0500 - OTHER FINFISH

15A NCAC 03M .0522 SPOTTED SEATROUT

The Fisheries Director may, by proclamation, impose any of the following requirements on the taking of spotted seatrout:

- (1) specify time;
(2) specify area;
(3) specify means and methods;
(4) specify season;
(5) specify size; and
(6) specify quantity.

Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52.

SUBCHAPTER 03O - LICENSES, LEASES, FRANCHISES AND PERMITS

SECTION .0100 - LICENSES

15A NCAC 03O .0114 SUSPENSION, REVOCATION, AND REISSUANCE OF LICENSES

(a) All commercial and recreational licenses issued under Article 14A, Article 14B, and Article 25A of Chapter 113 are subject to suspension and revocation.

(b) A conviction resulting from being charged by an inspector under G.S. 14-32, ~~14-33~~ 14-33, 14-72, or 14-399 shall be deemed a conviction for license suspension or revocation purposes.

(c) Upon receipt of notice of a licensee's conviction as specified in G.S. 113-171 or a conviction as specified in Paragraph (b) of this Rule, the Fisheries Director shall determine whether it is a first, ~~a second, a third-third, or a fourth-fourth~~, or subsequent conviction. Where several convictions result from a single transaction or occurrence, the convictions shall be treated as a single conviction so far as suspension or revocation of the licenses of a licensee is concerned. For a second conviction, the Fisheries Director shall suspend all licenses issued to the licensee for a period of 30 days; for a third conviction, the Fisheries Director

shall suspend all licenses issued to the licensee for a period of 90 days; for a fourth or subsequent conviction, the Fisheries Director shall revoke all licenses issued to the licensee, except:

- (1) ~~For for~~ a felony conviction under G.S. 14-399, the Fisheries Director shall suspend all licenses issued to the licensee for a period of one year;
(2) ~~For for~~ a first conviction under G.S. 113-187(d)(1), the Fisheries Director shall suspend all licenses issued to the licensee for a period of one year; for a second or subsequent conviction under G.S. 113-187(d)(1), the Fisheries Director shall revoke all licenses issued to the licensee;
(3) ~~For for~~ a conviction under G.S. ~~14-72, 113-208, 113-209, 113-268, or 113-269~~, the Fisheries Director shall revoke all licenses issued to the licensee; and
(4) ~~For for~~ a conviction under G.S. 14-32 or 14-33, when the offense was committed against a marine fisheries ~~inspector-inspector~~, the Fisheries Director shall revoke all licenses issued to the licensee; the former licensee shall not be eligible to apply for reinstatement of a revoked license or for any additional license authorized in Article 14A, Article 14B and Article 25A of Chapter 113 for a period of two years.

(d) After the Fisheries Director determines a conviction requires a suspension or revocation of the licenses of a licensee, the Fisheries Director shall cause the licensee to be served with written notice of suspension or revocation. The written notice may be served upon any responsible individual affiliated with the corporation, partnership, or association where the licensee is not an individual. The notice of suspension or revocation shall be served by an inspector or other agent of the Department or by certified mail, must state the ground upon which it is based, and takes effect immediately upon service. The agent of the Fisheries Director making service shall then or subsequently, as may be feasible under the circumstances, collect all license certificates and plates and other forms or records relating to the license as directed by the Fisheries Director.

(e) Where a license has been suspended, the former licensee shall not be eligible to apply for reissuance of license or for any additional license authorized in Article 14A, Article 14B and Article 25A of Chapter 113 during the suspension period. Licenses shall be returned to the licensee by the Fisheries Director or the Director's agents at the end of a period of suspension.

(f) Where a license has been revoked, the former licensee shall not be eligible to apply for reinstatement of a revoked license or for any additional license authorized in Article 14A, Article 14B and Article 25A of Chapter 113 for a period of one year, except as provided in ~~Paragraph-Subparagraph~~ (c)(4) of this Rule. For a request for reinstatement following revocation, the eligible former licensee shall satisfy the Fisheries Director that the licensee will strive in the future to conduct the operations for which the license is sought in accord with all applicable laws and rules by sending a request for reinstatement in writing to the Fisheries Director, Division of Marine Fisheries, ~~3441 Arendell Street, P.O. Box 769, Morehead City, North Carolina NC 28557~~. Upon the application

of an eligible former licensee after revocation, the Fisheries Director may issue one license sought but not another, as deemed necessary to prevent the hazard of recurring violations of the law. (g) A licensee shall not willfully evade the service prescribed in this Rule.

Authority G.S. 113-168.1; 113-171; S.L. 2010-145.

SECTION .0200 - LEASES AND FRANCHISES

15A NCAC 030 .0201 STANDARDS AND REQUIREMENTS FOR SHELLFISH BOTTOM LEASES AND FRANCHISES AND WATER COLUMN LEASES

(a) All areas of the public ~~bottoms~~ bottom underlying ~~coastal fishing waters~~ Coastal Fishing Waters shall meet the following ~~standards~~ standards and requirements, in addition to the standards in G.S. 113-202 in order to be deemed suitable for leasing for shellfish cultivation purposes:

- (1) ~~The~~ the proposed lease area ~~must~~ shall not contain a natural shellfish bed which is defined as "natural shellfish bed", as defined in G.S. 113-201.1 or have 10 bushels or more of shellfish per ~~acre~~ acre;
- (2) ~~The~~ the proposed lease area ~~must~~ shall not be closer than 100 feet to a developed shoreline, except no minimum setback is required when the area to be leased borders the applicant's property or the property of ~~riparian owners~~ "riparian owners", as defined in G.S. 113-201.1 who have consented in a notarized statement. ~~In~~ statement, or is in an area bordered by undeveloped shoreline, ~~no minimum setback is required~~ shoreline; and
- (3) ~~The~~ the proposed lease area shall not be less than one-half acre and shall not exceed ~~five~~ 10 acres for all ~~areas except those areas open to the mechanical harvest of oysters where proposed lease area shall not exceed 10 acres~~ areas.

~~This Subparagraph shall not be applied to reduce any holdings as of July 1, 1983.~~

~~(b) Persons holding five or more acres under shellfish lease or franchise shall meet the standards established in Paragraph (c) of this Rule prior to acceptance of applications for additional shellfish lease acreage.~~

~~(b) To be deemed suitable for leasing for aquaculture purposes, water columns superjacent to leased bottom shall meet the standards in G.S. 113-202.1 and water columns superjacent to franchises recognized pursuant to G.S. 113-206 shall meet the standards in G.S. 113-202.2.~~

~~(c) Franchises~~ To avoid termination, franchises recognized pursuant to G.S. 113-206 and shellfish bottom leases shall meet the following ~~standards in addition to the standards in G.S. 113-202.~~ In order to avoid termination, franchises and shellfish bottom leases shall requirements, in addition to the standards in G.S. 113-202:

- (1) ~~Produce~~ produce and market 10 bushels of shellfish per acre per year; and
- (2) ~~Plant~~ plant 25 bushels of seed shellfish per acre per year or 50 bushels of cultch per acre per

year, or a combination of cultch and seed shellfish where the percentage of required cultch planted and the percentage of required seed shellfish planted totals at least 100 percent.

~~(d) To avoid termination, water column leases shall:~~

- (1) ~~produce and market 40 bushels of shellfish per acre per year; or~~
- (2) ~~plant 100 bushels of cultch or seed shellfish per acre per year.~~

~~(e)~~ (e) The following standards shall be applied to determine compliance with ~~Subparagraphs (1) and (2) of Paragraph (e) Paragraphs (c) and (d) of this Rule:~~

- (1) Only shellfish marketed, planted, or produced ~~or marketed according to the definitions as defined in 15A NCAC 03I .0101 as the fishing activities "shellfish marketing from leases and franchises", "shellfish planting effort on leases and franchises", or "shellfish production on leases and franchises"~~ shall be submitted on production/utilization reporting forms as set forth in Rule .0207 of this Section for shellfish leases and franchises.
- (2) If more than one ~~shellfish~~ lease or franchise is used in the production of shellfish, one of the leases or franchises used in the production of the shellfish ~~must~~ shall be designated as the producing lease or franchise for those shellfish. Each bushel of shellfish may be produced by only one ~~shellfish~~ lease or franchise. Shellfish transplanted between leases or franchises may be credited as planting effort on only one lease or franchise.
- (3) Production and marketing information and planting effort information shall be compiled and averaged separately to assess compliance with the ~~standards~~ requirements. The lease or franchise ~~must~~ shall meet both the production requirement and the planting effort requirement within the dates set forth in G.S. 113-202.1 and 202.2 to be ~~judged~~ deemed in compliance with these standards for shellfish bottom leases. The lease or franchise shall meet either the production requirement or the planting effort requirement within the dates set forth in G.S. 113-202.1 and 202.2 to be deemed in compliance for water column leases.
- (4) All bushel measurements shall be in standard U.S. bushels.
- ~~(4)~~ (5) In determining production and marketing averages and planting effort averages for information not reported in bushel measurements, the following conversion factors shall be used:
 - (A) 300 oysters, 400 clams, or 400 scallops equal one bushel; and
 - (B) 40 pounds of scallop shell, 60 pounds of oyster shell, 75 pounds of clam ~~shell and shell~~, or 90 pounds of fossil stone equal one bushel.

~~(5) In the event that a portion of an existing lease or franchise is obtained by a new owner, the production history for the portion obtained shall be a percentage of the originating lease or franchise production equal to the percentage of the area of lease or franchise site obtained to the area of the originating lease or franchise.~~

~~(6) Production and marketing rate averages shall be computed irrespective of transfer of the lease or franchise. The production and marketing rates shall be averaged:averaged for the following situations using the time periods described:~~

~~(A) for an initial bottom lease or franchise, over the consecutive full calendar years remaining on the bottom lease or franchise contract after December 31 following the second anniversary of the initial bottom leases—and franchises.lease or franchise;~~

~~(B) for a renewal bottom lease or franchise, over the consecutive full calendar years beginning January 1 of the final year of the previous bottom lease or franchise term and ending December 31 of the final year of the current bottom lease contract for renewal leases.or franchise contract;~~

~~(C) for a water column lease, over the first five year-five-year period for an initial water column leases.lease and over the most recent five year-five-year period thereafter for a renewal water column leases.lease; or~~

~~(D) for a bottom lease or franchise issued an extension period under Rule .0208 of this Section, over the most recent five-year period.~~

~~Production and marketing rate averages shall be computed irrespective of transfer of the shellfish lease or franchise.~~

~~(7) All bushel measurements shall be in U.S. Standard Bushels.~~

~~(7) In the event that a portion of an existing lease or franchise is obtained by a new owner, the production history for the portion obtained shall be a percentage of the originating lease or franchise production equal to the percentage of the area of lease or franchise site obtained to the area of the originating lease or franchise.~~

(f) Persons holding five or more acres under all shellfish bottom leases and franchises combined shall meet the requirements established in Paragraph (c) of this Rule prior to the Division of Marine Fisheries accepting applications for additional shellfish lease acreage.

(e) Water columns superjacent to leased bottoms shall meet the standards in G.S. 113-202.1 in order to be deemed suitable for leasing for aquaculture purposes.

~~(f) Water columns superjacent to franchises recognized pursuant to G.S. 113-206 shall meet the standards in G.S. 113-202.2 in order to be deemed suitable for leasing for aquaculture purposes.~~

~~(g) Water column leases must produce and market 40 bushels of shellfish per acre per year to meet the minimum commercial production requirement or plant 100 bushels of cultch or seed shellfish per acre per year to meet commercial production by planting effort. The standards for determining production and marketing averages and planting effort averages shall be the same for water column leases as for bottom leases and franchises set forth in Paragraph (d) of this Rule except that either the produce and market requirement or the planting requirement must be met.~~

Authority G.S. 113-134; 113-201; 113-202; 113-202.1; 113-202.2; 113-206; 143B-289.52.

15A NCAC 030 .0208 TERMINATION OF SHELLFISH BOTTOM LEASES AND FRANCHISES AND WATER COLUMN LEASES

(a) Procedures for termination of shellfish leaseholds are provided in G.S. 113-202. The Secretary's decision to terminate a leasehold may be appealed by initiating a contested case as outlined in G.S. 150B-23.

~~(a)(b) In addition to Consistent with the grounds for termination established by G.S. 113-202, the Secretary shall begin action to terminate leases and franchises for failure to produce and market shellfish or for failure to maintain a planting effort of cultch or seed shellfish in accordance with 15A NCAC 030 .0204~~substantial breach of compliance with the provisions of rules of the Marine Fisheries Commission governing use of the leasehold includes the following, except as provided in Paragraph (c) of this Rule:

(1) failure to meet shellfish production and marketing requirements for bottom leases or franchises in accordance with Rule .0201 of this Section;

(2) failure to maintain a planting effort of cultch or seed shellfish for bottom leases or franchises in accordance with Rule .0201 of this Section;

(3) failure either to meet shellfish production and marketing requirements or to maintain a planting effort of cultch or seed shellfish for water column leases in accordance with Rule .0201 of this Section;

(4) the Fisheries Director has cause to believe the holder of private shellfish bottom or franchise rights has encroached or usurped the legal rights of the public to access public trust resources in navigable waters, in accordance with G.S. 113-205 and Rule .0204 of this Section; or

(5) the Attorney General initiates action for the purpose of vacating or annulling letters patent granted by the State, in accordance with G.S. 146-63.

(b) Action to terminate a shellfish franchise shall begin when there is reason to believe that the patentee, or those claiming under him, have done or omitted an act in violation of the terms and conditions on which the letters patent were granted, or have by

~~any other means forfeited the interest acquired under the same. The Division shall investigate all such rights issued in perpetuity to determine whether the Secretary should request that the Attorney General initiate an action pursuant to G.S. 146-63 to vacate or annul the letters patent granted by the state.~~

~~(e) Action to terminate a shellfish lease or franchise shall begin when the Fisheries Director has cause to believe the holder of private shellfish rights has encroached or usurped the legal rights of the public to access public trust resources in navigable waters.~~

(c) Consistent with G.S. 113-202(11) and 113-201(b), a leaseholder that failed to meet requirements in G.S. 113-202, 15A NCAC 03O .0201 or this Rule may be granted a single extension period of no more than two years per contract period upon sufficient showing of hardship by written notice to the Fisheries Director prior to the expiration of the lease term that one of the following occurrences caused or will cause the leaseholder to fail to meet lease requirements:

- (1) death, illness, or incapacity of the leaseholder or his "immediate family", as defined in G.S. 113-168 that prevented or will prevent the leaseholder from working the lease;
- (2) damage to the lease from hurricanes, tropical storms, or other severe weather events recognized by the National Weather Service;
- (3) shellfish mortality caused by disease, natural predators, or parasites; or
- (4) damage to the lease from a manmade disaster that triggers a state emergency declaration or federal emergency declaration.

(d) In the case of hardship as described in Subparagraph (c)(1) of this Rule, the notice shall state the name of the leaseholder or immediate family member, and either the date of death, or the date and nature of the illness or incapacity. The Fisheries Director may require a doctor's verification of the illness or incapacity. Written notice and any supporting documentation shall be addressed to the Director of the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557.

(e) Requirements for transfer of beneficial ownership of all or any portion of or interest in a leasehold are provided in G.S. 113-202(k).

~~(d) In the event action to terminate a lease is begun, the owner shall be notified by registered mail and given a period of 30 days in which to correct the situation. Petitions to review the Secretary's decision must be filed with the Office of Administrative Hearings as outlined in 15A NCAC 03P .0102. (e) The Secretary's decision to terminate a lease may be appealed by initiating a contested case as outlined in 15A NCAC 03P .0102.~~

Authority G.S. 113-134; 113-201; 113-202; 113-202.1; 113-202.2; 113-205; 143B-289.52.

SECTION .0500 - PERMITS

15A NCAC 03O .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS

(a) To obtain any Marine Fisheries permit, the following information is required for proper application from the applicant, a responsible party, or person holding a power of attorney:

- (1) ~~Full~~full name, physical address, mailing address, date of birth, and signature of the applicant on the ~~application~~. ~~If application and if~~ the applicant is not appearing before a license agent or the designated Division contact, the applicant's signature on the application shall be notarized;
- (2) ~~Current~~current picture identification of applicant, responsible party, or person holding a power of attorney. Acceptable forms of picture identification are driver's license, North Carolina Identification card issued by the North Carolina Division of Motor Vehicles, military identification card, resident alien card (green card), or ~~passport~~passport, or if applying by mail, a copy thereof;
- (3) ~~Full~~full names and dates of birth of designees of the applicant who will be acting under the requested permit where that type permit requires listing of designees;
- (4) ~~Certification~~certification that the applicant and his designees do not have four or more marine or estuarine resource convictions during the previous three years;
- (5) ~~For~~for permit applications from business entities:
 - (A) ~~Business Name~~business name;
 - (B) ~~Type of Business Entity~~Corporation, type of business entity: corporation, partnership, or sole proprietorship;
 - (C) ~~Name~~name, address, and phone number of responsible party and other identifying information required by this Subchapter or rules related to a specific permit;
 - (D) ~~For~~for a corporation, current articles of incorporation and a current list of corporate officers when applying for a permit in a corporate name;
 - (E) ~~For~~for a partnership, if the partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when applying for a permit; and
 - (F) ~~For~~for business entities, other than corporations, copies of current assumed name statements if filed and copies of current business privilege tax certificates, if applicable; and
- (6) ~~Additional~~additional information as required for specific permits.
 - (a) A permittee shall hold a valid Standard or Retired Standard Commercial Fishing License in order to hold a:
 - (1) Pound Net Permit;
 - (2) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean;~~or~~
 - (3) Atlantic Ocean Striped Bass Commercial Gear ~~Permit~~Permit; or
 - (4) Permit for Weekend Trawling for Live Shrimp.

(A) An individual who is assigned a Standard Commercial Fishing License is the individual required to hold a Permit for Weekend Trawling for Live Shrimp.

(B) The master designated on the single vessel corporation Standard Commercial Fishing License is the individual required to hold the Permit for Weekend Trawling for Live Shrimp.

~~(c) A~~ When mechanical methods to take shellfish are used, a permittee and his designees shall hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order for a permittee to hold a:

- (1) Permit to Transplant Prohibited (Polluted) Shellfish;
- (2) Permit to Transplant Oysters from Seed Oyster Management Areas;
- (3) Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or ~~Franchises;~~ Franchises, except as provided in G.S. 113-169.2;
- (4) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas; or
- (5) Depuration Permit.

(d) When mechanical methods to take shellfish are not used, a permittee and his designees shall hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order for a permittee to hold a:

- (1) Permit to Transplant Prohibited (Polluted) Shellfish;
- (2) Permit to Transplant Oysters from Seed Oyster Management Areas;
- (3) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas; or
- (4) Depuration Permit.

~~(e)~~ (e) A permittee shall hold a valid:

- (1) Fish Dealer License in the proper category in order to hold Dealer Permits for Monitoring Fisheries Under a Quota/Allocation for that category; and
- (2) Standard Commercial Fishing License with a Shellfish Endorsement, Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to harvest clams or oysters for depuration.

~~(f)~~ (f) Aquaculture Operations/Collection Permits:

- (1) A permittee shall hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold an Aquaculture Collection Permit.
- (2) The permittee or designees shall hold appropriate licenses from the Division of Marine Fisheries for the species harvested and the gear used under the Aquaculture Collection Permit.

~~(g)~~ (g) Atlantic Ocean Striped Bass Commercial Gear Permit:

- (1) Upon application for an Atlantic Ocean Striped Bass Commercial Gear Permit, a person shall declare one of the following gears for an initial permit and at intervals of three consecutive license years thereafter:

- (A) gill net;
- (B) trawl; or
- (C) beach seine.

For the purpose of this Rule, a "beach seine" is defined as a swipe net constructed of multi-filament or multi-fiber webbing fished from the ocean beach that is deployed from a vessel launched from the ocean beach where the fishing operation takes place. Gear declarations shall be binding on the permittee for three consecutive license years without regard to subsequent annual permit issuance.

- (2) A person is not eligible for more than one Atlantic Ocean Striped Bass Commercial Gear Permit regardless of the number of Standard Commercial Fishing Licenses, Retired Standard Commercial Fishing Licenses or assignments held by the person.

~~(h)~~ (h) Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted.

~~(i)~~ (i) A permit shall be issued only after the application has been deemed complete by the Division of Marine Fisheries and the applicant certifies to abide by the permit general and specific conditions established under 15A NCAC 03J .0501, .0505, 03K .0103, .0104, .0107, .0111, .0401, 03O .0502, and .0503 as applicable to the requested permit.

~~(j)~~ (j) The Fisheries Director, or his agent may evaluate the following in determining whether to issue, modify, or renew a permit:

- (1) ~~Potential~~ potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries Commission;
- (2) ~~Applicant's~~ applicant's demonstration of a valid justification for the permit and a showing of responsibility as determined by the Fisheries Director; and
- (3) ~~Applicant's~~ applicant's history of habitual fisheries violations evidenced by eight or more violations in 10 years.

~~(k)~~ (k) The Division of Marine Fisheries shall notify the applicant in writing of the denial or modification of any permit request and the reasons therefor. The applicant may submit further information, or reasons why the permit should not be denied or modified.

~~(l)~~ (l) Permits are valid from the date of issuance through the expiration date printed on the permit. Unless otherwise established by rule, the Fisheries Director may establish the issuance timeframe for specific types and categories of permits based on season, calendar year, or other period based upon the nature of the activity permitted, the duration of the activity, compliance with federal or state fishery management plans or

implementing rules, conflicts with other fisheries or gear usage, or seasons for the species involved. The expiration date shall be specified on the permit.

~~(m)~~ For permit renewals, the permittee's signature on the application shall certify all information as true and accurate. Notarization of signature on renewal applications shall not be required.

~~(n)~~ For initial or renewal permits, processing time for permits may be up to 30 days unless otherwise specified in this Chapter.

~~(o)~~ It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address, in accordance with G.S. 113-169.2.

~~(p)~~ It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee prior to use of the permit by that designee.

~~(q)~~ Permit applications are available at all Division Offices.

Authority G.S. 113-134; 113-169.1; 113-169.2; 113-169.3; 113-182; 113-210; 143B-289.52.

**15A NCAC 030 .0503 PERMIT CONDITIONS;
SPECIFIC**

(a) Horseshoe Crab Biomedical Use Permit:

- (1) It is unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.
- (2) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit a report on the use of horseshoe crabs to the Division of Marine Fisheries due on February 1 of each year. Such reports shall be filed on forms provided by the Division and shall include a monthly account of the number of crabs harvested, statement of percent mortality up to the point of release, and a certification that harvested horseshoe crabs are solely used by the biomedical facility and not for other purposes.
- (3) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to comply with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe Crab. The Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe Crab is incorporated by reference including subsequent amendments and editions. Copies of this plan are available via the Internet from the Atlantic States Marine Fisheries Commission at <http://www.asmfc.org/fisheries-management/program-overview> and at the Division of Marine Fisheries, ~~P.O. Box 769, 3441 Arendell St., 3441 Arendell Street, P.O. Box 769, Morehead City, North Carolina NC 28557~~ at no cost.

(b) Dealers Permits for Monitoring Fisheries under a Quota/Allocation:

(1) During the commercial season opened by proclamation or rule for the fishery for which a Dealers Permit for Monitoring Fisheries under a Quota/Allocation permit is issued, it is unlawful for the fish dealers issued such permit to fail to:

- (A) fax or send via electronic mail by noon daily, on forms provided by the Division, the previous day's landings for the permitted fishery to the dealer contact designated on the permit. Landings for Fridays or Saturdays shall be submitted on the following Monday. If the dealer is unable to fax or electronic mail the required information, the permittee shall call in the previous day's landings to the dealer contact designated on the permit, but shall maintain a log furnished by the Division;
- (B) submit the required log to the Division upon request or no later than five days after the close of the season for the fishery permitted;
- (C) maintain faxes and other related documentation in accordance with 15A NCAC 03I .0114;
- (D) contact the dealer contact designated on the permit daily regardless of whether or not a transaction for the fishery for which a dealer is permitted occurred; and
- (E) record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.

(2) Striped Bass Dealer Permit:

- (A) It is unlawful for a fish dealer to possess, buy, sell, or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:
 - (i) Atlantic Ocean;
 - (ii) Albemarle Sound Management Area as designated in 15A NCAC 03R .0201; and
 - (iii) the Joint and Coastal Fishing Waters of the Central/Southern Management Area as designated in 15A NCAC 03R .0201.
- (B) No permittee shall possess, buy, sell, or offer for sale striped bass taken from the harvest areas opened by proclamation without having a North

Carolina Division of Marine Fisheries issued valid tag for the applicable area affixed through the mouth and gill cover, or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. North Carolina Division of Marine Fisheries striped bass tags shall not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the North Carolina Division of Marine Fisheries Offices. The Division of Marine Fisheries shall specify the quantity of tags to be issued based on historical striped bass landings. It is unlawful for the permittee to fail to surrender unused tags to the Division upon request.

- (3) Albemarle Sound Management Area for River Herring Dealer Permit: It is unlawful to possess, buy, sell, or offer for sale river herring taken from the ~~following area Albemarle Sound Management Area for River Herring as defined in 15A NCAC 03R .0202~~ without first obtaining an Albemarle Sound Management Area for River Herring Dealer Permit. ~~Albemarle Sound Management Area for River Herring as defined in 15A NCAC 03R .0202. Permit.~~
- (4) Atlantic Ocean Flounder Dealer Permit:
 - (A) It is unlawful for a fish dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first obtaining an Atlantic Ocean Flounder Dealer Permit. The licensed location shall be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.
 - (B) It is unlawful for a fish dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first obtaining an Atlantic Ocean Flounder Dealer Permit.
- (5) Black Sea Bass North of Cape Hatteras Dealer ~~Permit~~. It is unlawful for a fish dealer to purchase or possess more than 100 pounds of black sea bass taken from the Atlantic Ocean north of Cape Hatteras (35° 15.0321' N) per day per commercial fishing operation during the open season unless the dealer has a Black Sea Bass North of Cape Hatteras Dealer Permit.
- (6) Spiny Dogfish Dealer Permit: It is unlawful for a fish dealer to purchase or possess more than

100 pounds of spiny dogfish per day per commercial fishing operation unless the dealer has a Spiny Dogfish Dealer Permit.

- (c) Blue Crab Shedding Permit: It is unlawful to possess more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.
- (d) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean:
 - (1) It is unlawful to trawl for shrimp in the Atlantic Ocean without Turtle Excluder Devices installed in trawls within one nautical mile of the shore from Browns Inlet (34° 35.7000' N latitude) to Rich's Inlet (34° 17.6000' N latitude) without a valid Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean when allowed by proclamation from April 1 through November 30.
 - (2) It is unlawful to tow for more than 55 minutes from April 1 through October 31 and 75 minutes from November 1 through November 30 in the area described in Subparagraph (d)(1) of this Rule when working under this permit. Tow time begins when the doors enter the water and ends when the doors exit the water.
 - (3) It is unlawful to fail to empty the contents of each net at the end of each tow.
 - (4) It is unlawful to refuse to take observers upon request by the Division of Marine Fisheries or the National ~~Marine Fisheries Service~~ Oceanic and Atmospheric Administration Fisheries.
 - (5) It is unlawful to fail to report any sea turtle captured. Reports shall be made within 24 hours of the capture to the Marine Patrol Communications Center by phone. All turtles taken incidental to trawling shall be handled and resuscitated in accordance with requirements specified in ~~50 CFR Code of Federal Regulations (CFR) 223.206. This federal rule is incorporated by reference including subsequent amendments and editions. Copies of this rule are available via the Code of Federal Regulations posted on the Internet at <http://www.gpoaccess.gov/efr/index.html> and at the Division of Marine Fisheries, P.O. Box 769, Morehead City, North Carolina 28557 at no cost.~~ 50 CFR 223.206 (2002) is hereby incorporated by reference. A copy of the reference materials can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=9088932317c242b91d6a87a47b6bda54&mc=true&tpl=/ecfrbrowse/Title50/50tab_02.tpl, free of charge. A copy of the CFR in effect on the date of this Rule can be found at <http://portal.ncdenr.org/web/mf/rules-and-regulations>, free of charge.
- (e) Pound Net Set ~~Permits~~. Permit: Rule 15A NCAC 03J .0505 sets forth the specific conditions for pound net set permits.

(f) ~~Aquaculture Operations/Collection Permits: Operation Permit and Aquaculture Collection Permit:~~

- (1) It is unlawful to conduct aquaculture operations utilizing marine and estuarine resources without first securing an Aquaculture Operation Permit from the Fisheries Director.
- (2) It is unlawful:
 - (A) to take marine and estuarine resources from Coastal Fishing Waters for aquaculture purposes without first obtaining an Aquaculture Collection Permit from the Fisheries ~~Director.~~Director;
 - (B) to sell, or use for any purpose not related to North Carolina aquaculture, marine and estuarine resources taken under an Aquaculture Collection ~~Permit.~~ Permit; and
 - (C) to fail to submit to the Fisheries Director an annual report due on December 1 of each year on the form provided by the Division the amount and disposition of marine and estuarine resources collected under authority of ~~this permit.~~ an Aquaculture Collection Permit.
- (3) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 03K .0103 and .0104 are exempt from requirements to have an Aquaculture Operation Permit or Aquaculture Collection Permit issued by the Fisheries Director.
- (4) ~~Aquaculture Operations/Collection~~ Operation Permits and Aquaculture Collection Permits shall be issued or renewed on a calendar year basis.
- (5) It is unlawful to fail to provide the Division of Marine Fisheries with a listing of all designees acting under an Aquaculture Collection Permit at the time of application.

(g) Scientific or Educational Activity Permit:

- (1) It is unlawful for institutions or agencies seeking exemptions from license, rule, proclamation, or statutory requirements to collect, hold, culture, or exhibit for scientific or educational purposes any marine or estuarine species without first obtaining a Scientific or Educational Activity Permit.
- (2) The Scientific or Educational Activity Permit shall only be issued for scientific or educational purposes and for collection methods and possession allowances approved by the Division of Marine Fisheries.
- (3) The Scientific or Educational Activity Permit shall only be issued for approved activities conducted by or under the direction of Scientific or Educational institutions as defined in Rule 15A NCAC 03I .0101.

- (4) It is unlawful for the responsible party issued a Scientific or Educational Activity Permit to fail to submit a report on collections and, if authorized, sales to the Division of Marine Fisheries due on December 1 of each year unless otherwise specified on the permit. The reports shall be filed on forms provided by the Division. Scientific or Educational Activity permits shall be issued on a calendar year basis.
- (5) It is unlawful to sell marine or estuarine species taken under a Scientific or Educational Activity Permit without:
 - (A) the required license(s) for such sale;
 - (B) authorization stated on the permit for such sale; and
 - (C) providing the information required in Rule 15A NCAC 03I .0114 if the sale is to a licensed fish dealer.
- (6) It is unlawful to fail to provide the Division of Marine Fisheries a listing of all designees acting under a Scientific or Educational Activity Permit at the time of application.
- (7) The permittee or designees utilizing the permit shall call the Division of Marine Fisheries Communications Center at 800-682-2632 or 252-726-7021 not later than 24 hours prior to use of the permit, specifying activities and location.

(h) Under Dock Oyster Culture Permit:

- (1) It is unlawful to cultivate oysters in containers under docks for personal consumption without first obtaining an Under Dock Oyster Culture Permit.
- (2) An Under Dock Oyster Culture Permit shall be issued only in accordance with provisions set forth in G.S. 113-210(c).
- (3) The applicant shall complete and submit an examination, with a minimum of 70 percent correct answers, based on an educational package provided by the Division of Marine Fisheries pursuant to G.S. 113-210(j). The examination demonstrates the applicant's knowledge of:
 - (A) the application process;
 - (B) permit criteria;
 - (C) basic oyster biology and culture techniques;
 - (D) shellfish harvest area closures due to pollution;
 - (E) safe handling practices;
 - (F) permit conditions; and
 - (G) permit revocation criteria.
- (4) Action by an Under Dock Oyster Culture Permit holder to encroach on or usurp the legal rights of the public to access public trust resources in Coastal Fishing Waters shall result in permit revocation.

(i) Atlantic Ocean Striped Bass Commercial Gear Permit:

- (1) It is unlawful to take striped bass from the Atlantic Ocean in a commercial fishing operation without first obtaining an Atlantic Ocean Striped Bass Commercial Gear Permit.
 - (2) It is unlawful to use a single Standard Commercial Fishing License, including assignments, to obtain more than one Atlantic Ocean Striped Bass Commercial Gear Permit during a license year.
- (j) Coastal Recreational Fishing License Exemption Permit:
- (1) It is unlawful for the responsible party seeking exemption from recreational fishing license requirements for eligible individuals to conduct an organized fishing event held in Joint or Coastal Fishing Waters without first obtaining a Coastal Recreational Fishing License Exemption Permit.
 - (2) The Coastal Recreational Fishing License Exemption Permit shall only be issued for recreational fishing activity conducted solely for the participation and benefit of one of the following groups of eligible individuals:
 - (A) individuals with physical or mental limitations;
 - (B) members of the United States Armed Forces and their dependents, upon presentation of a valid military identification card, for military appreciation;
 - (C) individuals receiving instruction on recreational fishing techniques and conservation practices from employees of state or federal marine or estuarine resource management agencies, or instructors affiliated with educational institutions; and
 - (D) disadvantaged youths.

For purposes of this Paragraph, educational institutions include high schools and other secondary educational institutions.
 - (3) The Coastal Recreational Fishing License Exemption Permit is valid for the date(s), time, and physical location of the organized fishing event for which the exemption is granted and the time period shall not exceed one year from the date of issuance.
 - (4) The Coastal Recreational Fishing License Exemption Permit shall only be issued when all of the following, in addition to the information required in 15A NCAC 03O .0501, is submitted to the Fisheries Director in writing a minimum of 30 days prior to the event:
 - (A) the name, date(s), time, and physical location of the event;
 - (B) documentation that substantiates local, state, or federal involvement in the organized fishing event, if applicable;
 - (C) the cost or requirements, if any, for an individual to participate in the event; and
 - (D) an estimate of the number of participants.
- (k) Permit for Weekend Trawling for Live Shrimp:
- (1) It is unlawful to take shrimp with trawls from 9:00 p.m. on Friday through 12:00 p.m. (noon) on Saturday without first obtaining a Permit for Weekend Trawling for Live Shrimp.
 - (2) It is unlawful for a holder of a Permit for Weekend Trawling for Live Shrimp to use trawls from 12:01 p.m. on Saturday through 4:59 p.m. on Sunday.
 - (3) It is unlawful for a permit holder during the timeframe specified in Subparagraph (k)(1) of this Rule to:
 - (A) use trawl nets to take live shrimp except from areas open to the harvest of shrimp with trawls;
 - (B) take shrimp with trawls that have a combined headrope length of greater than 40 feet in Internal Coastal Waters;
 - (C) possess more than one gallon of dead shrimp (heads on) per trip;
 - (D) fail to have a functioning live bait tank or a combination of multiple functioning live bait tanks with aerator(s) and/or circulating water, with a minimum combined tank capacity of 50 gallons; and
 - (E) fail to call the Division of Marine Fisheries Communications Center at 800-682-2632 or 252-726-7021 prior to each weekend use of the permit, specifying activities and location.

Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 113-210; 143B-289.52

SUBCHAPTER 03P - HEARING PROCEDURES

SECTION .0100 - HEARING PROCEDURES

15A NCAC 03P .0101 LICENSE, PERMIT, OR CERTIFICATE DENIAL: REQUEST FOR REVIEW

~~(a) If the Division decides to deny or limit a renewal of a license or permit for an activity of a continuing nature, the license sought to be renewed shall continue in effect as provided in G.S. 150B-3.~~

(a) For the purpose of this Rule and in accordance with G.S. 150B-2, "license" includes "permit" as well as "certification" and "certificate of compliance".

(b) Except in cases where G.S. 113-171 is applicable, before the Division may commence proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license or permit, license, notice shall be given to the license or permit holder notifying him that:

(1) the license holder has a right through filing a request for a contested case hearing in the Office of Administrative Hearings to a hearing before an administrative law judge and a final agency decision by the Marine Fisheries Commission; and

~~(1)(2) He the license holder may request an opportunity to show compliance with all lawful requirements for retention of the license in an informal meeting with Division personnel responsible for the initiation of the action to revoke the license; and by submitting a statement in writing to the personnel designated in the notice for the initiation of the action.~~

~~(2) He has a right through filing a request for a contested case hearing in the Office of Administrative Hearings to a hearing before an administrative law judge and a final agency decision by the Marine Fisheries Commission.~~

(c) Any requests statements submitted by the license holder for an informal meeting or administrative hearings shall be made to the person designated in the notice to show compliance with all lawful requirements for retention of the license shall be postmarked within 15 days of receipt of the notice for the initiation of the action. Statements and any supporting documentation shall be addressed to the personnel designated in the notice and mailed to the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557.

(d) Upon receipt of a statement and any supporting documentation from the license holder, the Division shall review the statement and within 15 days, notify the license holder in writing with the Division's determination of whether the license holder demonstrated compliance with all lawful requirements for retention of the license. In making this determination, the Division may consider criteria including, but not limited to material changes made enabling the license holder to conduct the operations for which the license is held in accord with all applicable laws and rules, and processing errors made by the Division.

~~(d)(e) The Division may order summary suspension of a license or permit if it finds that the public health, safety, or welfare requires emergency action. Upon such determination, the Fisheries Director shall issue an order giving the reasons for the emergency action. The effective date of the order shall be the date specified on the order or the date of service of a certified copy of the order at the last known address of the license or permit holder holder, whichever is later.~~

~~(e) When a license is summarily suspended and a request is made for an informal meeting or a hearing, the proceeding shall be promptly commenced and determined.~~

Authority G.S. 113-134; 113-171; 113-221.2; 150B-3; 150B-23.

SUBCHAPTER 03R - DESCRIPTIVE BOUNDARIES

SECTION .0100 - DESCRIPTIVE BOUNDARIES

15A NCAC 03R .0103 PRIMARY NURSERY AREAS

The primary nursery areas referenced in 15A NCAC 03N .0104 are delineated in the following coastal water areas:

- (1) In the Roanoke Sound Area:
 - (a) Shallowbag Bay:
 - (i) Dough Creek - northeast of a line beginning on the west shore at a point 35° 54.5396' N - 75° 39.9681' W; running northeasterly to the east shore to a point 35° 54.4615' N - 75° 40.1598' W; and west of a line that crosses a canal on the east side of Dough Creek beginning on the north shore at a point 35° 54.7103' N - 75° 40.0951' W; running southerly to the south shore to a point 35° 54.6847' N - 75° 40.0882' W; and
 - (ii) Scarborough Creek - south of a line beginning on the west shore at a point 35° 53.9801' N - 75° 39.5985' W; running northeasterly to the east shore to a point 35° 54.0372' N - 75° 39.5558' W; and
 - (b) Broad Creek - all waters north of a line beginning on the west shore at a point 35° 51.9287' N - 75° 38.3377' W; running northeasterly to the east shore to a point 35° 52.0115' N - 75° 38.1792' W; and west and south of a line beginning on the north shore at a point 35° 53.3655' N - 75° 38.0254' W; running southeasterly to the south shore to a point 35° 53.3474' N - 75° 37.9430' W;
- (2) In the Northern Pamlico Sound Area:
 - (a) Long Shoal River:
 - (i) Long Shoal River - northwest of a line beginning on the north shore at a point 35° 38.0175' N - 75° 52.9270' W; running southwesterly to the south shore to a point 35° 37.8369' N - 75° 53.1060' W;
 - (ii) Deep Creek - southeast of a line beginning on the north shore at a point 35° 37.7346' N - 75° 52.1383' W; running southwesterly to the south shore to a point 35° 37.6673' N - 75° 52.2997' W;
 - (iii) Broad Creek - west of a line beginning on the north shore at a point 35° 35.9820' N - 75° 53.6789' W; running southerly to the south shore

- to a point 35° 20.6082' N - 76° 13.3305' W; and
 - (v) Old Haulover - west of a line beginning on the north shore at a point 35° 22.0186' N - 76° 15.6736' W; running southerly to the south shore to a point 35° 21.9708' N - 76° 15.6825' W;
 - (h) Swanquarter Bay:
 - (i) Upper Swanquarter Bay - north of a line beginning on the west shore at a point 35° 23.5651' N - 76° 20.6715' W; running easterly to the east shore to a point 35° 23.6988' N - 76° 20.0025' W;
 - (ii) Oyster Creek - east of a line beginning on the north shore at a point 35° 23.1214' N - 76° 19.0026' W; running southeasterly to the south shore to a point 35° 23.0117' N - 76° 18.9591' W; and
 - (iii) Caffee Bay:
 - (A) Unnamed tributary - north of a line beginning on the west shore at a point 35° 22.1604' N - 76° 18.9140' W; running easterly to the east shore to a point 35° 22.1063' N - 76° 18.7500' W;
 - (B) Unnamed tributary - north of a line beginning on the west shore at a point 35° 22.1573' N - 76° 18.5101' W; running easterly to the east shore to a point 35° 22.1079' N - 76° 18.1562' W; and
 - (C) Upper Caffee Bay (Haulover) - east of a line beginning on the north shore at a point 35° 21.8499' N - 76° 17.5199' W; running southerly to the south shore to a point 35° 21.5451' N - 76° 17.4966' W;
 - (i) Rose Bay:
 - (i) Rose Bay - north of a line beginning on the west shore
- (ii) at a point 35° 26.6543' N - 76° 25.3992' W; running easterly to Channel Marker "6"; running northeasterly to Watch Point to a point 35° 26.8515' N - 76° 25.0055' W;
 - (ii) Island Point Creek - west of a line beginning on the north shore at a point 35° 26.0413' N - 76° 25.0452' W; running southeasterly to the south shore to a point 35° 25.9295' N - 76° 24.9882' W;
 - (iii) Tooley Creek - west of a line beginning on the north shore at a point 35° 25.4937' N - 76° 25.5324' W; running southerly to the south shore to a point 35° 25.1819' N - 76° 25.5776' W;
 - (iv) Broad Creek - east of a line beginning on the north shore at a point 35° 24.4620' N - 76° 23.3398' W; running southwesterly to the south shore to a point 35° 24.2352' N - 76° 23.5158' W;
 - (v) Lightwood Snag Bay - northwest of a line beginning on the north shore at a point 35° 24.3340' N - 76° 25.9680' W; running southwesterly to a point 35° 24.2610' N - 76° 26.1800' W; running southwesterly to a point on the shore 35° 23.9270' N - 76° 26.3300' W;
 - (vi) Deep Bay:
 - (A) Old Haulover - north of a line beginning on the west shore at a point 35° 23.2140' N - 76° 22.8560' W; running easterly to the east shore to a point 35° 23.2124' N - 76° 22.7340' W; and
 - (B) Drum Cove (Stinking Creek) - south of a line beginning on the west shore at a point 35° 22.5212' N - 76° 24.7321' W; running southeasterly to the east shore to a point

- 35° 22.4282' N - 76° 24.5147' W; and
- (vii) Eastern tributaries (Cedar Hammock and Long Creek) - east of a line beginning on the north shore at a point 35° 24.9119' N - 76° 23.1587' W; running southerly to the south shore to a point 35° 24.6700' N - 76° 23.2171' W;
- (j) Spencer Bay:
- (i) Germantown Bay:
 - (A) Ditch Creek - northwest of a line beginning on the north shore at a point 35° 24.1874' N - 76° 27.8527' W; running southwesterly to the south shore to a point 35° 24.0937' N - 76° 27.9348' W;
 - (B) Jenette Creek - northwest of a line beginning on the north shore at a point 35° 24.5054' N - 76° 27.6258' W; running southwesterly to the south shore to a point 35° 24.4642' N - 76° 27.6659' W;
 - (C) Headwaters of Germantown Bay - north of a line beginning on the west shore at a point 35° 24.8345' N - 76° 27.2605' W; running southeasterly to the east shore to a point 35° 24.6210' N - 76° 26.9221' W; and
 - (D) Swan Creek - southeast of a line beginning on the north shore at a point 35° 24.4783' N - 76° 27.1513' W; running southwesterly to the south shore to a point 35° 24.3899' N - 76° 27.2809' W;
 - (ii) Unnamed tributary - west of a line beginning on the north shore at a point 35° 22.9741' N - 76° 28.3469' W; running southerly to the south shore to a point 35° 22.8158' N - 76° 28.3280' W;
 - (iii) Unnamed tributary - west of a line beginning on the north shore at a point 35° 23.1375' N - 76° 28.5681' W; running southerly to the south shore to a point 35° 23.0209' N - 76° 28.5060' W;
 - (iv) Unnamed tributary - southwest of a line beginning on the north shore at a point 35° 23.3775' N - 76° 28.7332' W; running southeasterly to the south shore to a point 35° 23.3297' N - 76° 28.5608' W;
 - (v) Unnamed tributaries - northwest of a line beginning on the north shore at a point 35° 23.7207' N - 76° 28.6590' W; running southwesterly to the south shore to a point 35° 23.4738' N - 76° 28.7763' W;
 - (vi) Upper Spencer Bay - northwest of a line beginning on the north shore at a point 35° 24.3129' N - 76° 28.5300' W; running southwesterly to the south shore to a point 35° 23.9681' N - 76° 28.7671' W; and
 - (vii) Spencer Creek - east of a line beginning on the north shore at a point 35° 23.9990' N - 76° 27.3702' W; running southerly to the south shore to a point 35° 23.8598' N - 76° 27.4037' W;
 - (k) Long Creek - north of a line beginning on the west shore at a point 35° 22.4678' N - 76° 28.7868' W; running southeasterly to the east shore to a point 35° 22.3810' N - 76° 28.7064' W;
 - (l) Willow Creek - east of a line beginning on the north shore at a point 35° 23.1370' N - 76° 29.8829' W; running southeasterly to the south shore to a point 35° 22.9353' N - 76° 29.7215' W;
 - (m) Abels Bay - north and east of a line beginning on the west shore at a point 35° 24.1072' N - 76° 30.3848' W; running southeasterly to the east shore to a point 35° 23.9898' N - 76° 30.1178' W; thence running southerly

- to the south shore to a point 35° 23.6947' N - 76° 30.1900' W; and
- (n) Crooked Creek - north of a line beginning on the west shore at a point 35° 24.4138' N - 76° 32.2124' W; running easterly to the east shore to a point 35° 24.3842' N - 76° 32.0419' W;
- (3) In the Pungo River Area:
- (a) Fortescue Creek:
- (i) Headwaters of Fortescue Creek - southeast of a line beginning on the south shore at a point 35° 25.5379' N - 76° 30.6923' W; running easterly to the north shore to a point 35° 25.5008' N - 76° 30.5537' W;
- (ii) Warner Creek - north of a line beginning on the west shore at a point 35° 26.2778' N - 76° 31.5463' W; running easterly to the east shore to a point 35° 26.3215' N - 76° 31.4522' W;
- (iii) Island Creek - north of a line beginning on the west shore at a point 35° 26.1342' N - 76° 32.3883' W; running easterly to the east shore to a point 35° 26.1203' N - 76° 32.2603' W;
- (iv) Dixon Creek - south of a line beginning on the west shore at a point 35° 25.5766' N - 76° 31.8489' W; running easterly to the east shore to a point 35° 25.5865' N - 76° 31.6960' W;
- (v) Pasture Creek - north of a line beginning on the west shore at a point 35° 25.9437' N - 76° 31.8468' W; running southwesterly to the east shore to a point 35° 25.9918' N - 76° 31.7224' W;
- (vi) Cox, Snell, and Seer Creeks - northeast of a line beginning on the west shore at a point 35° 26.0496' N - 76° 31.2087' W; running southeasterly to the east shore to a point 35° 25.8497' N - 76° 30.8828' W;
- (vii) Unnamed tributary on the north side of Fortescue Creek - northeast of a line beginning on the west shore at a point 35° 25.7722' N - 76° 30.7825' W; running southeasterly to the east shore to a point 35° 25.7374' N - 76° 30.7102' W; and
- (viii) Runway Creek - northeast of a line beginning on the west shore at a point 35° 25.6547' N - 76° 30.6637' W; running easterly to the east shore to a point 35° 25.6113' N - 76° 30.5714' W;
- (b) Slade Creek:
- (i) Upper Slade Creek - south of a line beginning on the north shore at a point 35° 27.9168' N - 76° 30.5189' W; running westerly to the south shore to a point 35° 27.9532' N - 76° 30.7140' W;
- (ii) Jarvis Creek - northeast of a line beginning on the west shore at a point 35° 28.2450' N - 76° 30.8921' W; running southeasterly to the east shore to a point 35° 28.2240' N - 76° 30.8200' W;
- (iii) Jones Creek - south of a line beginning on the west shore at a point 35° 28.0077' N - 76° 30.9337' W; running southeasterly to the east shore to a point 35° 27.9430' N - 76° 30.8938' W;
- (iv) Becky Creek - north of a line beginning on the west shore at a point 35° 28.6081' N - 76° 31.6886' W; running northeasterly to the east shore to a point 35° 28.6297' N - 76° 31.6073' W;
- (v) Neal Creek - north of a line beginning on the west shore at a point 35° 28.7797' N - 76° 31.8657' W; running northeasterly to the east shore to a point 35° 28.8084' N - 76° 31.7727' W;
- (vi) Wood Creek - north of a line beginning on the west shore at a point 35° 28.5788' N - 76° 32.4163' W; running northeasterly to the east shore to a point 35° 28.6464' N - 76° 32.3339' W;
- (vii) Spellman Creek - north of a line beginning on the east shore at a point 35° 28.2233' N - 76° 32.6827' W; running southwesterly to the west

- shore to a point 35° 28.2567' N - 76° 32.6533' W;
- (viii) Speer Creek - east of a line beginning on the north shore at a point 35° 27.9680' N - 76° 32.3593' W; running southerly to the south shore to a point 35° 27.9216' N - 76° 32.3862' W;
- (ix) Church Creek and Speer Gut - east of a line beginning on the north shore at a point 35° 27.5910' N - 76° 32.7412' W; running southwesterly to the south shore to a point 35° 27.5282' N - 76° 32.8227' W; and
- (x) Allison and Foreman Creek - south of a line beginning on Parmalee Point at a point 35° 27.2812' N - 76° 33.0634' W; running southwesterly to the west shore to a point 35° 27.2418' N - 76° 33.1451' W;
- (c) Flax Pond - west of a line beginning the north shore at a point 35° 32.0297' N - 76° 33.0389' W; running southwesterly to the south shore to a point 35° 31.9212' N - 76° 33.2061' W; and
- (d) Battalina and Tooleys creeks - northwest of a line beginning on the north shore at a point 35° 32.3914' N - 76° 36.1548' W; running southwesterly to the south shore to a point 35° 32.0627' N - 76° 36.3769' W;
- (4) In the Pamlico River Area:
 - (a) North Creek:
 - (i) North Creek - north of a line beginning on the west shore at a point 35° 25.6764' N - 76° 39.9970' W; running northeasterly to the east shore to a point 35° 25.5870' N - 76° 40.0806' W;
 - (ii) East Fork:
 - (A) Northeast of a line beginning on the west shore at a point 35° 25.8000' N - 76° 39.2679' W; running southeasterly to the east shore to a point 35° 25.6914' N - 76° 39.1374' W; and
 - (B) Unnamed tributary of East Fork -
- northwest of a line beginning on the north shore at a point 35° 25.6950' N - 76° 39.4337' W; running southwesterly to the south shore to a point 35° 25.6445' N - 76° 39.4698' W;
- (iii) Frying Pan Creek - east of a line beginning on the north shore at a point 35° 24.9881' N - 76° 39.5948' W; running southwesterly to Chambers Point to a point 35° 24.8508' N - 76° 39.6811' W; and
- (iv) Little Ease Creek - west of a line beginning on the north shore at a point 35° 25.1463' N - 76° 40.3490' W; running southwesterly to Cousin Point to a point 35° 25.0075' N - 76° 40.4159' W;
- (b) Goose Creek:
 - (i) Hatter Creek - west of a line beginning on the north shore at a point 35° 19.9593' N - 76° 37.5992' W; running southerly to the south shore to a point 35° 19.9000' N - 76° 37.5904' W;
 - (ii) Upper Spring Creek:
 - (A) Headwaters of Upper Spring Creek - east of a line beginning on the north shore at a point 35° 16.3636' N - 76° 36.0568' W; running southeasterly to the south shore to a point 35° 16.1857' N - 76° 36.0111' W; and
 - (B) Unnamed tributary - north of a line beginning on the west shore at a point 35° 16.8386' N - 76° 36.4447' W; running easterly to the east shore to a point 35° 16.8222' N - 76° 36.3811' W;
 - (iii) Eastham Creek - east of a line beginning on the north shore at a point 35° 17.7423'

- N - 76° 36.5164' W; running southeasterly to the south shore to a point 35° 17.5444' N - 76° 36.3963' W;
 - (iv) Mud Gut - northeast of a line beginning on the north shore at a point 35° 17.8754' N - 76° 36.7704' W; running southeasterly to the south shore to a point 35° 17.8166' N - 76° 36.7468' W;
 - (v) Wilkerson Creek - east of a line beginning on the north shore at a point 35° 18.4096' N - 76° 36.7479' W; running southwesterly to the south shore to a point 35° 18.3542' N - 76° 36.7741' W; and
 - (vi) Dixon Creek - east of a line beginning on the north shore at a point 35° 18.8893' N - 76° 36.5973' W; running southerly to the south shore to a point 35° 18.5887' N - 76° 36.7142' W; and
- (c) Oyster Creek - Middle Prong:
 - (i) Oyster Creek:
 - (A) West of a line, beginning on the north shore at a point 35° 19.4780' N - 76° 34.0131' W; running southerly to the south shore to a point 35° 19.3796' N - 76° 34.0021' W; and
 - (B) Duck Creek - south of a line beginning on the west shore at a point 35° 19.0959' N - 76° 33.2998' W; running northeasterly to the east shore to a point 35° 19.1553' N - 76° 33.2027' W;
 - (ii) James Creek - southwest of a line beginning on the north shore at a point 35° 18.6045' N - 76° 32.3233' W; running southeasterly to James Creek Point at a point 35° 18.4805' N - 76° 32.0240' W;
 - (iii) Middle Prong - south of a line beginning on the west shore at a point 35° 17.8888' N - 76° 31.9379' W; running southerly to the east shore to a point 35° 17.7323' N - 76° 31.9052' W; and
- (iv) Clark Creek:
 - (A) Headwaters of Clark Creek (including Mouse Harbor Ditch) - southeast of a line beginning on the west shore at a point 35° 18.1028' N - 76° 31.1661' W; running northeasterly to the east shore to a point 35° 18.1907' N - 76° 31.0610' W; and
 - (B) Boat Creek - east of a line beginning on the north shore at a point 35° 18.5520' N - 76° 31.2927' W; running southerly to the south shore to a point 35° 18.4189' N - 76° 31.2660' W;
- (5) In the Western Pamlico Sound Area:
 - (a) Mouse Harbor:
 - (i) Long Creek - north of a line beginning on the west shore at a point 35° 18.4025' N - 76° 29.8139' W; running northeasterly to the east shore to a point 35° 18.4907' N - 76° 29.5652' W;
 - (ii) Lighthouse Creek - north of a line beginning on the west shore at a point 35° 18.5166' N - 76° 29.2166' W; running southeasterly to the east shore to a point 35° 18.4666' N - 76° 29.1666' W; and
 - (iii) Cedar Creek and Island creeks - south of a line beginning on the west shore at a point 35° 16.9073' N - 76° 29.8667' W; running southeasterly to the east shore to a point 35° 16.6800' N - 76° 29.4500' W;
 - (b) Porpoise Creek - west of a line beginning on the north shore at a point 35° 15.7263' N - 76° 29.4897' W; running southeasterly to the south shore to a point 35° 15.6335' N - 76° 29.3346' W;
 - (c) Middle Bay:
 - (i) Middle Bay - west of a line beginning on the north shore

- at a point 35° 14.6137' N - 76° 30.8086' W; running southeasterly to the south shore to a point 35° 14.0631' N - 76° 30.5176' W; and
- (ii) Little Oyster Creek - north of a line beginning on the west shore at a point 35° 14.4745' N - 76° 30.2111' W; running northeasterly to the east shore to a point 35° 14.5825' N - 76° 29.9144' W; and
- (d) Jones Bay, west of the IWW:
- (i) Little Drum Creek and Little Eve Creek - south of a line beginning on the west shore at a point 35° 12.4380' N - 76° 31.7428' W; running southeasterly to the east shore to a point 35° 12.3499' N - 76° 31.2554' W;
- (ii) Ditch Creek - south of a line beginning on the west shore at a point 35° 13.3609' N - 76° 33.6539' W; running southeasterly to the east shore to a point 35° 13.2646' N - 76° 33.1996' W;
- (iii) Lambert Creek - west of a line beginning on the north shore at a point 35° 13.8980' N - 76° 34.3078' W; running southeasterly to the south shore to a point 35° 13.8354' N - 76° 34.2665' W;
- (iv) Headwaters of Jones Bay, (west of the IWW) - west of a line beginning on the north shore at a point 35° 14.4684' N - 76° 35.4307' W; running southerly to the south shore to a point 35° 14.3947' N - 76° 35.4205' W;
- (v) Bills Creek - north of a line beginning on the west shore at a point 35° 14.4162' N - 76° 34.8566' W; running northerly to the east shore to a point 35° 14.4391' N - 76° 34.7248' W;
- (vi) Doll Creek - north of a line beginning on the west shore at a point 35° 14.3320' N - 76° 34.2935' W; running southeasterly to the east shore to a point 35° 14.2710' N - 76° 34.0406' W; and
- (vii) Drum Creek - north of a line beginning on the west shore
- at a point 35° 14.1764' N - 76° 33.2632' W; running easterly to the east shore to a point 35° 14.1620' N - 76° 33.0614' W;
- (6) In the Bay River Area:
- (a) Mason Creek - southeast of a line beginning on the north shore at a point 35° 08.2531' N - 76° 41.4897' W; running southwesterly to the west shore to a point 35° 08.1720' N - 76° 41.6340' W;
- (b) Moore Creek - southeast of a line beginning on the north shore at a point 35° 08.9671' N - 76° 40.2017' W; running southeasterly to the south shore to a point 35° 08.8629' N - 76° 40.1598' W;
- (c) Small tributaries from Bell Point to Ball Creek:
- (i) Tributary west of Bell Point - south of a line beginning on the west shore at a point 35° 09.9536' N - 76° 39.3977' W; running northeasterly to the east shore to a point 35° 09.9970' N - 76° 39.3420' W;
- (ii) Little Pasture Creek - south of a line beginning on the west shore at a point 35° 09.8944' N - 76° 39.1483' W; running southeasterly to the east shore to a point 35° 09.8417' N - 76° 39.1130' W; and
- (iii) Rice Creek - south of a line beginning on the west shore at a point 35° 09.7616' N - 76° 38.9686' W; running southeasterly to the east shore to a point 35° 09.7378' N - 76° 38.8833' W;
- (d) Ball and Cabin creeks - south of a line beginning on the west shore at a point 35° 09.6479' N - 76° 37.9973' W; running southeasterly to the east shore to a point 35° 09.5589' N - 76° 37.5879' W;
- (e) Bonner Bay:
- (i) Riggs Creek - west of a line beginning on the north shore at a point 35° 09.4050' N - 76° 36.2205' W; running southeasterly to the south shore to a point 35° 09.2298' N - 76° 36.0949' W;
- (ii) Spring Creek - west of a line beginning on the north shore at a point 35° 08.5149'

- N - 76° 36.0799' W; running southerly to the south shore to a point 35° 08.3575' N - 76° 36.0713' W;
- (iii) Bryan and Ives creeks - south of a line beginning on the west shore at a point 35° 08.3632' N - 76° 35.8653' W; running northeasterly to the east shore to a point 35° 08.4109' N - 76° 35.7075' W;
- (iv) Long Creek Gut - north of a line beginning on the west shore at a point 35° 09.1993' N - 76° 34.8517' W; running easterly to the east shore to a point 35° 09.1987' N - 76° 34.5373' W;
- (v) Dipping Vat Creek - east of a line beginning on the north shore at a point 35° 09.2734' N - 76° 34.3363' W; running southerly to the south shore to a point 35° 09.1212' N - 76° 34.3667' W;
- (vi) Long Creek - east of a line beginning on the west shore at a point 35° 08.1404' N - 76° 34.5741' W; running northeasterly to the east shore to a point 35° 08.2078' N - 76° 34.4819' W; and
- (vii) Cow Gallus Creek - west of a line beginning on the north shore at a point 35° 08.5125' N - 76° 34.6417' W; running southerly to the south shore to a point 35° 08.4083' N - 76° 34.6131' W;
- (f) Rock Hole Bay - northeast of a line beginning on the west shore at a point 35° 11.6478' N - 76° 32.5840' W; running southeasterly to the east shore to a point 35° 11.2664' N - 76° 32.2160' W;
- (g) Dump Creek - north of a line beginning on the west shore at a point 35° 11.7105' N - 76° 33.4228' W; running easterly to the east shore to a point 35° 11.7174' N - 76° 33.1807' W;
- (h) Tributaries east of IWW at Gales Creek:
- (i) Raccoon Creek - east of a line beginning on the north shore at a point 35° 12.9169' N - 76° 35.4930' W; running southeasterly to the south shore to a point 35° 12.6515' N - 76° 35.3368' W; and
- (ii) Ditch Creek - east of a line beginning on the north shore at a point 35° 12.4460' N - 76° 35.0707' W; running southeasterly to the south shore to a point 35° 12.3495' N - 76° 34.9917' W;
- (i) Tributaries west of IWW at Gales Creek:
- (i) Jumpover Creek - west of a line beginning on the north shore at a point 35° 13.2830' N - 76° 35.5843' W; running southerly to the south shore to a point 35° 13.2035' N - 76° 35.5844' W;
- (ii) Gales Creek - west of a line beginning on the north shore at a point 35° 12.9653' N - 76° 35.6600' W; running southerly to the south shore to a point 35° 12.8032' N - 76° 35.6366' W; and
- (iii) Whealton and Tar creeks - west of a line beginning on the north shore at a point 35° 12.7334' N - 76° 35.5430' W; running southeasterly to the south shore to a point 35° 12.4413' N - 76° 35.3594' W;
- (j) Chadwick and No Jacket creeks - north of a line beginning on the west shore at a point 35° 11.9511' N - 76° 35.8899' W; running northeasterly to the east shore to a point 35° 12.0599' N - 76° 35.3973' W;
- (k) Bear Creek - west of a line beginning on the north shore at a point 35° 11.7526' N - 76° 36.2721' W; running southwesterly to the south shore to a point 35° 11.5781' N - 76° 36.3366' W;
- (l) Little Bear Creek - north of a line beginning on the west shore at a point 35° 11.1000' N - 76° 36.3060' W; running northeasterly to the east shore to a point 35° 11.2742' N - 76° 35.9822' W;
- (m) Tributaries to Bay River from Petty Point to Sanders Point:
- (i) Oyster Creek - north of a line beginning on the west shore at a point 35° 10.7971' N - 76° 36.7399' W; running northeasterly to the east shore to a point 35° 10.9493' N - 76° 36.4878' W;

- (ii) Potter Creek - north of a line beginning on the west shore at a point 35° 10.7259' N - 76° 37.0764' W; running northeasterly to the east shore to a point 35° 10.7778' N - 76° 36.7933' W;
- (iii) Barnes and Gascon creeks - north of a line beginning on the west shore at a point 35° 10.6396' N - 76° 37.3137' W; running northeasterly to the east shore to a point 35° 10.6929' N - 76° 37.2087' W;
- (iv) Harris Creek - north of a line beginning on the west shore at a point 35° 10.5922' N - 76° 37.5333' W; running northeasterly to the east shore to a point 35° 10.6007' N - 76° 37.5103' W; and
- (v) Mesic Creek - north of a line beginning on the west shore at a point 35° 10.5087' N - 76° 37.9520' W; running easterly to the east shore to a point 35° 10.4830' N - 76° 37.8477' W;
- (n) In Vandemere Creek:
 - (i) Cedar Creek - north of a line beginning on the west shore at a point 35° 11.2495' N - 76° 39.5727' W; running northeasterly to the east shore to a point 35° 11.2657' N - 76° 39.5238' W;
 - (ii) Long Creek - east of a line beginning on the north shore at a point 35° 11.4779' N - 76° 38.7790' W; running southerly to the south shore to a point 35° 11.4220' N - 76° 38.7521' W; and
 - (iii) Little Vandemere Creek - north of a line beginning on the west shore at a point 35° 12.1449' N - 76° 39.2620' W; running southeasterly to the east shore to a point 35° 12.1182' N - 76° 39.1993' W;
- (o) Smith Creek - north of a line beginning on the west shore to a point 35° 10.4058' N - 76° 40.2565' W; running northeasterly to the east shore to a point 35° 10.4703' N - 76° 40.1593' W;
- (p) Harper Creek - west of a line beginning on the north shore at a point 35° 09.2767' N - 76° 41.8489' W;
- (q) Chapel Creek - north of a line beginning on the west shore at a point 35° 08.9333' N - 76° 42.8382' W; running northeasterly to the east shore to a point 35° 08.9934' N - 76° 42.7694' W; and
- (r) Swindell Bay - south of a line beginning on the west shore at a point 35° 08.2580' N - 76° 42.9380' W; running southeasterly to the east shore to a point 35° 08.2083' N - 76° 42.8031' W;
- (7) In the Neuse River Area North Shore:
 - (a) Swan Creek - west of a line beginning on the south shore at a point 35° 06.5470' N - 76° 33.8203' W; running northeasterly to a point 35° 06.4155' N - 76° 33.9479' W; running to the south shore of Swan Island to a point 35° 06.3168' N - 76° 34.0263' W; running northeasterly to a point 35° 06.6705' N - 76° 33.7307' W, running northeasterly to the north shore to a point 35° 06.8183' N - 76° 33.5971' W;
 - (b) Broad Creek:
 - (i) Greens Creek - north of a line beginning on the west shore at a point 35° 06.0730' N - 76° 35.5110' W; running southeasterly to the east shore to a point 35° 05.9774' N - 76° 35.3704' W;
 - (ii) Pittman Creek - north of a line beginning on the west shore at a point 35° 05.8143' N - 76° 36.1475' W; running northeasterly to the east shore to a point 35° 05.8840' N - 76° 36.0144' W;
 - (iii) Burton Creek - west of a line beginning on the north shore at a point 35° 05.7174' N - 76° 36.4797' W; running southwesterly to the south shore to a point 35° 05.6278' N - 76° 36.5067' W;
 - (iv) All tributaries on the north shore of Broad Creek - north of a line beginning on the west shore of the western most tributary at a point 35° 05.5350' N - 76° 37.4058' W; running easterly to a point 35° 05.4752' N - 76° 36.9672' W; running to a point 35°

- 05.4868' N - 76° 36.9163' W; north of a line beginning on the west shore of the eastern most tributary at 35° 05.4415' N - 76° 36.7869' W, running northeasterly to a point 35° 05.4664' N - 76° 36.7540' W;
- (v) Brown Creek - northwest of a line beginning on the west shore at a point 35° 05.5310' N - 76° 37.8132' W; running northeasterly to the east shore to a point 35° 05.5737' N - 76° 37.6908' W;
- (vi) Broad Creek including Gideon Creek - west of a line beginning on the north shore at a point 35° 05.5310' N - 76° 37.8132' W; running southerly to the south shore to a point 35° 05.3212' N - 76° 37.8398' W;
- (vii) Tar Creek - south of a line beginning on the west shore at a point 35° 05.2604' N - 76° 37.5093' W; running easterly to the east shore to a point 35° 05.2728' N - 76° 37.6251' W;
- (viii) Tributary east of Tar Creek - south of a line beginning on the west shore at a point 35° 05.3047' N - 76° 37.0316' W; running easterly to the east shore to a point 35° 05.2674' N - 76° 36.8086' W;
- (ix) Tributary east of Tar Creek - south of a line beginning on the west shore at a point 35° 05.2674' N - 76° 36.8086' W; running easterly to the east shore to a point 35° 05.2445' N - 76° 36.5416' W;
- (x) Parris Creek - south of a line beginning on the west shore at a point 35° 05.2445' N - 76° 36.5416' W; running southeasterly to the east shore to a point 35° 05.2031' N - 76° 36.4573' W;
- (xi) Mill Creek - south of a line beginning on the west shore at a point 35° 05.4439' N - 76° 36.0260' W; running northeasterly to the east shore to a point 35° 05.4721' N - 76° 35.8835' W; and
- (xii) Cedar Creek - south of a line beginning on the west shore at a point 35° 05.3711' N - 76° 35.6556' W; running southeasterly to the east shore to a point 35° 05.2867' N - 76° 35.5348' W;
- (c) Orchard and Old House creeks - north of a line beginning on the west shore at a point 35° 03.3302' N - 76° 38.4478' W; running northeasterly to the east shore to a point 35° 03.6712' N - 76° 37.9040' W;
- (d) Pierce Creek - north of a line beginning on the west shore at a point 35° 02.5030' N - 76° 40.0536' W; running northeasterly to the east shore to a point 35° 02.5264' N - 76° 39.9901' W;
- (e) Whittaker Creek - north of a line beginning on the west shore at a point 35° 01.7186' N - 76° 41.1309' W; running easterly to the east shore to a point 35° 01.6702' N - 76° 40.9036' W;
- (f) Oriental:
- (i) Smith and Morris creeks - north of a line beginning on the west shore at a point 35° 02.1553' N - 76° 42.2931' W; running southeasterly to the east shore to a point 35° 02.1097' N - 76° 42.1806' W;
- (ii) Unnamed tributary west of Dewey Point - north of a line beginning on the west shore at a point 35° 01.3704' N - 76° 42.4906' W; running northeasterly to the east shore to a point 35° 01.3530' N - 76° 42.4323' W;
- (iii) Unnamed tributary on the south shore of Greens Creek - south of a line beginning on the west shore at a point 35° 01.4340' N - 76° 42.7920' W; running southeasterly to the east shore to a point 35° 01.4040' N - 76° 42.7320' W;
- (iv) Unnamed tributary on the south shore of Greens Creek - south of a line beginning on the west shore at a point 35° 01.3680' N - 76° 42.4920' W; running southeasterly to the east shore to a point 35° 01.3560' N - 76° 42.4320' W;
- (v) Greens Creek - west of a line beginning on the north shore at a point 35° 01.5985' N - 76° 42.9959' W; running

- southeasterly to the south shore to a point 35° 01.4759' N - 76° 42.9570' W;
- (vi) Kershaw Creek - north of a line beginning on the west shore at a point 35° 01.5985' N - 76° 42.9959' W; running easterly to the east shore to a point 35° 01.6077' N - 76° 42.8459' W; and
- (vii) Shop Gut Creek - west of a line beginning on the north shore at a point 35° 01.2720' N - 76° 42.1500' W; running southerly to the south shore to a point 35° 01.1700' N - 76° 42.1380' W;
- (g) Dawson Creek:
- (i) Unnamed eastern tributary of Dawson Creek - east of a line beginning on the north shore at a point 35° 00.2064' N - 76° 45.2652' W; running southeasterly to the south shore to a point 35° 00.1790' N - 76° 45.2289' W; and
- (ii) Unnamed tributary of Dawson Creek (at mouth) - east of a line beginning on the north shore at a point 34° 59.6620' N - 76° 45.1156' W; running southerly to the south shore to a point 34° 59.6326' N - 76° 45.1177' W; and
- (h) Beard Creek tributary - southeast of a line beginning on the north shore at a point 35° 00.3176' N - 76° 51.9098' W; running southwesterly to the southwest shore to a point 35° 00.1884' N - 76° 51.9850' W;
- (8) In the Neuse River Area South Shore:
- (a) Clubfoot Creek - south of a line beginning on the west shore at a point 34° 52.4621' N - 76° 45.9256' W; running easterly to the east shore to a point 34° 52.4661' N - 76° 45.7567' W:
- (i) Mitchell Creek - west of a line beginning on the north shore at a point 34° 54.4176' N - 76° 45.7680' W; running southerly to the south shore to a point 34° 54.2610' N - 76° 45.8277' W; and
- (ii) Gulden Creek - east of a line beginning on the north shore at a point 34° 54.1760' N - 76° 45.4438' W; running
- southerly to the south shore to a point 34° 54.0719' N - 76° 45.4888' W;
- (b) Adams Creek:
- (i) Godfrey Creek - south of a line beginning on the west shore at a point 34° 57.3104' N - 76° 41.1292' W; running easterly to the east shore to a point 34° 57.2655' N - 76° 41.1187' W;
- (ii) Delamar Creek - south of a line beginning on the west shore at a point 34° 57.0475' N - 76° 40.7230' W; running southeasterly to the east shore to a point 34° 57.0313' N - 76° 40.7015' W;
- (iii) Kellum Creek - west of a line beginning on the north shore at a point 34° 55.5240' N - 76° 39.8072' W; running southeasterly to the south shore to a point 34° 55.4356' N - 76° 39.8201' W;
- (iv) Kearney Creek and unnamed tributary - west of a line beginning on the north shore of the north creek at a point 34° 55.1847' N - 76° 39.9686' W; running southerly to the south shore to a point 34° 54.9661' N - 76° 40.0091' W;
- (v) Isaac Creek - south of a line beginning on the west shore at a point 34° 54.2457' N - 76° 40.1010' W; running easterly to the east shore to a point 34° 54.2630' N - 76° 40.0088' W;
- (vi) Back Creek - southeast of a line beginning on the northeast shore at a point 34° 54.6598' N - 76° 39.5257' W; running southwesterly to the southwest shore to a point 34° 54.5366' N - 76° 39.7075' W;
- (vii) Cedar Creek - southeast of a line beginning on the west shore at a point 34° 55.7759' N - 76° 38.6070' W; running easterly to the east shore to a point 34° 55.7751' N - 76° 38.4965' W;
- (viii) Jonaquin Creek - northeast of a line beginning on the west shore at a point 34° 56.1192' N - 76° 38.4997' W; running

- easterly to the east shore to a point 34° 56.1172' N - 76° 38.4584' W;
- (ix) Dumpling Creek - east of a line beginning on the northwest shore at a point 34° 56.9187' N - 76° 39.5559' W; running southeasterly to the southeast shore to a point 34° 56.8421' N - 76° 39.5155' W; and
- (x) Sandy Huss Creek - northeast of a line beginning on the west shore at a point 34° 57.2348' N - 76° 39.8457' W; running southeasterly to the east shore to a point 34° 57.1638' N - 76° 39.7169' W;
- (c) Garbacon Creek - south of a line beginning on the west shore at a point 34° 59.0044' N - 76° 38.5758' W; running easterly to the east shore to a point 34° 59.0006' N - 76° 38.4845' W;
- (d) South River:
- (i) Big Creek - southwest of a line beginning on the northwest shore at a point 34° 56.9502' N - 76° 35.3498' W; running southeasterly to the southeast shore to a point 34° 56.8346' N - 76° 35.2091' W; and
- (ii) Horton Bay - north of a line beginning on the west shore at a point 34° 59.1936' N - 76° 34.7657' W; running easterly to the east shore to a point 34° 59.2023' N - 76° 34.4586' W;
- (e) Brown Creek - south of a line beginning on the west shore at a point 34° 59.8887' N - 76° 33.5707' W; running easterly to the east shore to a point 34° 59.9440' N - 76° 33.4180' W; and
- (f) Turnagain Bay:
- (i) Abraham Bay - west of a line beginning on the north shore at a point 35° 00.1780' N - 76° 30.7564' W; running southerly to the south shore to a point 34° 59.8338' N - 76° 30.7128' W;
- (ii) Broad Creek and Persons Creek - southwest of a line beginning at a point on the north shore 34° 59.1974' N - 76° 30.4118' W; running southeasterly to the south shore to a point 34° 58.9738' N - 76° 30.1168' W;
- (iii) Mulberry Point Creek - east of a line beginning on the north shore at a point 35° 00.4736' N - 76° 29.7538' W; running southerly to the south shore to a point 35° 00.3942' N - 76° 29.7082' W;
- (iv) Tump Creek - east of a line beginning on the north shore at a point 35° 00.2035' N - 76° 29.5947' W; running southerly to the south shore to a point 35° 00.0500' N - 76° 29.4897' W;
- (v) Tributary south of Tump Creek - east of a line beginning on the north shore at a point 34° 59.7784' N - 76° 29.3548' W; running southerly to the south shore to a point 34° 59.6830' N - 76° 29.3303' W;
- (vi) Deep Gut - northeast of a line beginning on the north shore at a point 34° 59.6134' N - 76° 29.0376' W; running southeasterly to the south shore to a point 34° 59.4799' N - 76° 28.9362' W; and
- (vii) Big Gut - east of a line beginning on the north shore at a point 34° 59.0816' N - 76° 28.7076' W; running southerly to the south shore to a point 34° 58.9300' N - 76° 28.7383' W;
- (9) West Bay - Long Bay Area:
- (a) Fur Creek and Henrys Creek - southwest of a line beginning on the northwest shore at a point 34° 56.5580' N - 76° 27.7065' W; running southeasterly to the southeast shore to a point 34° 56.3830' N - 76° 27.4563' W; and
- (b) Cadduggen Creek - south of a line beginning on the west shore at a point 34° 56.5767' N - 76° 23.8711' W; running easterly to the east shore to a point 34° 56.2890' N - 76° 23.6626' W;
- (10) Core Sound Area:
- (a) Cedar Island Bay - northwest of a line beginning on the northeast shore at a point 34° 59.7770' N - 76° 17.3837' W; running southwesterly to the

- southwest shore to a point 34° 59.0100' N - 76° 17.9339' W;
- (b) Lewis Creek - north of a line beginning on the west shore at a point 34° 56.8736' N - 76° 16.8740' W; running easterly to the east shore to a point 34° 56.9455' N - 76° 16.8234' W;
- (c) Thorofare Bay:
- (i) Merkle Hammock Creek - southwest of a line beginning on the northwest shore at a point 34° 55.4796' N - 76° 21.4463' W; running southeasterly to the southeast shore to a point 34° 55.3915' N - 76° 21.1682' W; and
- (ii) Barry Bay - west of a line beginning on the north shore at a point 34° 54.6450' N - 76° 20.6127' W; running southerly to the south shore to a point 34° 54.4386' N - 76° 20.4912' W;
- (d) Nelson Bay:
- (i) Willis Creek and Fulchers Creek - west of a line beginning on the north shore of Willis Creek at a point 34° 51.1006' N - 76° 24.5996' W; running southerly to the south shore of Fulchers Creek to a point 34° 50.2861' N - 76° 24.8708' W; and
- (ii) Lewis Creek - west of a line beginning on the north shore at a point 34° 51.9362' N - 76° 24.6322' W; running southerly to the south shore to a point 34° 51.7323' N - 76° 24.6487' W;
- (e) Cedar Creek between Sea Level and Atlantic - west of a line beginning on the north shore at a point 34° 52.0126' N - 76° 22.7046' W; running southerly to the south shore to a point 34° 51.9902' N - 76° 22.7190' W;
- (f) Oyster Creek, northwest of the Highway 70 Bridge; and
- (g) Jarretts Bay Area:
- (i) Smyrna Creek - northwest of the Highway 70 Bridge;
- (ii) Ditch Cove and adjacent tributary - east of a line beginning on the north shore at a point 34° 48.0167' N - 76° 28.4674' W; running southerly to the south shore
- to a point 34° 47.6143' N - 76° 28.6473' W;
- (iii) Broad Creek - northwest of a line beginning on the west shore at a point 34° 47.7820' N - 76° 29.2724' W; running northeasterly to the east shore to a point 34° 47.9766' N - 76° 28.9729' W;
- (iv) Howland Creek - northwest of a line beginning on the northeast shore at a point 34° 47.5129' N - 76° 29.6217' W; running southwesterly to the southwest shore to a point 34° 47.3372' N - 76° 29.8607' W;
- (v) Great Creek - southeast of a line beginning on the northeast shore at a point 34° 47.4279' N - 76° 28.9565' W; running southwesterly to the southwest shore to a point 34° 47.1515' N - 76° 29.2077' W;
- (vi) Williston Creek - northwest of the Highway 70 Bridge;
- (vii) Wade Creek - west of a line beginning on the north shore at a point ~~34° 46.3022' N - 76° 30.5443' W~~; 34° 46.3125' N - 76° 30.2676' W; running southerly to the south shore to a point ~~34° 46.2250' N - 76° 30.3864' W~~; 34° 46.1915' N - 76° 30.3593' W;
- (viii) Jump Run - north of a line beginning on the west shore at a point 34° 45.5385' N - 76° 30.3974' W; running easterly to the east shore to a point 34° 45.5468' N - 76° 30.3485' W;
- (ix) Middens Creek - west of a line beginning on the north shore at a point 34° 45.5046' N - 76° 30.9710' W; running southerly to the south shore to a point 34° 45.4093' N - 76° 30.9584' W;
- (x) Tusk Creek - northwest of a line beginning on the northwest shore at a point 34° 44.8049' N - 76° 30.6248' W; running southerly to the south shore to a point 34° 44.6074' N - 76° 30.7553' W; and

- (xi) Creek west of Bells Island - west of a line beginning on the north shore at a point 34° 43.9531' N - 76° 30.4144' W; running southerly to the south shore to a point 34° 43.7825' N - 76° 30.3543' W;
- (11) Straits, North River, Newport River Area:
 - (a) Straits:
 - (i) Sleepy Creek - north of a line beginning on the west shore at a point 34° 43.3925' N - 76° 31.4912' W; running easterly to the east shore to a point 34° 43.3651' N - 76° 31.3250' W;
 - (ii) Dicks Creek - north of a line beginning on the west shore at a point 34° 43.3858' N - 76° 32.9125' W; running southeasterly to the east shore to a point 34° 43.3912' N - 76° 32.8605' W; and
 - (iii) Whitehurst Creek - north of a line beginning on the west shore at a point 34° 43.5118' N - 76° 33.3392' W; running northeasterly to the east shore to a point 34° 43.5561' N - 76° 33.1869' W;
 - (b) North River, north of Highway 70 Bridge:
 - (i) Ward Creek - north of Highway 70 Bridge:
 - (A) North Leopard Creek - southeast of a line beginning on the southwest shore at a point 34° 45.9573' N - 76° 34.4208' W; running northeasterly to the northeast shore to a point 34° 46.0511' N - 76° 34.3170' W; and
 - (B) South Leopard Creek - southeast of a line beginning on the southwest shore at a point 34° 45.4930' N - 76° 34.7622' W; running northeasterly to the northeast shore to a point 34° 45.5720' N - 76° 34.6236' W; and
 - (ii) Turner Creek (Gibbs Creek) - west of a line beginning on the north shore at a point 34° 43.4693' N - 76° 37.6372' W; running southerly to the south shore to a point 34° 43.4054' N - 76° 37.6585' W; and
 - (c) Newport River - west of a line beginning on the north shore at a point 34° 46.5635' N - 76° 44.3998' W; running southerly to Lawton Point to a point 34° 45.6840' N - 76° 44.0895' W;
 - (i) Russel Creek - northeast of a line beginning on the north shore at a point 34° 45.5840' N - 76° 39.8020' W; running southeasterly to the south shore to a point 34° 45.5819' N - 76° 39.7895' W;
 - (ii) Ware Creek - northeast of a line beginning on the north shore at a point 34° 46.4576' N - 76° 40.5020' W; running southeasterly to the south shore to a point 34° 46.4125' N - 76° 40.4460' W;
 - (iii) Bell Creek - east of a line beginning on the north shore at a point 34° 47.2805' N - 76° 40.9082' W; running southerly to the south shore to a point 34° 47.0581' N - 76° 40.8854' W;
 - (iv) Eastman Creek - east of a line beginning on the north shore at a point 34° 47.8640' N - 76° 41.0671' W; running southerly to the south shore to a point 34° 47.8027' N - 76° 41.0605' W;
 - (v) Oyster Creek - north of a line beginning on the west shore at a point 34° 46.6610' N - 76° 42.5011' W; running easterly to the east shore to a point 34° 46.7161' N - 76° 42.3481' W;
 - (vi) Harlow Creek - north of a line beginning on the west shore at a point 34° 46.7138' N - 76° 43.4838' W; running northeasterly to the east shore to a point 34° 46.8490' N - 76° 43.3296' W;

- (vii) Calico Creek - west of a line beginning on the north shore at a point 34° 43.7318' N - 76° 43.1268' W; running southerly to the south shore to a point 34° 43.6066' N - 76° 43.2040' W; and
 - (viii) Crab Point Bay - northwest of a line beginning on the northeast shore at a point 34° 44.0615' N - 76° 42.9393' W; running southwesterly to the southwest shore to a point 34° 43.9328' N - 76° 43.0721' W;
- (12) Bogue Sound - Bogue Inlet Area:
- (a) Gales Creek - north of the Highway 24 Bridge;
 - (b) Broad Creek - north of the Highway 24 Bridge;
 - (c) Sanders Creek - north of a line beginning at a point 34° 42.4694' N - 76° 58.3754' W on the west shore; running easterly to a point 34° 42.4903' N - 76° 58.1434' W on the east shore;
 - (d) Goose Creek - north of a line beginning on the west shore at a point 34° 41.8183' N - 77° 00.7208' W; running easterly to the east shore to a point 34° 41.8600' N - 77° 00.5108' W;
 - (e) Archer Creek - west of a line beginning on the north shore at a point 34° 40.4721' N - 77° 00.7577' W; running southerly to the south shore to a point 34° 40.3521' N - 77° 00.8008' W;
 - (f) White Oak River - northwest of a line beginning on the northeast shore at a point 34° 45.6730' N - 77° 07.5960' W; running southwesterly to the southwest shore to a point 34° 45.2890' N - 77° 07.7500' W;
 - (i) Pettiford Creek - east of a line beginning on the north shore at a point 34° 42.8670' N - 77° 05.3990' W; running southerly to the south shore to a point 34° 42.6310' N - 77° 05.3180' W; and
 - (ii) Holland Mill Creek - west of a line beginning on the north shore at a point 34° 43.8390' N - 77° 08.0090' W; running southeasterly to the south shore to a point 34° 43.4800' N - 77° 07.7650' W;
- (g) Hawkins Creek - west of a line beginning on the north shore at a point 34° 41.1210' N - 77° 07.5720' W; running southerly to the south shore to a point 34° 41.0460' N - 77° 07.5930' W;
 - (h) Queen's Creek - north of state road number 1509 bridge:
 - (i) Dick's Creek - west of a line beginning on the north shore at a point 34° 39.9790' N - 77° 09.3470' W; running southeasterly to the south shore to a point 34° 39.9350' N - 77° 09.3280' W;
 - (ii) Parrot Swamp - west of a line beginning on the north shore at a point 34° 40.6170' N - 77° 09.7820' W; running southeasterly to the south shore to a point 34° 40.3660' N - 77° 09.5980' W; and
 - (iii) Hall's Creek - east of a line beginning on the north shore at a point 34° 41.0740' N - 77° 09.8640' W; running easterly to the south shore to a point 34° 41.0300' N - 77° 09.6740' W; and
 - (i) Bear Creek - west of a line beginning at Willis Landing at a point 34° 38.7090' N - 77° 12.6860' W; running southeasterly to the south shore to a point 34° 38.4740' N - 77° 12.3810' W;
- (13) New River Area:
- (a) Salliers Bay area - all waters north and northwest of the IWW beginning at a point on the shoreline 34° 37.0788' N - 77° 12.5350' W; running easterly to a point near Beacon "58" at a point 34° 37.9670' N - 77° 12.3060' W; running along the IWW near Cedar Point to a point 34° 33.1860' N - 77° 20.4370' W; running northerly to a point on the shoreline 34° 33.1063' N - 77° 20.4679' W; following the shoreline to the point of origin; including Howard Bay, Mile Hammock Bay, Salliers Bay, and Freeman Creek;
 - (b) New River Inlet area (including Hellgate Creek and Ward's Channel) - all waters south of the IWW from a point on the shoreline 34° 33.0486' N - 77° 18.6295' W; running northwesterly to a point near Beacon "65" 34° 33.0550' N - 77° 18.6380' W; running along the IWW to a point near Beacon "15" 34° 31.0630' N - 77°

- 22.2630' W; running southerly to a point on the shoreline 34° 30.9212' N - 77° 22.2257' W; following the shoreline across New River Inlet at the COLREGS demarcation line back to the point of origin excluding the marked New River Inlet Channel;
- (c) New River:
- (i) Trap's Bay - northeast of a line beginning on the west shore at a point 34° 34.0910' N - 77° 21.0010' W; running southeasterly to the east shore to a point 34° 33.8260' N - 77° 20.4060' W;
- (ii) Courthouse Bay:
- (A) Tributary of Courthouse Bay - southeast of a line beginning on Harvey's Point at a point 34° 35.0050' N - 77° 22.3910' W; running northeasterly to the east shore to a point 34° 35.0830' N - 77° 22.1890' W;
- (B) Tributary of Courthouse Bay - northwest of a line beginning on the west shore at a point 34° 35.0970' N - 77° 22.6010' W; running northeasterly to the east shore to a point 34° 35.1630' N - 77° 22.5030' W; and
- (C) Rufus Creek - east of a line beginning at a point on the north shore 34° 34.4630' N - 77° 21.6410' W; running southerly to a point near Wilken's Bluff 34° 34.3140' N - 77° 21.6620' W;
- (iii) Wheeler Creek - south of a line beginning on the west shore at a point 34° 34.0570' N - 77° 23.3640' W; running easterly to a point near Poverty Point 34° 34.1060' N - 77° 23.2440' W;
- (iv) Fannie Creek - south of a line beginning on the west shore at a point 34° 34.1470' N - 77° 23.6390' W; running easterly to the east shore to a point 34° 34.1300' N - 77° 23.5600' W;
- (v) Snead's Creek - northwest of a line beginning on the west shore at a point 34° 35.2850' N - 77° 23.5500' W; running northerly to the east shore to a point 34° 35.3440' N - 77° 23.4860' W;
- (vi) Everette Creek - south of a line beginning on the west shore at a point 34° 34.2570' N - 77° 24.8480' W; running easterly to the east shore to a point 34° 34.2380' N - 77° 24.6970' W;
- (vii) Stone's Creek - southwest of a line beginning on the northwest shore at a point 34° 36.6170' N - 77° 26.8670' W; running southeasterly to the southeast shore to a point 34° 36.5670' N - 77° 26.8500' W;
- (viii) Muddy Creek - north of a line beginning on the west shore 34° 36.8670' N - 77° 26.6340' W; running easterly to the east shore to a point 34° 36.8670' N - 77° 26.6170' W;
- (ix) Mill Creek - north of a line beginning on the west shore at a point 34° 37.2350' N - 77° 25.7000' W; running easterly to the east shore to a point 34° 37.2360' N - 77° 25.6890' W;
- (x) Whitehurst Creek - west of a line beginning on the north shore at a point 34° 38.0780' N - 77° 22.6110' W; running easterly to the south shore to a point 34° 38.0720' N - 77° 22.6000' W;
- (xi) Town Creek - west of a line beginning on the north shore at a point 34° 39.6060' N - 77° 23.0690' W; running southerly to the south shore to a point 34° 39.5950' N - 77° 23.0830' W;
- (xii) Lewis Creek - southwest of a line beginning on the northwest shore at a point 34° 40.9330' N - 77° 24.5290' W;

- (xiii) running southeasterly to the southeast shore to a point 34° 40.9190' N - 77° 24.5040' W; Northeast Creek - east of a line beginning at the mouth of Scale's Creek at a point 34° 43.7350' N - 77° 24.1190' W; running southeasterly to the south shore to a point 34° 43.3950' N - 77° 23.5450' W;
- (xiv) Southwest Creek - southwest of a line beginning on the north shore at a point 34° 41.8500' N - 77° 25.6460' W; running southeasterly to the south shore to a point 34° 41.5540' N - 77° 25.2250' W; and
- (xv) Upper New River - north of a line beginning on the west shore at a point 34° 42.9770' N - 77° 25.9070' W; running easterly through a point near Beacon "53" to a point 34° 43.2600' N - 77° 25.3800' W; to the east shore to a point 34° 43.4260' N - 77° 25.0700' W; and
- (d) Chadwick Bay - all waters bounded by a line beginning on Roses Point at a point 34° 32.2240' N - 77° 22.2880' W; running easterly to a point near Marker "6" at 34° 32.4180' N - 77° 21.6080' W; then following the IWW to a point near Marker "14" at 34° 31.3220' N - 77° 22.1520' W; following the shoreline of Chadwick Bay back to the point of origin;
 - (i) Fullard Creek (including Charles Creek) - northwest of a line beginning on the north shore at a point 34° 32.2210' N - 77° 22.8080' W; running southeasterly to the south shore to a point 34° 32.0340' N - 77° 22.7160' W; and
 - (ii) Bump's Creek - north of a line beginning on the west shore at a point 34° 32.3430' N - 77° 22.4570' W; running northeasterly to the east shore to a point 34° 32.4400' N - 77° 22.3830' W;
- (14) Stump Sound Area - Stump Sound - all waters north of the IWW from a point on the shoreline 34° 31.1228' N - 77° 22.3181' W; running southerly to a point across the IWW from Beacon"15" 34° 31.1040' N - 77° 22.2960' W; running along the IWW to a point near Marker "78" 34° 25.4050' N - 77° 34.2120' W; running northerly to a point on the shoreline 34° 24.5183' N - 77° 34.9833' W; running along the shoreline to the point of origin; except 100 feet north of the IWW from a point across from Beacon "49" 34° 28.1330' N - 77° 30.5170' W to a point near Marker "78" 34° 25.4050' N - 77° 34.2120' W. All waters south of IWW from a point on the shoreline 34° 31.0550' N - 77° 22.2574' W; running northerly to a point near Beacon "15" at 34° 31.0630' N - 77° 22.2630' W; running along the IWW to a point across the IWW from Marker "78" 34° 25.3110' N - 77° 34.1710' W; running southeasterly to a point on the shoreline 34° 23.9817' N - 77° 35.0367' W; running along the shoreline to the point of origin; except 100 feet on the south side of the IWW from a point near Beacon "49" 34° 28.0820' N - 77° 30.4600' W at Morris Landing to a point across the IWW from Marker "78" 34° 25.3110' N - 77° 34.1710' W and except the dredged canals at Old Settler's Beach and the dredged channel from the IWW north of Marker "57" to the Old Settler's Beach Canals; Topsail Sound Area:
 - (a) Virginia Creek - all waters northwest of a line beginning on the southwest shore near the mouth at a point 34° 24.8030' N - 77° 35.5960' W; running northeasterly to a point 34° 25.0333' N - 77° 35.3167' W; running easterly to intersect the nursery area line near Becky's Creek at a point 34° 25.4050' N - 77° 34.2120' W, with the exception of the natural channel as marked by the North Carolina Division of Marine Fisheries;
 - (b) Old Topsail Creek - all waters northwest of a line beginning on the northeast shore at a point 34° 21.7740' N - 77° 40.3870' W; running southwesterly to the southwest shore to a point 34° 21.4930' N - 77° 40.6900' W, with the exception of the dredged channel as marked by the North Carolina Division of Marine Fisheries;
 - (c) Topsail Sound - all waters enclosed within a line starting near Beacon "BC" at a point 34° 24.6110' N - 77° 35.7050' W; then bounded on the northeast and southeast by Bank's Channel, on the southwest by Marker "98" channel and on the northeast by the IWW; then back to the point of origin; and
 - (d) Mallard Bay Area - all waters northwest of the IWW beginning at a point on the shoreline 34° 24.0278' N

- 77° 36.8498' W; running southerly to a point 34° 24.0167' N - 77° 36.7333' W near Beacon "93"; running southwesterly to a point 34° 23.8167' N - 77° 36.9667' W; running southwesterly along the marsh line to a point on the shoreline 34° 22.6168' N - 77° 38.8580' W near Beacon "96"; running along the shoreline to the point of origin;
- (16) Middle Sound Area:
- (a) Howard Channel and Long Point Channel area - all waters southeast of the IWW beginning at a point on the shoreline 34° 20.4514' N - 77° 40.0183' W; running along the shorelines of Topsail Inlet Channel and Marker # 98 Channel to a point near Beacon "98" 34° 21.5670' N - 77° 40.4580' W; running along the IWW to a point on the north side of the Figure 8 Island Marina Channel to a point 34° 16.5120' N - 77° 45.4870' W; following the shoreline of Figure 8 Island Marina Channel to a point 34° 16.2628' N - 77° 44.7855' W; following the shoreline across Rich Inlet at the COLREGS demarcation line to the point of origin. [with the exception of Howard Channel from the IWW to New Topsail Inlet, Green Channel from Marker "105" to Rich's Inlet, Butler's Creek (Utley's Channel) from the IWW to Nixon's Channel, and Nixon's Channel from IWW to Rich's Inlet;]
- (b) Futch Creek - northwest of a line beginning on the north shore at Baldeagle Point at a point 34° 17.9900' N - 77° 44.4930' W; running southerly to Porter's Neck to a point 34° 18.1170' N - 77° 44.3760' W;
- (c) Page's Creek - northwest of a line beginning on the north shore at a point 34° 16.7420' N - 77° 46.6940' W; running southwesterly to the south shore to a point 34° 16.6910' N - 77° 46.8510' W; and
- (d) All waters bounded on the north by the Figure Eight Island Causeway, on the east by Mason's Channel, on the south by Mason's Inlet Channel and on the west by the Intracoastal Waterway, with the exception of Mason's Channel;
- (17) Greenville Sound Area:
- (a) Shell Island area - all waters bounded on the north by Mason's Inlet Channel, on the west by the IWW, on the south by Old Moores Inlet Channel and on the east by Wrightsville Beach;
- (b) Howe Creek (Moore's Creek) - northwest of a line beginning on the north shore at a point 34° 14.9060' N - 77° 47.2180' W; running southwesterly to the south shore to a point 34° 14.8470' N - 77° 47.3810' W;
- (c) Bradley Creek - all waters west of a line beginning on the north side of the Highway 17, 74 and 76 Bridge at a point 34° 12.9700' N - 77° 50.0260' W; running southerly to the south side of the bridge at a point 34° 12.8620' N - 77° 50.0550' W; and
- (d) Wrightsville Beach area - all waters in an area enclosed by a line beginning across the IWW from the mouth of Bradley Creek at a point 34° 12.3530' N - 77° 49.1250' W; running easterly to a point (near the Borrow Pit) 34° 12.3820' N - 77° 48.6610' W; then bounded by Bank's Channel on the east, Shinn Creek on the south and the IWW on the west, back to point of origin;
- (18) Masonboro Sound Area:
- (a) Masonboro - Myrtle Grove Sound area (west side) - all waters west and northwest of the IWW beginning at a point on the shoreline 34° 12.7423' N - 77° 49.8391' W; running southeasterly to a point at the mouth of Bradley Creek at a point 34° 12.4130' N - 77° 49.2110' W; running along the west side of the IWW to a point opposite Beacon "161" at 34° 03.5590' N - 77° 53.4550' W; running westerly to a point on the shoreline 34° 03.5715' N - 77° 53.4979' W; running along the shoreline back to the point of origin; and
- (b) Masonboro - Myrtle Grove Sound area (east side) - all waters south and southeast of a line beginning on the north end of Masonboro Island at a point 34° 10.9130' N - 77° 48.9550' W; running northwesterly to a point near the intersection of Shinn Creek and the IWW 34° 11.3840' N - 77° 49.5240' W; running along the east side of the IWW to a point near Marker "161" 34° 03.5270' N - 77° 53.3550' W; running southerly to a point on the shoreline 34° 03.3917' N - 77° 53.0423' W; running along the shoreline across Carolina Beach Inlet at the COLREGS demarcation line

- 33° 52.6850' N - 77° 58.0780' W; running northeasterly to the east shore to a point 33° 52.7690' N - 77° 58.0110' W;
- (19) Cape Fear River Area:
- (a) Cape Fear River - all waters north of a line beginning on the west shore at a point 34° 10.4410' N - 77° 57.7400' W; running easterly through Beacon "59" to the east shore to a point 34° 10.4050' N - 77° 57.1310' W; with the exception of the maintained channel, and all waters north of a line beginning on the west shore at a point 34° 04.6040' N - 77° 56.4780' W; running easterly through Beacon "41" to the east shore to a point 34° 04.7920' N - 77° 55.4740' W; with the exception of 300 yards east and west of the main shipping channel up to Beacon "59" (mouth of Brunswick River);
- (b) The Basin (Ft. Fisher area) - east of a line beginning on the north shore at a point 33° 57.2950' N - 77° 56.1450' W; running southeasterly to the south shore to a point 33° 57.1120' N - 77° 56.2060' W;
- (c) Walden Creek - all waters northwest of a line beginning on the north side of county road No. 1528 bridge at a point 33° 58.2950' N - 77° 59.0280' W; running southerly to the south side of the bridge at a point 33° 58.2250' N - 77° 59.0440' W;
- (d) Baldhead Island Creeks:
- (i) Baldhead Creek - southeast of a line beginning on the north shore at a point 33° 51.7680' N - 77° 59.1700' W; running westerly to the south shore to a point 33° 51.7590' N - 77° 59.1850' W;
- (ii) Cape Creek - southeast of a line beginning on the north shore at a point 33° 51.9740' N - 77° 58.3090' W; running southwesterly to the south shore to a point 33° 51.9480' N - 77° 58.3480' W;
- (iii) Bluff Island Creek (East Beach Creek) - south of a line beginning on the west shore at a point 33° 52.6740' N - 77° 58.1530' W; running easterly to the east shore to a point 33° 52.6850' N - 77° 58.0780' W; and
- (iv) Deep Creek - south of a line on the west shore at a point
- (e) Dutchman Creek - north of a line beginning on the west shore at a point 33° 55.1560' N - 78° 02.7260' W; running southeasterly to the east shore to a point 33° 55.1130' N - 78° 02.5990' W;
- (f) Denis Creek - west of a line beginning on the north shore at a point 33° 55.0410' N - 78° 03.5180' W; running southerly to the south shore to a point 33° 55.0120' N - 78° 03.5110' W;
- (g) Piney Point Creek - west of a line beginning on the north shore at a point 33° 54.6310' N - 78° 03.5020' W; running southerly to the south shore to a point 33° 54.6040' N - 78° 03.5010' W;
- (h) Molasses, Coward and Smokehouse creeks - all waters bounded by the IWW and the Elizabeth River on the north and east, the Oak Island Coast Guard canal on the east, Oak Island on the south and the CP and L Discharge canal on the west; and
- (i) Oak Island area - all waters north of the IWW from a point on the shoreline 33° 55.2827' N - 78° 03.7681' W; running southerly to a point across the IWW from Marker # 9 33° 55.2610' N - 78° 03.7630' W; running along the IWW to a point near Beacon "18" 33° 55.7410' N - 78° 10.2760' W; running northerly to a point on the shoreline 33° 55.7718' N - 78° 10.2744' W; running along the shoreline back to the point of origin; all waters south of the IWW from a point near Marker "9" 33° 55.2060' N - 78° 03.7580' W; running along the IWW to a point across the IWW from Beacon "18" 33° 55.7199' N - 78° 10.2764' W; running southerly to a point on the shoreline 33° 55.6898' N - 78° 10.2775' W; running along the shoreline back to the point of origin;
- (20) Lockwoods Folly Inlet Area:
- (a) Davis Creek and Davis Canal - east of a line beginning on the north shore at a point 33° 55.2280' N - 78° 10.8610' W; running southerly to the south shore to a point 33° 55.1970' N - 78° 10.8390' W;
- (b) Lockwoods Folly River - north of a line beginning on the west shore at a point 33° 56.3880' N - 78° 13.2360'

- W; running easterly to the east shore to a point 33° 56.6560' N - 78° 12.8350' W; and
- (c) Spring Creek (Galloway Flats area) - all waters northwest of a line beginning on the north shore at a point 33° 55.7350' N - 78° 13.7090' W; running southwesterly to the south shore to a point 33° 55.5590' N - 78° 13.7960' W;
- (21) Shallotte Inlet Area:
- (a) Shallotte River - north of a line beginning on Bill Holden's Landing at a point 33° 55.8840' N - 78° 22.0710' W; running northeasterly to Gibbins Point to a point 33° 56.3190' N - 78° 21.8740' W;
- (b) Shallotte River (Ocean Flats) - excluding Gibbs Creek, the area enclosed by a line beginning at Long Point 33° 54.6210' N - 78° 21.7960' W; then bounded on the south by the IWW, the west by Shallotte River, the north by Gibb's Creek and the east by the shoreline of the Shallotte River back to the point of origin;
- (c) Shallotte Creek (Little Shallotte River) - east of a line beginning on Shell Landing at a point 33° 55.7390' N - 78° 21.6410' W; running southerly to Boone's Neck Point to a point 33° 55.5990' N - 78° 21.5480' W;
- (d) Saucepan Creek - northwest of a line beginning on the west shore at a point 33° 54.7007' N - 78° 23.4183' W; running northerly to the east shore (mouth of Old Mill Creek) to a point 33° 54.9140' N - 78° 23.4370' W; and
- (e) Old Channel area - all waters south of the IWW from a point near Beacon "83" 33° 54.2890' N - 78° 23.1930' W; running along the IWW to a point near Ocean Isle Beach Bridge 33° 53.7270' N - 78° 26.3760' W; running southerly to a point on the shoreline 33° 53.7082' N - 78° 26.3732' W; running southerly along the shoreline to a point on the shoreline 33° 53.3827' N - 78° 26.2118' W; running along the shoreline to the point of origin; except the dredged finger canals at Ocean Isle Beach located on the south side of the IWW between the Ocean Isle Beach Bridge and IWW Marker "89"; and
- (22) Little River Inlet Area:
- (a) Gause Landing area - all waters north of the IWW from a point on the shoreline 33° 53.9053' N - 78° 25.6064' W; running southerly to a point near Beacon "90" 33° 53.8790' N - 78° 25.5950' W; then following the IWW to a point at the intersection of the IWW and the South Carolina line; 33° 52.0003' N - 78° 33.5633' W; running northerly along the South Carolina line to a point on the shoreline 33° 52.0290' N - 78° 33.5893' W; running along the shoreline to the point of origin;
- (b) Eastern Channel Area - all waters bounded on the east and south by Eastern Channel, on the west by Jink's Creek and on the north by the IWW;
- (c) The Big Narrows Area:
- (i) Big Teague Creek - west of a line beginning on the north shore at a point 33° 52.8260' N - 78° 30.0110' W; running southerly to the south shore to a point 33° 52.8040' N - 78° 29.9940' W;
- (ii) Little Teague Creek - west of a line beginning on the north shore at a point 33° 52.9280' N - 78° 30.1500' W; running southeasterly to the south shore to a point 33° 52.9130' N - 78° 30.1220' W; and
- (iii) Big Norge Creek - south of a line beginning on the west shore at a point 33° 52.8550' N - 78° 30.6190' W; running easterly to the east shore to a point 33° 52.8620' N - 78° 30.5900' W;
- (d) Mad Inlet area - all waters south of the IWW from a point on the shoreline 33° 52.3121' N - 78° 30.4990' W; running northerly to a point near the Sunset Beach Bridge 33° 52.8450' N - 78° 30.6510' W; then following the IWW to a point at the intersection of the IWW and the South Carolina line 33° 51.9888' N - 78° 33.5458' W; running southeasterly along the South Carolina line to a point on the shoreline; running along the shoreline across Mad Inlet at the COLREGS demarcation line to the point of origin; with the exception of Bonaparte Creek; and
- (e) Calabash River - all waters east of a line beginning at a point on the north side of state road No. 1164 bridge at a point 33° 53.3850' N - 78° 32.9710' W; running southerly to the south side of the bridge at a point 33° 53.3580' N - 78° 32.9750' W.

Authority G.S. 113-134; 113-182; 143B-289.52.

TITLE 17 – DEPARTMENT OF REVENUE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Revenue intends to adopt the rules cited as 17 NCAC 05G .0101, .0102, .0201, .0301 - .0303, .0401, .0402, .0501 - .0505, .0601, .0701, .0801 - .0803, .0901 - .0905, .1001 - .1006, .1101 - .1105, .1201, .1301 - .1303.

Link to agency website pursuant to G.S. 150B-19.1(c): www.dor.state.nc.us

Proposed Effective Date: See S.L. 2016-94, s. 38.4(b)

Public Hearing:

Date: October 31, 2016

Time: 10:00 a.m.

Location: NC Dept of Revenue, Room 135, 501 N Wilmington St, Raleigh, NC 27604

Reason for Proposed Action: The General Assembly enacted SL 2016-94 (H.B. 1030) which requires the Department of Revenue to adopt rules interpreting the substantive provision of G.S. 105-130.4(1) concerning the application of market-based sourcing of receipts for purposes of the sales factor.

Comments may be submitted to: Lennie Collins, P.O. Box 871, Raleigh, NC 27602, phone 919-814-1163, fax 919-733-1821, email Lennie.collins@ncdor.gov

Comment period ends: January 3, 2017

Fiscal impact (check all that apply).

- State funds affected
Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
Local funds affected
Substantial economic impact (>=\$1,000,000)
Approved by OSBM
No fiscal note required by S.L. 2016-94, s. 38.4(a)

CHAPTER 05 - CORPORATE FRANCHISE, INCOME, AND INSURANCE TAXES

SUBCHAPTER 05G – MARKET-BASED SOURCING FOR APPORTIONMENT OF INCOME

SECTION .0100 – GENERAL RULES

17 NCAC 05G .0101 SCOPE

The rules in this Subchapter do not apply to receipts from the sale of tangible personal property. Other receipts are in North Carolina when the taxpayer's market for the sales is in North Carolina. The rules of this Subchapter establish uniform rules for:

- (1) determining to what extent the market for a sale is in North Carolina;

- (2) reasonably approximating the state or states of assignment where the state or states cannot be determined;
(3) excluding receipts from the sale of intangible property from the numerator and denominator of the sales factor pursuant to G.S. 105-130.4(1); and
(4) excluding receipts from the denominator of the sales factor where the state or states of assignment cannot be determined or reasonably approximated.

Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .0102 DEFINITIONS

As used in this Subchapter, the following definitions shall apply:

- (1) "Billing address" means the location stated in the books and records of the taxpayer as the primary mailing address relating to a customer's account as of the time of the transaction as kept in good faith in the regular course of business and not for tax avoidance purposes.
(2) "Business customer" means a customer that is a business operating in any form, including a sole proprietorship. Sales to a non-profit organization; a trust; the U.S. Government; a foreign, state or local government; or to an agency or instrumentality of that government are treated as sales to a business customer.
(3) "Code" means as defined in G.S. 105-228.90.
(4) "Department" means the North Carolina Department of Revenue.
(5) "Good faith" means a state of mind consisting in honesty in belief or purpose, faithfulness to one's duty or obligation, observance of reasonable commercial standards of fair dealing in a given trade or business, or absence of intent to defraud or to seek unconscionable advantage.
(6) "Individual customer" means a customer that is not a business customer.
(7) "Intangible property" means property that is not physical or whose representation by physical means is merely incidental and includes:
(a) copyrights;
(b) patents;
(c) trademarks;
(d) trade names;
(e) brand names;
(f) franchises;
(g) licenses;
(h) trade secrets;
(i) trade dress;
(j) information;
(k) know-how;
(l) methods;
(m) programs;
(n) procedures;
(o) systems;
(p) formulae;

- (q) processes;
 - (r) technical data;
 - (s) designs;
 - (t) literary;
 - (u) musical, or artistic compositions;
 - (v) information;
 - (w) ideas;
 - (x) contract rights including broadcast rights;
 - (y) agreements not to compete;
 - (z) goodwill and going concern value;
 - (aa) securities; and,
 - (bb) except as otherwise provided in these Rules, computer software.
- (8) "Place of order" means the physical location where a customer places an order for a sale from a taxpayer, resulting in a contract with the taxpayer.
- (9) "Population" means the most recent population data maintained by the U.S. Census Bureau for the year in question as of the close of the taxable period. Census data is available free of charge at census.gov/topics/population.html.
- (10) "Reasonable" means agreeable to reason; just; proper. Ordinary or usual.
- (11) "Related entity" means as defined in G.S. 105-130.7A.
- (12) "Secretary" means the Secretary of Revenue.
- (13) "State where a contract of sale is principally managed by the customer" means the primary location where an employee or other representative of a customer serves as the primary contact person for the taxpayer with respect to the day-to-day execution and performance of a contract entered into by the taxpayer with the customer.

SECTION .0200 – GENERAL PRINCIPLES OF APPLICATION

17 NCAC 05G .0201 ASSIGNMENT OF RECEIPTS FROM SALES OF OTHER THAN TANGIBLE PERSONAL PROPERTY

A taxpayer's assignment of receipts from sales of other than tangible personal property shall comply with the following:

- (1) A taxpayer shall apply the rules set forth in this Subchapter based on objective criteria and shall consider all sources of information reasonably available to the taxpayer at the time of its tax filing including the taxpayer's books and records kept in the regular course of business. A taxpayer shall determine its method of assigning receipts in good faith, and apply it consistently with respect to similar transactions. A taxpayer shall retain contemporaneous records that explain the determination and application of its method of assigning its receipts, including its underlying

assumptions, and shall provide those records to the Secretary upon request.

- (2) This Subchapter provides assignment rules that apply sequentially in a hierarchy. For each sale to which a hierarchical rule applies, a taxpayer shall make a reasonable effort to apply the primary rule applicable to the sale before seeking to apply the next rule in the hierarchy and shall continue to do so with each succeeding rule in the hierarchy.
- (3) A taxpayer's method of assigning its receipts shall reflect an attempt to obtain the most accurate assignment of receipts consistent with the standards set forth in this Subchapter, rather than an attempt to lower the taxpayer's tax liability.

Authority G.S. 105-130.4; S.L. 2016-94.

SECTION .0300 – RULES OF REASONABLE APPROXIMATION

17 NCAC 05G .0301 IN GENERAL

The Rules of this Subchapter set forth the process of reasonable approximation that apply if the state or states of assignment cannot be determined. In some instances, the reasonable approximation shall be made in accordance with specific rules of approximation prescribed in this Subchapter. In other cases, the applicable rule in this Subchapter permits a taxpayer to reasonably approximate the state or states of assignment, using a method that reflects an effort to approximate the results that would be obtained under the applicable rules or standards set forth in this Subchapter.

Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .0302 APPROXIMATION BASED UPON KNOWN SALES

When, by applying the applicable rules set forth in Sections .0900 through .1200 of this Subchapter, a taxpayer can ascertain the state or states of assignment of a substantial portion of its receipts from sales of substantially similar services and the taxpayer reasonably believes that the geographic distribution of the remainder of its sales tracks that of the assigned receipts, the taxpayer shall include the receipts from those sales in its sales factor in the same proportion as its assigned receipts. This Rule applies in the context of licenses and sales of intangible property where the substance of the transaction resembles a sale of goods or services.

Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .0303 RELATED ENTITY TRANSACTIONS

Where a taxpayer has receipts subject to this Subchapter from transactions with a related entity customer, information that the customer has regarding the sourcing of receipts from these transactions shall be imputed to the taxpayer.

Authority G.S. 105-130.4; S.L. 2016-94.

SECTION .0400 – EXCLUSION OF RECEIPTS FROM THE SALES FACTOR

17 NCAC 05G .0401 ALLOCATED GROSS RECEIPTS

The sales factor includes only gross receipts of the taxpayer that are not allocated under G.S. 105-130.4, and are received from transactions and activity in the regular course of the taxpayer's trade or business. Receipts addressed in G.S. 105-130.4(a)(7) shall be excluded.

Authority G.S. 105-130.4; G.S. 105-130.4(a)(7); S.L. 2016-5; S.L. 2016-94.

17 NCAC 05G .0402 UNASSIGNABLE GROSS RECEIPTS

When a taxpayer is unable to ascertain the state or states where receipts of a sale are to be assigned pursuant to the rules set forth in this Subchapter using a reasonable amount of effort undertaken in good faith, the receipts shall be excluded from the denominator of the taxpayer's sales factor pursuant to this Subchapter.

Authority G.S. 105-130.4; S.L. 2016-94.

SECTION .0500 - CHANGES IN METHODOLOGY

17 NCAC 05G .0501 ALTERNATIVE APPORTIONMENT

Nothing in this Subchapter limits the application of G.S. 105-122(c1)(2) or G.S. 105-130.4(t1). If the application of this Subchapter results in the assignment of receipts to the taxpayer's sales factor that the taxpayer believes does not fairly represent the extent of the taxpayer's business activity in North Carolina, the taxpayer may request the use of a different method for assigning those receipts.

Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .0502 ORIGINAL RETURNS

When a taxpayer files an original return for a taxable year in which it properly assigns its receipts using a method of assignment, including a method of reasonable approximation, in accordance with the rules in this Subchapter, the application of such method of assignment shall be deemed to be a correct determination by the taxpayer of the state or states of assignment to which the method is properly applied. In those cases, neither the Secretary nor the taxpayer may modify the taxpayer's methodology as applied for assigning those receipts for the taxable year, through the form of an audit adjustment, amended return, or abatement application. However, the Secretary and the taxpayer may each subsequently correct factual errors or calculation errors with respect to the taxpayer's application of its filing methodology.

Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .0503 SECRETARY'S AUTHORITY TO ADJUST A TAXPAYER'S RETURN

The Secretary's ability to review and adjust a taxpayer's assignment of receipts on a return to assign receipts consistent with the rules of this Subchapter, includes each of the following potential actions:

- (1) when a taxpayer fails to properly assign receipts from a sale in accordance with the rules set forth in this Subchapter, including the failure to apply a hierarchy of rules consistent with the principles of Rule .0201(2) of this Subchapter, the Secretary shall adjust the assignment of the receipts in accordance with the applicable rules in this Subchapter;
- (2) when a taxpayer uses a method of approximation to assign its receipts and the Secretary determines that the method of approximation employed by the taxpayer is not reasonable, the Secretary shall either substitute a method of approximation that the Secretary determines is appropriate or exclude the receipts from the taxpayer's numerator and denominator;
- (3) when the Secretary determines that a taxpayer's method of approximation has not been applied in a consistent manner with respect to similar transactions or year to year, the Secretary may require that the taxpayer apply its method of approximation in a consistent manner;
- (4) when a taxpayer excludes receipts from the denominator of its receipts factor on the basis that the assignment of the receipts cannot be reasonably approximated, the Secretary may determine that the exclusion of those receipts is not appropriate, and may instead substitute a method of approximation that the Secretary determines is appropriate;
- (5) when a taxpayer fails to retain contemporaneous records that explain the determination and application of its method of assigning its receipts, including its underlying assumptions, or fails to provide those records to the Secretary upon request, the Secretary shall treat the taxpayer's assignment of receipts as unsubstantiated, and shall adjust the assignment of the receipts in a manner consistent with the applicable rules in this Subchapter; or
- (6) when the Secretary concludes that a customer's billing address was selected by the taxpayer for tax avoidance purposes, the Secretary shall adjust the assignment of receipts from sales to that customer in a manner consistent with the applicable rules in this Subchapter.

Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .0504 TAXPAYER AUTHORITY TO CHANGE A METHOD OF ASSIGNMENT ON A PROSPECTIVE BASIS

A taxpayer may change its method of assigning its receipts every year in its original return, including changing its method of approximation, from that used on previous returns. However, the taxpayer may only make this change for purposes of improving the accuracy of assigning its receipts consistent with the rules set forth in this Subchapter. This includes addressing the circumstance where there is a change in the information that is available to the taxpayer as relevant for purposes of complying with these Rules. Further, a taxpayer that changes its method of assigning its receipts shall disclose, in the original return filed for the year of the change, the fact that is the taxpayer has made the change. The taxpayer shall retain and provide to the Secretary upon request documents that explain the nature and extent of the change, and the reason for the change. If a taxpayer fails to disclose the change or retain and provide the required records upon request, the Secretary may disregard the taxpayer's change and substitute an assignment method that the Secretary determines is appropriate.

Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .0505 SECRETARY AUTHORITY TO CHANGE A METHOD OF ASSIGNMENT ON A PROSPECTIVE BASIS

The Secretary may direct a taxpayer to change its method of assigning its receipts in tax returns that have not yet been filed, if upon reviewing the taxpayer's filing methodology applied in a prior tax year, the Secretary determines that the change reflects a more accurate assignment of the taxpayer's receipts within the meaning of this Subchapter, and determines that the change can be reasonably adopted by the taxpayer. The Secretary shall provide the taxpayer with a written explanation of the reason for making the change. When a taxpayer fails to comply with the Secretary's direction on future returns, the Secretary shall deem the taxpayer's method of assigning its receipts on those returns to be unreasonable, and shall substitute an assignment method that the Secretary determines is reasonable.

Authority G.S. 105-130.4; S.L. 2016-94.

SECTION .0600 - FURTHER GUIDANCE

17 NCAC 05G .0601 EXAMPLES

(a) The Secretary shall publish on the Department's website examples demonstrating the application of rules set forth in this Subchapter. The document is available at dornc.gov.

(b) The Secretary may issue further public written statements with respect to the rules set forth in this Subchapter. These statements may include guidance with respect to:

- (1) what constitutes a reasonable method of approximation within the meaning of the rules, and
- (2) the circumstances when a filing change for a taxpayer's method of reasonable approximation will be deemed appropriate.

Authority G.S. 105-130.4; S.L. 2016-94.

SECTION .0700 – SALE OF A SERVICE

17 NCAC 05G .0701 IN GENERAL

(a) The receipts from a sale of a service are in North Carolina to the extent that the service is delivered to a location in North Carolina. The term "delivered to a location" refers to the location of the taxpayer's market for the service, which may not be the location of the taxpayer's employees or property.

(b) The rules to determine the location of the delivery of a service in the context of several specific types of service transactions are set forth in Sections .0700 through .1000 of this Subchapter.

Authority G.S. 105-130.4; S.L. 2016-94.

SECTION .0800 – SALE OF IN-PERSON SERVICES

17 NCAC 05G .0801 IN GENERAL

(a) Except as otherwise provided in this Section, "in-person services" are services that are physically provided in person by the taxpayer, where the customer or the customer's real or tangible property upon which the services are performed is in the same location as the service provider at the time the services are performed. This Section includes situations where the services are provided on behalf of the taxpayer by a third-party contractor.

(b) Examples of in-person services include:

- (1) warranty and repair services;
- (2) cleaning services;
- (3) plumbing services;
- (4) carpentry;
- (5) construction contractor services;
- (6) pest control;
- (7) landscape services;
- (8) medical and dental services, including medical testing, x-rays, and mental health care and treatment;
- (9) child care;
- (10) hair cutting and salon services;
- (11) live entertainment and athletic performances; and
- (12) in-person training or lessons.

(c) In-person services include services within the description of this Rule that are performed at

- (1) a location that is owned or operated by the service provider; or
- (2) a location of the customer, including the location of the customer's real or tangible personal property.

(d) Professional services as described in Section .1000 of this Subchapter shall not be treated as in-person services within the meaning of this Section.

Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .0802 ASSIGNMENT OF RECEIPTS FROM SALE OF IN-PERSON SERVICES

Receipts from a sale of in-person services shall be assigned to North Carolina to the extent the customer receives the service in North Carolina. The taxpayer shall determine the location where a service is received as follows:

- (1) if the service is performed with respect to the body of an individual customer in North Carolina, such as hair cutting or x-ray services, or in the physical presence of the customer in North Carolina, such as live entertainment or athletic performances, the service is received in North Carolina;
- (2) if the service is performed with respect to the customer's real estate in North Carolina or if the service is performed with respect to the customer's tangible personal property at the customer's residence or in the customer's possession in North Carolina, the service is received in North Carolina; or
- (3) if the service is performed with respect to the customer's tangible personal property and the tangible personal property is to be shipped or delivered to the customer, whether the service is performed within or outside North Carolina, the service is received in North Carolina if the property is shipped or delivered to the customer in North Carolina.

Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .0803 REASONABLE APPROXIMATION

When the taxpayer cannot determine the state or states where a service was received pursuant to Rule .0802 of this Section, but the taxpayer has sufficient information regarding the location of receipt from which it can reasonably approximate the state or states where the service is received, the taxpayer shall reasonably approximate such state or states.

Authority G.S. 105-130.4; S.L. 2016-94.

SECTION .0900 - SERVICES DELIVERED TO A CUSTOMER OR ON BEHALF OF THE CUSTOMER, OR DELIVERED ELECTRONICALLY THROUGH THE CUSTOMER

17 NCAC 05G .0901 IN GENERAL

(a) If the service provided by the taxpayer is not an in-person service within the meaning of Rule .0801 of this Subchapter or a professional service as defined in Section .1000 of this Subchapter, and the service is delivered to or on behalf of the customer, or delivered electronically through the customer, the receipts from a sale are in North Carolina to the extent that the service is delivered in North Carolina.

(b) For purposes of this Section, a service:

- (1) "delivered to a customer" is a service in which the customer and not a third party is the recipient of the service.

(2) "delivered on behalf of a customer" is one in which a customer contracts for a service but one or more third parties, rather than the customer, is the recipient of the service. This includes fulfillment services, or the direct or indirect delivery of advertising to the customer's intended audience.

(3) "delivered electronically through a customer" is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to an end user or other third-party recipient.

(c) A service can be delivered to or on behalf of a customer by physical means or through electronic transmission.

Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .0902 ASSIGNMENT OF RECEIPTS FROM SALES OF SERVICES DELIVERED TO THE CUSTOMER OR ON BEHALF OF THE CUSTOMER, OR DELIVERED ELECTRONICALLY THROUGH THE CUSTOMER

(a) The assignment of receipts to a state or states when a sale of a service is delivered to the customer or on behalf of the customer, or delivered electronically through the customer, shall depend upon the method of delivery of the service and the nature of the customer. Separate rules of assignment shall apply to services delivered by physical means and services delivered by electronic transmission. For purposes of this Section, a service delivered by an electronic transmission is not a delivery by a physical means.

(b) If a rule of assignment set forth in this section depends upon whether the customer is an individual or a business customer, and the taxpayer acting in good faith cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer.

Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .0903 DELIVERY TO OR ON BEHALF OF A CUSTOMER BY PHYSICAL MEANS, WHETHER TO AN INDIVIDUAL OR BUSINESS CUSTOMER

(a) Services delivered to a customer or on behalf of a customer through a physical means include:

- (1) Product delivery services where property is delivered to the customer or to a third party on behalf of the customer;
- (2) The delivery of brochures, fliers or other direct mail services;
- (3) The delivery of advertising or advertising-related services to the customer's intended audience in the form of a physical medium; and
- (4) The sale of custom software, such as where software is developed for a specific customer in a case where the transaction is properly treated as a service transaction for purposes of corporate taxation where the taxpayer installs the custom software at the customer's site.

(b) The following rules shall apply whether the taxpayer's customer is an individual customer or a business customer:

- (1) Rule of Determination. In assigning the receipts from a sale of a service delivered to a customer or on behalf of a customer through a physical means, a taxpayer shall determine the state or states where the service is delivered. If the taxpayer is able to determine the state or states where the service is delivered, it shall assign the receipts to that state or states.
- (2) Rule of Reasonable Approximation. If the taxpayer is unable to determine the state or states where the service is delivered, but has sufficient information regarding the place of delivery that the taxpayer may reasonably approximate the state or states where the service is delivered, it shall reasonably approximate the state or states.

Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .0904 DELIVERY TO CUSTOMER BY ELECTRONIC TRANSMISSION

(a) Services delivered by electronic transmission include services that are transmitted through the means of wire, lines, cable, fiber optics, electronic signals, satellite transmission, audio or radio waves, or other similar means, whether or not the service provider owns, leases, or otherwise controls the transmission equipment.

(b) When a service is delivered by electronic transmission to a customer, the following rules apply:

- (1) Services Delivered By Electronic Transmission to an Individual Customer.
 - (A) Rule of Determination. When a service is delivered to an individual customer by electronic transmission, the service is delivered in North Carolina to the extent that the taxpayer's customer received the service in North Carolina. If the taxpayer is able to determine the state or states where the service is received, it shall assign the receipts from that sale to that state or states.
 - (B) Rules of Reasonable Approximation. If the taxpayer is unable to determine the state or states where the customer received the service, but has sufficient information regarding the place of receipt to reasonably approximate the state or states where the service is received, it shall reasonably approximate the state or states. If a taxpayer does not have sufficient information that it can determine or reasonably approximate the state or states in which the service is received, it shall reasonably approximate the state or states using the customer's billing address.

(2) Services Delivered By Electronic Transmission to a Business Customer.

- (A) Rule of Determination. When a service is delivered to a business customer by electronic transmission, the service is delivered in North Carolina to the extent that the taxpayer's customer received the service in North Carolina. If the taxpayer can determine the state or states where the service is received, it shall assign the receipts from that sale to the state or states. For purposes of this Part the state or states where the service is received shall reflect the location where the service was directly used by the employees or designees of the customer.
- (B) Rule of Reasonable Approximation. If the taxpayer is unable to determine the state or states where the customer received the service, but has sufficient information regarding the place of receipt to reasonably approximate the state or states where the service is received, it shall reasonably approximate the state or states.
- (C) Secondary Rule of Reasonable Approximation. When a service is delivered to a business customer by electronic transmission where a taxpayer does not have sufficient information to determine or reasonably approximate the state or states in which the service is received, the taxpayer shall reasonably approximate the state or states as set forth in this Rule. In these cases, unless the taxpayer can apply the safe harbor set forth in Sub-Item (2)(D) of this Rule, the taxpayer shall reasonably approximate the state or states in which the service is received as follows: first, by assigning the receipts from the sale to the state where the contract of sale is principally managed by the customer; second, if the state where the customer principally manages the contract is not reasonably determinable, by assigning the receipts from the sale to the customer's place of order; and third, if the customer's place of order is not reasonably determinable, by assigning the receipts from the sale using the customer's billing address. However, if the taxpayer derives more than five percent of its receipts from sales of services from any single customer, the

- taxpayer shall identify the state in which the contract of sale is principally managed by that customer.
- (D) Safe Harbor. When a service is delivered to a business customer by electronic transmission, a taxpayer may not be able to determine, or reasonably approximate under Sub-Item (2)(B) of this Rule, the state or states in which the service is received. In these cases, the taxpayer may, in lieu of the rule stated in Sub-Item (2)(C) of this Rule, apply the safe harbor stated in this Sub-Item. Under this safe harbor, a taxpayer may assign its receipts from sales to a particular customer based upon the customer's billing address in a taxable year in which the taxpayer engages in substantially similar service transactions with more than 250 customers, whether business or individual, and does not derive more than five percent of its receipts from sales of all services from that customer.
- (E) Related Entity Transactions. When a service is delivered by electronic transmission to a business customer that is a related entity, the taxpayer may not use the secondary rule of reasonable approximation in Sub-Item (2)(C) of this Rule but may use the rule of reasonable approximation in Sub-Item (2)(B) of this Rule, and the safe harbor in Sub-Item (2)(D) of this Rule. The Secretary may aggregate sales to related entities in determining whether the sales exceed five percent of receipts from sales of all services under that safe harbor provision.

- behalf of a customer to the customer's intended audience by electronic means, the service is delivered in North Carolina to the extent that the audience for the advertising is in North Carolina. In the case of the delivery of a service to a customer that acts as an intermediary in reselling the service in substantially identical form to third-party recipients, the service is delivered in North Carolina to the extent that the end users or other third-party recipients receive the services in North Carolina. The provisions in this Sub-Item apply whether the taxpayer's customer is an individual customer or a business customer and whether the end users or other third-party recipients to which the services are delivered through or on behalf of the customer are individuals or businesses.
- (2) Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the services are actually delivered to the end users or other third-party recipients either through or on behalf of the customer, but has sufficient information regarding the place of delivery that the taxpayer may reasonably approximate the state or states where the services are delivered, it shall reasonably do so.
- (3) Select Secondary Rules of Reasonable Approximation.
- (a) If a taxpayer's service is the direct or indirect electronic delivery of advertising on behalf of its customer to the customer's intended audience, and if the taxpayer lacks sufficient information regarding the location of the audience that the taxpayer may determine or reasonably approximate that location, the taxpayer shall reasonably approximate the audience in a state for the advertising using the following secondary rules of reasonable approximation. If a taxpayer is delivering advertising directly or indirectly to a known list of subscribers, the taxpayer shall reasonably approximate the audience for advertising in a state using a percentage that reflects the ratio of the state's subscribers in the specific geographic area in which the advertising is delivered relative to the total subscribers in that area. For a taxpayer with less information about its audience, the taxpayer shall reasonably approximate the audience in a state using the percentage that reflects the ratio of the state's population in the specific geographic area where the advertising is delivered

Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .0905 SERVICES DELIVERED ELECTRONICALLY THROUGH OR ON BEHALF OF AN INDIVIDUAL OR BUSINESS CUSTOMER

When a service is delivered electronically "on behalf of" or "through" a customer as defined in Rule .0901 of this Subchapter, the methodology provided under this Rule applies.

- (1) Rule of Determination. In the case of the delivery of a service by electronic transmission, where the service is delivered electronically to end users or other third-party recipients through or on behalf of the customer, the service is delivered in North Carolina to the extent that the end users or other third-party recipients are in North Carolina. For example, in the case of the direct or indirect delivery of advertising on

relative to the total population in that area.

(b) If a taxpayer's service is the delivery of a service to a customer that then acts as the taxpayer's intermediary in reselling that service to end users or other third party recipients, and the taxpayer lacks sufficient information regarding the location of the end users or other third party recipients that the taxpayer may determine or reasonably approximate that location, the taxpayer shall reasonably approximate the extent to which the service is received in a state by using the percentage that reflects the ratio of the state's population in the specific geographic area where the taxpayer's intermediary resells the services, relative to the total population in that area.

(c) When using the secondary reasonable approximation methods provided above, the relevant specific geographic area of delivery includes only the areas where the service was substantially and materially delivered or resold. Unless the taxpayer demonstrates the contrary, it will be presumed that the area where the service was substantially and materially delivered or resold does not include areas outside the United States.

- (13) video production services;
- (14) graphic and other design services;
- (15) engineering services; and
- (16) architectural services.

Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .1002 OVERLAP WITH OTHER CATEGORIES OF SERVICES

(a) Certain services that fall within the definition of "professional services" set forth in this Section shall be treated as "in-person services" within the meaning of Section .0800 of this Subchapter, and shall be assigned under the rules of that Section. Specifically, professional services that are physically provided in person by the taxpayer such as carpentry, certain medical and dental services, or child care services when the customer or the customer's real or tangible property upon which the services are provided is in the same location as the service provider at the time the services are performed are "in-person services" and are assigned as such, notwithstanding that they may also be considered to be "professional services."

(b) Professional services where the service is of an intellectual or intangible nature, such as legal, accounting, financial, and consulting services, shall be assigned as professional services under the rules of this Section, notwithstanding the fact that these services may involve some amount of in-person contact.

(c) Professional services may in some cases include the transmission of documents or other communications by mail or by electronic means. In these cases, the assignment rules that apply are those set forth in this Section, and not those set forth in Section .0900 of this Subchapter, pertaining to services delivered to a customer or through or on behalf of a customer.

Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .1003 ASSIGNMENT OF RECEIPTS

The location of delivery of professional services shall not be determined by a general rule of determination, but shall be reasonably approximated. The assignment of receipts from a sale of a professional service depends on whether the customer is an individual or business customer. When the taxpayer, acting in good faith, cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. For purposes of assigning the receipts from a sale of a professional service, a taxpayer's customer is the person that contracts for the service, irrespective of whether another person pays for or also benefits from the taxpayer's services.

Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .1004 PROFESSIONAL SERVICES OTHER THAN ARCHITECTURAL OR ENGINEERING SERVICES

Receipts from sales of professional services other than those services described in Rules .1005 - .1006 of this Section, shall be assigned as follows:

- (1) Professional Services Delivered to Individual Customers. Except as otherwise provided in

Authority G.S. 105-130.4; S.L. 2016-94.

SECTION .1000 - PROFESSIONAL SERVICES

17 NCAC 05G .1001 IN GENERAL

(a) Except as otherwise provided in this Subchapter, "professional services" are services that require specialized knowledge and may require a professional certification, license, or degree. These services include the performance of technical services that require the application of specialized knowledge.

(b) Professional services include:

- (1) management services;
- (2) bank and financial services;
- (3) financial custodial services;
- (4) investment and brokerage services;
- (5) fiduciary services;
- (6) tax preparation;
- (7) payroll and accounting services;
- (8) lending services;
- (9) credit card services, including credit card processing services;
- (10) data processing services;
- (11) legal services;
- (12) consulting services;

Section .1000 of this Subchapter in any instance in which the service provided is a professional service and the taxpayer's customer is an individual customer, the state or states where the service is delivered shall be reasonably approximated as set forth in this Rule. The taxpayer shall assign the receipts from a sale to the customer's state of primary residence, or, if the taxpayer cannot reasonably identify the customer's state of primary residence, to the state of the customer's billing address. However, when the taxpayer derives more than five percent of its receipts from sales of all services from an individual customer, the taxpayer shall identify the customer's state of primary residence and assign the receipts from the service or services provided to that customer to that state.

(2) Professional Services Delivered to Business Customers. When the taxpayer provides a professional service to a business customer, the state or states in which the service is delivered shall be reasonably approximated as set forth in this Rule. In particular, unless the taxpayer can use the safe harbor set forth in Item (3) of this Rule the taxpayer shall assign the receipts from the sale as follows:

- (a) by assigning the receipts to the state where the contract of sale is principally managed by the customer;
- (b) if the place of customer management is not reasonably determinable, to the customer's place of order; and
- (c) if the customer place of order is not reasonably determinable, to the customer's billing address.

When the taxpayer derives more than five percent of its receipts from sales of all services from a customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by the customer.

(3) Safe Harbor; Large Volume of Transactions. Notwithstanding the rules set forth in Items (1) and (2) of this Rule, a taxpayer may assign its receipts from sales to a particular customer based on the customer's billing address in any taxable year when the taxpayer engages in substantially similar service transactions with more than 250 customers, whether individual or business, and does not derive more than five percent of its receipts from sales of all services from that customer. This safe harbor applies only for purposes of this Rule.

Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .1005 ARCHITECTURAL OR ENGINEERING SERVICES WITH RESPECT TO REAL OR TANGIBLE PERSONAL PROPERTY

(a) Architectural and engineering services with respect to real or tangible personal property shall be professional services within the meaning of this Section. The receipts from a sale of an architectural service shall be assigned to a state or states to the extent that the services are with respect to real estate improvements located, or expected to be located, in the state or states. The receipts from a sale of an engineering service shall be assigned to a state or states to the extent that the services are with respect to tangible or real property located in the state or states, including real estate improvements located in, or expected to be located in, the state or states.

(b) This Rule shall apply regardless of whether or not the customer is an individual or business customer. In any instance in which architectural or engineering services are not described in this Rule, the receipts from a sale of these services must be assigned under Rule .1004 of this Section.

Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .1006 RELATED ENTITY TRANSACTIONS

When the professional service is sold to a related entity, rather than applying the rule for professional services delivered to business customers in Rule .1004(2) of this Section, the state or states where the service is assigned is the place of receipt by the related entity as reasonably approximated using the following hierarchy:

- (1) if the service primarily relates to specific operations or activities of a related entity conducted in one or more locations, then to the state or states where those operations or activities are conducted in proportion to the related entity's payroll at the locations to which the service relates in the state or states; or
- (2) if the service does not primarily relate to specific operations or activities of a related entity conducted in particular locations, but instead relates to the operations of the related entity generally, then to the state or states where the related entity has employees, in proportion to the related entity's payroll in those states. The taxpayer may use the safe harbor provided by Rule .1004(3) of this Section.

Authority G.S. 105-130.4; S.L. 2016-94.

SECTION .1100 – LICENSE OR LEASE OF INTANGIBLE PROPERTY

17 NCAC 05G .1101 IN GENERAL

(a) The receipts from the license of intangible property shall be assigned to North Carolina to the extent the intangible is used in North Carolina. The term "use" shall refer to the location of the taxpayer's market for the use of the intangible property that is being licensed and shall not refer to the location of the property or payroll of the taxpayer. This Section sets forth the rules to

determine the location of the use of intangible property for several specific types of licensing transactions.

(b) A license of intangible property that conveys all substantial rights in that property shall be treated as a sale of intangible property for purposes of these rules. For purposes of Sections .1100 and 1200, a sale or exchange of intangible property shall be treated as a license of that property where the receipts from the sale or exchange derive from payments that are contingent on the productivity, use, or disposition of the property.

(c) Intangible property licensed as part of the sale or lease of tangible property shall be treated under these rules as the sale or lease of tangible property.

(d) Nothing in this Section shall be construed to allow or require inclusion of sales in the sales factor that are not included in the definition of "sales" pursuant to G.S. 105-130.4, or that are excluded from the numerator and the denominator of the sales factor pursuant to proposed G.S. 105-130.4(1)(6). To the extent that the transfer of either a security or business "goodwill" or similar intangible value, including "going concern value" or "workforce in place," is characterized as a license or lease of intangible property, receipts from such transaction shall be excluded from the numerator and the denominator of the taxpayer's sales factor.

Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .1102 LICENSE OF A MARKETING INTANGIBLE

(a) If a license is granted for the right to use intangible property in connection with the sale, lease, license, or other marketing of goods, services, or other items, such as a marketing intangible, to a consumer, the royalties or other licensing fees paid by the licensee for that marketing intangible shall be assigned to North Carolina to the extent that those fees are attributable to the sale or other provision of goods, services, or other items purchased or otherwise acquired by consumers in North Carolina.

(b) License of a marketing intangible includes the following when it is intended to promote consumer sales:

- (1) the license of a service mark, trademark, or trade name;
- (2) copyrights;
- (3) the license of a film, television or multimedia production or event for commercial distribution; and
- (4) a franchise agreement.

(c) In the case of the license of a marketing intangible, where a taxpayer has actual evidence of the amount or proportion of its receipts that is attributable to North Carolina, it shall assign that amount or proportion to North Carolina. In the absence of actual evidence of the amount or proportion of the licensee's receipts that are derived from North Carolina consumers, the portion of the licensing fee to be assigned to North Carolina shall be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the North Carolina population in the specific geographic area where the licensee makes material use of the intangible property to regularly market its goods, services, or other items relative to the total population in that area.

(d) If the license of a marketing intangible is for the right to use the intangible property in connection with sales or other transfers

at wholesale rather than directly to retail customers, the portion of the licensing fee to be assigned to North Carolina shall be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the North Carolina population in the specific geographic area in which the licensee's goods, services, or other items are ultimately and materially marketed using the intangible property relative to the total population of that area. Unless the taxpayer demonstrates that the marketing intangible is materially used in the marketing of items outside the United States, the fees from licensing that marketing intangible shall be presumed to be derived from within the United States.

Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .1103 LICENSE OF A PRODUCTION INTANGIBLE

(a) If a license is granted for the right to use intangible property, other than in connection with the sale, lease, license, or other marketing of goods, services, or other items, and the license will be used in a production capacity (a "production intangible"), the licensing fees paid by the licensee for that right shall be assigned to North Carolina to the extent that the use for which the fees are paid takes place in North Carolina.

(b) License of a production intangible includes the license of a patent, a copyright, or trade secrets to be used in a manufacturing process, where the value of the intangible lies predominately in its use in that process.

(c) If the actual use of intangible property pursuant to a license of a production intangible takes place in part in North Carolina, the entire use is in this State except to the extent that the taxpayer is able to demonstrate that the actual location of a portion of the use takes place outside North Carolina.

(d) When a license of a production intangible to a related entity, the taxpayer shall assign the receipts to where the intangible property is actually used. When a license of a production intangible to a party other than a related entity where the location of actual use is unknown, the use of the intangible property takes place in the state of the licensee's commercial domicile when a business, or the licensee's state of primary residence when an individual.

Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .1104 LICENSE OF A MIXED INTANGIBLE

If a license of intangible property includes both a license of a marketing intangible and a license of a production intangible (a "mixed intangible") and the fees to be paid in each instance are separately and reasonably stated in the licensing contract, the Secretary will accept that separate statement for purposes of these Rules. If a license of intangible property includes both a license of a marketing intangible and a license of a production intangible and the fees to be paid in each instance are not separately and reasonably stated in the contract, the licensing fees were paid entirely for the license of the marketing intangible, except to the extent that the taxpayer can reasonably establish otherwise.

Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .1105 LICENSE OF INTANGIBLE PROPERTY WHEN SUBSTANCE OF THE TRANSACTION RESEMBLES A SALE OF GOODS OR SERVICES

(a) When the license of intangible property resembles the sale of an electronically-delivered good or service, rather than the license of a marketing intangible or production intangible, the receipts shall be assigned by applying Rules .0904 and .0905 of this Subchapter. Transactions to be assigned under this Rule include the license of:

- (1) Database access;
- (2) Access to information;
- (3) Digital goods and
- (4) Certain software, where the transaction is not the license of pre-written software treated as the sale of tangible personal property.

(b) Sublicenses. The provisions of Rule .0905 of this Subchapter shall apply where a taxpayer licenses intangible property to a customer that in turn sublicenses the intangible property to end users as if the transaction were a service delivered electronically through a customer to end users. Rule .0905 of this Subchapter shall apply to services delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other recipients shall also apply with respect to licenses of intangible property for purposes of sublicense to end users. For this purpose, the intangible property sublicensed to an end user shall not fail to be substantially identical to the property that was licensed to the sublicensor merely because the sublicense transfers a reduced bundle of rights with respect to that property, such as when the sublicensee's rights are limited to its own use of the property and do not include the ability to grant a further sublicense, or because that property is bundled with additional services or items of property.

Authority G.S. 105-130.4; S.L. 2016-94.

SECTION .1200 – SALE OF INTANGIBLE PROPERTY

17 NCAC 05G .1201 ASSIGNMENT OF RECEIPTS

The assignment of receipts to a state or states in the instance of a sale or exchange of intangible property depends upon the nature of the intangible property sold. For purposes of this Section, a sale or exchange of intangible property includes a license of that property where the transaction is treated for tax purposes as a sale of all substantial rights in the property and the receipts from the transaction are not contingent on the productivity, use, or disposition of the property.

- (1) In the case of a sale or exchange of intangible property where the property sold or exchanged is a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area, the receipts from the sale are assigned to a state to the extent that the intangible property is used or is authorized to be used within the state. If the intangible property is used or may be used only in this State, the taxpayer shall assign the receipts from the sale

to North Carolina. If the intangible property is used or is authorized to be used in North Carolina and one or more other states, the taxpayer shall assign the receipts from the sale to North Carolina to the extent that the intangible property is used in or authorized for use in North Carolina, through the means of a reasonable approximation.

- (2) In the case of a sale or exchange of intangible property where the receipts from the sale or exchange are contingent on the productivity, use, or disposition of the property, the receipts from the sale shall be assigned by applying the rules set forth in Section .1100 of this Subchapter.
- (3) In the case of a sale or exchange of intangible property where the substance of the transaction resembles a sale of goods or services and where the receipts from the sale or exchange do not derive from payments contingent on the productivity, use, or disposition of the property, the receipts from the sale shall be assigned by applying the rules set forth in Rule .1105 of this Subchapter.
- (4) Receipts from the sale of intangible property are not included in the sales factor in any case when the sale does not give rise to receipts within the meaning of Rule .0401 of this Subchapter. In addition, in any case in which the sale of intangible property results in receipts within the meaning of Section .0400 of this Subchapter, those receipts shall be excluded from the numerator and the denominator of the taxpayer's sales factor if the receipts are not referenced in G.S. 105.130.4(1) The sale of intangible property that is excluded from the numerator and denominator of the taxpayer's sales factor under this provision includes the sale of business "goodwill," the sale of an agreement not to compete, or similar intangible value.

Authority G.S. 105-130.4; S.L. 2016-94.

SECTION .1300 – SPECIAL RULES

17 NCAC 05G .1301 SOFTWARE TRANSACTIONS

(a) A license or sale of pre-written software for purposes other than commercial reproduction, or other exploitation of the intellectual property rights, transferred on a tangible medium shall be treated as the sale of tangible personal property, rather than as either the license or sale of intangible property or the performance of a service. In these cases, the receipts shall be in North Carolina as determined under the rules for the sale of tangible personal property set forth under G.S. 105-130.4 and applicable rules of this Subchapter.

(b) In all other cases, the receipts from a license or sale of software shall be assigned to North Carolina as determined

otherwise under this Subchapter. This determination shall be based on the facts, and:

- (1) the development and sale of custom software as set forth in Section .0900 of this Subchapter;
- (2) the license of a marketing intangible, as set forth in Rule .1102 of this Subchapter;
- (3) the license of a production intangible, as set forth in Rule .1103 of this Subchapter;
- (4) the license of intangible property where the substance of the transaction resembles a sale of goods or services, as set forth in Rule .1105 of this Subchapter; or
- (5) as a sale of intangible property, as set forth in Rule .1201 of this Subchapter.

Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .1302 SALES OR LICENSES OF DIGITAL GOODS AND SERVICES

The receipts from the sale or license of digital goods or services, including, the sale of video, audio, and software products or similar transactions shall be assigned by applying the same provisions set forth in Rules .0904 or .0905 of this Subchapter, as if the transaction was a service delivered to an individual or business customer, or delivered through or on behalf of an individual or business customer. For purposes of the analysis, the terms of the contractual relationship or the characterization of the sale or the license shall not be relevant.

Authority G.S. 105-130.4; S.L. 2016-94.

17 NCAC 05G .1303 TELECOMMUNICATIONS COMPANIES

(a) When a taxpayer who provides telecommunications or ancillary services and that is subject to Multistate Tax Commission Reg. IV.18(i), receipts from the sale or license of digital goods or services not otherwise assigned for apportionment purposes pursuant to that Regulation shall be assigned pursuant to this Rule. The taxpayer shall apply Rules .0904 or .0905 of this Subchapter as if the transaction were a service delivered to an individual or business customer or delivered through or on behalf of an individual or business customer. MTC Reg. IV.18(i) is available at no charge at <http://www.mtc.gov/Uniformity/Adopted-Uniformity-Recommendations>.

(b) In applying these rules, if the taxpayer cannot determine the state or states where a customer receives the purchased product, it may reasonably approximate this location using the customer's place of "primary use" of the purchased product, applying the definition of "primary use" set forth in MTC Model Regulation for Sourcing Sales of Telecommunications and Ancillary Services, MTC Reg. IV.18(i).

Authority G.S. 105-130.4; S.L. 2016-94.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 50 – BOARD OF EXAMINERS OF PLUMBING, HEATING, AND FIRE SPRINKLER CONTRACTORS

Notice is hereby given in accordance with G.S. 150B-21.2 that The State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors intends to adopt the rules cited as 21 NCAC 50 .0312, .0313, .0414 and amend the rules cited as 21 NCAC 50 .0405 and .1104.

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

Proposed Effective Date: February 1, 2017

Public Hearing:

Date: December 13, 2016

Time: 8:30 a.m.

Location: State Board of Plumbing, Heating and Fire Sprinklers Contractors, 1109 Dresser Court, Raleigh, NC

Reason for Proposed Action: *Session Law 2016, Chapter 105 (HB 742) mandated creation of a new subset of license for licensees who work for school systems or state or local government and who wish to be able to moonlight while their license is listed in the name of the State or local agency. These rules effectuate the legislation by specifying experience, exam requirements, responsibilities and fees.*

Comments may be submitted to: Dale Dawson, 1109 Dresser Court, Raleigh, NC 27609, email DDawson@nclicensing.org

Comment period ends: December 13, 2016 at 12:00 noon.

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

Fiscal impact (check all that apply).

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

SECTION .0300 – EXAMINATIONS

21 NCAC 50 .0312 STATE AND LOCAL GOVERNMENT PLUMBING OR HEATING TECHNICIAN

(a) In order to determine the qualifications of an applicant for a license as a State or local government plumbing or heating technician, the Board shall provide a written or computer-based examination in the following categories:

- (1) State and Local Government Plumbing Technician
(2) State & Local Government Heating Group No. 1 Technician
(3) State & Local Government Heating Group No. 2 Technician
(4) State & Local Government Heating Group No. 3 Technician

(b) Applicants for a license as a State & Local Government Plumbing or Heating Technician must obtain a license based on experience set forth in Paragraph (c) of this Rule and must pass the Class I technical and Board laws and rules part of the Board-administered examination related to the category for which a technician license is sought.

(c) Applicants for a license as a State & Local Government plumbing or heating technician shall present evidence adequate to establish 3000 hours of full-time experience in the installation, maintenance, service or repair of plumbing or heating systems related to the category for which a technician license is sought, whether or not a license was required for the work performed.

(d) Applicants for a license as a State & Local Government Technician who currently hold an active plumbing, or heating contractor license issued by this board may qualify for the corresponding State and local government technician license without examination.

Authority G.S. 87-18; 87-21(a); 87-21(b).

21 NCAC 50 .0313 RESPONSIBILITIES OF STATE AND LOCAL GOVERNMENT TECHNICIAN LICENSEES

(a) A licensed state & local government technician licensee shall be required to list their license with the Board in the name of the state & local government agency by whom the licensee is employed.

(b) The holder of license as a State & Local Government Heating, Group 1 Technician, Heating, Group 2 Technician, Heating Group 3 Technician or Plumbing Technician shall be a full-time employee of a State or Local Government agency.

(c) A licensed state & local government technician licensee shall ensure that a permit is obtained from the appropriate state or local Code Enforcement official before commencing any work for which a license is required by the Board. The licensee shall also ensure that a request for final inspection of the work for which a license is required is made within 10 days of the earlier of the system being made operational or placed in service, absent agreement with the appropriate state or local Code Enforcement official. Absent agreement with the local Code Enforcement official the licensee is not relieved of responsibility to the Board

to arrange inspection until a certificate of compliance or the equivalent is obtained from the appropriate state or local code enforcement official or the license has clear and convincing evidence of his effort to obtain the same.

(d) The failure of a licensee to comply with the permit and inspection obligations outlined in this Rule shall be considered by the Board as evidence of incompetence or misconduct in the use of license from the Board.

(e) A licensed state & local government technician licensee is responsible for general supervision to the extent of his qualifications, compliance with all applicable codes and standards, and assurance that permits and inspections are obtained.

(f) The general supervision required by G.S. 87-26 is that degree of supervision which is necessary and sufficient to ensure that the work is performed in a workmanlike manner and with the requisite skill and that the installation is made properly, safely and in accordance with applicable codes and rules. General supervision requires that review of the work done pursuant to the state and local government technician license be performed by the state and local government technician licensee while the work is in progress.

(g) In each state or local government agency location, branch or facility of any kind from which work requiring a license pursuant to G.S. 87, Article 2 is carried out there shall be on duty the lesser of 1500 hours annually, or all hours during which the activities described herein are carried out, at least one individual who holds the appropriate state & local government technician license in the classification required for the work being proposed or performed, whose license is listed in the name of the particular state or local government agency at that location, and who is engaged in the work of the state or local government at the agency location or at an agency job site and who has the responsibility to exercise general supervision over the work and who has been empowered to act for the state or local government agency, as defined in 21 NCAC 50 .0505, of all work falling within his license qualification. Evidence of compliance shall be required as a condition of renewal or retention of license and falsification shall constitute fraud in obtaining license. The standards set forth in 21 NCAC 50 .0512 shall be applied.

(h) An unlicensed person who is directly and regularly employed by state & local government agency licensed pursuant to G.S. 87, Article 2 is not required to have a license and shall not be subject to an action for injunctive relief brought by the Board if the unlicensed person is a bona-fide employee of the state & local government.

(i) The annual license fee for a State & Local Government Technician license is one hundred thirty dollars (\$130.00), except as provided in Paragraph (j) of this Rule.

(j) The annual license fee for a State & Local Government Technician Plumbing or Heating Technician license which is listed as the second or subsequent licensee at the same agency location is sixty-five dollars (\$65.00).

Authority G.S. 87-18; 87-21(a)(5); 87-21(a)(6); 87-21(a)(10); 87-21(b)(3); 87-22; 87-22.1; 87-26.

SECTION .0400 - GENERAL PROCEDURES

21 NCAC 50 .0405 MULTIPLE LICENSES

(a) In order to maintain the identity of firms and allow effective supervision, each licensed contractor or technician shall qualify only the business location where he is primarily located.

(b) A licensee may be listed on only one contractor license at any given time, whether the license is issued in the name of the individual or in the name of a firm; provided, however, that the fire sprinkler maintenance technician qualification and the state and local government technician qualification may be listed separately in the name of the employer to which restricted.

(c) The holder of qualification as a contractor may, upon deletion of his name and qualifications from a firm license, reinstate his personal license, either as an individual or in the name of some other corporation, partnership, or business that has a trade name, upon compliance with G.S. 87-26.

(d) A technician licensee, other than the holder of a Fire Sprinkler Maintenance Technician license, may, upon deletion of his name and qualification from a firm license, move his qualification to another licensed corporation, partnership or business which has a trade name, upon compliance with G.S. 87-26.

Authority G.S. 87-18; 87-21(a)(5); 87-21(a)(6); 87-21(b)(2)(c); 87-26.

21 NCAC 50 .0414 SUPERVISION IN ABSENCE OF INSPECTION

In lieu of the supervision required by 21 NCAC 50 .0505, the holder of the qualifications upon which a license is based shall personally examine all work performed in reliance upon the license at completion and before the work is placed in service to assure that the installation, replacement or repair is performed in compliance with the current edition of the NC Building Codes and the manufacturers installation instructions, where the work will not be examined and approved by a person holding qualification from the Code Officials Qualification Board.

Authority G.S. 87-18; 87-21(b)(2)(c); 87-25; 87-26.

21 NCAC 50 .1104 FEES FOR COPIES OF RECORDS AND RETURNED CHECKS

The Board charges the following fees:

- (1) copies of license \$20.00
- (2) abstract of license record \$25.00 per license record search
- (3) processing fee for returned checks maximum allowed by law
- (4) copy of Board rules \$10.00
- (5) processing fee for late renewal \$25.00
- (6) Business and Project Management for Contractors ~~\$45.00~~ Publisher's Retail Price

Authority G.S. 25-3-506; 87-18; 87-22; 150B-19.

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 August 18, 2016.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Stormwater Discharges</u>	15A NCAC 02H .0126*	30:16 NCR
<u>Definitions: NPDES MS4 Stormwaters</u>	15A NCAC 02H .0150*	30:16 NCR
<u>NPDES MS4 Stormwater: Designation of Petition Process</u>	15A NCAC 02H .0151*	30:16 NCR
<u>Development in Urbanizing Areas</u>	15A NCAC 02H .0152	30:16 NCR
<u>NPDES MS4 Stormwater: Program Implementation</u>	15A NCAC 02H .0153*	30:16 NCR
<u>Post Construction Practices</u>	15A NCAC 02H .0154	30:16 NCR
<u>Post-Construction Stormwater Management: Purpose and Scope</u>	15A NCAC 02H .1001*	30:16 NCR
<u>Definitions</u>	15A NCAC 02H .1002*	30:16 NCR
<u>Requirements that Apply to All Subject Projects</u>	15A NCAC 02H .1003*	30:16 NCR
<u>Stormwater Requirements: Coastal Counties</u>	15A NCAC 02H .1005	30:16 NCR
<u>Stormwater Requirements: High Quality Waters</u>	15A NCAC 02H .1006	30:16 NCR
<u>Stormwater Requirements: Outstanding Resource Waters</u>	15A NCAC 02H .1007	30:16 NCR
<u>Design of Stormwater Management Measures</u>	15A NCAC 02H .1008	30:16 NCR
<u>Staff Review and Permit Preparation</u>	15A NCAC 02H .1009	30:16 NCR
<u>Final Action on Permit Applications to the Division</u>	15A NCAC 02H .1010	30:16 NCR
<u>Modification and Revocation of Permits</u>	15A NCAC 02H .1011	30:16 NCR
<u>Delegation of Authority</u>	15A NCAC 02H .1012	30:16 NCR
<u>General Permits</u>	15A NCAC 02H .1013	30:16 NCR
<u>Stormwater Management for Urbanizing Areas</u>	15A NCAC 02H .1014	30:16 NCR
<u>Urbanizing Area Definitions</u>	15A NCAC 02H .1015	30:16 NCR
<u>Development in Urbanizing Areas: Applicability and Deline...</u>	15A NCAC 02H .1016*	30:16 NCR
<u>NPDES MS4 and Urbanizing Areas: Post-Construction Practices</u>	15A NCAC 02H .1017*	30:16 NCR
<u>Urbanizing Areas: Delegation</u>	15A NCAC 02H .1018*	30:16 NCR
<u>Universal Stormwater Management Program</u>	15A NCAC 02H .1020*	30:16 NCR
<u>Non-Coastal County High Quality Waters (HQW) and Outstand...</u>	15A NCAC 02H .1021*	30:16 NCR
<u>Permit Administration</u>	15A NCAC 02H .1040*	30:16 NCR
<u>General Permits</u>	15A NCAC 02H .1041*	30:16 NCR
<u>MDC for Rainwater Harvesting</u>	15A NCAC 02H .1057*	30:16 NCR
<u>MDC for Green Roofs</u>	15A NCAC 02H .1058*	30:16 NCR
<u>MDC for Treatment Swales</u>	15A NCAC 02H .1061*	30:16 NCR
<u>MDC for Dry Ponds</u>	15A NCAC 02H .1062*	30:16 NCR

COASTAL RESOURCES COMMISSION

<u>Coastal Wetlands</u>	15A NCAC 07H .0205*	30:18 NCR
<u>Purpose</u>	15A NCAC 07H .1801*	30:18 NCR
<u>Approval Procedures</u>	15A NCAC 07H .1802*	30:18 NCR
<u>General Conditions</u>	15A NCAC 07H .1804*	30:18 NCR
<u>Specific Conditions</u>	15A NCAC 07H .1805*	30:18 NCR
<u>Specific Conditions</u>	15A NCAC 07H .2505*	30:18 NCR

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Permit Required</u>	15A NCAC 13B .0201*	30:20 NCR
<u>Option to Apply for Issuance of 10-Year Permit for Sanita...</u>	15A NCAC 13B .0206*	30:20 NCR

PROPERTY TAX COMMISSION

<u>Legal Representation Before the Commission</u>	17 NCAC 11 .0216*	30:21 NCR
<u>Appearance at Hearing Required</u>	17 NCAC 11 .0217*	30:21 NCR

BARBER EXAMINERS, BOARD OF

<u>Roster and Student Records</u>	21 NCAC 06F .0110*	30:14 NCR
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HEARING AID DEALERS AND FITTERS BOARD

<u>Annual Continuing Education Requirements</u>	21 NCAC 22F .0202*	30:22 NCR
<u>Self-Study</u>	21 NCAC 22F .0208*	30:22 NCR
<u>Committee on Investigations</u>	21 NCAC 22L .0101*	30:22 NCR

LANDSCAPE CONTRACTORS' LICENSING BOARD

<u>Name and Location of Board</u>	21 NCAC 28B .0101*	30:22 NCR
<u>Meetings</u>	21 NCAC 28B .0102	30:22 NCR
<u>Practice of Landscape Contracting</u>	21 NCAC 28B .0103	30:22 NCR
<u>Applications for Licensure</u>	21 NCAC 28B .0201*	30:22 NCR
<u>Reciprocity</u>	21 NCAC 28B .0202*	30:22 NCR
<u>Military-Trained Applicant; Military Spouse</u>	21 NCAC 28B .0203*	30:22 NCR
<u>Maintain Current Information</u>	21 NCAC 28B .0204*	30:22 NCR
<u>License Renewal; Waiver</u>	21 NCAC 28B .0301	30:22 NCR
<u>Reinstatement</u>	21 NCAC 28B .0302*	30:22 NCR
<u>General</u>	21 NCAC 28B .0401*	30:22 NCR
<u>Continuing Education Units</u>	21 NCAC 28B .0402*	30:22 NCR
<u>Continuing Education Records; Audit</u>	21 NCAC 28B .0403*	30:22 NCR
<u>Extension of Time</u>	21 NCAC 28B .0404*	30:22 NCR
<u>Requests for Approval</u>	21 NCAC 28B .0405*	30:22 NCR
<u>General</u>	21 NCAC 28B .0501*	30:22 NCR
<u>Planting</u>	21 NCAC 28B .0502*	30:22 NCR
<u>Turf</u>	21 NCAC 28B .0503*	30:22 NCR
<u>Finish Grade</u>	21 NCAC 28B .0504	30:22 NCR

APPROVED RULES

<u>Design and Consultation</u>	21	NCAC 28B .0505	30:22 NCR
<u>Drainage Systems and Cisterns</u>	21	NCAC 28B .0506	30:22 NCR
<u>Low-Voltage Lighting; Pools</u>	21	NCAC 28B .0507*	30:22 NCR
<u>Walls</u>	21	NCAC 28B .0508	30:22 NCR
<u>Paving</u>	21	NCAC 28B .0509	30:22 NCR
<u>Pruning</u>	21	NCAC 28B .0510*	30:22 NCR
<u>Wildflower, Native Grass, and No-Mow Seed Establishment</u>	21	NCAC 28B .0511*	30:22 NCR
<u>Fee Schedule</u>	21	NCAC 28B .0601	30:22 NCR
<u>Complaints; Investigations</u>	21	NCAC 28B .0701*	30:22 NCR
<u>Probable Cause</u>	21	NCAC 28B .0801	30:22 NCR
<u>Hearings</u>	21	NCAC 28B .0802	30:22 NCR
<u>Subpoenas</u>	21	NCAC 28B .0803	30:22 NCR
<u>Summary Suspension</u>	21	NCAC 28B .0804*	30:22 NCR

MEDICAL BOARD

<u>Continuing Medical Education (CME) Required</u>	21	NCAC 32R .0101*	30:22 NCR
<u>Continuing Medical Education</u>	21	NCAC 32S .0216*	30:22 NCR

OPTOMETRY, BOARD OF EXAMINERS IN

<u>Fees</u>	21	NCAC 42J .0101*	30:03 NCR
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PHARMACY, BOARD OF

<u>Medication in Health Departments</u>	21	NCAC 46 .2401*	n/a G.S. 150B-21.5(a)(3)
<u>Drugs and Devices to be Dispensed</u>	21	NCAC 46 .2403*	n/a G.S. 150B-21.5(a)(3)

PODIATRY EXAMINERS, BOARD OF

<u>Application</u>	21	NCAC 52 .0201*	30:08 NCR
<u>Examination</u>	21	NCAC 52 .0202*	30:08 NCR
<u>Re-Examination</u>	21	NCAC 52 .0204*	30:08 NCR
<u>Practice Orientation</u>	21	NCAC 52 .0205*	30:08 NCR
<u>Annual Renewal of License</u>	21	NCAC 52 .0207*	30:08 NCR
<u>Applicants Licensed in Other States</u>	21	NCAC 52 .0209	30:08 NCR
<u>Fee for Validation of Licensee Lists; Computer Services</u>	21	NCAC 52 .0210	30:08 NCR
<u>Military License</u>	21	NCAC 52 .0211*	30:08 NCR
<u>Specialty Credentialing Privileges</u>	21	NCAC 52 .0212*	30:08 NCR
<u>Registration</u>	21	NCAC 52 .0301*	30:08 NCR
<u>Annual Renewal</u>	21	NCAC 52 .0302	30:08 NCR
<u>Penalties</u>	21	NCAC 52 .0303	30:08 NCR
<u>Hearings</u>	21	NCAC 52 .0402*	30:08 NCR
<u>Service of Notice</u>	21	NCAC 52 .0403	30:08 NCR
<u>Place of Hearings</u>	21	NCAC 52 .0404*	30:08 NCR
<u>Appeal</u>	21	NCAC 52 .0408*	30:08 NCR
<u>Application for Examination</u>	21	NCAC 52 .0601*	30:08 NCR
<u>Appl/Exam/Podiatrist Licensed/Other States (Reciprocity)</u>	21	NCAC 52 .0610*	30:08 NCR
<u>Payment of Fees</u>	21	NCAC 52 .0612*	30:08 NCR

<u>Fee Schedule</u>	21 NCAC 52 .0613	30:08 NCR
<u>Petition for Rulemaking Hearings</u>	21 NCAC 52 .0701*	30:08 NCR
<u>Contents of Petition</u>	21 NCAC 52 .0702*	30:08 NCR
<u>Dispositions of Petitions</u>	21 NCAC 52 .0703*	30:08 NCR
<u>Notice Mailing List</u>	21 NCAC 52 .0804*	30:08 NCR
<u>Subjects of Declaratory Rulings</u>	21 NCAC 52 .1001*	30:08 NCR
<u>Submission of Request for Ruling</u>	21 NCAC 52 .1002*	30:08 NCR
<u>Disposition of Requests</u>	21 NCAC 52 .1003*	30:08 NCR
<u>Record of Decision</u>	21 NCAC 52 .1004*	30:08 NCR
<u>Definition</u>	21 NCAC 52 .1005*	30:08 NCR
<u>Simplification of Issues</u>	21 NCAC 52 .1202*	30:08 NCR
<u>Subpoenas</u>	21 NCAC 52 .1203	30:08 NCR
<u>Final Decisions in Administrative Hearings</u>	21 NCAC 52 .1204	30:08 NCR
<u>Board of Podiatry Examiners Elections</u>	21 NCAC 52 .1301*	30:08 NCR
<u>Procedures for Conducting Elections</u>	21 NCAC 52 .1302*	30:08 NCR
<u>Soft Tissue Procedures</u>	21 NCAC 52 .1401*	30:08 NCR

The following Rules are subject to the next Legislative Session. (see G.S. 150B-21.3(b1))

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Life-of-Site Permit Issued for a Sanitary Landfill or Tra...</u>	15A NCAC 13B .0207*	30:20 NCR
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TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

*Amended Eff. July 3, 2012;
Readopted Eff. January 1, 2017.*

15A NCAC 02H .0126 STORMWATER DISCHARGES

(a) Stormwater discharges subject to National Pollutant Discharge Elimination System (NPDES) permitting are addressed in this section, which incorporates, supplements, and elaborates on the federal rules on stormwater NPDES discharges. Other stormwater control requirements are addressed in Section .1000 of this Subchapter entitled "Stormwater Management," but may also be addressed in sections dedicated to particular water classifications or circumstances.

(b) Facilities and Regulated Entities (REs) subject to NPDES permitting shall be issued NPDES permits for stormwater discharges to surface waters in accordance with this Rule, Rules. 0150 through .0153 of this Subchapter, and United States Environmental Protection Agency (EPA) regulations 40 CFR 122.21, 122.26, and 122.28 through 122.37 (1 July 2015 Edition) which are hereby incorporated by reference, not including subsequent amendments and editions. These federal regulations may be accessed at no cost at <http://www.gpo.gov/fdsys/>. State regulations may be accessed at <http://www.ncoah.com/rules>.

*History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1);
Eff. November 1, 1986;
Amended Eff. August 3, 1992;
Temporary Amendment Eff. November 1, 2002;
Temporary Amendment returned to Agency by Rules Review Commission on January 22, 2004;*

15A NCAC 02H .0150 DEFINITIONS: NPDES MS4 STORMWATER

Federal definitions for NPDES discharges at 40 C.F.R. 122.2 and 122.26(b)(1 July 2015 Edition) are incorporated herein by reference, not including subsequent amendments and editions. These federal regulations may be accessed at no cost at <http://www.gpo.gov/fdsys/>. The definition of any word or phrase used in the NPDES municipal separate storm sewer system (MS4) stormwater program shall be the same as given in Article 21, Chapter 143 of the General Statutes of North Carolina, as amended, and Rule .1002 of this Subchapter. Other words and phrases are defined as follows:

- (1) "Division" means the Division of Energy, Mineral, and Land Resources in the Department.
- (2) "MS4" means municipal separate storm sewer system.
- (3) "Planning jurisdiction" means the territorial jurisdiction within which a municipality exercises the powers authorized by Article 19 of Chapter 160A of the General Statutes, or a county exercises the powers authorized by Article 18 of Chapter 153A of the General Statutes.
- (4) "Public entity" means the United States, the State, a city, village, township, county, school district, public college or university, single-

purpose governmental agency, or any other governing body that is created by federal or State law.

- (5) "Regulated entity" means any public entity that must obtain a National Pollutant Discharge Elimination System (NPDES) permit for stormwater management for its municipal separate storm sewer system (MS4).
- (6) "Sensitive receiving waters" means any of the following:
 - (a) waters that are classified as high quality, outstanding resource, shellfish, trout, or nutrient sensitive waters in accordance with 15A NCAC 02B .0101, 15A NCAC 02B .0200, and 15A NCAC 02B .0301;
 - (b) waters that are occupied by or designated as critical habitat for aquatic animal species that are listed as threatened or endangered by the United States Fish and Wildlife Service or the National Marine Fisheries Service under the provisions of the Endangered Species Act of 1973 (Pub. L. No. 93-205; 87 Stat. 884; 16 U.S.C. 1531, et seq.), as amended; or
 - (c) waters for which the "best usage," as described by the classification system set forth in 15A NCAC 02B .0101, 15A NCAC 02B .0200, and 15A NCAC 02B .0301 have been determined to be impaired in accordance with the requirements of subsection (d) of 33 U.S.C. 1313, which is incorporated herein by reference, not including subsequent amendments and editions. This federal code may be accessed at no cost at <http://www.gpo.gov/fdsys/>.
- (7) "Significant contributor of pollutants" means a municipal separate storm sewer system (MS4) or a discharge that contributes to the pollutant loading of a water body or that destabilizes the physical structure of a water body such that the contribution to pollutant loading or the destabilization may reasonably be expected to have an "adverse impact," as that term is defined in 15A NCAC 02H Rule .1002 of this Subchapter, on the quality and best usage of the water body. "Best usage" of a water body shall be determined pursuant to 15A NCAC 02B .0211 through 15A NCAC 02B .0222 and 15A NCAC 02B .0300.
- (8) "Total maximum daily load (TMDL) implementation plan" means a written, quantitative plan, and analysis for attaining and maintaining water quality standards in all seasons for a specific water body and pollutant.

History Note: Authority G.S. 143-213; 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 2006-246; Eff. July 3, 2012; Readopted Eff. January 1, 2017.

15A NCAC 02H .0151 NPDES MS4 STORMWATER: DESIGNATION AND PETITION PROCESS

(a) Designation of Regulated Entities. A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity through federal designation, through the State designation process, or under a total maximum daily load (TMDL) implementation plan, as provided in this Paragraph.

- (1) Federal designation. A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity pursuant to 40 CFR 122.32. These federal regulations may be accessed at no cost at <http://www.gpo.gov/fdsys/>.
- (2) State designation process. The Commission shall designate a public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated entity as provided in Subparagraphs (2)(A) through (F) below:
 - (A) Designation schedule. The Commission shall implement the designation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).
 - (B) Identification of candidate regulated entities. The Commission shall identify a public entity as a candidate for designation as a regulated entity if the municipal separate storm sewer system (MS4) either:
 - (i) discharges stormwater that has the potential to have an "adverse impact," as that term is defined in Rule .1002 of this Subchapter, on water quality; or
 - (ii) serves a public entity that has not been designated pursuant to Item (1) of this Paragraph and that has either a population of more than 10,000 or more than 4,000 housing units, and either a population density of 1,000 people per square mile or more or more than 400 housing units per square mile.
 - (C) Notice and comment on candidacy. The Commission shall notify each public entity identified as a candidate for designation as a regulated entity.

After notification of each public entity, the Commission shall publish a list of all public entities within a river basin that have been identified as candidates for designation. This list shall be published on the Division website at <http://portal.ncdenr.org/web/lr/storm> water. The Commission shall accept public comment on the proposed designation of a public entity as a regulated entity for 30 days from the date of publication.

- (D) Designation of regulated entities. After review of the public comment, the Commission shall make a determination on designation for each of the candidate public entities. The Commission shall designate a candidate public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated public entity only if the Commission determines either that:
- (i) the public entity has an actual population growth rate that exceeds 1.3 times the State population growth rate for the previous 10 years;
 - (ii) the public entity has a projected population growth rate that exceeds 1.3 times the projected State population growth rate for the next 10 years;
 - (iii) the population of the public entity is more than 15 percent greater than its population two years prior to the publication of the list identifying the public entity as a candidate for designation.
 - (iv) the municipal separate storm sewer system (MS4) discharges stormwater that has adverse impacts on water quality; or
 - (v) the municipal separate storm sewer system (MS4) discharges stormwater that results in a significant contribution of pollutants to receiving waters, taking into account the effectiveness of other applicable water quality protection programs. To determine the effectiveness of other

applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the best usages.

- (E) Notice of designation. The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a NPDES permit for stormwater management shall be submitted to the Commission.
 - (F) Application schedule. A public entity that has been designated as a regulated entity pursuant to this subdivision shall submit its application for a NPDES permit for stormwater management within 18 months of the date of notification.
- (3) Designation under a total maximum daily load (TMDL) implementation plan. The Commission shall designate an owner or operator of a small municipal separate storm sewer system (MS4) as a regulated entity if the municipal separate storm sewer system (MS4) is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. 1313, which are incorporated herein by reference. This federal code [may be accessed at no cost at <http://www.gpo.gov/fdsys/>]. The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a NPDES permit for stormwater management shall be submitted to the Commission. A public entity that has been designated as a regulated entity pursuant to this Item shall submit its application for a NPDES permit for stormwater management within 18 months of the date of notification.
- (b) Petition Process. A petition may be submitted to the Commission to request that an owner or operator of a municipal separate storm sewer system (MS4) or a person who discharges stormwater be required to obtain a NPDES permit for stormwater management as follows:
- (1) Connected discharge petition. An owner or operator of a permitted municipal separate storm sewer system (MS4) may submit a petition to the Commission to request that a

person who discharges into the permitted municipal separate storm sewer system (MS4) be required to obtain a separate NPDES permit for stormwater management. The Commission shall grant the petition and require the person to obtain a separate NPDES permit for stormwater management if the petitioner shows that the person's discharge flows or will flow into the permitted municipal separate storm sewer system (MS4).

(2) Adverse impact petition. Any person may submit a petition to the Commission to request that an owner or operator of a municipal separate storm sewer system (MS4) or a person who discharges stormwater be required to obtain a NPDES permit for stormwater management as follows:

(A) Petition review. The Commission shall grant the petition and require the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater to obtain a NPDES permit for stormwater management if the petitioner shows any of the following:

- (i) the municipal separate storm sewer system (MS4) or the discharge discharges stormwater or has the potential to discharge stormwater that may cause or contribute to a water quality standard violation;
- (ii) the municipal separate storm sewer system (MS4) or the discharge is a significant contributor of pollutants to receiving waters; or
- (iii) the municipal separate storm sewer system (MS4) or the discharge is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. 1313.

(B) Types of evidence for required showing. Petitioners may make the showing of adverse impact required by Part (b)(2)(A) of this Rule by providing to the Commission the following information:

- (i) monitoring data that includes representative sampling of the municipal separate storm sewer system (MS4) or

discharge and information describing how the sampling is representative. The petitioner shall notify the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater of its intent to conduct monitoring activities prior to conducting those activities;

- (ii) scientific or technical literature that supports the sampling methods;
- (iii) studies and technical information on land uses in the drainage area and the characteristics of stormwater runoff from these land uses;
- (iv) a map that delineates the drainage area of the petitioned entity; the location of sampling stations; the location of the stormwater outfalls in the adjacent area of the sampling locations; general features, including surface waters, major roads, and political boundaries; and areas of concern regarding water quality;
- (v) for stormwater discharges to impaired waters, documentation that the receiving waters are impaired or degraded and monitoring data that demonstrates that the municipal separate storm sewer system (MS4) or discharge contributes pollutants for which the waters are impaired or degraded; or
- (vi) for stormwater discharges to nonimpaired waters, monitoring data that demonstrates that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is a significant contributor of pollutants to the receiving waters.

(C) Water quality protection program offset. If the petitioner makes the required showing, the Commission shall review the effectiveness of any

existing water quality protection programs that may offset the need to obtain a NPDES permit for stormwater management. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the best usages. The Commission may deny the petition if it finds that existing water quality protection programs are adequate to address stormwater impacts on sensitive receiving waters and to ensure compliance with a TMDL implementation plan.

- (3) Petition administration. The Commission shall process petitions in the following manner:
 - (A) A separate petition shall be filed for each municipal separate storm sewer system (MS4) or discharge.
 - (B) The Commission shall evaluate petitions that contain all information required by Part (2)(B) of this Paragraph. The Commission shall make a determination on the completeness of a petition within 90 days of receipt of the petition, or it shall be deemed complete. If the Commission requests additional information, the petitioner may submit additional information and the Commission shall determine, within 90 days of receipt of the additional information, whether the information completes the petition.
 - (C) The petitioner shall provide to the chief administrative officer of the municipal separate storm sewer system (MS4) or the person in control of the discharge a copy of the petition and a copy of any subsequent additional information submitted to the Commission within 48 hours of each submittal.
 - (D) The Commission shall post all petitions on the Division website at <http://deq.nc.gov/about/divisions/energy-mineral-land-resources/energy-mineral-land-permits/stormwater-program> and maintain copies available for inspection at the Division's office. The Commission shall accept and consider public comment for 30 days from the date of posting.
 - (E) The Commission may hold a public hearing on a petition and shall hold a public hearing on a petition if it

receives a written request for a public hearing within the public comment period and the Commission determines that there is a significant public interest in holding a public hearing. The Commission's determination to hold a public hearing shall be made no less than 15 days after the close of the public comment period. The Commission shall schedule the hearing to be held within 45 days of the close of the initial public comment period and shall accept and consider additional public comment through the date of the hearing.

- (F) An additional petition for the same municipal separate storm sewer system (MS4) or discharge received during the public comment period shall be considered as comment on the original petition. An additional petition for the same municipal separate storm sewer system (MS4) or discharge received after the public comment period ends and before the final determination is made shall be considered incomplete and held pending a final determination on the original petition.
 - (i) If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is required to obtain a NPDES permit for stormwater management, any other petitions for the same municipal separate storm sewer system (MS4) or discharge that were held shall be considered in the development of the NPDES permit for stormwater management.
 - (ii) If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is not required to obtain a NPDES permit for stormwater management, an additional petition for the municipal separate storm sewer system (MS4) or discharge shall

present new information as required by Part (2)(B) of this Paragraph or demonstrate that conditions have changed in order to be considered. If new information is not provided, the petition shall be returned as incomplete.

- (G) The Commission shall evaluate a petition within 180 days of the date on which it is determined to contain all information required by Part (2)(B) of this Paragraph. If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is required to obtain a NPDES permit for stormwater management, the Commission shall notify the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater within 30 days of the requirement to obtain the permit. The owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater shall submit its application for a NPDES permit for stormwater management within 18 months of the date of notification.

(c) Exemption. A municipality with a population of less than 1,000, including a municipality designated as an urbanized area under the most recent federal decennial census, is not required to obtain a NPDES permit for stormwater management unless the municipality is shown to be contributing to an impairment of State waters, as determined under the requirements of 33 U.S.C. 1313(d).

(d) Waiver. The Department may waive the requirement for a NPDES permit for stormwater management pursuant to 40 CFR 122.32(d) or (e).

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 2006-246; Eff. July 3, 2012; Readopted Eff. January 1, 2017.

15A NCAC 02H .0152 DEVELOPMENT IN URBANIZING AREAS

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 2011-220; Eff. July 3, 2012; Amended Eff. July 1, 2013; Repealed Eff. January 1, 2017.

15A NCAC 02H .0153 NPDES MS4 STORMWATER: PROGRAM IMPLEMENTATION

(a) Permit Standards. To obtain a NPDES permit for stormwater management, an applicant shall develop, implement, and enforce a stormwater management plan approved by the Commission that satisfies the six "minimum control measures" required by 40 CFR 122.34(b). These federal regulations may be accessed at no cost at <http://www.gpo.gov/fdsys/>. The evaluation of the post-construction stormwater management measures required by 40 CFR 122.34(b)(5) shall be conducted as provided in Rule .1017 of this Subchapter. Regulated entities may propose using any existing State or local program that relates to the minimum control measures to meet, either in whole or in part, the requirements of the minimum control measures.

(b) Implementation Schedule. The requirements of this Rule shall be implemented as follows:

- (1) a regulated entity shall apply within 18 months of notification by the Department that the regulated entity is subject to regulation pursuant to Rules .0151(a) and (b) and Rule .1016 of this Subchapter;
- (2) public education and outreach minimum measures shall be implemented within 12 months from date of permit issuance;
- (3) a regulated entity shall implement its post-construction program no later than 24 months from the date the permit is issued; and
- (4) the Department shall include permit conditions that establish schedules for implementation of each minimum control measure of the regulated entity's stormwater management program based on the submitted application so that the regulated entity implements its permitted program within five years from permit issuance.

(c) Federal and State Projects. The Commission shall have jurisdiction, to the exclusion of local governments, to issue a NPDES permit for stormwater management to a federal or State agency that applies to all or part of the activities of the agency or that applies to the particular project. If a federal or State agency does not hold a MS4 NPDES permit for stormwater management that applies to the particular project within North Carolina, then the project shall be subject to the stormwater management requirements of this Rule as implemented by the Commission or by a local government. The provisions of G.S. 153A-347 and G.S. 160A-392 apply to the implementation of this Rule.

(d) General Permit. The Commission shall develop and issue a NPDES general permit for stormwater management. The general permit requirements for post-construction stormwater management measures required by 40 CFR 122.34(b)(5) shall require a permittee to meet the standards set forth in Rule .1017 of this Subchapter. After the Commission has issued a National Pollutant Discharge Elimination System (NPDES) general permit for stormwater management, a public entity that has applied for a permit may submit a notice of intent to be covered under the general permit to the Commission. The notice of intent shall be submitted to the Division accompanied by the application fee as set forth in G.S. 143-215.3D. The Commission shall treat an application for a permit as an application for an individual permit

unless the applicant submits a notice of intent to be covered under a general permit under this Paragraph.

(e) The exclusions from the requirement to obtain a NPDES permit for stormwater management set out in 40 CFR 122.3, including the exclusions for certain nonpoint source agricultural and silvicultural activities, apply to the provisions of this Rule.

(f) In order to fulfill the post-construction minimum control measure requirement for linear transportation projects, including private transportation projects constructed to North Carolina Department of Transportation standards that will be conveyed to the State or another public entity upon completion, a permittee, delegated program, or regulated entity may use the Stormwater Best Management Practices Toolbox (Version 2, April 2014 Edition) developed by the North Carolina Department of Transportation which is herein incorporated by reference, including any subsequent amendments and editions, and may be accessed at no cost at https://connect.ncdot.gov/resources/hydro/HSPDocuments/2014_BMP_Toolbox.pdf.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 2006-246; S.L. 2014-1; Eff. July 3, 2012; Readopted Eff. January 1, 2017.

15A NCAC 02H .0154 POST-CONSTRUCTION PRACTICES

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); Eff. July 3, 2012; Repealed Eff. January 1, 2017.

SECTION .1000 - STORMWATER MANAGEMENT

15A NCAC 02H .1001 POST-CONSTRUCTION STORMWATER MANAGEMENT: PURPOSE AND SCOPE

The purpose of this Section is to protect surface waters and aquatic resources from the adverse impacts of stormwater runoff from development activities.

- (1) **APPLICABILITY.** This Section shall apply to development projects and major modifications of development projects for residential, commercial, industrial, or institutional use that are subject to one or more of the post-construction stormwater management programs listed in Item (2) of this Rule. This Section shall not apply to:
 - (a) land management activities associated with agriculture or silviculture;
 - (b) activities of the North Carolina Department of Transportation (NCDOT) that are regulated in accordance with the provisions of NPDES Permit Number NCS000250;
 - (c) linear transportation projects undertaken by an entity other than the NCDOT when:

- (i) the project is constructed to NCDOT standards and is in accordance with the NCDOT Stormwater Best Management Practices Toolbox (Version 2, April 2014 Edition) which is herein incorporated by reference, including any subsequent amendments and editions, and may be accessed at no cost at https://connect.ncdot.gov/resources/hydro/HSPDocuments/2014_BMP_Toolbox.pdf;
- (ii) upon completion, the project will be conveyed either to the NCDOT or another public entity and will be regulated in accordance with that entity's NPDES MS4 stormwater permit; and
- (iii) the project is not part of a common plan of development;

- (d) development activities that have already received a State Stormwater Permit or Certification where no modification or a minor modification is requested. These activities shall follow their existing permit conditions.
- (e) airport facilities that are deemed permitted in accordance with G.S. 143-214.7(c4); and
- (f) "redevelopment" as the term is defined in G.S. 143-214.7(a1).

- (2) **STORMWATER PROGRAMS.** The post-construction stormwater management programs consist of the following:
 - (a) Coastal Counties – 15A NCAC 02H .1019;
 - (b) Non-Coastal County High Quality Waters and Outstanding Resource Waters – 15A NCAC 02H .1021;
 - (c) NPDES MS4 Stormwater – 15A NCAC 02H .0126; 15A NCAC 02H .0150, .0151; 15A NCAC 02H .0153; 15A NCAC 02H .1017;
 - (d) Urbanizing Areas – 15A NCAC 02H .1016; and
 - (e) Universal Stormwater Management Program - 15A NCAC 02H .1020.
- (3) **PERMIT REQUIRED.** A permit shall be required for development activities that are subject to any of the post-construction stormwater management programs listed in Item (2) of this Rule. The permit shall be issued by the implementing authority in accordance

with this Section. If a project is subject to more than one post-construction stormwater management program, the requirements of both programs shall apply unless otherwise required or allowed by the applicable rule of this Section.

(4) **DISPUTES REGARDING WATER QUALITY CLASSIFICATION.** For stormwater programs that apply based on water quality classification, any disputes regarding water quality classification shall be determined by the N.C. Division of Water Resources pursuant to 15A NCAC 02B .0101 and in accordance with G.S. 143-214.1.

(5) **PRIOR AUTHORIZATIONS.** A development project shall not be required to comply with this Section or shall be allowed to follow an earlier version of the rules of this Section available for no cost on the Division's website at <http://deq.nc.gov/about/divisions/energy-mineral-land-resources/energy-mineral-land-permits/stormwater-program> if it is conducted pursuant to one of the following authorizations, provided that the authorization was obtained prior to the effective date of the applicable rule of this Section, and the authorization is valid, unexpired, unrevoked, and not otherwise terminated:

- (a) a building permit pursuant to G.S. 153A-357 or G.S. 160A-417;
- (b) a "site specific development plan" as defined by G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5);
- (c) a "phased development plan" as defined by G.S. 153A-344.1(b)(3) or G.S. 160A-385.1 that shows:
 - (i) for the initial or first phase of development, the type and intensity of uses for a specific parcel or parcels, including the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A-330 through G.S. 153A-335 or G.S. 160A-371 through G.S. 160A-376; and
 - (ii) for any subsequent phase of development, sufficient detail that demonstrates to the permitting authority that implementation of the requirements of this Section to that phase of development would require a material change in that phase of development as contemplated in the phased development plan. Sufficient

detail may include documentation of financial expenditures and contractual obligations, a copy of an approved site-specific development plan, and a narrative of how the new rules will require a material change to the subsequent phase or phases of development; or

(d) a vested right to the development pursuant to common law.

(6) **ANTI-DEGRADATION POLICY.** Development projects that are subject to this Section shall comply with the Antidegradation Policy set forth in 15A NCAC 02B .0201.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 2014-1; Eff. January 1, 1988; Amended Eff. September 1, 1995; Readopted Eff. January 1, 2017.

15A NCAC 02H .1002 DEFINITIONS

The definition of any word or phrase in this Section shall be the same as given in Article 21, Chapter 143 of the General Statutes of North Carolina, as amended. Definitions set forth in 15A NCAC 02H .0150 and 40 CFR 122.2 and 122.26(b) (1 July 2015 Edition) are incorporated herein by reference, not including subsequent amendments and editions. These federal regulations may be accessed at no cost at <http://www.gpo.gov/fdsys/>. Other words and phrases used in this Section are defined as follows:

- (1) "Adverse impact" means a detrimental effect upon water quality or best usages, including a violation of water quality standards, caused by or contributed to by a discharge or loading of a pollutant or pollutants.
- (2) "Best usage" means those uses of waters specified for each classification as determined by the Commission in accordance with the provisions of G.S. 143-214.1 and as set forth in 15A NCAC 02B .0101, 15A NCAC 02B .0200, and 15A NCAC 02B .0300.
- (3) "Built-upon area" or "BUA" has the same meaning as in G.S. 143-214.7.
- (4) "CAMA Major Development Permits" means those permits or revised permits required by the Coastal Resources Commission as set forth in 15A NCAC 07J Sections .0100 and .0200.
- (5) "Certificate of Stormwater Compliance" means the approval for activities that meet the requirements for coverage under a stormwater general permit for development activities that are regulated by this Section.
- (6) "Coastal Counties" means any of the following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover,

- Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington.
- (7) "Commission" means the North Carolina Environmental Management Commission.
- (8) "Common plan of development" means a site where multiple separate and distinct development activities may be taking place at different times on different schedules but governed by a single development plan regardless of ownership of the parcels. Information that may be used to determine a "common plan of development" include plats, blueprints, marketing plans, contracts, building permits, public notices or hearings, zoning requests, and infrastructure development plans.
- (9) "Curb Outlet System" means curb and gutter with breaks or other outlets used to convey stormwater runoff to vegetated conveyances or other vegetated areas.
- (10) "Design volume" means the amount of stormwater runoff that an SCM or series of SCMs is designed to treat.
- (11) "Development" has the same meaning as in G.S. 143-214.7.
- (12) "Director" means the Director of the Division of Energy, Mineral, and Land Resources.
- (13) "Dispersed flow" means uniform shallow flow that is conveyed to a vegetated filter strip as defined in Rule .1059 of this Section, another vegetated area, or stormwater control measure. The purpose of "dispersed flow" is to remove pollutants through infiltration and settling, as well as to reduce erosion prior to stormwater reaching surface waters.
- (14) "Division" means the Division of Energy, Mineral, and Land Resources.
- (15) "Drainage Area or Watershed" means the entire area contributing surface runoff to a single point.
- (16) "Erosion and Sedimentation Control Plan" means any plan, amended plan, or revision to an approved plan submitted to the Division of Energy, Mineral, and Land Resources or a delegated authority in accordance with G.S. 113A-57.
- (17) "Existing development" means those projects that are built or those projects that have established a vested right under North Carolina law as of the effective date of the state stormwater program or applicable local government ordinance to which the project is subject.
- (18) "General Permit" means a permit issued under G.S. 143-215.1(b)(3) and G.S. 143-215.1(b)(4) authorizing a category of similar activities or discharges.
- (19) "Geotextile fabric" means a permeable geosynthetic comprised solely of non-biodegradable textiles.
- (20) "Infiltration Systems" means stormwater control measures designed to allow runoff to move into the soil's pore space.
- (21) "Intermittent stream" has the same meaning as in 15A NCAC 02B .0233.
- (22) "Local government" has the same meaning as in 15A NCAC 02B .0202.
- (23) "Major modification" means a change of a state stormwater permit that is not a "minor modification" as that term is defined in this Rule.
- (24) "Minimum Design Criteria" or "MDC" means the requirements set forth in this Section for siting, site preparation, design and construction, and post-construction monitoring and evaluation necessary for the Department to issue stormwater permits that comply with State water quality standards adopted pursuant to G.S. 143-214.1.
- (25) "Minor modification" means a change of a state stormwater permit that does not increase the net built-upon area within the project or does not increase the overall size of the stormwater control measures that have been approved for the project.
- (26) "Non-erosive velocity" means the flow rate of water, usually measured in feet per second, that does not exceed the maximum permissible velocity for the condition and type of soil and groundcover over which the water is flowing. Erosion occurs when the maximum permissible velocity is exceeded.
- (27) "Notice of Intent" means a written notification to the Division that an activity or discharge is intended to be covered by a general permit in lieu of an application for an individual permit.
- (28) "NPDES" means National Pollutant Discharge Elimination System.
- (29) "Off-site Stormwater Systems" means stormwater management systems that are located outside the boundaries of the specific project in question, but designed to control stormwater drainage from that project and other potential development sites.
- (30) "One-year, 24-hour storm" means the maximum amount of rainfall during a 24 consecutive hour period expected, on average, to occur once a year. One-year, 24-hour storm depths are estimated by the National Oceanic and Atmospheric Administration (NOAA) Precipitation Frequency Data Server (PFDS), which is herein incorporated by reference, including subsequent amendments and editions, and may be accessed at no cost at <http://hdsc.nws.noaa.gov/hdsc/pfds/>.
- (31) "On-site Stormwater Systems" means the systems necessary to control stormwater within an individual development project and located within the project boundaries.

- (32) "Peak attenuation volume" means stormwater runoff in excess of the design volume that is conveyed to an SCM where it is not treated in accordance with the applicable MDC, but is released by the SCM in a controlled manner to address potential downstream erosion and flooding impacts to meet federal, State, or local regulations beyond the requirements of this Section.
- (33) "Perennial waterbody" has the same meaning as in 15A NCAC 02B .0233.
- (34) "Perennial stream" has the same meaning as in 15A NCAC 02B .0233.
- (35) "Permeable pavement" means paving material that absorbs water or allows water to infiltrate through the paving material. "Permeable pavement" materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, porous asphalt, and any other material with similar characteristics.
- (36) "Person" has the same meaning as in G.S. 143-212(4).
- (37) "Primary SCM" means a wet pond, stormwater wetland, infiltration system, sand filter, bioretention cell, permeable pavement, green roof, rainwater harvesting, or an approved new stormwater technology that is designed, constructed and maintained in accordance with the MDC.
- (38) "Project" means the proposed development activity for which an applicant is seeking a stormwater permit from the state or other entity in accordance with this Section. "Project" shall exclude any land adjacent to the area disturbed by the project that has been counted as pervious by any other development regulated under a federal, State, or local stormwater regulation. Owners and developers of large developments consisting of many linked projects may consider developing a master plan that illustrates how each project fits into the design of the large development.
- (39) "Public linear transportation project" means a project consisting of a road, bridge, sidewalk, greenway, or railway that is on a public thoroughfare plan or provides improved access for existing development and that is owned and maintained by a public entity.
- (40) "Required storm depth" means the minimum amount of rainfall that shall be used to calculate the required treatment volume or to evaluate whether a project has achieved runoff volume match.
- (41) "Redevelopment" has the same meaning as in G.S. 143-214.7.
- (42) "Residential development" has the same meaning as in 15A NCAC 02B .0202.
- (43) "Runoff treatment" means that the volume of stormwater runoff generated from all of the built-upon area of a project at build-out during a storm of the required storm depth is treated in one or more primary SCMs or a combination of Primary and Secondary SCMs that provides equal or better treatment.
- (44) "Runoff volume match" means that the annual runoff volume after development shall not be more than ten percent higher than the annual runoff volume before development, except in areas subject to SA waters requirements per Rule .1019 of this Section where runoff volume match means that the annual runoff volume after development shall not be more than five percent higher than the annual runoff volume before development.
- (45) "Seasonal High Water Table" or "SHWT" means the highest level of the saturated zone in the soil during a year with normal rainfall. SHWT may be determined in the field through identification of redoximorphic features in the soil profile, monitoring of the water table elevation, or modeling of predicted groundwater elevations.
- (46) "Secondary SCM" means an SCM that does not achieve the annual reduction of Total Suspended Solids (TSS) of a "Primary SCM" but may be used in a treatment train with a primary SCM or other Secondary SCMs to provide pre-treatment, hydraulic benefits, or a portion of the required TSS removal.
- (47) "Stormwater" has the same meaning as in G.S.143-213(16a).
- (48) "Stormwater Collection System" means any conduit, pipe, channel, curb, or gutter for the primary purpose of transporting (not treating) runoff. A stormwater collection system does not include vegetated swales, swales stabilized with armoring, or alternative methods where natural topography or other physical constraints prevents the use of vegetated swales (subject to case-by-case review), curb outlet systems, or pipes used to carry drainage underneath built-upon surfaces that are associated with development controlled by the provisions of Rule .1003 in this Section.
- (49) "Stormwater Control Measure" or "SCM," also known as "Best Management Practice" or "BMP," means a permanent structural device that is designed, constructed, and maintained to remove pollutants from stormwater runoff by promoting settling or filtration; or to mimic the natural hydrologic cycle by promoting infiltration, evapo-transpiration, post-filtration discharge, reuse of stormwater, or a combination thereof.
- (50) "Ten-year storm intensity" means the maximum rate of rainfall of a duration equivalent to the time of concentration expected, on the average, once in 10 years. Ten-

year storm intensities are estimated by the National Oceanic and Atmospheric Administration (NOAA) Precipitation Frequency Data Server (PFDS), which is herein incorporated by reference, including subsequent amendments and editions, and may be accessed at no cost at <http://hdsc.nws.noaa.gov/hdsc/pfds/>.

- (51) "Vegetated setback" means an area of natural or established vegetation adjacent to surface waters, through which stormwater runoff flows in a diffuse manner to protect surface waters from degradation due to development activities.
- (52) "Vegetated conveyance" means a permanent, designed waterway lined with vegetation that is used to convey stormwater runoff at a non-erosive velocity within or away from a developed area.
- (53) "Water Dependent Structures" means a structure that requires access, proximity to, or siting within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks, or bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots, and boat storage areas shall not be considered water dependent structures.

History Note: Authority G.S. 143-213; 143-214.1; 143-214.7; 143-215.3(a)(1); Eff. January 1, 1988; Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1. (f)); July 3, 2012; December 1, 1995; September 1, 1995; Temporary Amendment Eff. March 28, 2014; Amended Eff. January 1, 2015; Readopted Eff. January 1, 2017.

15A NCAC 02H .1003 REQUIREMENTS THAT APPLY TO ALL PROJECTS

The following requirements shall apply to projects subject to any North Carolina stormwater program set forth in Rule .1001 of this Section.

- (1) **CALCULATION OF PROJECT DENSITY.** The following requirements shall apply to the calculation of project density:
 - (a) Project density shall be calculated as the total built-upon area divided by the total project area;
 - (b) A project with existing development may use the calculation method in Sub-Item (1)(a) or shall have the option of calculating project density as the difference of total built-upon area minus existing built-upon area divided by the difference of total project area minus existing built-upon area;
 - (c) Total project area shall exclude the following:
 - (i) areas below the Normal High Water Line (NHWL); and

- (ii) areas defined as "coastal wetlands" pursuant to 15A NCAC 07H .0205, herein incorporated by reference, including any subsequent amendments and editions, and may be accessed at no cost at <http://reports.oah.state.nc.us/ncac.asp> as measured landward from the Normal High Water (NHW) line; and
- (d) On a case-by-case basis as determined by the Division during application review, projects may be considered to have both high and low density areas based on one or more of the following criteria:
 - (i) natural drainage area boundaries;
 - (ii) variations in land use throughout the project; and
 - (iii) construction phasing.

(2) **DESIGN REQUIREMENTS FOR LOW DENSITY PROJECTS.** Low density projects shall meet the following minimum design criteria:

- (a) **DENSITY THRESHOLDS.** Low density projects shall not exceed the low density development thresholds set forth in the stormwater programs to which they are subject pursuant to Rules .1017, .1019, and .1021 of this Section. For projects subject to the requirements for Non-Coastal High Quality Waters and Outstanding Resource Waters, dwelling unit per acre may be used instead of density to establish low density status for single-family detached residential development as set forth in Rule .1021 in this Section;
- (b) **DISPERSED FLOW.** Projects shall be designed to maximize dispersed flow through vegetated areas and minimize channelization of flow;
- (c) **VEGETATED CONVEYANCES.** Stormwater that cannot be released as dispersed flow shall be transported by vegetated conveyances. A minimal amount of non-vegetated conveyances for erosion protection or piping for driveways or culverts under a road shall be allowed by the permitting authority when it cannot be avoided. Vegetated conveyances shall meet the following requirements:
 - (i) Side slopes shall be no steeper than 3:1 (horizontal

- to vertical) unless it is demonstrated to the permitting authority that the soils and vegetation will remain stable in perpetuity based on engineering calculations and on-site soil investigation; and
- (ii) The conveyance shall be designed so that it does not erode during the peak flow from the 10-year storm as demonstrated by engineering calculations.
- (d) **CURB OUTLET SYSTEMS.** Low density projects may use curb and gutter with outlets to convey stormwater to grassed swales or vegetated areas. Requirements for these curb outlet systems shall be as follows:
- (i) The curb outlets shall be designed such that the swale or vegetated area can carry the peak flow from the 10-year storm at a non-erosive velocity;
 - (ii) The longitudinal slope of the swale or vegetated area shall not exceed five percent, except where not practical due to physical constraints. In these cases, devices to slow the rate of runoff and encourage infiltration to reduce pollutant delivery shall be provided;
 - (iii) The swale's cross-section shall be trapezoidal with a minimum bottom width of two feet;
 - (iv) The side slopes of the swale or vegetated area shall be no steeper than 3:1 (horizontal to vertical);
 - (v) The minimum length of the swale or vegetated area shall be 100 feet; and
 - (vi) Low density projects may use treatment swales designed pursuant to Rule .1061 of this Section in lieu of the requirements specified in Sub-items (i) through (v) of this Item.
- (3) **DESIGN REQUIREMENTS FOR HIGH DENSITY PROJECTS.** High density projects are projects that do not conform to Item (2) of this Rule. High density projects shall meet the following minimum design criteria:
- (a) **TREATMENT REQUIREMENTS.** SCMs shall be designed, constructed, and maintained so that the project achieves either "runoff treatment" or "runoff volume match" as those terms are defined in Rule .1002 of this Section.
 - (b) **OFF-SITE STORMWATER.** Stormwater runoff from off-site areas and existing development shall not be required to be treated in the SCM. Runoff from off-site areas or existing development that is not bypassed shall be included in the sizing of on-site SCMs at its full built-out potential.
 - (c) **OFF-SITE SCM.** A project that controls runoff through an off-site SCM shall be allowed on a case-by-case basis as determined by the permitting authority if the off-site SCM meets the provisions of Rules .1050 through .1061 of this Section.
 - (d) **EXPANSION OR REPLACEMENT OF EXISTING DEVELOPMENT.** When new built-upon area is added to existing development or existing development is replaced with new built-upon area, only the area of net increase shall be subject to this Section.
 - (e) **MDC FOR SCMS.** SCMs shall meet the relevant MDC set forth in Rules .1050 through .1062 of this Section except in accordance with Item (6) of this Rule.
- (4) **VEGETATED SETBACKS.** Vegetated setbacks shall be required adjacent to waters as specified in the stormwater rules to which the project is subject pursuant to this Section, in addition to the following requirements applicable to all vegetated setbacks:
- (a) The width of a vegetated setback shall be measured horizontally from the normal pool elevation of impounded structures, from the top of bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline;
 - (b) Vegetated setbacks may be cleared or graded, but shall be replanted and maintained in grass or other vegetation;
 - (c) Built-upon area that meets the requirements of G.S. 143-214.7(b2)(2) shall be allowed within the vegetated setback.

- (d) Built-upon area that does not meet the requirements of G.S. 143-214.7(b2)(2) shall be allowed within a vegetated setback when it is not practical to locate the built-upon area elsewhere, the built-upon area within the vegetated setback is minimized, and channelizing runoff from the built-upon area is avoided. Built-upon area within the vegetated setback shall be limited to:
 - (i) Publicly-funded linear projects such as roads, greenways, and sidewalks;
 - (ii) Water Dependent Structures; and
 - (iii) Minimal footprint uses such as poles, signs, utility appurtenances, and security lights.
- (e) Stormwater that has not been treated in an SCM shall not be discharged through a vegetated setback; instead it shall be released at the edge of the vegetated setback and allowed to flow through the setback as dispersed flow.
- (f) Artificial streambank and shoreline stabilization shall not be subject to the requirements of this Item.
- (5) **STORMWATER OUTLETS.** Stormwater outlets shall be designed so that they do not cause erosion downslope of the discharge point during the peak flow from the 10-year storm event as shown by engineering calculations.
- (6) **VARIATIONS FROM THIS SECTION.** The permitting authority shall have the option to approve projects that do not comply with all of the provisions of this Section on a case-by-case basis as follows:
 - (a) If the variation pertains to an SCM design that does not meet all of the MDC, then the applicant shall provide technical justification based on engineering calculations and the results of research studies showing that the proposed design provides equal or better stormwater control and equal or better protection of waters of the State than the requirements of this Section and that it shall function in perpetuity. The permitting authority shall have the option to require compliance with the MDC in the event that the alternative SCM design fails;
 - (b) If the variation pertains to other aspects of the project, then the applicant shall demonstrate that the project provides equal or better stormwater control and equal or better

protection of waters of the State than the requirements of this Section; and

- (c) Variations from this Section shall not be allowed if the project is being permitted under the fast-track process.
- (7) **DEED RESTRICTIONS AND PROTECTIVE COVENANTS.** The permittee shall record deed restrictions and protective covenants prior to the issuance of a certificate of occupancy to ensure that projects will be maintained in perpetuity consistent with the plans and specifications approved by the permitting authority. For projects owned by public entities, the permittee shall have the option to incorporate specific restrictions and conditions into a facility management plan or another instrument in lieu of deed restrictions and protective covenants.
- (8) **COMPLIANCE WITH OTHER REGULATORY PROGRAMS.** Project designs shall comply with all other applicable requirements pursuant to G.S. 143-214.1, G.S. 143-214.5, G.S. 143-214.7, and G.S. 143-215.3(a)(1).

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1(d); 143-215.3(a)(1); S.L. 2008-198; Eff. January 1, 1988; Amended Eff. December 1, 1995; September 1, 1995; Readopted Eff. January 1, 2017.

- 15A NCAC 02H .1005 STORMWATER REQUIREMENTS: COASTAL COUNTIES**
- 15A NCAC 02H .1006 STORMWATER REQUIREMENTS: HIGH QUALITY WATERS**
- 15A NCAC 02H .1007 STORMWATER REQUIREMENTS: OUTSTANDING RESOURCE WATERS**
- 15A NCAC 02H .1008 DESIGN OF STORMWATER MANAGEMENT MEASURES**
- 15A NCAC 02H .1009 STAFF REVIEW AND PERMIT PREPARATION**
- 15A NCAC 02H .1010 FINAL ACTION ON PERMIT APPLICATIONS TO THE DIVISION**
- 15A NCAC 02H .1011 MODIFICATION AND REVOCATION OF PERMITS**
- 15A NCAC 02H .1012 DELEGATION OF AUTHORITY**
- 15A NCAC 02H .1013 GENERAL PERMITS**

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a); 143-215.3(a)(1); S.L. 2011-220; Eff. September 1, 1995; This Rule is superseded by S.L. 2008-211 Eff. October 1, 2008; Amended Eff. March 1, 2013; July 3, 2012; December 1, 1995; Repealed Eff. January 1, 2017.

15A NCAC 02H .1014 STORMWATER MANAGEMENT FOR URBANIZING AREAS

15A NCAC 02H .1015 URBANIZING AREA DEFINITIONS

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); Eff. July 3, 2012; Repealed Eff. January 1, 2017.

15A NCAC 02H .1016 DEVELOPMENT IN URBANIZING AREAS: APPLICABILITY AND DELINEATION

(a) Development in Unincorporated Areas of Counties.

(1) Development that cumulatively disturbs one acre or more of land, including development that disturbs less than one acre of land that is part of a larger common plan of development or sale, that is located in the unincorporated area of a county shall comply with the standards set forth in Rule.1017 of this Section beginning 1 July 2007 if the development is located in any of the following:

(A) an area that is designated as an urbanized area under the most recent federal decennial census.

(B) the unincorporated area of a county outside of a municipality designated as an urbanized area under the most recent federal decennial census which is herein incorporated by reference, including subsequent amendments and editions, and may be accessed at no cost at: <https://www.census.gov/programs-surveys/decennial-census/data.html> that extends:

(i) One mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals;

(ii) Two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals; or

(iii) Three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.

(C) an area delineated pursuant to Subparagraph (3) of this Paragraph.

(D) a county that contains an area that is designated as an urbanized area under the most recent federal decennial census in which the unduplicated sum

of the following equal or exceed 75 percent of the total geographic area of the county:

(i) the area that is designated as an urbanized area under the most recent federal decennial census;

(ii) the area described in Subparagraph (1)(B) of this Paragraph;

(iii) the area delineated pursuant to Item (2) of this Paragraph;

(iv) the jurisdiction of a regulated entity designated pursuant to Paragraph (a) of Rule .0151(a) of this Subchapter;

(v) the area that is regulated by a NPDES MS4 permit for stormwater management required pursuant to 15A NCAC 02H .0151(b); and

(vi) areas in the county that are subject to any of the stormwater management programs administered by the Division; or

(E) A county that contains an area that is designated as an urbanized area under the 1990 or 2000 federal decennial census and that has an actual population growth rate that exceeded the State population growth rate for the period 1995 through 2004, unless that actual population growth rate occurred in an area within the county that consists of less than five percent of the total land area of the county.

(2) For purposes of this Paragraph, the stormwater programs administered by the Division shall be as follows:

(A) Water Supply Watershed I (WS-I) – 15A NCAC 02B .0212;

(B) Water Supply Watershed II (WS-II) – 15A NCAC 02B .0214;

(C) Water Supply Watershed III (WS-III) – 15A NCAC 02B .0215;

(D) Water Supply Watershed IV (WS-IV) – 15A NCAC 02B .0216;

(E) High Quality Waters (HQW) in Non-Coastal Counties – 15A NCAC 02H .1021;

(F) Outstanding Resource Waters (ORW) in Non-Coastal Counties – 15A NCAC 02H .1021;

(G) Coastal Counties – 15A NCAC 02H .1019;

(H) Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 02B .0235;

- (I) Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 02B .0258;
 - (J) Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 02B .0251; and
 - (K) Other Environmental Management Commission Nutrient Sensitive Waters (NSW) Classifications – 15A NCAC 02B .0223.
- (3) Delineation Process. The Commission shall delineate regulated coverage areas as follows:
- (A) Schedule: The Commission shall implement the delineation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).
 - (B) Potential candidate coverage areas. A potential candidate coverage area shall be the unincorporated area of a county that is outside a municipality designated as a regulated entity pursuant to Rule .0151(a)(2) and (3) of this Subchapter that extends:
 - (i) one mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals;
 - (ii) two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals; or
 - (iii) three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.
 - (C) Identification of candidate coverage areas. The Commission shall identify an area within a potential candidate coverage area described in Part (3)(B) of this Subparagraph as a candidate coverage area if the discharge of stormwater within or from the unincorporated area has the potential to have an adverse impact on water quality.
 - (D) Notice and comment on candidacy. The Commission shall notify each public entity that is located in whole or in part in a candidate coverage area. After notification of each public entity, the Commission shall publish a map of the unincorporated areas within the river basin that have been identified as candidate coverage areas. The Commission shall accept public comment on the proposed delineation of a candidate coverage area for a period of not less than 30 days.
 - (E) Delineation of regulated coverage areas. After review of public comment, the Commission shall delineate regulated coverage areas. The Commission shall delineate a candidate coverage area as a regulated coverage area only if the Commission determines that the discharge of stormwater within or from the candidate coverage area either:
 - (i) has an adverse impact on water quality; or
 - (ii) results in a significant contribution of pollutants to sensitive receiving waters, taking into account the effectiveness of other applicable water quality protection programs. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the best usages.
 - (F) Notice of delineation. The Commission shall provide written notice to each public entity that is located in whole or in part in a candidate coverage area of its delineation determination. The notice shall state the basis for the determination.
- (4) Except as provided in this Subparagraph and Rule .1018 of this Section, the Commission shall administer and enforce the standards for development in the regulated coverage areas. To the extent authorized by law, where the development is located in a municipal planning jurisdiction, the municipality shall administer and enforce the standards. A public entity may request that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in Rule .1018 of this Section.
- (b) Development in Incorporated Areas in Certain Counties. Development that cumulatively disturbs one acre or more of land, including development that disturbs less than one acre of land that is part of a larger common plan of development or sale, that is located in the incorporated areas of a county described in Parts (a)(1)(D) and (E) of this Rule that are not designated as an urbanized area under the most recent federal decennial census

shall comply with the standards set forth in Rule .1017 of this Section beginning 1 July 2007. The Commission shall administer and enforce the standards for development unless the public entity requests that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in Rule .1018 of this Section.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 2006-246; S.L. 2011-220; Eff. July 3, 2012; Amended Eff. July 1, 2013; Readopted Eff. January 1, 2017.

15A NCAC 02H .1017 NPDES MS4 AND URBANIZING AREAS: POST-CONSTRUCTION REQUIREMENTS

The purpose of this Rule is to minimize the impact of stormwater runoff from new development on the water quality of surface waters and to protect their best usages.

- (1) **IMPLEMENTING AUTHORITY.** The requirements of this Rule shall be implemented by permittees, delegated programs, and regulated entities in accordance with Rule .0151 of this Subchapter and Rule .1016 of this Section.
- (2) **APPLICABILITY.** This Rule shall apply to all development subject to Rule .1016 of this Section or that disturbs one acre or more of land, including a development that disturbs less than one acre of land that is part of a larger common plan of development or sale, and is subject to a local NPDES post-construction stormwater program pursuant to Rule .0153 of this Subchapter. Where this Rule is administered by the Division, it shall not apply to projects that are subject to any of the following rules:
 - (a) Water Supply Watershed I (WS-I) – 15A NCAC 02B .0212;
 - (b) Water Supply Watershed II (WS-II) – 15A NCAC 02B .0214;
 - (c) Water Supply Watershed III (WS-III) – 15A NCAC 02B .0215;
 - (d) Water Supply Watershed IV (WS-IV) – 15A NCAC 02B .0216;
 - (e) High Quality Waters (HQW) in Non-Coastal Counties – 15A NCAC 02H .1021;
 - (f) Outstanding Resource Waters (ORW) in Non-Coastal Counties – 15A NCAC 02H .1021;
 - (g) Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 02B .0235;
 - (h) Tar-Pamlico River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 02B .0258;
 - (i) Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 02B .0251;

- (j) Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development – 15A NCAC 02B .0265;
 - (k) Falls Reservoir Water Supply Nutrient Strategy: Stormwater Management for New Development – 15A NCAC 02B .0277;
 - (l) Coastal Counties: Stormwater Management Requirements – 15A NCAC 02H .1019;
 - (m) Goose Creek Watershed: Stormwater Control Requirements – 15A NCAC 02B .0602; or
 - (n) Universal Stormwater Management Program – 15A NCAC 02H .1020.
- (3) **GENERAL REQUIREMENTS FOR DEVELOPMENT.** In addition to the requirements of this Rule, development shall comply with Rule .1003 of this Section.
 - (4) **PROJECT DENSITY.** A project shall be considered a low density project if it meets the low density criteria set forth in Rule .1003(2) of this Section and contains no more than 24 percent built-upon area or no more than two dwelling units per acre; otherwise, a project shall be considered high density. Low density projects shall comply with the requirements set forth in Rule .1003(2) of this Section. High density projects shall comply with the requirements set forth in Rule .1003(3) of this Section.
 - (5) **REQUIRED STORM DEPTH.** For high density projects designed to achieve runoff treatment, the required storm depth shall be one inch. Applicants shall have the option to design projects to achieve "runoff volume match" in lieu of "runoff treatment" as those terms are defined in Rule .1002 of this Section.
 - (6) **OPERATION AND MAINTENANCE PLANS.** Permittees and regulated entities shall implement and delegated programs shall require an operation and maintenance plan for SCMs in accordance with Rule .1050 of this Section. In addition, the operation and maintenance plan shall require the owner of each SCM to annually submit a maintenance inspection report on each SCM to the local program or regulated entity.
 - (7) **FECAL COLIFORM REDUCTION.** Regulated entities and delegated programs shall implement a fecal coliform reduction program that controls, to the maximum extent practicable, sources of fecal coliform. At a minimum, the program shall include a pet waste management component, which may be achieved by revising an existing litter ordinance, and an on-site domestic wastewater treatment system component to ensure proper

- operation and maintenance of such systems, which may be coordinated with local county health departments.
- (8) **DEED RESTRICTIONS AND PROTECTIVE COVENANTS.** Restrictions and protective covenants shall be recorded by permittees or regulated entities on the property in the Office of the Register of Deeds in the county where the property is located prior to the issuance of a certificate of occupancy and in accordance with Rule .1003(7) of this Section.
- (9) **PROJECTS IN AREAS DRAINING TO SENSITIVE RECEIVING WATERS.** Additional requirements shall apply to projects located in areas draining to certain sensitive receiving waters as follows:
- (a) projects subject to the Class SA waters requirements of Rule .1019 of this Section shall meet those requirements and shall use SCMs that result in the highest degree of fecal coliform die-off and control sources of fecal coliform to the maximum extent practicable;
 - (b) projects located in areas draining to Trout waters shall use SCMs that avoid a sustained increase in the receiving water temperature; and
 - (c) projects located in areas draining to Nutrient Sensitive Waters shall use SCMs that reduce nutrient loading, while still incorporating the stormwater controls required for the project's density level. Delegated programs and regulated entities may implement a nutrient application management program for inorganic fertilizer and organic nutrients to reduce nutrients entering waters of the State. In areas subject to a Nutrient Sensitive Water Stormwater Management Program, the provisions of that program fulfill the nutrient loading reduction requirement. Nutrient Sensitive Water Stormwater Management Program requirements are set forth in 15A NCAC 02B .0200.
- (10) **VEGETATED SETBACKS.** Vegetated setbacks from perennial waterbodies, perennial streams, and intermittent streams shall be required in accordance with Rule .1003 of this Section and shall be at least 30 feet in width. Vegetated setbacks from such waters shall be required if the water is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture which is herein incorporated by reference, including subsequent amendments and editions, and may be accessed at no cost at <http://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/survey/> or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS) which is herein incorporated by reference, including subsequent amendments and editions, and may be accessed at no cost at <http://www.usgs.gov/pubprod/>. Relief from this requirement may be allowed when surface waters are not present in accordance with 15A NCAC 02B .0233(3)(a). In addition, an exception to this requirement may be pursued in accordance with Item (12) of this Rule.
- (11) **EXCLUSIONS.** Development shall not be subject to this Rule if it is conducted pursuant to one of the following authorizations, provided that the authorization was obtained prior to the effective date of the post-construction stormwater control requirements in the area in which the development is located, and the authorization is valid, unexpired, unrevoked, and not otherwise terminated:
- (a) a building permit pursuant to G.S. 153A-357 or G.S. 160A-417;
 - (b) a "site specific development plan" as defined by G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5);
 - (c) a "phased development plan" as defined by G.S. 153A-344.1 for a project located in the unincorporated area of a county that is subject to this Rule, if the Commission is responsible for implementation of the requirements of this Rule, that shows:
 - (i) for the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A-330 through G.S. 153A-335; and
 - (ii) for any subsequent phase of development, sufficient detail that demonstrates to the permitting authority that implementation of the requirements of this Rule to that phase of development would require a material change in that phase of development as contemplated in the phased development plan. Sufficient detail may include

- documentation of financial expenditures and contractual obligations, a copy of an approved site-specific development plan, and a narrative of how the new rules will require a material change to the subsequent phase or phases of development;
- (d) a vested right to the development pursuant to G.S. 153A-344(b), G.S. 153A-344.1, G.S. 160A-385(b), or G.S. 160A-385.1 issued by a local government that implements this Rule; or
 - (e) a vested right to the development pursuant to common law.
- (12) **EXCEPTIONS.** The Department or an appropriate local authority, pursuant to Article 18 of G.S. 153A or Article 19 of G.S. 160A, may grant exceptions from the 30-foot landward location of built-upon area requirement of Item (10) of this Rule as well as the deed restrictions and protective covenants requirement of Item (8) of this Rule as follows:
- (a) An exception shall be granted if the application meets all of the following criteria:
 - (i) unnecessary hardships would result from strict application of the requirement, and these hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property, and not as a result from actions taken by the petitioner; and
 - (ii) the requested exception is consistent with the spirit, purpose, and intent of this Rule; will protect water quality; will secure public safety and welfare; and will preserve substantial justice. Merely proving that the exception would permit a greater profit from the property shall not be considered adequate justification for an exception.
 - (b) Notwithstanding Sub-Item (a) of this Item, exceptions shall be granted in any of the following instances:
 - (i) when there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance; provide maximum nutrient removal; protect against erosion and sedimentation; have the least adverse effects on aquatic life and habitat; and protect water quality to the maximum extent practicable through the use of SCMs; or
 - (ii) when there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including water, sewer, or gas construction and maintenance corridor; as long as it is located 15 feet landward of all perennial waterbodies, perennial streams, and intermittent streams and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of SCMs.
 - (c) Conditions and safeguards may be imposed upon any exception granted in accordance with G.S. 143-215.1(b).
 - (d) Delegated programs and regulated entities shall document the exception procedure and submit an annual report to the Department on all exception proceedings.
 - (e) Appeals of the Department's exception decisions shall be filed with the Office of Administrative Hearings, under

G.S. 150B-23. Appeals of a local authority's exception decisions shall be made to the appropriate Board of Adjustment or other appropriate local governing body, pursuant to G.S. 160A-388 or G.S. 153A-345.1.

- (13) In order to fulfill the post-construction minimum control measure program requirement, a permittee, delegated program, or regulated entity may use the Department's model ordinance, design its own post-construction practices based on the Department's guidance on scientific and engineering standards for SCMs, incorporate the post-construction model practices described in this Section, or develop its own comprehensive watershed plan that meets the post-construction stormwater management measure required by 40 CFR 122.34(b)(5) (1 July 2015 Edition), which is incorporated by reference, not including subsequent amendments and editions. A copy of the reference material may be accessed at no cost at <http://www.gpo.gov/fdsys/>.
- (14) Nothing in this Rule shall alter the requirement that a discharge fully comply with all applicable State or federal water quality standards.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 2006-246; S.L. 2008-198; Eff. July 3, 2012; Readopted Eff. January 1, 2017.

15A NCAC 02H .1018 URBANIZING AREAS: DELEGATION

A public entity that does not administer the requirements of a NPDES MS4 permit for stormwater management throughout the entirety of its planning jurisdiction and whose planning jurisdiction includes a regulated coverage area pursuant to Rule .1016 of this Section may submit a stormwater management program for its regulated coverage area or a portion of its regulated coverage area to the Commission for approval pursuant to G.S. 143-214.7(c) and (d). One paper copy of the stormwater management program shall be submitted to the Division. The stormwater management program shall include an ordinance or regulation adopted by a public entity that meets or exceeds the minimum requirements of Rules .1003 and .1017 of this Section. Two or more public entities are authorized to establish a joint program and to enter into agreements that are necessary for the proper administration and enforcement of the program. The resolution, memorandum of agreement, or other document that establishes any joint program shall be duly recorded in the minutes of the governing body of each public entity participating in the program, and a certified copy of each resolution shall be filed with the Commission. The Commission shall review each proposed program submitted to it to determine whether the submission is complete. A complete submission shall contain the required ordinance or regulation; supporting documentation that demonstrates a public entity's stormwater management program

meets the requirements of Rules .1003 and .1017 of this Section; and if applicable, certified resolutions with an effective date. Within 90 days after the receipt of a complete submission, the Commission shall notify the public entity submitting the program that it has been approved, approved with modifications, or disapproved. The Commission shall approve a program only upon determining that its requirements meet or exceed those of Rules .1003 and .1017 of this Section. If the Commission determines that any public entity is failing to administer or enforce an approved stormwater management program, it shall notify the public entity in writing and shall specify the deficiencies of administration and enforcement. If the public entity has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the public entity indicates its willingness and ability to correct the deficiencies identified by the Commission and resume administration and enforcement of the program.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 2006-246; S.L. 2011-220; Eff. January 1, 2017 (previously codified in 15A NCAC 02H .1016).

15A NCAC 02H .1020 UNIVERSAL STORMWATER MANAGEMENT PROGRAM

(a) Adoption of the Universal Stormwater Management Program (USMP) shall be made at the option of a local government by adopting an ordinance that complies with this Rule and the requirements of 15A NCAC 02B .0104(f). The Commission shall approve local ordinances if it determines that the requirements of the local ordinance meet or exceed the provisions of this Rule and the requirements of 15A NCAC 02B .0104(f). A model ordinance for the USMP shall be available at no cost on the Division's website at <http://deq.nc.gov/about/divisions/energy-mineral-land-resources/energy-mineral-land-permits/stormwater-permits/usmp>. Administration and implementation of the USMP shall be the responsibility of the adopting local government within its jurisdiction. Local governments located within one of the 20 Coastal Counties may elect to have the Division administer and implement the USMP, either in whole or in part, within their jurisdiction following their adoption of the program. The requirements of the USMP shall supersede and replace all other existing post-construction stormwater requirements within that jurisdiction, as specified in Paragraph (b) of this Rule.

(b) With the exceptions noted in Paragraph (c) of this Rule, the requirements specified in this Rule shall replace the following post-construction stormwater control requirements:

- (1) Water Supply (WS) Watershed II (WS II) (15A NCAC 02B .0214(3)(b)(i));
- (2) WS Watershed II Critical Area (WS II CA) (15A NCAC 02B .0214(3)(b)(ii));
- (3) WS Watershed III (WS III) (15A NCAC 02B .0215(3)(b)(i));
- (4) WS Watershed III Critical Area (WS III CA) (15A NCAC 02B .0215(3)(b)(ii));
- (5) WS Watershed IV (WS IV) (15A NCAC 02B .0216(3)(b)(i));

- (6) WS Watershed IV Critical Area (WS IV CA) (15A NCAC 02B .0216(3)(b)(ii));
- (7) High Quality Waters (HQW) for Freshwaters (15A NCAC 02H .1021);
- (8) Outstanding Resource Waters (ORW) for Freshwaters (15A NCAC 02H .1021);
- (9) Outstanding Resource Waters (ORW) for Saltwaters (15A NCAC 02H .1019);
- (10) Shellfishing Waters (SA) (15A NCAC 02H .1019);
- (11) Post-Construction Stormwater Requirements of the NPDES MS4Program (15A NCAC 02H .1017);
- (12) Coastal Counties Stormwater Requirements in 15A NCAC 02H .1019;
- (13) Stormwater Management Plans for 401 Water Quality Certifications under 15A NCAC 02H .0500;
- (14) Catawba Buffer Rules (15A NCAC 02B .0243); and
- (15) Urban Stormwater Management Requirements of the Randleman Lake Water Supply Watershed Rules (15A NCAC 02B .0251).

(c) As mandated in 15A NCAC 02H .0506(b)(5) and (c)(5), the Director may review and require amendments to proposed stormwater control plans submitted under the provisions of the certification process pursuant to Section 401 of the Clean Water Act (33 U.S.C. 1341) in order to ensure that the proposed activity will not violate water quality standards.

(d) Adoption of the USMP shall not affect the requirements specified in the following Rules:

- (1) 15A NCAC 02B .0214(3)(b)(i)(I);
- (2) 15A NCAC 02B .0214(3)(b)(ii)(C) and (D);
- (3) 15A NCAC 02B .0215(3)(b)(i)(I);
- (4) 15A NCAC 02B .0215(3)(b)(ii)(C) and (D); and
- (5) 15A NCAC 02B .0216(3)(b)(ii)(C) and (D).

(e) The Catawba Buffer Rules shall be superseded in those areas where the buffers are contained within the jurisdiction of another stormwater program listed in Paragraph (b) of this Rule and the requirements of that program shall be replaced by the USMP. For the watershed that drains to Lake James, which is not contained within the jurisdiction of another stormwater program, the Catawba Buffer Rules shall be superseded if the USMP is implemented in the entire area within five miles of the normal pool elevation of Lake James.

(f) The implementation of the USMP shall supersede the Urban Stormwater Requirements of the Randleman Lake Water Supply Watershed in 15A NCAC 02B .0251, but USMP implementation does not affect the Randleman Lake Water Supply Watershed: Protection and Maintenance of Existing Riparian Buffers requirements specified in 15A NCAC 02B .0250.

(g) Coastal Counties Requirements. All development activities located in one of the 20 Coastal Counties that disturb 10,000 square feet or more of land, including projects that disturb less than 10,000 square feet of land that are part of a larger common plan of development or sale, shall control the runoff from the first one and one half inch of rainfall to the level specified in Paragraph (i) of this Rule. In addition, all impervious surfaces, except for

roads, paths, and water dependent structures, shall be located at least 30 feet landward of all perennial waterbodies, perennial streams, and intermittent streams. In addition to the other requirements specified in this Paragraph, all development activities that are located within 575 feet of waters designated by the Commission as shellfishing waters shall be limited to a maximum impervious surface density of 36 percent. Redevelopment activities shall not be required to comply with the requirements of this Paragraph.

(h) Non-Coastal Counties Requirements. All residential development activity that is located in one of the 80 Non-Coastal Counties that disturbs one acre or more of land, including residential development that disturbs less than one acre of land that is part of a larger common plan of development or sale, and all non-residential development activity that is located in one of the 80 Non-Coastal Counties that disturbs ½ acre or more of land, including non-residential development that disturbs less than ½ acre of land that is part of a larger common plan of development or sale, shall control the runoff from the first one inch of rainfall as specified in Paragraph (i) of this Rule. Except as allowed in this Paragraph, no new impervious or partially pervious surfaces, except for roads, paths, and water dependent structures, shall be allowed within the one percent Annual Chance Floodplain as delineated by the North Carolina Floodplain Mapping Program in the Division of Emergency Management which is herein incorporated by reference, including subsequent amendments and editions, and may be accessed at no cost at <http://www.ncfloodmaps.com/>. For perennial and intermittent streams that do not have a floodplain delineated by the Floodplain Mapping Program, all development activities subject to this Rule shall be located at least 30 feet landward of all perennial waterbodies, perennial streams, and intermittent streams. In addition to the other requirements specified in this Paragraph, all development activities that are located within the area designated by the Commission as a Critical Area of a Water Supply Watershed as defined in 15A NCAC 02B .0202 shall be limited to a maximum impervious surface density of 36 percent. Redevelopment of residential structures within the one percent Annual Chance Floodplain shall be allowed. Redevelopment of non-residential structures within the one percent Annual Chance Floodplain shall be allowed provided that less than ½ acre is disturbed during the redevelopment activity. Redevelopment activities outside of the one percent Annual Chance Floodplain shall not be required to comply with the requirements of this Paragraph.

(i) Structural stormwater controls required under Paragraphs (g) and (h) of this Rule shall meet the following criteria:

- (1) achieve either runoff treatment or runoff volume match in accordance with Paragraphs (g) and (h) of this Rule; and
 - (A) for SCMs designed to achieve runoff treatment, the required storm depth shall be one and one half inch in the Coastal Counties and one inch in the Non-Coastal Counties.
 - (B) applicants shall have the option to use SCMs designed to achieve "runoff volume match" in lieu of "runoff treatment" in accordance with the

definitions of those terms in Rule .1002 of this Section; and

- (2) meet the requirements for all projects subject to stormwater rules as set forth in Rule .1003 of this Section.

(j) For the purposes of this Rule, a surface water shall be deemed present if the feature is shown on either the most recent published version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture which is herein incorporated by reference, including subsequent amendments and editions, and may be accessed at no cost at <http://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/survey/> or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS) which is herein incorporated by reference, including subsequent amendments and editions, and may be accessed at no cost at <http://www.usgs.gov/pubprod/>. Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233(3)(a).

(k) Local governments that implement the USMP shall require applicants to record deed restrictions and protective covenants that ensure that the project will be maintained in perpetuity consistent with approved plans.

(l) Local governments that implement the USMP shall require an operation and maintenance plan that ensures the operation of the structural stormwater control measures required by the USMP. The operation and maintenance plan shall require the owner of each structural control to submit a maintenance inspection report on each structural stormwater control measure annually to the local program.

(m) In addition to the other measures required in this Rule, all development activities located in one of the 20 Coastal Counties that disturb 10,000 square feet or more of land within ½ mile and draining to SA waters shall:

- (1) use stormwater control measures that result in fecal coliform die-off and that control to the maximum extent practicable sources of fecal coliform while complying with Paragraph (i) of this Rule; and
- (2) prohibit new direct points of stormwater discharge to SA waters or expansion of existing stormwater conveyance systems that drain to SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin shall not increase the net amount or rate of stormwater discharge through existing outfalls to SA waters. Diffuse flow of stormwater at a non-erosive velocity to a vegetated buffer or other natural area capable of providing effective infiltration of the runoff from the 1-year, 24-hour storm shall not be considered a direct point of stormwater discharge. Consideration shall be given to soil type, slope, vegetation, and existing hydrology when evaluating infiltration effectiveness.

(n) In addition to the other measures required in this Rule, development activities draining to trout (Tr) waters shall use

stormwater control measures that do not cause an increase in the receiving water temperature while still incorporating the requirements specified in Paragraph (i) of this Rule.

(o) The Division, upon determination that a local government is failing to implement or enforce the approved local stormwater program, shall notify the local government in writing of the local program's deficiencies. If the local government has not corrected the deficiencies within 90 days of receipt of written notification from the Division, then the Division shall take the following action:

- (1) implement the requirements of 15A NCAC 02B .0243 and 15A NCAC 02H .1019, and .1021 in lieu of the local government's administration of the USMP in areas subject to those Rules; and
- (2) enforce the requirements of 15A NCAC 02B .0214 through .0216, and .0251, and 15A NCAC 02H .0500 and .1017 in areas subject to those Rules.

(p) Development activities conducted within a jurisdiction where the USMP has been implemented may take credit for the nutrient reductions achieved by utilizing diffuse flow in the one percent Annual Chance Floodplain to comply with the nutrient loading limits specified within NSW Rules where the one percent Annual Chance Floodplain exceeds the 50-foot Riparian Buffers. Development activities occurring where the USMP has been implemented but there is no delineated one percent Annual Chance Floodplain may take credit for the nutrient reductions achieved by utilizing diffuse flow into a vegetated filter strip that exceeds the 50-foot Riparian Buffer by at least 30 feet and has a slope of five degrees or less.

(q) The following special provisions of the USMP apply only to federal facilities and Department of Defense (DoD) installations. Federal facilities and DoD installations may adopt the USMP within their boundaries by submitting a letter to the Chairman of the Commission that states that the facility in question has adopted controls that comply with the requirements of this Rule and with the requirements of 15A NCAC 02B .0104(f). In lieu of the protective covenants and deed restrictions required in Paragraph (k) of this Rule, federal facilities and DoD installations that choose to adopt the USMP within their boundaries shall incorporate specific restrictions and conditions into base master plans or other appropriate instruments to ensure that development activities regulated under this Rule will be maintained in a manner consistent with the approved plans.

(r) Implementation of this USMP does not affect any other rule or requirement not specifically cited in this Rule.

History Note: Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-215.1; 143-215.3(a); 143-215.6A; 143-215.6B; 143-215.6C; Eff. January 1, 2007; Readopted Eff. January 1, 2017.

15A NCAC 02H .1021 NON-COASTAL COUNTY HIGH QUALITY WATERS (HQW) AND OUTSTANDING RESOURCE WATERS (ORW)

The purpose of this Rule is to minimize the impact of stormwater runoff from development on the water quality of surface waters and to protect their designated best usages in management zones

of Non-Coastal County High Quality Waters (HQW) and Outstanding Resource Waters (ORW).

- (1) **IMPLEMENTING AUTHORITY.** This rule shall be implemented by the Division.
- (2) **APPLICABILITY.** This Rule shall apply to development activities outside of Coastal Counties that require an Erosion and Sedimentation Control Plan pursuant to G.S. 113A-57 and are either:
 - (a) within one mile of and draining to waters classified as HQW except that development located in WS-I or WS-II watersheds as set forth in 15A NCAC 02B .0212 and .0214 are excluded from the requirements of this Rule; or
 - (b) draining to waters classified as ORW.
- (3) **EFFECTIVE DATE.** The effective date of prior Rules .1006 and .1007 of this Section is September 1, 1995.
- (4) **GENERAL REQUIREMENTS FOR NEW DEVELOPMENT.** In addition to the requirements of this Rule, projects shall also comply with the requirements set forth in Rule .1003 of this Section.
- (5) **PROJECT DENSITY.** A project shall be considered a low density project if meets the low density criteria set forth in Item (2) of Rule .1003 of this Section and contains no more than 12 percent built-upon area or no more than one dwelling unit per acre; otherwise, a project shall be considered high density. Low density projects shall comply with the requirements set forth in Item (2) of Rule .1003 of this Section. High density projects shall comply with the requirements set forth in Item (3) of Rule .1003 of this Section.
- (6) **REQUIRED STORM DEPTH.** For high density projects designed to achieve runoff treatment, the required storm depth shall be one inch. Applicants shall have the option to design projects to achieve "runoff volume match" in lieu of "runoff treatment" as those terms are defined in Rule .1002 of this Section.
- (7) **VEGETATED SETBACKS.** Vegetated setbacks from perennial waterbodies, perennial streams, and intermittent streams shall be at least 30 feet in width for both low and high density developments and shall comply with Rule .1003(4) of this Section.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a); Eff. January 1, 2017 (portions of this Rule previously codified in 15A NCAC 02H .1006 and .1007).

15A NCAC 02H .1040 PERMIT ADMINISTRATION

This Rule applies to the permitting processes set forth in Rules .1041 through .1045 of this Section.

- (1) **SIGNATURES ON PERMIT APPLICATION FORMS.** Application forms shall have an original signature by one of the following entities unless the application is accompanied by a letter of authorization signed by the appropriate authority as designated in Sub-Items (a) through (d) of this Item authorizing the signature of another entity:
 - (a) in the case of a corporation, by a principal executive officer of the level of vice-president or his authorized representative. In the case of a limited liability corporation (LLC), by a manager or company official as those terms are defined in G.S. 57D "North Carolina Limited Liability Company Act;"
 - (b) in the case of a partnership, by a general partner or a managing partner. In the case of a limited partnership, by a general partner;
 - (c) in the case of a proprietorship, by the proprietor(s); or
 - (d) in the case of a municipal, state, or other public entity, by either a principal executive officer, ranking official, or other duly authorized employee.
- (2) **PERMIT PROCESSING TIMES.** The Division shall process permit applications and additional or amended information pursuant to G.S. 143-215.1.
- (3) **DELEGATION.** For permits issued by the Division, the Director shall be authorized to delegate to Division staff any of the functions contained in these Rules, except the following:
 - (a) denying a permit application;
 - (b) revoking a permit if such revocation is not requested by the permittee;
 - (c) modifying a permit not requested by the permittee; and
 - (d) calling for a public notice or meeting.
- (4) **PERMIT ISSUANCE.** The following shall apply to stormwater management permits issued by the Division:
 - (a) stormwater management permits issued for low density projects shall not require permit renewal;
 - (b) stormwater management permits issued for projects that require the construction of engineered stormwater control measures shall be issued for a period not to exceed 8 years; and
 - (c) stormwater management permits shall be issued to the property owner or to a lessee, purchaser, or developer with the written permission of the property owner, and shall cover the entire project.

- (5) **PERMIT DENIAL.** If the Director denies a permit, the letter of denial shall state the reason(s) for denial and the Director's estimate of the changes in the applicant's proposed activities or plans that would be required in order that the applicant may obtain a permit. Permit applications may be denied where the proposed project results in noncompliance with:
- (a) the purposes of G.S. 143, Article 21;
 - (b) the purposes of G.S. 143-215.67(a);
 - (c) rules governing coastal waste treatment or disposal, found in Section .0400 of this Subchapter;
 - (d) rules governing "subsurface disposal systems," found in 15A NCAC 18A .1900. Copies of these Rules are available from the North Carolina Division of Public Health, 1632 Mail Service Center, Raleigh, North Carolina 27699-1632; or
 - (e) rules governing groundwater quality standards found in Subchapter 2L of this Chapter.
- (6) **PERMIT REVOCATION OR MODIFICATION.** Permits issued pursuant to these Rules are subject to revocation, or modification by the Director upon 60 days' written notice by the Director in whole or in part for good cause including the following:
- (a) violation of any terms or conditions of the permit;
 - (b) obtaining a permit by misrepresentation or failure to disclose all relevant facts; or
 - (c) refusal of the permittee to allow authorized employees of the Department of Environmental Quality, upon presentation of credentials:
 - (i) to enter upon permittee's premises in which any records are required to be kept under terms and conditions of the permit;
 - (ii) to have access to any and all records required to be kept under terms and conditions of the permit;
 - (iii) to inspect any monitoring equipment or method required in the permit; or
 - (iv) to sample any discharge of pollutants.
- (7) **DIRECTOR'S CERTIFICATION.** With the exception of the fast track permitting as set forth in Rules .1043 and .1044 of this Section, projects that do not comply with the requirements of this Section may be approved on a case-by-case basis if the project is certified by the Director that water quality standards and best usages will not be threatened. Approval of alternative designs for SCMs that do not meet all the MDC shall be in accordance with Rule .1003(6) of this Section. Approval of new stormwater technologies shall be in accordance with Rule .1050(15) of this Section. The applicant shall provide information that demonstrates to the Director that:
- (a) there are practical difficulties or hardships due to the physical nature of the project such as its size, shape, or topography that prevent strict compliance with this Section; and
 - (b) water quality standards and best usages will be protected, including development plans and specifications for SCMs that will be installed in lieu of the requirements of this Section or information that demonstrates that the project is located such that impacts to surface waters from pollutants present in stormwater from the site will be mitigated.
- (8) **PUBLIC NOTICE.** The Director is authorized to call for a public notice or hearing to solicit and receive comments from other regulatory agencies and the public to obtain additional information needed to complete the review of either the stormwater permit application or the stormwater conditions. If comments are solicited, notice shall be posted on the Division's website and shall provide the public at least 30 days after publication to submit comments to the Director. The permit application shall be included in the notice published on the Division's website.
- (9) **CONTESTED CASE HEARING.** An applicant whose application is denied or who is issued a permit subject to conditions that are not acceptable to the applicant may seek a contested case hearing pursuant to G.S. 150B-23.
- (10) **COMPLIANCE.** Any individual or entity found to be in noncompliance with the provisions of a stormwater management permit or the requirements of this Section shall be subject to enforcement procedures as set forth in G.S. 143, Article 21.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a); 143-215.3D; 143-215.6A; 143-215.6B; 143-215.6C;

Eff. January 1, 2017 (portions of this rule previously codified in 15A NCAC 02H .1003, .1010, .1011, and .1012).

15A NCAC 02H .1041 GENERAL PERMITS

(a) In accordance with the provisions of G.S. 143-215.1(b)(3) and (4), general permits may be developed by the Division and issued by the Director for categories of activities covered in this Section. Each of the general permits shall be issued separately pursuant to G.S. 143-215.1, using all procedural requirements specified for State permits including application and public notice.

(b) General permits may be written to regulate categories of activities that:

- (1) involve the same or similar operations;
- (2) have similar characteristics;
- (3) require the same limitations or operating conditions;
- (4) require the same or similar monitoring; and
- (5) are controlled by a general permit as determined by the Director.

(c) General permit coverage shall be available to activities, such as the following:

- (1) construction of bulkheads and boat ramps;
- (2) installation of sewer lines with no proposed built-upon areas;
- (3) construction of an individual single family residence; and
- (4) other activities that, as determined by the Director, meet the criteria of Paragraph (b) of this Rule.

(d) General permits may be modified or revoked in accordance with the authority and requirements of Rule .1040 of this Section.

(e) Procedural requirements for application and permit approval, unless designated as applicable to persons proposed to be covered under the general permits, apply only to the issuance of the general permits.

(f) After issuance of the general permit by the Director, persons engaged in activities in the applicable categories may request coverage under the general permit, and if an activity falls within a category of activities governed by the general permit the Director or his designee shall grant coverage. All activities that receive a "Certificate of Coverage" for that category of activity shall be deemed governed by that general permit.

(g) No provision in any general permit issued under this Rule shall be interpreted to allow the permittee to violate state water quality standards or other applicable environmental standards.

(h) For a general permit to apply to an activity, a Notice of Intent to be covered by the general permit shall be submitted to the Division using forms provided by the Division on the Division's website at <http://portal.ncdenr.org/web/lr/stormwater> <http://deq.nc.gov/about/divisions/energy-mineral-land-resources/energy-mineral-land-permits/stormwater-program> . In addition to the application procedures set forth in Rules .1040 and .1042 of this Section, the Notice of Intent shall include the following:

- (1) project name and physical location;
- (2) receiving stream name and classification;
- (3) total project area above mean high water;
- (4) total amount of proposed built-upon area;
- (5) description of best management practices employed at the project site;
- (6) two sets of site and grading plans; if applicable, plans shall show wetland delineation and the

"AEC" line as established by the North Carolina Coastal Resources Commission pursuant to Sections .0100 15A NCAC 07H .0100 - .0600; and

- (7) location of the project indicated on a U.S. Geological Survey (USGS) map.

If all requirements are met, coverage under the general permit may be granted. If all requirements are not met, or the Director determines the activity is not governed by the general permit, then the applicant shall be notified in writing and may apply for an individual permit pursuant to this Section.

(i) General permits may be modified and reissued by the Division as necessary. Activities covered under general permits need not submit new Notices of Intent or renewal requests unless so directed by the Division. If the Division chooses not to renew a general permit, all facilities covered under that general permit shall be notified to submit applications for individual permits.

(j) All previous state water quality permits issued to a facility that may be covered by a general permit, whether for construction or operation, shall be revoked upon request of the permittee, termination of the individual permit, and issuance of the Certification of Coverage.

(k) Any person engaged in the activities set forth in G.S. 143-215.1 and not permitted in accordance with this Section shall be in violation in G.S. 143-215.1.

(l) Any person covered or considering coverage under a general permit may choose to pursue an individual permit for any activity covered by this Section.

(m) The Director may require any person, otherwise eligible for coverage under a general permit, to apply for an individual permit by notifying that person that an individual permit application is required. Notification shall consist of a written description of the reason(s) for the decision, appropriate permit application forms and application instructions, a statement establishing the required date for submission of the application, and a statement informing the person that coverage by the general permit shall automatically terminate upon issuance of the individual permit. Reasons for requiring application for an individual permit include:

- (1) the activity is a significant contributor of pollutants;
- (2) a change in the conditions at the permitted site, altering the constituents or characteristics of the site such that the activity no longer qualifies for coverage under a general permit;
- (3) noncompliance with the general permit;
- (4) noncompliance with other provisions of G.S. 143-215.1;
- (5) a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the activity; or
- (6) a determination that the water of the stream receiving stormwater runoff from the site is not meeting applicable water quality standards.

(n) Any interested person may petition the Director to take an action under Paragraph (m) of this Rule to require an individual permit. A petition shall be submitted in writing by mail or email to the Director.

History Note: Authority G.S. 143-215.1; 143-215.3(a);143-215.3D;
Eff. January 1, 2017 (previously codified in 15A NCAC 02H .1013).

15A NCAC 02H .1057 MDC FOR RAINWATER HARVESTING

The purpose of this Rule is to set forth the design requirements for rainwater harvesting systems that are constructed to meet the requirements of this Section.

- (1) **MAJOR COMPONENTS OF A RAINWATER HARVESTING SYSTEM.** Rainwater harvesting systems shall include the following components:
 - (a) a collection system;
 - (b) a pre-treatment device to minimize gross and coarse solids collection in the tank;
 - (c) a cistern or other storage device;
 - (d) an overflow; and
 - (e) a distribution system.
- (2) **FATE OF CAPTURED WATER.** Captured stormwater shall be used or discharged as follows:
 - (a) use to meet a water demand. The usage, type, volume, frequency, and seasonality of water demand shall be established and justified;
 - (b) discharge through a passive drawdown device to a vegetated infiltration area or another SCM; or
 - (c) a combination of use and passive discharge.
- (3) **SIZING.** A rainwater harvesting system shall be considered as a primary SCM if the system is sized and water demand, passive discharge, or a combination of the two is provided for 85 percent of the total annual runoff volume as demonstrated through water balance calculations.
- (4) **WATER BALANCE CALCULATIONS.** The water balance shall be calculated using the NCSU Rainwater Harvester model, which is herein incorporated by reference, including subsequent amendments and editions, and may be accessed at no cost at <https://stormwater.bae.ncsu.edu/>, or another continuous-simulation hydrologic model that calculates the water balance on a daily or more frequent time-step using a minimum of five representative years of actual rainfall records. The model shall account for withdrawals from the cistern for use, active or passive drawdown, and additions to the cistern by rainfall, runoff, and a make-up water source if applicable.
- (5) **DISTRIBUTION SYSTEM.** The distribution system shall be tested for functionality prior to the completion of the rainwater harvesting system. The design shall include a protocol for

testing the functionality of the distribution system upon completion of the initial system and upon additions to the existing system.

- (6) **SIGNAGE REQUIREMENTS.** All harvested rainwater outlets such as spigots and hose bibs, and appurtenances shall be labeled as "Non-Potable Water" to warn the public and others that the water is not intended for drinking. Passive drawdown devices, when employed, shall be marked with identifying signage or labels that are visible to owners and maintenance personnel.

History Note: Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a);
Eff. January 1, 2017.

15A NCAC 02H .1058 MDC FOR GREEN ROOFS

The purpose of this Rule is to set forth the design requirements for green roofs that are constructed to meet the requirements of this Section.

- (1) **MEDIA SPECIFICATION.** The maximum organic fraction of the media shall be 10 percent by volume.
- (2) **DESIGN VOLUME.** The design volume for a green roof shall equal the media depth times the plant available water (PAW). The maximum rainfall depth that may be treated by a green roof shall be 1.5 inches.
- (3) **MINIMUM MEDIA DEPTH.** The minimum media depth shall be four inches if the roof will not be irrigated or three inches if the roof will be irrigated. For roofs with three-inch media depths, an irrigation plan shall be included in the Operation and Maintenance Plan.
- (4) **VEGETATION SPECIFICATION.** The planting plan shall be designed to achieve a 75 percent vegetative cover within two years.
- (5) **SLOPE.** The green roof shall have a slope (or pitch) of no greater than eight percent.

History Note: Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a);
Eff. January 1, 2017.

15A NCAC 02H .1061 MDC FOR TREATMENT SWALES

The purpose of this Rule is to set forth the design requirements for treatment swales that are constructed to meet the requirements of this Section. Vegetated conveyances that are designed to convey stormwater from a project but are not intended to remove pollutants shall not be subject to this Rule, but instead shall meet the requirements of Rule .1003(2)(c) of this Section.

- (1) **SHWT.** Swales shall not be excavated below the SHWT.
- (2) **SHAPE.** Swales shall be trapezoidal in cross-section with a maximum bottom width of six feet. Side slopes stabilized with vegetative cover shall be no steeper than 3:1 (horizontal to

vertical). Steeper vegetated slopes may be accepted on a case-by-case basis provided that the applicant demonstrates that the soils and vegetation will remain stable in perpetuity based on engineering calculations.

- (3) **SWALE SLOPE AND LENGTH.** The longitudinal swale slope shall not exceed seven percent. The swale slope and length shall be designed to achieve a flow depth of six inches or less during the 0.75 inch per hour storm and a minimum hydraulic retention time of four minutes.
- (4) **GRASS SPECIFICATION.** The grass species in the swale shall be:
 - (a) non-clumping and deep-rooted;
 - (b) able to withstand a velocity of four feet per second;
 - (c) managed at an average of six inches; and
 - (d) not be cut lower than four inches.
- (5) **CONVEYANCE OF LARGER STORMS.** Swales shall be designed to non-erosively pass the ten-year storm.

History Note: Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a); Eff. January 1, 2017.

15A NCAC 02H .1062 MDC FOR DRY PONDS

The purpose of this Rule is to set forth the design requirements for dry ponds that are constructed to meet the requirements of this Section.

- (1) **SEPARATION FROM THE SHWT.** The lowest point of the dry pond shall be a minimum of six inches above the SHWT.
- (2) **TEMPORARY POOL DEPTH.** The maximum depth of the temporary pool shall be 10 feet.
- (3) **UNIFORM GRADING AND POSITIVE DRAINAGE.** The bottom of the dry pond shall be graded uniformly to flow toward the outlet structure without low or high spots other than an optional low flow channel.
- (4) **LOCATION OF INLET(S) AND OUTLET.** The inlet(s) and outlet shall be located in a manner that avoids short circuiting.
- (5) **PRETREATMENT.** Pretreatment devices shall be provided to settle sediment and prevent erosion. Pretreatment devices may include measures such as gravel verges, filter strips, grassed swales, and forebays.
- (6) **DRAWDOWN TIME.** The design volume shall draw down between two and five days.
- (7) **PROTECTION OF THE RECEIVING STREAM.** The dry pond shall discharge the runoff from the one-year, 24-hour storm in a manner that minimizes hydrologic impacts to the receiving channel.
- (8) **OUTLET.** The dry pond shall include a small permanent pool near the outlet orifice to reduce

clogging and keep floating debris away from the orifice. A screen or other device shall be provided to prevent large debris from entering the outlet system.

- (9) **VEGETATION.** The dam structure, including the front and back embankment slopes, shall be planted with non-clumping turf grass, and trees and woody shrubs shall not be allowed.

History Note: Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a); Eff. January 1, 2017.

15A NCAC 07H .0205 COASTAL WETLANDS

(a) **Description.** Coastal wetlands are defined as any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides, that reach the marshland areas through natural or artificial watercourses, provided this does not include hurricane or tropical storm tides. Regular or occasional flooding shall be established through field indicators, including the observation of tidal water on the site, changes in elevation, presence of periwinkle (*littoraria* spp.), presence of crab burrows, staining, or wrack lines. Coastal wetlands may contain one or more of the following marsh plant species:

- (1) Cord Grass (*Spartina alterniflora*);
- (2) Black Needlerush (*Juncus roemerianus*);
- (3) Glasswort (*Salicornia* spp.);
- (4) Salt Grass (*Distichlis spicata*);
- (5) Sea Lavender (*Limonium* spp.);
- (6) Bulrush (*Scirpus* spp.);
- (7) Saw Grass (*Cladium jamaicense*);
- (8) Cat-tail (*Typha* spp.);
- (9) Salt Meadow Grass (*Spartina patens*); or
- (10) Salt Reed Grass (*Spartina cynosuroides*).

The coastal wetlands AEC includes any contiguous lands designated by the Secretary of DEQ pursuant to G.S. 113-230(a).

(b) **Significance.** The unique productivity of the estuarine and ocean system is supported by detritus (decayed plant material) and nutrients that are exported from the coastal wetlands. Without the wetlands, the high productivity levels and complex food chains typically found in the estuaries could not be maintained. Additionally, coastal wetlands serve as barriers against flood damage and control erosion between the estuary and the uplands.

(c) **Management Objective.** It is the objective of the Coastal Resources Commission to conserve and manage coastal wetlands so as to safeguard and perpetuate their biological, social, economic and aesthetic values, and to coordinate and establish a management system capable of conserving and utilizing coastal wetlands as a natural resource necessary to the functioning of the entire estuarine system.

(d) **Use Standards.** Suitable land uses are those consistent with the management objective in this Rule. First priority of use shall be allocated to the conservation of existing coastal wetlands. Secondary priority of coastal wetland use shall be given to those types of development activities that require water access and cannot function elsewhere.

Unacceptable land uses include restaurants, businesses, residences, apartments, motels, hotels, trailer parks, parking lots, private roads, highways, and factories. Acceptable land uses include utility easements, fishing piers, docks, wildlife habitat management activities, and agricultural uses such as farming and forestry drainage as permitted under North Carolina's Dredge and Fill Law, G.S. 113-229, or applicable local, state, and federal laws.

In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

(e) Alteration of Coastal Wetlands. Alteration of coastal wetlands includes mowing or cutting of coastal wetlands vegetation whether by mechanized equipment or manual means. Alteration of coastal wetlands by federal or state resource management agencies as a part of planned resource management activities is exempt from the requirements of this Paragraph. Alteration of coastal wetlands shall be governed according to the following provisions:

- (1) Alteration of coastal wetlands shall be exempt from the permit requirements of the Coastal Area Management Act (CAMA) when conducted in accordance with the following criteria:
 - (A) Coastal wetlands may be mowed or cut to a height of no less than two feet, as measured from the coastal wetland substrate, at any time and at any frequency throughout the year;
 - (B) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured from the coastal wetland substrate, once between each December 1 and March 31;
 - (C) Alteration of the substrate is not allowed;
 - (D) All cuttings or clippings shall remain in place as they fall;
 - (E) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured from the coastal wetland substrate, to create an access path four feet wide or less on waterfront lots without a pier access; and
 - (F) Coastal wetlands may be mowed or cut by utility companies as necessary to maintain utility easements.
- (2) Coastal wetland alteration not meeting the exemption criteria of this Rule shall require a CAMA permit. CAMA permit applications for coastal wetland alterations are subject to review by the North Carolina Wildlife Commission, North Carolina Division of Marine Fisheries, U.S. Fish and Wildlife Service, and National Marine Fisheries Service in order to determine whether or not the proposed activity will have a

significant adverse impact on the habitat or fisheries resources.

History Note: Authority G.S. 113A-107;113A-113(b)(1); 113A-124;

Eff. September 9, 1977;

Amended Eff. September 1, 2016; November 1, 2009; August 1, 1998; October 1, 1993; May 1, 1990; January 24, 1978.

15A NCAC 07H .1801 PURPOSE

This permit will allow beach bulldozing needed to reconstruct or repair dune systems, as defined in Rule .0305 of this Subchapter. For the purpose of this general permit, "beach bulldozing" is defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to repair damage to frontal or primary dunes. This general permit is subject to the procedures outlined in Subchapter 07J .1100 and shall apply only to the Ocean Erodible AEC. This general permit shall not apply to the Inlet Hazard AEC.

History Note: Authority G.S. 113-229(cl); 113A-107;113A-113(b); 113A-118.1;

Eff. December 1, 1987;

Amended Eff. September 1, 2016.

15A NCAC 07H .1802 APPROVAL PROCEDURES

(a) The applicant shall contact the Division of Coastal Management at the address provided in 15A NCAC 07A .0101 and complete an application requesting approval for development. The applicant shall provide information on site location, dimensions of the project area, and their name and address.

(b) The applicant shall provide:

- (1) confirmation that a written statement, signed by the adjacent riparian property owners, stating that they have no objections to the proposed work, has been obtained; or
- (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the DCM within 10 days of receipt of the notice, and state that no response shall be interpreted as no objection. DCM staff shall review all comments and determine, based upon their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If DCM staff determines that the project exceeds the Rules established for the General Permit process, DCM shall notify the applicant that an application for a major permit shall be required.

(c) No work shall begin until an on-site meeting is held with the applicant and DCM representative. All bulldozing shall be completed within 30 days of the date of permit issuance.

History Note: Authority G.S. 113-229(cl); 113A-107; 113A-113(b); 113A-118.1;

Eff. December 1, 1987;
Amended Eff. September 1, 2016; January 1, 1990.

15A NCAC 07H .1804 GENERAL CONDITIONS

- (a) This permit shall not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality, air quality, coastal wetlands, cultural or historic sites, wildlife, fisheries resources, or public trust rights. If a shipwreck is unearthed, all work shall stop and the Division of Coastal Management shall be contacted immediately.
- (b) This permit shall not eliminate the need to obtain any other required state, local or federal authorization.
- (c) Development carried out under this permit shall be consistent with all local requirements, Commission rules, and local Land Use Plans in effect at the time of authorization.

History Note: Authority G.S. 113-229(cl); 113A-107; 113A-113(b); 113A-118.1;
Eff. December 1, 1987;
Amended Eff. May 1, 1990;
RRC Objection due to ambiguity Eff. May 19, 1994;
Amended Eff. September 1, 2016; August 1, 1998; July 1, 1994.

15A NCAC 07H .1805 SPECIFIC CONDITIONS

- (a) The area where this activity is being performed shall maintain a slope that follows the pre-emergency slopes as closely as possible so as not to endanger the public or the public's use of the beach. The movement of material by 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 without the written permission of the adjoining landowner(s).
- (c) The permit shall not authorize movement of material from seaward of the mean low water line.
- (d) The activity shall not increase erosion on neighboring properties.
- (e) Adding sand to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. Upon completion of the project, the fill areas shall be replanted with native vegetation, such as Sea Oats (*Uniola paniculata*), or if outside the planting season, shall be stabilized with sand fencing until planting can occur.
- (f) In order to minimize adverse impacts to nesting sea turtles, no bulldozing shall occur within the period of April 1 through November 15 of any year without the prior approval of the Division of Coastal Management, in coordination with the North Carolina Wildlife Resources Commission, the United States Fish and Wildlife Service, and the United States Army Corps of Engineers, that the work can be accomplished without significant adverse impact to sea turtle nests or suitable nesting habitat.
- (g) If one contiguous acre or more of oceanfront property is to be excavated or filled, an erosion and sedimentation control plan shall be filed with the Division of Energy, Mineral, and Land Resources, or appropriate local government having jurisdiction.

This plan must be approved prior to commencing the land disturbing activity.

History Note: Authority G.S. 113-229(cl); 113A-107; 113A-113(b); 113A-118.1;
Eff. December 1, 1987;
Temporary Amendment Eff. September 2, 1998;
Amended Eff. September 1, 2016; August 1, 2012 (see S.L. 2012-143, s.1(f)); August 1, 2000.

15A NCAC 07H .2505 SPECIFIC CONDITIONS

- (a) The replacement of a damaged or destroyed structure shall take place within the footprint and dimensions that existed immediately prior to the damaging hurricane or tropical storm. No structural enlargement or additions shall be allowed.
- (b) Structure replacement, dune reconstruction, and maintenance excavation authorized by this permit shall conform to the existing use standards and regulations for exemptions, minor development permits, and major development permits, including general permits. These use standards include, but are not limited to:
 - (1) 15A NCAC 07H .0208(b)(6) for the replacement of docks and piers;
 - (2) 15A NCAC 07H .0208(b)(7) for the replacement of bulkheads and shoreline stabilization measures;
 - (3) 15A NCAC 07H .0208(b)(9) for the replacement of wooden and riprap groins;
 - (4) 15A NCAC 07H .1500 for maintenance excavation activities; and
 - (5) 15A NCAC 07H .1800 for beach bulldozing in the Ocean Hazard AEC.
- (c) The replacement of an existing dock or pier facility, including associated structures, marsh enhancement breakwaters, or groins shall be set back 15 feet from the adjoining property lines and the riparian access dividing line. The line of division of riparian access shall be established by drawing a line along the channel or deep water in front of the property, 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. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 07H .1205, illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable. The setback may be waived by written agreement of the adjacent riparian owner(s) or when the two adjoining riparian owners are co-applicants. Should the adjacent property be sold before replacement of the structure begins, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any construction of the structure.

History Note: Authority G.S. 113A-107; 113A-118.1;
Temporary Adoption Eff. October 2, 1999;
Temporary Adoption Expired on July 28, 2000;
Eff. April 1, 2001;
Amended Eff. September 1, 2016.

15A NCAC 13B .0201 PERMIT REQUIRED

(a) No person shall treat, process, store, or dispose of solid waste or arrange for the treatment, processing, storage, or disposal of solid waste except at a solid waste management facility permitted by the Division for such activity, except as provided in G.S. 130A-294(b).

(b) No person shall cause, suffer, allow, or permit the treatment, storage, or processing of solid waste upon any real or personal property owned, operated, leased, or in any way controlled by that person without first having been issued a permit for a solid waste management facility from the Division authorizing such activity, except as provided in G.S. 130A-294(b).

(c) No solid waste management facility shall be established, operated, maintained, constructed, expanded, or modified without a currently valid permit issued by the Division for the specified type of disposal activity. It is the responsibility of every owner and operator of a proposed solid waste management facility to apply for a permit for the facility. The term "owner" shall include record owners of the land where the facility is located or proposed to be located and holders of any leasehold interest, however denominated, in any part of the land or structures where the facility is located or proposed to be located.

(d) The solid waste management facility permit, except for land clearing and inert debris permits, shall have two parts, as follows:

- (1) A permit approval to construct a solid waste management facility or portion of a facility shall be issued by the Division after site and construction plans have been approved by the Division and it has been determined that the facility can be operated in accordance with Article 9 of Chapter 130A and the applicable rules set forth in this Subchapter, and other applicable state, federal, and local laws. An applicant shall not clear or grade land or commence construction for a solid waste management facility or a portion thereof until a permit approval to construct has been issued.
- (2) A permit approval to operate a solid waste management facility shall not be issued unless it has been determined that the facility has been constructed in accordance with the construction plans, that any pre-operation conditions of the permit to construct have been met, and that the permit has been recorded, if applicable, in accordance with Rule .0204 of this Section.

(e) Land clearing and inert debris facilities may be issued a combined permit that includes approval to construct and operate the facility.

(f) Land clearing and inert debris facilities subject to Rule .0563(1) of this Subchapter may construct and operate after notification as provided for under Rule .0563(2) of this Subchapter.

(g) All solid waste management facilities shall be operated in conformity with these Rules and shall not create a nuisance, or an unsanitary condition, or a potential public health hazard.

History Note: Authority G.S. 130A-294; S.L. 2015-286, s.4.9; Eff. April 1, 1982; Amended Eff. January 4, 1993; February 1, 1991; March 1, 1988; Temporary Amendment Eff. May 19, 1993 to expire on October 9, 1993 or until the permanent rule becomes effective, whichever is sooner; Temporary Amendment Expired Eff. October 9, 1993; Amended Eff. September 1, 2016; August 1, 2008.

15A NCAC 13B .0206 OPTION TO APPLY FOR ISSUANCE OF 10-YEAR PERMIT FOR SANITARY LANDFILL OR TRANSFER STATION

History Note: Authority G.S. 130A-294; S.L. 2012-187, s.15.1; S.L. 2015-286, s. 4.9; Eff. July 1, 2013; Repealed Eff. September 1, 2016.

15A NCAC 13B .0207 LIFE-OF-SITE PERMIT ISSUED FOR A SANITARY LANDFILL OR TRANSFER STATION

(a) A new or existing sanitary landfill or transfer station permit shall be subject to Section .0400, .0500, or .1600 of this Subchapter and shall be for the life-of-site as defined in G.S. 130A-294(a2).

(b) A life-of-site permit application for a new sanitary landfill shall contain design, construction, site development, and operation plans. Site development plans shall show the phases or progression of operation in periods of no less than five years and no greater than the life of the site as contained in the facility plan. The life-of-site of a sanitary landfill shall be specified in the facility plan prepared in accordance with Section .0500 or .1600 of this Subchapter.

(c) A sanitary landfill that has an existing permit as of July 1, 2016 shall be approved for a life-of-site permit within 90 days of submittal of the following updated permit information:

- (1) a specification of the life-of-site quantified in the site development or facility plan;
- (2) landfill capacity in years, projected for the life of the site;
- (3) average monthly disposal rates and estimated variances; and
- (4) a copy of the local government franchise agreement or approving resolution for the life of the site.

(d) Each phase within a life-of-site permit for sanitary landfills shall be designed and constructed in accordance with Sections .0500 or .1600 of this Subchapter. Site development plans shall show the phases or progression of construction and operation in periods of no less than five years and no greater than the life of the site as contained in the site development or facility plan.

(e) A life-of-site permit application for a new transfer station shall conform to the requirements of Section .0400 of this Subchapter and shall contain a site plan for the life of the site. A specification of the life-of-site of a transfer station shall be quantified in the site plan prepared in accordance with Section .0400 of this Subchapter.

(f) A transfer facility that has an existing permit as of July 1, 2016 shall be approved for a life-of-site permit upon submittal of a

written request that shall include a specification of the quantified life-of-site.

History Note: Authority G.S. 130A-294; S.L. 2015-286, s. 4.9; Eff. Pending Legislative Review.

TITLE 17 – DEPARTMENT OF REVENUE

17 NCAC 11 .0216 LEGAL REPRESENTATION BEFORE THE COMMISSION

(a) Parties appearing before the Property Tax Commission may either represent themselves if natural persons, or shall be represented by an attorney licensed to practice law in North Carolina, except as provided for in G.S. 105-290(d2). This requirement shall not be waived by the Commission. Notice of non-attorney representation pursuant to G.S. 105-290(d2) shall be filed with the Commission within 30 days of filing a Notice of Appeal or the appeal shall be subject to dismissal.

(b) All parties, attorneys, and witnesses shall be present for the hearing of their case 30 minutes before the time it is scheduled by the Commission or the appeal shall be subject to dismissal.

History Note: Authority G.S. 84-4; 105-288; 105-290; Eff. June 1, 1982; Amended Eff. September 1, 2016; July 1, 1993.

17 NCAC 11 .0217 APPEARANCE AT HEARING REQUIRED

(a) In order to pursue an appeal, the appellant shall either appear at the scheduled hearing as permitted by Rule .0216 of this Section or be represented at the hearing by an attorney at law. Attorneys at law not authorized to practice in North Carolina shall comply with the provisions of G.S. 84-4.1.

(b) If no continuance is requested or granted, the failure of the appellant or his attorney to appear at the scheduled time and date for hearing shall be grounds for dismissal of appellant's appeal. The Commission may dismiss the appeal on motion of the opposing party or on its own motion.

(c) If the appellant is a trust, a trustee may appear for the trust. If the appellant is a partnership, a general partner may appear for the partnership. A family member may not represent another family member. An attorney-in-fact may not represent the grantor of the power of attorney.

History Note: Authority G.S. 84-4; 105-288; 105-290; Eff. June 1, 1991; Amended Eff. September 1, 2016; July 1, 1993.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 06 – BOARD OF BARBER EXAMINERS

21 NCAC 06F .0110 ROSTER AND STUDENT RECORDS

Each barber school shall:

- (1) maintain an up-to-date written roster system that shall be used to ensure that each student serves substantially equal numbers of patrons for practical work;
(2) maintain a record of each student, including a weekly record of the number of days and hours the student attended classes in practical work and theory;
(3) maintain a separate daily record of the number of patrons the student served for haircuts, shaves, and other barbering services;
(4) maintain a weekly record of the subject matter taught to the student in theory classes;
(5) submit the Form BAR-10 as required by 21 NCAC 06N .0111;
(6) provide to the Board the list of students required by G.S. 86A-22(5) by the 15th day of each month; and
(7) maintain the signed acknowledgment required by 21 NCAC 06F .0116.

History Note: Authority G.S. 86A-22; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. April 1, 2010; June 1, 2008; May 1, 1989; March 1, 1983; Readopted Eff. September 1, 2016.

CHAPTER 22 – HEARING AID DEALERS AND FITTERS BOARD

21 NCAC 22F .0202 ANNUAL CONTINUING EDUCATION REQUIREMENTS

(a) A licensee shall complete and record with the Board ten hours (1.00 CEU credit) of Board-approved continuing education annually, including at least five hours (0.50 CEU credit) classified as Category 1 in accordance with Rule .0203 of this Section.

(b) The CEU Accrual Period for each license renewal shall be the calendar year preceding license renewal. CEU credit cannot be carried over from one CEU Accrual Period to the next, even if the CEU credit earned exceeds the license renewal requirement.

(c) An individual who passes the licensing exam during a CEU Accrual Period shall have satisfied the continuing education requirement for the corresponding license renewal.

History Note: Authority G.S. 93D-3(c); 93D-11; Eff. September 1, 2013; Amended Eff. October 1, 2016.

21 NCAC 22F .0208 SELF-STUDY

(a) Self-study may be completed to satisfy up to five hours of the continuing education requirement during each CEU Accrual Period.

(b) Each self-study event shall be one session and up to five sessions completed in the same CEU Accrual Period may be reported on one self-study Report of Attendance as a self-study program.

(c) A licensee shall record self-study CEU credit with the Board by submitting all of the following:

- (1) an electronic CEU Verification Report;
- (2) a completed self-study Report of Attendance;
- (3) an official transcript listing the licensee's score of 80 percent or greater on an Internet-presented examination pertaining to the content of the self-study activity; and
- (4) the recording fee as set forth in Rule 21 NCAC 22A .0501 for each self-study program.

(d) The Board shall accept electronic images of the self-study Report of Attendance and official transcripts when submitted electronically in conjunction with the CEU Verification Report.

History Note: Authority G.S. 93D-3(c); 93D-11; Eff. September 1, 2013; Amended Eff. January 1, 2017.

21 NCAC 22L .0101 COMMITTEE ON INVESTIGATIONS

(a) The Board President shall appoint two Board members for a standing Committee on Investigations. The Committee on Investigations shall investigate complaints submitted to the Board, unless administratively closed as described in Paragraph (d) of this Rule.

(b) The complainant shall submit a signed Board-approved complaint form set forth in this Rule. The complaint form is available on the Board website (www.nchalb.org) or by contacting the Board office. The complaint form requires the following:

- (1) the complainant first and last name;
- (2) the complainant address;
- (3) the complainant phone number;
- (4) the licensee, apprentice, or registered sponsor first and last name;
- (5) the licensee, apprentice, or registered sponsor business address;
- (6) the nature of the complaint; and
- (7) the complainant signature and attestation of truthfulness.

(c) The Board shall not respond to or investigate anonymous complaints or inquiries.

(d) The Board staff shall administratively close:

- (1) any complaint anonymously submitted;
- (2) a complaint that alleges an advertising violation of 21 NCAC 22J .0103 that occurred more than one year prior to notifying the Board of the alleged violation;
- (3) a complaint withdrawn by the complainant at any stage of the investigation; or
- (4) incomplete forms. The Board staff shall return incomplete forms to the complainant, if a complainant is listed on the incomplete form.

(e) After a review of a complaint, the Committee on Investigations shall:

- (1) recommend to the Board a finding that there is no probable cause to believe a violation of the law or rules exists and close the complaint when the Board finds that there is no probable

cause to believe a violation of the law or rules exists. The Committee shall send a letter to the complainant stating the same. This letter is not a public record pursuant to G.S. 93D-13(c);

- (2) serve the licensee, apprentice, or registered sponsor with a written explanation of the charges if there is evidence that probable cause of a violation exists;
- (3) hire an investigator or such persons as it deems necessary to determine whether there is probable cause to believe a violation exists in order to support formal disciplinary action against a licensee, apprentice, or registered sponsor;
- (4) subpoena persons to provide the Committee with sworn testimony or documents, provided that the subpoena is signed by the President or Secretary-Treasurer of the Board; or
- (5) make inquiries designed to assist the Committee in its review of matters under investigation.

(f) The respondent shall respond in writing within 20 days of receipt of the notification of charges.

(g) The Committee may offer the complainant a summary of the response. The Committee shall make this decision on a case-by-case basis, considering the nature of the complaint and the response.

(h) The Committee shall offer the parties an opportunity to present oral statements to the Committee after the response is received from the respondent, if the Committee determines that further information is required from the complainant or respondent. Neither party shall be compelled to attend.

(i) With assistance from the Board's legal counsel, the Committee shall determine the validity and merit of the charges, and whether the accused party has violated any standard of conduct that would justify a disciplinary action based upon the grounds as specified in G.S. 93D-13 or this Chapter.

(j) The Committee on Investigations shall present its findings and recommendation to the Board, including proposed discipline, if any, but shall not identify the parties to the complaint to the full Board except by descriptive titles, such as licensee, apprentice, sponsor, and consumer.

(k) The Board may find no probable cause for disciplinary action and dismiss the charges. The Committee on Investigations shall notify the parties of the Board action.

(l) The Board may find no probable cause for disciplinary action but issue a letter of caution to the respondent.

(m) The Board may find probable cause for disciplinary action and serve the respondent with a private reprimand. The private reprimand letter is not a public record pursuant to G.S. 93D-13(c). The Board shall deem the private reprimand accepted as formal discipline in the matter unless the respondent submits a refusal to accept the private reprimand, which shall:

- (1) be in writing, addressed to the Committee on Investigations;
- (2) be filed with the Board staff within 20 days after service of the private reprimand; and
- (3) include a request for a contested case hearing in accordance with 21 NCAC 22L .0103.

(n) The Board may find probable cause for disciplinary action and authorize the Committee on Investigations, by and through the Board's legal counsel, to undertake negotiations with the respondent to settle the matter without a hearing when such settlement accomplishes the Board's duty to protect the consuming public.

(o) If the Board and respondent fail to settle the matter under Paragraph (n) of this Rule, the Board shall:

- (1) serve a notice of hearing on the accused party as required by G.S. 150B, Article 3A., which may also be released to any requesting member of the public pursuant to G.S. 93D-13(c);
- (2) designate a presiding officer for the contested case; and
- (3) conduct a hearing in accordance with the rules of this Subchapter.

History Note: Authority G.S. 93D-3; 93D-13; 150B-38; Eff. January 1, 1992; Amended Eff. October 1, 2016; December 1, 2013; February 1, 2010; April 1, 1996.

CHAPTER 28 – LANDSCAPE CONTRACTORS' LICENSING BOARD

21 NCAC 28B .0101 NAME AND LOCATION OF BOARD

(a) All communications shall be addressed to the North Carolina Landscape Contractors' Licensing Board ("Board") at 3901 Barrett Drive, Suite 202, Raleigh, North Carolina 27609. Applications and other information are available on the Board's website: www.nclclb.com.

(b) The Board office is open from 9:00 a.m. until 5:00 p.m., Monday through Friday.

(c) The Board office is closed on State and Federal holidays.

History Note: Authority G.S. 89D-14; 89D-15(2); Temporary Adoption Eff. January 1, 2016; Eff. September 1, 2016.

21 NCAC 28B .0102 MEETINGS

(a) Regular meetings of the Board will be held at the Board office or other location chosen by the Chairman. Additional meetings may be held at such other times and places as the Board deems necessary.

(b) The Board shall hold an annual meeting every January. At that meeting, the Board shall elect a chairman, a vice chairman, a secretary-treasurer, and such other officers as may be deemed necessary by the Board.

History Note: Authority G.S. 89D-14; 89D-15(2); Temporary Adoption Eff. January 1, 2016; Eff. September 1, 2016.

21 NCAC 28B .0103 PRACTICE OF LANDSCAPE CONTRACTING

An individual who is "readily available to exercise supervision over the landscape construction and contracting work" as set forth in G.S. 89D-12(a) and G.S. 89D-17(f) is an individual who is physically located no more than 100 miles from where the construction or contract project is located or who is available electronically with the ability to view the construction or contract project.

History Note: Authority G.S. 89D-12(a); 89D-15(2); Temporary Adoption Eff. January 1, 2016; Eff. September 1, 2016.

21 NCAC 28B .0201 APPLICATIONS FOR LICENSURE

(a) All applicants for licensure or examination shall submit an application to the Board. The application form shall be available on the Board website or may be obtained by contacting the Board office. The application shall require the following:

- (1) The Social Security Number of applicant;
- (2) The applicant's contact information;
- (3) The name of business under which licensee will be operating, if any;
- (4) Information about all crimes of which the applicant has been convicted;
- (5) Documentation regarding all crimes of which the applicant has been convicted;
- (6) Information indicating whether the applicant has any disciplinary history with any other occupational licensing, registration or certification board or agency;
- (7) Three personal letters of reference;
- (8) Two professional letters of reference;
- (9) The corporate surety bond or an irrevocable letter of credit as prescribed by G.S. 89D-16(a)(4);
- (10) The application fee as set forth in Rule .0601 of this Subchapter.

(b) All letters of reference as required by Subparagraphs (a)(7) and (a)(8) of this Rule shall include the following information for the person providing the reference:

- (1) Name;
- (2) Address;
- (3) Phone number; and
- (4) Email address.

(c) Once an applicant has submitted a complete application and has been determined to have met the minimum qualifications set forth in G.S. 89D-16(a), the Board will notify the applicant that the applicant is permitted to take an examination. Prior to taking the examination, the applicant shall submit an examination fee as set out in this Subchapter. In order to be permitted to take an examination, an applicant shall submit a complete application no less than 30 days prior to a scheduled examination date.

(d) All applications shall be notarized. Incomplete applications shall not be processed. Application fees are non-refundable.

History Note: Authority G.S. 89D-15(2); 89D-15(4); 89D-16; 89D-20;

*Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016.*

21 NCAC 28B .0202 RECIPROCITY

(a) All applicants for licensure by reciprocity shall submit an application to the Board. The application form shall be available on the Board website or may be obtained by contacting the Board office located as described in Rule .0101 of this Subchapter.

(b) All applications shall include the following:

- (1) The license by reciprocity application fee as set forth in Rule .0601 of this Subchapter;
- (2) Documentation establishing that the applicant holds an active license, certification, or registration as a landscape contractor in another state or country;
- (3) Information indicating whether the applicant has any disciplinary history with any other occupational licensing, registration or certification board or agency;
- (4) The corporate surety bond or an irrevocable letter of credit as prescribed by G.S. 89D-16(a)(4);
- (5) Contact information for three personal references;
- (6) Contact information for two professional references; and
- (7) Documentation regarding all crimes of which the applicant has been convicted.

If there is any evidence to show that the applicant has committed any acts that would constitute a violation under G.S. 89D-22, the applicant shall not be licensed by reciprocity.

(c) Once an applicant has submitted a complete application and the Board has determined that the requirements for licensure, certification, or registration in the applicant's home jurisdiction are substantially equivalent to the requirements in G.S. 89D-16, the Board shall issue a license to the applicant.

(d) All applications shall be notarized. Incomplete applications shall not be processed. Application fees are non-refundable.

*History Note: Authority G.S. 89D-15(2); 89D-15(3); 89D-15(4); 89D-16; 89D-19; 89D-22;
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016.*

21 NCAC 28B .0203 MILITARY-TRAINED APPLICANT; MILITARY SPOUSE

(a) Licensure for a military-trained applicant. Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military-trained applicant, the Board shall issue a license to the applicant who satisfies the following conditions:

- (1) submission of a complete application for licensure in accordance with Rule .0201 of this Section;
- (2) submission of an application fee in accordance with Rule .0601 of this Subchapter; and
- (3) providing documentation to satisfy conditions set out in G.S. 93B-15.1(a)(1), (2) and (3).

(b) Licensure for a military spouse. Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military spouse, the

Board shall issue a license to the applicant who satisfies the following conditions:

- (1) submission of a complete application for licensure in accordance with Rule .0201 of this Section;
- (2) submission of an application fee in accordance with Rule .0601 of this Subchapter;
- (3) submission of written documentation demonstrating that the applicant is married to an active member of the U.S. military; and
- (4) providing documentation to satisfy conditions set out in G.S. 93B-15.1(b)(1), (2), (3) and (4).

*History Note: Authority G.S. 89D-15(2); 89D-15(4); 89D-21; 93B-15.1;
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016.*

21 NCAC 28B .0204 MAINTAIN CURRENT INFORMATION

(a) Every licensee shall keep the Board advised of the licensee's current mailing address, phone number, email address, and the name or names under which the licensee is practicing. If any change occurs, the licensee shall notify the Board in writing of the change within 60 days.

(b) Upon the dissolution of a professional relationship, the member or members thereof shall notify the Board in writing concerning such dissolution and of the succeeding status and addresses of the individuals or firm.

(c) Within 5 days after the lapse of a surety bond or revocation of a letter of credit prescribed in G.S. 89D-16(a)(4), a licensee shall notify the Board in writing. If a licensee fails to renew the surety bond or obtain a new letter of credit within 30 days after the lapse or revocation, the license shall be revoked.

(d) Failure to notify the Board of the changes described in Paragraphs (a), (b), or (c) of this Rule shall constitute a violation of G.S. 89D-22.

*History Note: Authority G.S. 89D-15(2), 89D-15(11); 89D-16(a)(4); 89D-17(h); 89D-22(8);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016.*

21 NCAC 28B .0301 LICENSE RENEWAL; WAIVER

(a) All licensees seeking renewal shall submit annually to the Board a renewal application. The deadline for submission is August 1 in the renewal year. Applications shall be postmarked or received by the Board no later than August 1. If August 1 falls on a Saturday or Sunday, the application shall be postmarked or received no later than the following Monday. The application form is available on the Board website or may be obtained by contacting the Board office.

(b) All renewal applications shall include the following:

- (1) The license renewal fee set forth in Rule .0601 of this Subchapter;
- (2) Documentation showing that the licensee has met the Board's continuing education requirements as set forth in Section .0400 of this Subchapter. However, if the licensee was

licensed by examination within the previous 12 months, the licensee is not required to submit evidence of continuing education; and

- (3) Documentation regarding all crimes of which the licensee has been convicted since the previous licensure or renewal.

(c) Incomplete applications shall not be processed. Renewal fees are non-refundable.

(d) An individual who is serving in the Armed Forces of the United States shall receive an extension of time to pay the license renewal fee upon submission of the following to the Board:

- (1) Written request for waiver; and
- (2) Documentation that the licensee is serving in the Armed Forces of the United States and is eligible for an extension of time to file a tax return pursuant to G.S. 105-249.2.

History Note: Authority G.S. 89D-15(2); 89D-15(4); 89D-20; 93B-15; 105-249.2; Temporary Adoption Eff. January 1, 2016; Eff. September 1, 2016.

21 NCAC 28B .0302 REINSTATEMENT

(a) All applicants for reinstatement under this Rule shall submit an application to the Board. The application form shall be obtained by contacting the Board office. The reinstatement application shall require the following:

- (1) The applicant's home and business contact information including phone number and email address;
- (2) Corporate surety bond or an irrevocable letter of credit as required by G.S. 89D-16(a)(4);
- (3) Documentation showing that the licensee has met the Board's continuing education requirements as set forth in Section .0400 of this Subchapter;
- (4) Documentation regarding all crimes of which the applicant has been convicted since the previous application or renewal was filed with the Board;
- (5) Reinstatement, license renewal and renewal late fees in accordance with Rule .0601 of this Subchapter; and
- (6) Attestation, by signature, that the licensee has not engaged in the practice of landscape construction or contracting after revocation and that all information supplied on the reinstatement application is true and accurate.

(b) Any licensee whose license is suspended for failure to obtain continuing education as required by G.S. 89D-20(b) and this Subchapter may request reinstatement pursuant to G.S. 89D-20(b).

History Note: Authority G.S. 89D-15(2); 89D-15(4); 89D-20; Temporary Adoption Eff. January 1, 2016; Eff. September 1, 2016.

21 NCAC 28B .0401 GENERAL

To ensure continuing efforts on the part of licensed contractors to remain current with new developments in landscape technology and to encourage better business practices and safety in the profession, continuing education is required as a condition of license renewal. A licensee shall submit, as a part of his or her renewal application, evidence that he or she has met the Board's continuing education requirements as set forth in this Section. Except as provided in Rule .0301 of this Subchapter, renewal applications that do not contain this information shall be deemed incomplete.

History Note: Authority G.S. 89D-15(2); 89D-15(4); 89D-15(12); 89D-20; Temporary Adoption Eff. January 1, 2016; Eff. September 1, 2016.

21 NCAC 28B .0402 CONTINUING EDUCATION UNITS

(a) A licensee shall complete seven continuing education units (CEUs) during the year preceding renewal. Beginning with renewals filed after August 1, 2016, at least three of the seven CEUs must be technical credits and at least two of the seven CEUs must be business credits. If the information provided to the Board as required by this Section is unclear, the Board may request additional information from a licensee in order to assure compliance with continuing education requirements.

(b) For the purposes of this Rule:

- (1) "technical credits" are defined as credits relating directly to the subject matter of landscape contracting as described in G.S. 89D-11(3); and
- (2) "business credits" are defined as credits relating to general business practices, including business planning, contracts, liability exposure, human resources, basic accounting, financial statements, and safety.

(c) CEUs shall be determined as follows:

Type of Qualifying Activity	Minimum time required for 1 CEU
Live course	50 minutes
Online course	50 minutes
Trade Shows, Field Days, and Tours	4 hours
Board Member Service	1 hour
Teaching or instructing	1 hour
In-house or Green Industry training	1 hour

(d) No more than two CEU credits will be given for qualifying teaching or instructing in one year.

(e) Credit shall not be given in increments of less than .5 CEUs. Breaks in courses shall not be counted towards CEU credit.

(f) Requests for pre-approval shall be submitted at least 45 days prior to the first day of the course or event.

*History Note: Authority G.S. 89D-15(2); 89D-15(4); 89D-15(12); 89D-20(b);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016.*

21 NCAC 28B .0403 CONTINUING EDUCATION RECORDS; AUDIT

(a) A licensee shall maintain records of attendance at continuing education programs for which CEUs have been approved for two years following the processing date of the renewal application to which the CEUs were applied.

(b) Compliance with annual CEU requirements shall be determined through a random audit process conducted by the Board. Licensees selected for auditing shall provide the Board with the following documentation of the CEU activities claimed for the renewal period:

- (1) Attendance verification records; and
- (2) Information regarding course content, instructors, and sponsoring organization.

(c) Licensees selected for audit shall submit all requested information to the Board within 21 calendar days after the date the licensee was notified by the Board of the audit.

*History Note Authority G.S. 89D-15(2); 89D-15(4); 89D-15(12); 89D-20(b);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016.*

21 NCAC 28B .0404 EXTENSION OF TIME

(a) The Board shall grant a licensee an extension of time to complete CEU requirements during a period of service in the Armed Forces of the United States upon submission of the following to the Board:

- (1) Written request for an extension; and
- (2) Documentation that the licensee is serving in the Armed Forces of the United States and is eligible for an extension of time to file a tax return pursuant to G.S. 105-249.2.

(b) The Board shall grant a licensee an extension of time or waiver to obtain CEU requirements if he or she has a disability or illness that prevents him or her from complying with CEU requirements. In order to receive the waiver, a licensee shall provide the Board with the following:

- (1) Written request for waiver; and
- (2) Documentation that describes the disability or illness and explains how the disability or illness prevents the licensee from complying with the Board's CEU requirements. Documentation includes a letter from a licensed physician, nurse practitioner (NP), or physician assistant (PA).

(c) Where on a case-by-case basis the Board determines that due to an undue hardship (such as active military service, natural disaster, or illness of family member) the licensee could not reasonably be expected to comply with the Board's CEU requirements, the licensee shall be granted an extension of time in which to obtain the required CEUs. To be considered for an extension of time, a licensee shall submit the following:

- (1) Written request for extension; and

(2) Documentation that supports the reason for the extension.

(d) The Board shall grant a waiver of CEU requirements upon submission of documentation that a licensee is in active duty while serving in the Armed Forces and is or has been deployed for at least eight months during the twelve-month period during which CEUs were required.

(e) An extension granted under Paragraphs (b) or (c) of this Rule shall not exceed one year. Prior to the expiration of the one year extension of time, a licensee may request an additional extension in accordance with this Rule.

*History Note: Authority G.S. 89D-15(2); 89D-15(4); 89D-15(12); 89D-20(b); 93B-15; 105-249.2;
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016.*

21 NCAC 28B .0405 REQUESTS FOR APPROVAL

(a) All requests for CEU approval shall include the following:

- (1) All applicants for continuing education credit shall submit an application to the Board. The application form shall be available on the Board website or may be obtained by contacting the Board office. The application shall require the following:
 - (i) Applicant's contact information including phone number and email address;
 - (ii) Name of business under which the applicant is operating;
 - (iii) Type of qualifying activity in accordance with Rule .0402 of this Subchapter;
 - (iv) Title of the qualifying activity;
 - (v) Date(s) and time(s) of the qualifying activity;
 - (vi) Complete address where the qualifying activity will be held;
 - (vii) Qualifying activity registration information;
 - (viii) Name of presenter(s) and credentials;
 - (ix) Course agenda and supporting materials; and
 - (x) Attestation, by signature, that the qualifying activity provider will maintain attendance records for this course for one year after the date of this course.

(2) The number of Continuing Education Units (CEUs) requested; and

(3) The Location, date(s), and time(s) of course, activity, or Landscape Contractor's Licensing Board meetings attended or to be attended.

(b) For live and online courses and teaching or instructing activity, in addition to the requirements of Paragraph (a) of this Rule, all requests shall include the following:

- (1) The course title(s) and a description of course content;

- (2) The name and educational or professional credentials of the instructor;
- (3) The duration of the course or activity; and
- (4) An attestation that the course provider will maintain attendance records for one year after the date of the course.

(c) For trade shows, field days, and tours, requests for approval shall, in addition to the requirements of Paragraph (a) of this Rule, include materials or handouts promoting or obtained during the event.

(d) For in-house or Green Industry training, requests for approval shall include the following, in addition to the requirements of Paragraph (a) of this Rule:

- (1) A description of training provided; and
- (2) The name(s) of training instructors.

(e) For the purposes of this Rule, "Green Industry" is defined as greenhouse, nursery, floriculture, sod, Christmas tree producers, and related industry trades.

History Note: Authority G.S. 89D-15(2); 89D-15(4); 89D-20(b); Temporary Adoption Eff. January 1, 2016; Eff. September 1, 2016.

21 NCAC 28B .0501 GENERAL

(a) Prior to commencing work, services performed by a licensed landscape contractor ("licensed contractor") that exceed five thousand dollars (\$5,000) in value shall be described in a written agreement. This agreement may be authored by either party and shall contain:

- (1) The business name, license number, business address, and telephone number of the licensed contractor;
- (2) The name and address of client or customer;
- (3) The address or location of work to be performed, if different from the client or customer's address;
- (4) The date of the proposal;
- (5) The description of the work to be performed;
- (6) The total value in lump sum, unit price, or time and material price;
- (7) The estimated time of completion unless already identified in an original prime contract, if applicable;
- (8) The terms of payment;
- (9) The terms of warranty (if any);
- (10) The terms of maintenance, including the party responsible for maintenance;
- (11) The signatures of all parties by individuals legally authorized to act on behalf of the parties;
- (12) Affixation of a seal described in G.S. 89D-12(d) or a statement that the licensed contractor is licensed by the Board and the current address and phone number of the Board; and
- (13) The date of signing.

(b) All work performed by a licensed contractor shall meet all applicable building codes, local ordinances, and project specifications. All work performed by a licensed contractor shall meet manufacturer's specifications.

(c) If project plans or specifications prepared by someone other than the licensed contractor do not meet pertinent codes and ordinances, the licensed contractor shall bring this to the attention of the client or customer.

(d) If the licensed contractor observes a condition while the work is being performed that requires attention beyond the original scope of work, the contractor shall report the condition to a supervisor, the owner, or the person responsible for authorizing the work.

(e) The licensed contractor shall call for utility location services pursuant to the Underground Utility Safety and Damage Prevention Act, G.S. 87-115 et seq., also known as the N.C. 811 law.

(f) The licensed contractor shall maintain a worksite that meets state and local standards for a safe workplace.

History Note: Authority G.S. 89D-15(2); 89D-15(16); Temporary Adoption Eff. January 1, 2016; Eff. September 1, 2016.

21 NCAC 28B .0502 PLANTING

When planting, the licensed contractor shall:

- (1) Avoid potential planting conflicts with utilities and sight lines.
- (2) Protect plant material from physical damage and desiccation during transport.
- (3) Maintain plants during landscape construction.
- (4) Consider the cultural requirements of individual plants.
- (5) Excavate the plant hole sufficiently to ensure plant establishment and to promote long-term health, typically two times the width of the plant ball or container size.
- (6) Scarify the sidewalls of the planting pit.
- (7) Set plants in an upright, plumb position, unless design intent dictates otherwise.
- (8) Set plants on a firm, solid base.
- (9) Remove all strings, twine, and strapping from around the trunk of trees.
- (10) Remove the top third to top half of burlap or other wrapping material from the rootball of balled and burlapped trees.
- (11) Remove top third to top half of wire baskets on balled and burlapped trees or bend basket wire back to be flush with the side of the ball.
- (12) Set the plant so that the top of rootball is at or slightly above surrounding soil and does not exceed four inches above the surrounding soil.
- (13) Prior to planting, insure that the trunk flare of a tree is not covered with soil, is at or above the surrounding finished grade, and that no soil has been placed on top of the rootball.
- (14) Prior to planting containerized plants, manage the rootball to mitigate problems such as circling roots. Acceptable mitigation methods shall include slicing the rootball, shaving the rootball, or redirecting roots.

- (15) Utilize backfill soil that is similar to the soil at the planting site or is amended to meet a specific landscaping objective.
- (16) Not firm backfill to a density that inhibits root growth.
- (17) Install backfill soil in such a manner that it is settled in layered sections to limit future settling.
- (18) Not utilize screened soil as the sole material for backfill.
- (19) When mulching plants, maintain a mulch depth that is beneficial to the health of the plants.
- (20) When mulch is applied, apply mulch so that it does not touch a tree trunk or root flare.
- (21) Water plants thoroughly and immediately after planting in accordance with the needs of the plant.
- (22) Notify client of his or her responsibility to water plants following installation.
- (23) Stake trees only when required due to high winds, extreme slopes, or soft soils;
 - (a) If trees are staked, the guys shall not be installed so as to provide pressure on the trunk.
 - (b) Guys in contact with the tree shall be of a material that will not damage the tree.
- (24) Provide plants that are true to name and species.
- (25) Provide plants that are healthy and in good condition.
- (26) Prune any broken limbs.
- (27) Prune co-dominant leaders in shade trees that typically have dominant leaders.
- (28) If a condition is observed while the work is being performed that is detrimental to the long-term health of the plant, the condition shall be reported to the customer or client, a supervisor, the owner, or person responsible for authorizing the work.

- (6) Roll or rake after seeding to insure good soil contact;
- (7) Install sod within 36 hours of harvesting unless weather conditions or turf types dictate a shorter timeframe;
- (8) Lay sod strips in a staggered pattern, horizontal to slopes and with tight seams;
- (9) Roll sod after installation to provide good soil contact;
- (10) Distribute sprigs evenly;
- (11) Insure that sprigs and sod plugs are in good contact with the soil;
- (12) Water lawn areas after installation and in accordance with the needs of the lawn; and
- (13) Notify client of his or her responsibility to water turf following installation.

History Note: Authority G.S. 89D-15(2); 89D-15(16); Temporary Adoption Eff. January 1, 2016; Eff. September 1, 2016.

21 NCAC 28B .0504 FINISH GRADE

When grading, the licensed contractor shall:

- (1) Grade the surface such that the finish grade is smooth and free of depressions and debris;
- (2) Insure positive water flow through the site, away from structures, and in such a manner that there is no puddling or ponding; and
- (3) Comply with all applicable local and national building codes and ordinances regarding slopes and drainage.

History Note: Authority G.S. 89D-15(2); 89D-15(16); Temporary Adoption Eff. January 1, 2016; Eff. September 1, 2016.

21 NCAC 28B .0505 DESIGN AND CONSULTATION

(a) The licensed contractor shall be permitted to perform work as defined in G.S. 89D-11(3) and G.S. 89D-12 on the following project sites:

- (1) A single family residential project of any size;
- (2) A non-single family project under one acre in total area;
- (3) A residential, institutional, or commercial project over one acre in total area that involves only planting and mulching; and
- (4) Any other project not prohibited by, or specifically exempted from, the provisions of G.S. 83A, G.S. 89A, or G.S. 89C.

(b) Additionally, the licensed contractor shall:

- (1) Obtain direct knowledge of site conditions by visiting the site;
- (2) Insure that designs meet all applicable state and local codes and standards; and
- (3) Consider the cultural requirements of individual plants.

History Note: Authority G.S. 89D-11(3); 89D-15(2); 89D-15(16);

History Note: Authority G.S. 89D-15(2); 89D-15(16); Temporary Adoption Eff. January 1, 2016; Eff. September 1, 2016.

21 NCAC 28B .0503 TURF

When establishing turf, the licensed contractor shall:

- (1) Notify the owner or the construction manager whether there is adequate time to establish the specified turf from seed within the construction schedule and prior to finish of the job;
- (2) Prior to lawn installation, loosen soil to a minimum depth of three inches;
- (3) Confirm that all lawn seed meets the standards of the NC Seed Law of 1963, as set forth in G.S. 106, Art. 31;
- (4) Evenly distribute seed;
- (5) Apply seed at manufacturer's recommended rates;

*Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016.*

21 NCAC 28B .0506 DRAINAGE SYSTEMS AND CISTERNS

Licensed contractors shall:

- (1) Install drainage systems and cisterns in accordance with state and local codes and ordinances;
- (2) Install drainage conveyances in such a way that there is a positive flow;
- (3) Install drainage systems with measures that allow cleaning of the system;
- (4) Install drainage systems with adequate structural integrity so as to prevent crushing of the drainage system;
- (5) Install French drain systems to drain to daylight or into existing storm drainage; and
- (6) Insure that cisterns and closed drywells include an overflow outlet.

*History Note: Authority G.S. 89D-15(2); 89D-15(16);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016.*

21 NCAC 28B .0507 LOW-VOLTAGE LIGHTING; POOLS

(a) When installing low-voltage landscape lighting systems, the licensed contractor shall:

- (1) Insure that all wire connections are waterproof;
- (2) Only use weather-proof fixtures;
- (3) Supply lamps per the manufacturer's specifications with all fixtures;
- (4) Ensure that the total lamp wattage of each circuit does not exceed the National Electrical Code (NEC) standard for the size of wire being used;
- (5) Not load a wire to more than 80 percent of the wire's capacity;
- (6) Connect all exterior low-voltage wiring to a ground fault circuit interrupter (GFCI) circuit;
- (7) Mount transformers a minimum of 18 inches above grade;
- (8) Perform a post-installation inspection to verify that the lighting system is fully operational as intended per the manufacturer's recommendations; and
- (9) Provide literature to the client about the lighting components that lists lamps per the manufacturer's specifications for fixtures.

(b) All garden pools shall be installed in accordance with state and local codes.

*History Note: Authority G.S. 89D-15(2); 89D-15(16);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016.*

21 NCAC 28B .0508 WALLS

(a) When installing retaining walls, the licensed contractor shall:

- (1) Adhere to all pertinent codes.
- (2) Adhere to manufacturer's or design professionals specifications.
- (3) Bury the first course of a retaining wall.
- (4) Not construct dry-laid stone walls of a height more than 3 feet above grade.
- (5) Include a subdrain system that is constructed and sized to release the subsurface water behind the wall and not allow hydrostatic pressure to build behind the wall.
- (6) Construct on a level, well-compacted base of granular material at least 6 inches deep.
- (7) Place backfill behind retaining walls in lifts no greater than 6 inches before compacted (each lift shall be well-compacted).
- (8) Prevent excessive runoff from passing over a retaining wall.
- (9) Construct vertically-set timber walls with above-ground heights equal to or less than the depth of timbers below grade.
- (10) Install deadmen every fourth course on 8 feet centers when constructing horizontally-set timber retaining walls with staggered joints.
- (11) Stagger the joints when constructing dry-laid stone walls. If successive vertical joints occur, the licensed contractor shall avoid running vertical joints more than two courses.

(b) When installing freestanding walls, the licensed contractor shall:

- (1) Install footings for masonry and cast-in-place concrete freestanding walls of reinforced concrete. The top of the footing shall be at least 1 foot below grade.
- (2) Reinforce freestanding walls as needed to prevent displacement from wind loads.
- (3) Insure that moisture is prevented from entering a cavity wall during construction.
- (4) Insure that segmental wall construction meets segmental wall manufacturer's specifications.

*History Note: Authority G.S. 89D-15(2); 89D-15(16);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016.*

21 NCAC 28B .0509 PAVING

When paving, the licensed contractor shall:

- (1) Follow manufacturer's recommendations and specifications;
- (2) Choose paving materials that are appropriate for the project, based on the contractor's professional judgment;
- (3) Install paving on a well-compacted base that will prevent settlement;
- (4) Install paved surfaces to allow for surface drainage and to prevent ponding;
- (5) Install reinforcement in concrete slabs so that the reinforcement is suspended within the concrete and not resting on the base course;

- (6) Not pour concrete if air temperatures, away from artificial heat or in the shade, is less than 35 degrees Fahrenheit;
- (7) Not pour concrete if the air temperature in the shade is 90 degrees Fahrenheit and rising or if the concrete temperature is greater than 95 degrees Fahrenheit;
- (8) Use a vibratory compacting device to set unit pavers and after joints are swept; and
- (9) Utilize an edge restraint on unit paver installations.

- (5) Use a temporary cover, nurse crop, or mulch that is non-allelopathic and seasonally appropriate when seeding.
- (6) Use highest seed rates on slopes greater than 30 degrees or when a dormant seeding schedule is utilized.
- (7) Employ a seeding method that buries seed less than one-quarter inch in depth, and cultipack or roll after seed distribution.

History Note: Authority G.S. 89D-15(2); 89D-15(16); Temporary Adoption Eff. January 1, 2016; Eff. September 1, 2016.

History Note: Authority G.S. 89D-15(2); 89D-15(16); Temporary Adoption Eff. January 1, 2016; Eff. September 1, 2016.

21 NCAC 28B .0510 PRUNING

- (a) When pruning, a licensed contractor shall:
 - (1) Use sharp tools;
 - (2) When making a pruning cut that removes a branch at its point of origin, make the cut close to the trunk or parent branch without cutting into the branch bark ridge or branch collar or leaving a stub;
 - (3) Not flush cut;
 - (4) Not top trees;
 - (5) Remove branches in such a manner as to avoid damage to other parts of the plant or to other plants or property; and
 - (6) Precut branches that are too large to support with one hand to avoid splitting the wood or tearing the bark.
- (b) The requirements in Paragraph (a) of this Rule shall not apply when pruning to achieve artistic intent, such as pleaching, pollarding, sculpting, topiary, or espalier.

History Note: Authority G.S. 89D-15(2); 89D-15(16); Temporary Adoption Eff. January 1, 2016; Eff. September 1, 2016.

21 NCAC 28B .0511 WILDFLOWER, NATIVE GRASS, AND NO-MOW SEED ESTABLISHMENT

- When establishing wildflower, native grass, or no-mow seeding, a licensed contractor shall:
- (1) Prior to construction, inform the owner or construction manager of the time required to establish native bunch grasses and forbs from seed and whether this time is compatible with the construction schedule.
 - (2) Confirm the suitability of the specified seed for the project as determined by the land, soil type, and sun/shade exposure.
 - (3) Select seed that is regionally appropriate and of the geographic ecotype for the location of the project by following the recommended seeding rate from the supplier.
 - (4) Use pure live seed (PLS) rates for seeding. If bulk seed is utilized, adjust the rates accordingly.

21 NCAC 28B .0601 FEE SCHEDULE

- (a) The Board shall charge the following fees:
 - (1) Application: \$75.00;
 - (2) Examination: \$150.00;
 - (3) License fee: \$60.00;
 - (4) License renewal: \$60.00;
 - (5) Late renewal: \$25.00;
 - (6) Reinstatement: \$100.00;
 - (7) License by reciprocity: \$100.00;
 - (8) Duplicate license: \$25.00.
- (b) If the Board elects to use a testing service for the preparation, administration, or grading of examinations, the Board shall charge the applicant the actual cost of the examination services and a prorated portion of the examination fee.
- (c) All fees charged by the Board are non-refundable.

History Note: Authority G.S. 89D-15(2); 89D-15(10); 89D-21; Temporary Adoption Eff. January 1, 2016; Eff. September 1, 2016.

21 NCAC 28B .0701 COMPLAINTS; INVESTIGATIONS

- (a) All complaints filed with the Board shall be filed either on a form provided by the Board or via the Board's online complaint process at www.ncclcb.com. All complaints must contain the following information:
 - (1) Date of alleged violation;
 - (2) Contact information for licensee/unlicensed contractor;
 - (3) Contractor license number, if known;
 - (4) Complainant name and contact information;
 - (5) Address where alleged violation(s) occurred;
 - (6) Description of work performed;
 - (7) Copy of written contract; and
 - (8) Attestation, by signature, that information provided is true and accurate to the best of complainant's knowledge.

The Board will not investigate anonymous complaints. Incomplete complaints will not be investigated.

- (b) Upon completion of the investigation, the investigator's report will be forwarded to a designated Board member and Board staff, who will make a recommendation, based upon whether the investigation produces evidence of a violation of G.S. 89D-22 through 24 or the rules of this Subchapter, to the full Board as to

whether the case should be dismissed or whether further action by the Board is warranted.

History Note: Authority G.S. 89D-15(2); 89D-15(6); 89D-15(7);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016.

21 NCAC 28B .0801 PROBABLE CAUSE

Upon a determination that there is probable cause to believe a violation of G.S. 89D or the rules of this Subchapter exists, the Board shall issue a Notice of Hearing pursuant to G.S. 150B-38(b) and (c). Any party served with a Notice of Hearing may file a written response pursuant to G.S. 150B-38(d).

History Note: Authority G.S. 89D-15(2); 89D-15(7); 89D-15(8); 150B-38;
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016.

21 NCAC 28B .0802 HEARINGS

(a) Contested case hearings shall be conducted by a majority of the Board unless the Board requests the designation of an administrative law judge pursuant to G.S. 150B-40(e). The Board chairman shall serve as the presiding officer unless he or she is absent or disqualified, in which case the vice-chairman shall preside. Hearings shall be conducted pursuant to G.S. 150B-40.

(b) An affidavit seeking disqualification of any Board member, if filed in good faith and in a timely manner, shall be ruled on by the remaining members of the Board. An affidavit is considered timely if it is filed:

- (1) Prior to the hearing; or
- (2) As soon after the commencement of the hearing as the affiant becomes aware of facts that give rise to his or her belief that a Board member should be disqualified.

History Note: Authority G.S. 89D-15(2); 89D-15(8); 150B-38; 150B-40;
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016.

21 NCAC 28B .0803 SUBPOENAS

(a) Pursuant to G.S. 150B-39, the Board may issue subpoenas for the appearance of witnesses or the production of documents or information, either at the hearing or for the purposes of discovery.

(b) After a notice of hearing in a contested case has been issued and served upon a licensee or, in a case concerning an application for licensure, the applicant, the respondent may request subpoenas for the attendance of witnesses and the production of evidence.

(c) Requests by a licensee or applicant for subpoenas shall be made in writing to the Board and shall include the following:

- (1) the name and home or business address of all persons to be subpoenaed; and
- (2) the identification of any documents or information being sought.

Upon submission of a written request containing the information in Subparagraphs (1) and (2) of this Paragraph, the Board shall

issue the subpoenas to the requesting party within three business days of the Board's receipt of the request.

(d) Subpoenas shall be served by the party requesting the subpoena as provided by the Rules of Civil Procedure, G.S. 1A, Rule 45. The cost of service, fees, and expenses of any witnesses or documents subpoenaed is prescribed by G.S. 150B-39.

History Note: Authority G.S. 89D-15(2); 89D-15(8); 150B-39; 150B-40(c);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016.

21 NCAC 28B .0804 SUMMARY SUSPENSION

(a) The Board may summarily suspend a license in accordance with G.S. 150B-3(c).

(b) Upon the issuance of an order summarily suspending a license, the Board shall schedule a hearing to occur at the earliest practicable date. The order of summary suspension shall remain in effect until the proceedings are determined.

History Note: Authority G.S. 89D-15(2); 89D-15(4); 150B-3(c);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016.

CHAPTER 32 – MEDICAL BOARD

21 NCAC 32R .0101 CONTINUING MEDICAL EDUCATION (CME) REQUIRED

(a) Continuing Medical Education (CME) is defined as education, training, and activities to increase knowledge and skills generally recognized and accepted by the profession as within the basic medical sciences, the discipline of clinical medicine, and the provision of healthcare to the public. The purpose of CME is to maintain, develop, or improve the physician's knowledge, skills, professional performance, and relationships that physicians use to provide services for their patients, their practice, the public, or the profession.

(b) Each person licensed to practice medicine in the State of North Carolina, except those holding a residency training license, shall complete at least 60 hours of Category 1 CME relevant to the physician's current or intended specialty or area of practice every three years. Beginning on July 1, 2017, every physician who prescribes controlled substances, except those holding a residency training license, shall complete at least three hours of CME, from the required 60 hours of Category 1 CME, that is designed specifically to address controlled substance prescribing practices. The controlled substance prescribing CME shall include instruction on controlled substance prescribing practices, recognizing signs of the abuse or misuse of controlled substances, and controlled substance prescribing for chronic pain management.

(c) The three year period described in Paragraph (b) of this Rule begins on the physician's first birthday following initial licensure.

History Note: Authority G.S. 90-5.1(a)(3); 90-5.1(a)(10); 90-14(a)(15); S.L. 2015-241, s. 12F.16(b) and 12F.16(c);

Eff. January 1, 2000; Amended Eff. August 1, 2012; January 1, 2001; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016; Amended Eff. September 1, 2016.

21 NCAC 32S .0216 CONTINUING MEDICAL EDUCATION

(a) A physician assistant shall complete at least 50 hours of continuing medical education (CME) every two years. The CME shall be recognized by the National Commission on Certification of Physician Assistants (NCCPA) as Category I CME. A physician assistant shall provide CME documentation for inspection by the board or its agent upon request. The two year period shall begin on the physician assistant's first birthday following initial licensure. (b) Beginning on July 1, 2017, a physician assistant who prescribes controlled substances shall complete at least two hours of CME, from the required 50 hours, designed specifically to address controlled substance prescribing practices. The controlled substance prescribing CME shall include instruction on controlled substance prescribing practices, recognizing signs of the abuse or misuse of controlled substances, and controlled substance prescribing for chronic pain management. (c) A physician assistant who possesses a current certification with the NCCPA shall be deemed in compliance with the requirement of Paragraph (a) of this Rule. The physician assistant shall attest on his or her annual renewal that he or she is currently certified by the NCCPA. Physician assistants who attest that they possess a current certificate with the NCCPA shall not be exempt from the controlled substance prescribing CME requirement of Paragraph (b) of this Rule. Physician Assistants shall complete the required two hours of controlled substance CME unless such CME is a component part of their certification activity.

History Note: Authority G.S. 90-5.1(a)(3); 90-5.1(a)(10); 90-18.1; S.L. 2015-241, 12F.16(b) and 12F.16(c); Eff. September 1, 2009; Amended Eff. May 1, 2015; November 1, 2010; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016; Amended Eff. September 1, 2016.

CHAPTER 42 – BOARD OF EXAMINERS IN OPTOMETRY

21 NCAC 42J .0101 FEES

The Board charges the following fees:

- (1) Each application for general optometry examinations \$800.00
(2) Each general optometry license renewal \$300.00
(3) Each certificate of license to a resident optometrist desiring to change to another state or territory \$300.00
(4) Each license issued to a practitioner of another state or territory to practice in this State \$350.00

- (5) Each license to resume practice issued to an optometrist who has retired from the practice of optometry or who has moved from and returned to this State \$350.00
(6) Each application for registration as an optometric assistant or renewal thereof \$100.00
(7) Each application for registration as an optometric technician or renewal thereof \$100.00
(8) Each duplicate license \$100.00
(9) Each renewal license for each branch office \$100.00
(10) Each certificate of registration for a professional corporation or limited liability company \$50.00
(11) Each renewal certificate of registration for a professional corporation or limited liability company \$25.00

History Note: Authority G.S. 55B-10; 55B-11; 57D-2-02; 90-117.5; 90-123; Eff. June 1, 1989; Amended Eff. October 1, 1994; March 1, 1992; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015; Amended Eff. Pending Consultation pursuant to G.S. 12-3.1.

CHAPTER 46 – BOARD OF PHARMACY

21 NCAC 46 .2401 MEDICATION IN HEALTH DEPARTMENTS

A registered nurse employed by a local health department may dispense prescription drugs or devices under the following conditions:

- (1) Drugs or devices may be dispensed only to health department patients, with the exception of:
(a) opioid antagonists, which may be dispensed either to health department patients or to others as permitted by G.S. 90-12.7; and
(b) epinephrine auto-injectors, which may be dispensed either to health department patients or to school personnel as permitted by G.S. 115C-375.2A;
(2) No drugs or devices may be dispensed except at health department clinics;
(3) The health department shall secure the services of a pharmacist-manager who shall be responsible for compliance with all statutes, rules, and regulations governing the practice of pharmacy and dispensing of drugs at the health department;
(4) Only the general categories of drugs or devices listed in Rule .2403 of this Section may be

dispensed by a health department registered nurse; and

- (5) All drugs or devices dispensed pursuant to G.S. 90-85.34A and the rules of this Section shall be packaged, labeled, and otherwise dispensed in compliance with state and federal law, and records of dispensing shall be kept in compliance with state and federal law. The pharmacist-manager shall verify the accuracy of the records at least weekly, and where health department personnel dispense to 30 or more patients in a 24-hour period per dispensing site, the pharmacist-manager shall verify the accuracy of the records within 24 hours after dispensing occurs.

History Note: Authority G.S. 90-12.7; 90-85.6; 90-85.34A; 115C-375.2A; Eff. March 1, 1987; Amended Eff. September 1, 2016; January 1, 2015; August 1, 2014; May 1, 1989.

21 NCAC 46 .2403 DRUGS AND DEVICES TO BE DISPENSED

(a) Pursuant to the provisions of G.S. 90-85.34A(a)(3), prescription drugs and devices included in the following general categories may be dispensed by registered nurses in local health department clinics when prescribed for the indicated conditions:

- (1) Anti-tuberculosis drugs, as recommended by the North Carolina Department of Health and Human Services in the North Carolina Tuberculosis Policy Manual (available at www.ncdhhs.gov), when used for the treatment and control of tuberculosis;
- (2) Anti-infective agents used in the control of sexually-transmitted diseases as recommended by the United States Centers for Disease Control in the Sexually Transmitted Diseases Treatment Guidelines (available at www.cdc.gov);
- (3) Natural or synthetic hormones and contraceptive devices when used for the prevention of pregnancy;
- (4) Topical preparations for the treatment of lice, scabies, impetigo, diaper rash, vaginitis, and related skin conditions;
- (5) Vitamin and mineral supplements;
- (6) Opioid antagonists prescribed pursuant to G.S. 90-12.7; and
- (7) Epinephrine auto-injectors prescribed pursuant to G.S. 115C-375.2A.

(b) Regardless of the provisions set out in this Rule, no drug defined as a controlled substance by the United States Controlled Substances Act, 21 U.S. Code 801 through 904, or regulations enacted pursuant to that Act, 21 CFR 1300 through 1308, or by the North Carolina Controlled Substances Act, G.S. 90-86 through 90-113.8, may be dispensed by registered nurses pursuant to G.S. 90-85.34A.

History Note: Authority G.S. 90-12.7; 90-85.6; 90-85.34A; 115C-375.2A; Eff. March 1, 1987; Amended Eff. September 1, 2016; January 1, 2015; August 1, 2014; May 1, 1989.

CHAPTER 52 – BOARD OF PODIATRY EXAMINERS

21 NCAC 52 .0201 APPLICATION

(a) Any applicant for a license to practice podiatry shall submit a written application to the executive secretary of the board. Such Application for Examination or Application of Reciprocity shall be made on a form provided from the board's website (<http://www.ncbpe.org>) or from the board's office as set forth in Rule .0101 of this Chapter. The application shall require the following information:

- (1) Application type (Regular, Temporary Military, Clinical Residency);
- (2) Date of Application;
- (3) Social Security Number;
- (4) Last name, first name, and middle name;
- (5) Mailing address, including city, state, and zip code;
- (6) Telephone number and type (home, mobile, business);
- (7) Email address;
- (8) Whether or not a U.S. citizen;
- (9) Whether or not the applicant has or is serving in the military, awarded an MOS in podiatry and date, whether or not the applicant's spouse is currently serving in the military, and dates of service;
- (10) Education (high school, college or university, graduate or professional, residencies, internships, fellowship training), including name and location of institution, dates attended, graduation completion, major and minor, and type of degree received;
- (11) Whether or not the applicant intends to practice in North Carolina upon licensure;
- (12) Whether or not the applicant has been licensed in another state or territory and, if so, state or territory, date of issue, expiration date, disciplinary actions (if any), and how license was obtained;
- (13) Whether or not the licensee has ever had a license revoked, suspended, denied, or cancelled; denied the privilege of taking an exam; dropped, suspended, warned, placed on scholastic or disciplinary probation, expelled, or requested to resign from any school, college, or university, or advised by any such school of institution to discontinue studies therein; been a defendant in a legal action involving professional liability (malpractice), been named in a malpractice suit, had a professional liability claim paid on the applicant's behalf or paid such

a claim; been a patient for the treatment of mental illness; been addicted to drugs or alcohol; or been convicted of a felony; and any explanation regarding such information that the applicant wishes to present to the board.

- (14) Whether or not the applicant has previously taken the North Carolina exam and when;
- (15) Whether or not the applicant requires special disability accommodations to take the board's examination;
- (16) The reasons why the applicant is applying for licensure in North Carolina;
- (17) A list of three references;
- (18) Applicant's oath;
- (19) A passport-quality photograph taken within 60 days prior to the date of the application; and
- (20) Applicant's signature.

(b) Applicants shall furnish the board with proof that the applicant meets the educational and examination requirements set forth in G.S. 90-202.5(a)

(c) The application shall be accompanied by a non-refundable application fee of three hundred fifty dollars (\$350.00).

(d) Applications shall also be notarized by a Notary Public in good standing.

History Note: Authority G.S. 90-202.5; 90-202.6; 90-202.7; Eff. February 1, 1976; Amended Eff. June 1, 2011; April 1, 2005; January 1, 2005; December 1, 1988; Readopted Eff. September 1, 2016.

21 NCAC 52 .0202 EXAMINATION

(a) The board shall conduct an examination as set out in G.S. 90-202.6. The examination shall be scheduled so as not to conflict with the APMLE.

(b) An applicant who has qualified to sit for the examination shall pass written and oral sections on medical and clinical subjects related to the practice of podiatric medicine as set forth in G.S. 90-202.6(a) in order to complete the examination successfully.

(c) An applicant who has successfully completed the examination as set forth in Paragraph (b) of this Rule shall also pass an examination section on the practice and scope of podiatry in North Carolina and compliance with State statutes, in particular, G.S. 90-202.2 to G.S. 90-202.14; G.S. 131E-85 to G.S. 131E-87; G.S. 55B-10 to G.S. 55B-13; G.S. 57D; and the board's Rules, within 30 months of successfully completing the examination in Paragraph (b).

History Note: Authority G.S. 90-202.4(g); 90-202.6; Eff. February 1, 1976; Amended Eff. April 1, 2013; June 1, 2011; December 1, 1988; Readopted Eff. September 1, 2016.

21 NCAC 52 .0204 RE-EXAMINATION

Unsuccessful candidates for licensure may apply to the board for re-examination pursuant to G.S. 90-202.6(c) upon the payment of the three hundred fifty dollar (\$350.00) examination fee. No more than two re-examinations shall be allowed any one applicant within that one-year period under this Rule.

History Note: Authority G.S. 90-202.6; Eff. February 1, 1976; Amended Eff. June 1, 2011; December 1, 1988; Readopted Eff. September 1, 2016.

21 NCAC 52 .0205 PRACTICE-AND-ETHICS TRAINING AND EXAMINATION

The board may offer to each applicant who has otherwise successfully completed his or her examination on medical and clinical subjects an opportunity pursuant to Rule .0202(c) to attend by personal appearance or verified electronic conference a training in the practice and scope of podiatry in North Carolina and compliance with State statutes prior to the examination administered on those topics, on a date and at a time and location determined by the board. The license shall not be issued until the applicant has passed the examination regarding the practice and scope of podiatry in North Carolina and compliance with State statutes.

History Note: Authority G.S. 90-2-2.8; 90-202.2; 90-202.4(g); 90-202.6(a)(b); Eff. February 1, 1976; Amended Eff. December 1, 2012; March 1, 2006; May 1, 2005; December 1 1988; Readopted Eff. September 1, 2016.

21 NCAC 52 .0207 ANNUAL RENEWAL OF LICENSE

(a) The executive secretary of the board shall mail to the last known address of each license holder each year a form on which to apply for renewal of his or her license. The renewal application shall be pre-populated with information contained in the board's licensee database with a space for corrections or additions with regard to the following information about the licensee:

- (1) Social security number;
- (2) NPI number;
- (3) Marital status;
- (4) Name;
- (5) NC license number;
- (6) Birthdate;
- (7) Other states licensed in and license numbers;
- (8) Home address and phone number;
- (9) Business address and phone number;
- (10) Preferred mailing address (business or home);
- (11) Email address;
- (12) Whether or not the licensee would like to receive email correspondence from the board;
- (13) Medicare provider number;
- (14) Specialty area of practice (e.g., general, surgery, podogeriatrics, podopediatrics, foot orthopedics or biomechanics, other);
- (15) Present active status (e.g., active full-time, active part-time, teaching, retired, residency, other);
- (16) Principal setting of practice (e.g., hospital, nursing home, free-standing clinic, group, practitioner's office, nonfederal health facility,

- military facility, Veteran's Administration medical facility, school, other);
- (17) Form of employment (e.g., self-employed as a solo practitioner or non-solo practitioner, or employee of individual practitioner, partnership or group, government, other);
 - (18) National board certifications (American Board of Podiatry Surgery, American College of Foot & Ankle Surgery);
 - (19) Hospital staff privileges (hospital, location, date privileges began, type of privileges), any denial of such privileges, and the reason for such denial;
 - (20) Whether or not the licensee performs Amputations, Ankle Surgery, and/or Clubfoot procedures;
 - (21) Whether or not the licensee is granted specialty privileges by the board for Amputations, Ankle Surgery, and/or Clubfoot procedures;
 - (22) Continuing Medical Education (CME) credits earned in the previous license year, pursuant to G.S. 90-202.11 and S.L. 2015-241, s. 12F, 16(c);
 - (23) Whether or not the licensee has ever had a license revoked, suspended, denied, or cancelled; been a defendant in a legal action involving professional liability (malpractice), been named in a malpractice suit, had a professional liability claim paid on the applicant's behalf or paid such a claim; been a patient for the treatment of mental illness; been addicted to drugs or alcohol or treated for same; or been convicted of a felony; and any explanation regarding such information that the applicant wishes to present to the board;
 - (24) Original signature;
 - (25) Date of renewal application; or
 - (26) Desire not to renew license.

(b) The renewal form and accompanying documents shall be returned to the board's offices as set forth in Rule .0101 with the original signatures of the licensed podiatrist. The penalties for failure to comply with this Rule are specified in G.S. 90-202.10.

(c) If the licensee does not receive his or her renewal application from the board directly, the licensee may obtain a generic copy, without the pre-populated information, from the board's website at <http://www.ncbpe.org> or by contacting the board's office as set forth in Rule .0101 of this Chapter.

History Note: Authority G.S. 90-202.4(g); 90-202.10; 90-202.11; S.L. 2015-241, s. 12F, 16(c); Eff. February 1, 1976; Amended Eff. April 1, 2013; January 1, 2005; December 1, 1988; Readopted Eff. September 1, 2016.

21 NCAC 52 .0209 APPLICANTS LICENSED IN OTHER STATES

If an applicant for licensure is already licensed in another state to practice podiatry, the board shall issue a license to practice podiatry in the State of North Carolina only upon evidence that

said podiatrist has complied with the requirements set forth in General Statute 90-202.7 of the Podiatry Practice Act. Presentation of such evidence is the responsibility of the podiatrist seeking reciprocity to practice in the State of North Carolina. This evidence shall include verification from the Board of Podiatry Examiners of the state where the applicant has last practiced that the applicant is in good standing and has no disciplinary action pending. The verification shall include a history of previous disciplinary action, if any.

History Note: Authority G.S. 90-202.4(g); 90-202.7; Eff. December 1, 1988; Readopted Eff. September 1, 2016.

21 NCAC 52 .0210 FEE FOR VALIDATION OF LICENSEE LISTS; COMPUTER SERVICES

(a) In order to validate a podiatrist's authority to receive drug samples pursuant to U.S. federal laws, the Board shall provide computerized lists of its licensees and their licensing status to companies engaged in the business of providing data information services to the pharmaceutical and healthcare industries for the purposes of validating the licensing status of health care professionals for a fee of three hundred dollars (\$300.00) per order, payable in advance. Orders for a list of licensees shall be placed at least four weeks in advance.

(b) Other Data Processing Services. The Board may provide data processing services related to the Board's powers and duties upon request from research and educational organizations. No fees for such services shall be assessed if the use of the data is for nonprofit educational or research purposes.

History Note: Authority G.S. 90-202.3; 150B-19(5)e; P.L.100-293; Eff. April 1, 2005; Readopted Eff. September 1, 2016.

21 NCAC 52 .0211 MILITARY LICENSE

(a) Restricted Temporary License: The Board shall issue a restricted temporary license to podiatrists practicing in a clinical residency solely on federal military installations within North Carolina if, upon application to the Board, the applicant satisfies the following conditions:

- (1) Applications for restricted temporary license shall require the same education as for a permanent license, current participation in a one-year clinical residency, and successful completion of Parts I and II of the National Boards; and
- (2) Restricted temporary licenses shall be granted for a maximum of one-year, renewable annually so long as the podiatrist continues to practice within the clinical residency on the federal military installation.

The Board shall not assess a license examination nor application fee.

(b) Permanent Unrestricted License Military Podiatrist: The Board shall issue a permanent license to a military-trained applicant to allow the applicant to lawfully practice podiatry in North Carolina if, upon application to the Board, the applicant:

- (1) Has been awarded a military occupational specialty in podiatry and has done all of the following at a level that is substantially equivalent to or exceeds the requirements for licensure in North Carolina: completed a military program of podiatry training, completed testing or equivalent training and experience, and performed in the occupational specialty;
- (2) Has engaged in the practice of podiatry for at least two of the five years (which may include clinical residency) preceding the date of the application under this Paragraph;
- (3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice podiatry in this State at the time the act was committed; and
- (4) Pays the application, examination, and licensing fees required by the Board.

(c) **Permanent Unrestricted License-Podiatrist Spouse of Military Personnel:** The Board shall issue to a military spouse a license to practice podiatry in this State if, upon application to the board, the military spouse:

- (1) Holds a current license, certification, or registration from another jurisdiction and that jurisdiction's requirements for licensure, certification, or registration are substantially equivalent to or exceed the requirements for licensure in this State;
- (2) Can demonstrate competency in the occupation through passing the North Carolina examination;
- (3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed;
- (4) Is in good standing and has not been disciplined by the agency that had jurisdiction to issue the license, certification, or permit; and
- (5) Pays the application, examination, and licensing fees required by the Board.

(d) All relevant podiatric medical experience of a military service member in the discharge of official duties or, for a military spouse, all relevant podiatric medical experience, including full-time and part-time experience, regardless of whether in a paid or volunteer capacity, shall be credited in the calculation of years of practice in an occupation as required under Paragraphs (b) and (c) of this Rule.

(e) A nonresident licensed under this Rule shall be entitled to the same rights and subject to the same obligations as required of a resident licensed by the Board in this State.

History Note: Authority G.S. 90-202.5(b); 90-202.6; 93B-15.1; Army Regulation 40-68; Eff. April 1, 2005; Amended Eff. July 1, 2013; Readopted Eff. September 1, 2016.

21 NCAC 52 .0212 SPECIALTY CREDENTIALING PRIVILEGES

(a) The Board shall grant surgical specialty privileges to podiatrists in the areas of amputation, ankle surgery, and club foot correction.

(b) Application for such privileges shall be made upon a form provided by the board (available from the board's website at <http://www.ncbpe.org>) along with two copies of the applicants' surgery logs, both of which shall be highlighted in different colors (one color per specialty area, i.e. amputations, ankle surgeries, and club foot corrections).

(c) The application shall request the following information from the licensee:

- (1) Name;
- (2) Address;
- (3) License number;
- (4) Telephone;
- (5) Number of years, type, and location of post-graduate training;
- (6) Board certification(s) type and year;
- (7) Whether or not a Fellow of the American College of Foot & Ankle Surgeons and year of bestowal;
- (8) Other postgraduate continuing medical education;
- (9) Hospital affiliation(s), privileges, dates, and whether or not surgical or non-surgical;
- (10) Surgery center affiliations, privileges, dates, and whether or not surgical or non-surgical;
- (11) Teaching appointments, locations, years of affiliation, and type of appointment;
- (12) Which privilege(s) the applicant is applying for (e.g., ankle surgery, amputations, surgical correction of clubfoot);
- (13) Signature; and
- (14) Date of application.

History Note: Authority G.S. 90-202.2; Eff. June 1, 2011; Readopted Eff. September 1, 2016.

21 NCAC 52 .0301 REGISTRATION

No podiatrist or group of podiatrists may operate in the State of North Carolina as a professional corporation without first obtaining from the board a certificate of registration as set forth in G.S. 55B-10:

http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_55B/GS_55B-10.html. Each corporate registrant shall pay a separate registration fee of twenty-five dollars (\$25.00) per year for each separate establishment where podiatric services are performed.

History Note: Authority G.S. 55B-10; 90-202.4(g); Eff. February 1, 1976; Amended Eff. June 1, 2011; December 1, 1988; Readopted Eff. September 1, 2016.

21 NCAC 52 .0302 ANNUAL RENEWAL

Annual renewal of a professional podiatry corporate registration shall be as set forth in G.S. 55B-11:
http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_55B/GS_55B-11.html.

History Note: Authority G.S. 55B-11; 90-202.4(g);
 Eff. February 1, 1976;
 Amended Eff. June 1, 2011; December 1, 1988;
 Readopted Eff. September 1, 2016.

21 NCAC 52 .0303 PENALTIES

Penalties for non-renewal of a professional podiatry corporation certificate of registration shall be as set forth in G.S. 55B-11:
http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_55B/GS_55B-11.html.

History Note: Authority G.S. 55B-11; 90-202.4(g);
 Eff. December 1, 1988;
 Amended Eff. June 1, 2011;
 Readopted Eff. September 1, 2016.

21 NCAC 52 .0402 HEARINGS

The board may deny, revoke, or suspend a license in accordance with Article 3A of G.S. 150B. In addition, the board may summarily suspend a license where the public health, safety, or welfare requires emergency action as provided in G.S. 150B-3(c).

History Note: Authority G.S. 90-202.8; 150B-38;
 Eff. February 1, 1976;
 Amended Eff. December 1, 1988;
 Readopted Eff. September 1, 2016.

21 NCAC 52 .0403 SERVICE OF NOTICE

Any notice required by the rules shall be given personally or by certified mail, return receipt requested, directed to the licensee or applicant at his last known address as shown by the records of the board. If service cannot be accomplished either personally or by certified mail, it shall then be given as provided in G.S. 1A-1, Rule 4 (j1).

History Note: Authority G.S. 90-202.8; 150B-38;
 Eff. February 1, 1976;
 Amended Eff. December 1, 1988;
 Readopted Eff. September 1, 2016.

21 NCAC 52 .0404 PLACE OF HEARINGS

A hearing conducted by the board shall be held in the location as provided by G.S. 150B-38(e).

History Note: Authority G.S. 90-202.8; 150B-38(e);
 Eff. February 1, 1976;
 Amended Eff. December 1, 1988;
 Readopted Eff. September 1, 2016.

21 NCAC 52 .0408 APPEAL

A podiatrist who is aggrieved by a final decision in a contested case may obtain judicial review of the decision of the board as provided by G.S. 150B, Article 4.

History Note: Authority G.S. 90-202.8; 150B-43 to 150B-45;
 Eff. February 1, 1976;
 Amended Eff. December 1, 1988;
 Readopted Eff. September 1, 2016.

21 NCAC 52 .0601 APPLICATION FOR EXAMINATION

The application for examination shall be used by all applicants who wish to take the examination for licensure. It requires the applicant to furnish the board with information required by Rule .0201 of this Chapter. The form may be obtained in hard-copy or electronic format from the office of the executive secretary as set forth in Rule .0101 of this Chapter or from the board's website at www.ncbpe.org.

History Note: Authority G.S. 90-202.5;
 Eff. February 1, 1976;
 Amended Eff. June 1, 2011; April 1, 2005; January 1, 2005;
 December 1, 1988;
 Readopted Eff. September 1, 2016.

21 NCAC 52 .0610 APPL/EXAM/PODIATRIST LICENSED/OTHER STATES (RECIPROCITY)

Any applicant for licensure who is already licensed in another state and wishes to be issued a license pursuant to G.S. 90-202.7 shall comply with the requirements set forth in Rule .0201 of this Chapter and G.S. 90-202.7. Application forms may be obtained from the office of the executive secretary of the board as set forth in Rule .0101 of this Chapter or from the board's website at www.ncbpe.org.

History Note: Authority G.S. 90-202.7;
 Eff. December 1, 1988;
 Amended Eff. June 1, 2011; January 1, 2005;
 Readopted Eff. September 1, 2016.

21 NCAC 52 .0612 PAYMENT OF FEES

The Board shall accept payment of its fees in the form of cash, money order, check, or credit card. For checks that are returned by the Board's bank for insufficient funds, the payor shall reimburse the Board the fee charged to the Board by the bank for insufficient funds. For each credit card payment transaction, the Board shall assess a convenience fee in the amount equivalent to the merchant account fee the bank charges the Board for processing credit card charges.

History Note: Authority G.S. 55B-10; 55B-11; 90-202.4(g); 90-202.5; 90-202.10;
 Eff. October 1, 2012;
 Readopted Eff. September 1, 2016.

21 NCAC 52 .0613 FEE SCHEDULE

The following fees shall apply:

- (1) Application for examination (non-refundable) \$300.00
- (2) Examination (non-refundable) \$50.00
- (3) Re-Examination (application + exam fee, non-refundable) \$350.00

- (4) License certificate \$100.00
- (5) Annual License Renewal \$200.00
- (6) License Renewal Late Fee (per month, up to 6 months) \$25.00
- (7) Data Processing Fee for Pharmaceutical Verification as set forth in Rule .0210 of this Chapter \$300.00
- (8) Returned check the fee as set forth in Rule .0612 of this Section. As of the effective date of this Rule that fee is \$12.00
- (9) Incorporation for PA/PC/PLLC \$50.00
- (10) Annual Corporate Renewal \$25.00
- (11) Corporate Renewal Late Fee \$10.00

History Note: Authority G.S. 90-202.5(a);90-202.6(c); 90-202.9; 90-202.10; 55B-10; 55B-11; 55B-12; 150B-19(5)(e); Eff. April 1, 2013; Readopted Eff. September 1, 2016.

21 NCAC 52 .0701 PETITION FOR RULEMAKING HEARINGS

Any person wishing to submit a petition requesting the board to promulgate, amend, or repeal a rule shall address a petition to the office of the Board of Podiatry Examiners as set forth in Rule .0101 of this Chapter. The caption of the petition shall bear the notation: RULEMAKING PETITION RE: followed by the subject of the petition.

History Note: Authority G.S. 150B-20; Eff. February 1, 1976; Amended Eff. June 1, 2011; January 1, 2005; December 1, 1988; Readopted Eff. September 1, 2016.

21 NCAC 52 .0702 CONTENTS OF PETITION FOR RULEMAKING

The petition must include the following information:

- (1) a description of the subject of the petition. For example: "This petition is to hold a rulemaking hearing to amend Rule .0000;"
- (2) either a draft of the proposed rule or a summary of its contents;
- (3) the reason for the proposal;
- (4) the effect on existing rules;
- (5) any data supporting the proposal;
- (6) the effect of the proposed rule on existing practices, including cost factors;
- (7) the names of those most likely to be affected by the proposed rule, with addresses if reasonably known; and
- (8) the name(s) and address(es) of petitioner(s).

History Note: Authority G.S. 150B-20; Eff. February 1, 1976; Amended Eff. June 1, 2011; December 1, 1988; Readopted Eff. September 1, 2016.

21 NCAC 52 .0703 DISPOSITION OF PETITIONS

(a) The board shall determine whether the public interest will be served by granting the request. Prior to making this

determination, the board may request additional information from the petitioners, it may contact interested persons or persons likely to be affected by the proposed rule and request comments, and it may use any other appropriate method for obtaining information on which to base its determination. It shall consider the contents of the petition submitted and any other information obtained by the means described herein.

(b) The board shall make a determination for the institution of rulemaking proceedings or for the denial of the petition as provided by G.S. 150B-20.

History Note: Authority G.S. 150B-20; Eff. February 1, 1976; Amended Eff. June 1, 2011; December 1, 1988; Readopted Eff. September 1, 2016.

21 NCAC 52 .0804 NOTICE MAILING LIST

(a) Upon a determination to hold a rulemaking proceeding, either in response to a petition or otherwise, the Board shall give notice to all interested parties of the proceedings in accordance with the requirements of G.S. 150B, Article 2A.

(b) Mailing List. Any person desiring to be placed on the mailing list for the rulemaking notices may file a request in writing, furnishing his name and mailing address to the Board. The request shall state the subjects within the authority of the Board for which notice is requested.

(c) Fee Charged. The cost to be on the mailing list for rulemaking notices shall be fifteen dollars (\$15.00) per year. A notice and invoice shall be mailed no later than February 1 of each year to the last known address of persons on the mailing list. Persons who do not renew their request to remain on the mailing list by remitting the fee by March 1 of each year shall be deleted from the list.

History Note: Authority G.S. 150B-21.2(d); 90-20.4(g); Eff. April 1, 2005; Amended Eff. June 1, 2011; Readopted Eff. September 1, 2016.

21 NCAC 52 .1001 SUBJECTS OF DECLARATORY RULINGS

Any person substantially affected by a statute administered or rule promulgated by the board may request a declaratory ruling as provided in G.S. 150B-4.

History Note: Authority G.S. 150B-4; Eff. February 1, 1976; Amended Eff. December 1, 1988; Readopted Eff. September 1, 2016.

21 NCAC 52 .1002 SUBMISSION OF REQUEST FOR DECLARATORY RULING

All requests for declaratory rulings shall be written and mailed to the Board of Podiatry Examiners, 1500 Sunday Drive, Suite 102, Raleigh, North Carolina 27609, Attention: Executive Secretary. The request shall include the following information:

- (1) name and address of petitioner;
- (2) statute or rule to which petition relates;

- (3) concise statement of the manner in which petitioner is aggrieved by the rule or statute or by its potential application to him; and
- (4) a statement of whether an oral hearing is desired, and if so, the reason therefore.

Eff. February 1, 1976;
Amended Eff. December 1, 1988;
Readopted Eff. September 1, 2016.

History Note: Authority G.S. 150B-4;
Eff. February 1, 1976;
Amended Eff. January 1, 2005; December 1, 1988;
Readoption Eff. September 1, 2016.

21 NCAC 52 .1003 DISPOSITION OF REQUESTS

- (a) When the board deems it appropriate to issue a declaratory ruling, it shall issue such declaratory ruling within 60 days of receipt of the petition.
- (b) A declaratory ruling proceeding may consist of written submissions, an oral hearing, or other procedure as may be appropriate in the circumstances of the particular request.
- (c) Whenever the board believes "for good cause" that the issuance of a declaratory ruling is undesirable, it may refuse to issue such ruling. If the board refuses to issue such a ruling, it shall notify the petitioner of its decision in writing, stating the reasons for the denial of the declaratory ruling.
- (d) For purposes of Paragraph (c) of this Rule, "good cause" exists and the board shall refuse to issue a declaratory ruling:

21 NCAC 52 .1005 DEFINITION

For purposes of Rule .1004 of this Section, a declaratory ruling shall be deemed to be "in effect" until the statute or rule interpreted by the declaratory ruling is amended or repealed, until the board changes the declaratory ruling prospectively, or until any court sets aside the ruling.

History Note: Authority G.S. 150B-12; 150B-4;
Eff. February 1, 1976;
Amended Eff. December 1, 1988;
Readopted Eff. September 1, 2016.

- (1) unless the petitioner shows that the circumstances are so changed since the adoption of the rule that such a ruling would be warranted;
- (2) unless the petitioner shows that the agency did not give to the factors specified in the request for a declaratory ruling a full consideration at the time the rule was issued;
- (3) where there has been a similar controlling factual determination in a contested case, or where the factual context being raised for a declaratory ruling was specifically considered upon the adoption of the rule or directive being questioned, as evidenced by the rulemaking record; or
- (4) where the subject matter of the request is involved in pending litigation in any state or federal court in North Carolina.

21 NCAC 52 .1202 SIMPLIFICATION OF ISSUES

The parties to a contested case may agree in advance to simplify the hearing by decreasing the number of the issues to be contested at the hearing, accepting the validity of certain proposed evidence, accepting the findings in some other case with relevance to the case at hand, or agreeing to such other matters as may expedite the hearing.

History Note: Authority G.S. 150B-40;
Eff. February 1, 1976;
Amended Eff. December 1, 1988;
Readopted Eff. September 1, 2016.

History Note: Authority G.S. 150B-4;
Eff. February 1, 1976;
Readopted Eff. September 1, 2016.

21 NCAC 52 .1004 RECORD OF DECISION

A record of all declaratory ruling proceedings shall be maintained in the board office for as long as the ruling is in effect and for five years thereafter. This record shall contain: the petition, all written submissions filed in the request whether filed by the petitioner or any other person, and a record or summary of oral presentations, if any. Records of declaratory ruling proceedings shall be available for public inspection during the regular office hours of the board's office, as set forth in Rule .0101 of this Chapter.

21 NCAC 52 .1203 SUBPOENAS

The board issues subpoenas as provided in G.S. 150B-39.

History Note: Authority G.S. 150B-39;
Eff. February 1, 1976;
Amended Eff. December 1, 1988;
Readopted Eff. September 1, 2016.

History Note: Authority G.S. 150B-4;

21 NCAC 52 .1204 FINAL DECISIONS IN ADMINISTRATIVE HEARINGS

The board shall make a written final decision or order in all contested cases as provided by G.S. 150B-42.

History Note: Authority G.S. 150B-42;
Eff. February 1, 1976;
Amended Eff. December 1, 1988;
Readopted Eff. September 1, 2016.

21 NCAC 52 .1301 BOARD OF PODIATRY ELECTIONS

The submission of nominees to the Governor for appointment to the Board is governed by G.S. 90-202.4(d). Every podiatrist with a current North Carolina license residing in this state shall be eligible to vote in all elections subject to the procedures set out in Rule .1302 of this Section.

History Note: Authority G.S. 90-202.4;
Eff. September 1, 1982;
Amended Eff. December 1, 1988; May 1, 1983;
Readopted Eff. September 1, 2016.

21 NCAC 52 .1302 PROCEDURES FOR CONDUCTING ELECTIONS

The procedures to be followed in the conducting of elections to fill podiatrists' positions on the Board of Podiatry Examiners are as set forth in this Rule:

- (1) At least 30 days prior to the expiration of the term of a board member, written notice of the holding of an election shall be sent to every podiatrist with a current North Carolina license residing in this state using a mailing or electronic address as contained in the board's official records.
- (2) The notice shall have with it a list of at least two, but no more than three nominees proposed by the Board of Podiatry Examiners for the board member position to be filled.
- (3) The election or voting for the board member position shall take place annually prior to July 1 of each year. Additional nominations may be received from the floor or as write-in nominations on a ballot and may be received from any licensed podiatrist residing in North Carolina.
- (4) Ballots shall be prepared by the Board of Podiatry Elections and distributed or mailed to all North Carolina licensed podiatrists who reside in North Carolina. Any podiatrist who is eligible to vote and who wishes to vote and who will not be in attendance at the election meeting may request a written ballot from the executive secretary or secretary-treasurer and shall return the ballot prior to the election meeting. Each voting podiatrist shall cast his or her ballot in the ballot box or other designated receptacle or return the ballot to the board's offices located as set forth in Rule .0101 by the specified deadline for receipt of ballots. Late ballots shall not be counted.
- (5) The executive secretary, secretary-treasurer, or such other member of the board as may be designated by the president of the Board of Podiatry Examiners shall conduct a tally of the ballots, record the two names receiving the highest number of votes and their respective percentages, and submit to the president of the board the names of the two nominees receiving the highest number of votes and their respective percentage of votes.

- (6) The president of the board shall in turn submit to the Governor the two names receiving the highest number of votes and their respective percentage of votes with biographical data on the two podiatrists being submitted.
- (7) It shall not be necessary for an individual podiatrist to receive a majority of votes of those North Carolina licensed podiatrists participating in the election. All licensees shall be notified of the results of the election.
- (8) To be eligible for board membership, a podiatrist must have practiced podiatry in North Carolina for the period of time prescribed by G.S. 90-202.4(a). A vote for any licensed podiatrist not holding a North Carolina license for that period shall not be counted.

History Note: Authority G.S. 90-202.4; Eff. September 1, 1982; Amended Eff. May 1, 1983; Legislative Objection Lodged Eff. May 11, 1983; Curative Amended Eff. May 13, 1983; Amended Eff. April 1, 2005; December 1, 1988; Readopted Eff. September 1, 2016.

21 NCAC 52 .1401 SOFT TISSUE PROCEDURES

Simple soft tissue procedures pursuant to G.S. 90-202.2(b) are procedures involving structures proximal to a line parallel with the dome of the talus that may be performed by a podiatrist in an office setting, including:

- (1) ligation of superficial veins or vessels;
- (2) repair of soft tissue lacerations and abrasions;
- (3) incision, drainage and debridement of abscesses, hematomas, and ulcerations;
- (4) excision of foreign bodies and soft tissue masses which are not known or thought to be malignant;
- (5) biopsy and cauterization of soft tissue lesions;
- (6) ligamentous and tendon repairs found during the aforementioned procedures; and
- (7) release of nerve entrapment found in conjunction with an extension of nerve entrapment procedures of the foot.

History Note: Authority G.S. 90-202.2(b); Eff. October 1, 1995; Readopted Eff. September 1, 2016.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission October 20, 2016 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jeff Hyde (1st Vice Chair)
Robert A. Bryan, Jr.
Margaret Currin
Jay Hemphill
Jeffrey A. Poley

Appointed by House

Garth Dunklin (Chair)
Stephanie Simpson (2nd Vice Chair)
Paul Powell
Jeanette Doran
Danny Earl Britt, Jr.

COMMISSION COUNSEL

Abigail Hammond	(919)431-3076
Amber Cronk May	(919)431-3074
Amanda Reeder	(919)431-3079
Jason Thomas	(919)431-3081

RULES REVIEW COMMISSION MEETING DATES

October 20, 2016	November 17, 2016
December 15, 2016	January 19, 2016

AGENDA

RULES REVIEW COMMISSION

THURSDAY, OCTOBER 20, 2016 10:00 A.M.

1711 New Hope Church Rd., Raleigh, NC 27609

- 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. Criminal Justice Education and Training Standards Commission - 12 NCAC 09B .0203 (Reeder)
 - B. Environmental Management Commission - 15A NCAC 02H .1019, .1042, .1043, .1044, .1045, .1050, .1051, .1052, .1053, .1054, .1055, .1056, .1059, .1060 (Hammond)
- IV. Review of Log of Filings (Permanent Rules) for rules filed August 23, 2016 through September 20, 2016
 - Soil and Water Conservation Commission (Reeder)
 - Environmental Management Commission (Hammond)
 - Department of Transportation (Reeder)
 - Irrigation Contractors Licensing Board (Thomas)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. Existing Rules Review
 - Review of Reports
 - 1. 10A NCAC 39 - Commission for Public Health (Reeder)
 - 2. 10A NCAC 43C - Commission for Public Health (Reeder)
 - 3. 10A NCAC 43E - Commission for Public Health (Reeder)
 - 4. 10A NCAC 43G - Commission for Public Health (Reeder)
 - 5. 10A NCAC 43H - Commission for Public Health (Reeder)
 - 6. 10A NCAC 43I Commission for Public Health (Reeder)
 - 7. 10A NCAC 43J - Commission for Public Health (Reeder)
 - 8. 18 NCAC 06 - Department of Secretary of State (May)
 - 9. 18 NCAC 07- Department of Secretary of State (May)

10. 18 NCAC 10 – Department of Secretary of State (May)

- VII. Commission Business
- Public Hearing: RRC Proposed Rule 26 NCAC 05 .0205
 - Next meeting: Thursday, November 17, 2016

Commission Review
Log of Permanent Rule Filings
August 23, 2016 through September 20, 2016

SOIL AND WATER CONSERVATION COMMISSION

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

<u>Definitions for Subchapter 59H</u>	02	NCAC	59H	.0102
Amend/*				
<u>Allocation Guidelines and Procedures</u>	02	NCAC	59H	.0103
Amend/*				

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); 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>Excess Emissions Reporting and Malfunctions</u>	15A	NCAC	02D	.0535
Amend/*				
<u>Treatment of Malfunction Events and Work Practices for St...</u>	15A	NCAC	02D	.0545
Adopt/*				
<u>Applicability</u>	15A	NCAC	02D	.0902
Amend/*				
<u>Heavy-Duty Vehicle Idling Restrictions</u>	15A	NCAC	02D	.1010
Repeal/*				

The rules in Subchapter 2I concern hearings including scope, definitions and delegations (.0100); rule making hearings, notice and procedures (.0200); administrative hearings (.0300); special hearings (.0400); petitions for rulemaking (.0500); and declaratory rulings (.0600).

<u>Form and Contents of Petition</u>	15A	NCAC	02I	.0501
Amend/**				

TRANSPORTATION, DEPARTMENT OF

The rules in Chapter 3 are from the Division of Motor Vehicles.

The rules in Subchapter 3D are from the enforcement section and include general information (.0100); motor vehicle dealer, sales, distributor and factory representative licenses (.0200); motor vehicle thefts (.0300); notice of sale and stored vehicles (.0400); general information regarding safety inspection of motor vehicles (.0500); weight of vehicles and registration enforcement (.0600); approval of motor vehicles safety equipment (.0700); safety rules and regulations (.0800); and approval of sun screening devices (.0900).

Denial, Suspension or Revocation of Licenses 19A NCAC 03D .0522
Amend/*

IRRIGATION CONTRACTORS LICENSING BOARD

The rules in Chapter 23 are from the Irrigation Contractors' Licensing Board and concern licensing (.0100); hearing rules of the North Carolina Irrigation Contractors' Licensing Board (0200); irrigation record drawing minimum standards (.0300); irrigation design minimum standards (.0400); irrigation system installation minimum standards (.0500); irrigation system management for water efficiency minimum standards (.0600); and fees (.0700).

<u>Definitions</u>	21	NCAC	23	.0101
Amend/*				
<u>Surety Bonds and Legal Status</u>	21	NCAC	23	.0102
Adopt/*				
<u>Continuing Education</u>	21	NCAC	23	.0104
Amend/*				
<u>Complaint Process</u>	21	NCAC	23	.0208
Adopt/*				
<u>Irrigation Record Drawing</u>	21	NCAC	23	.0301
Amend/*				
<u>System Design Objectives and Requirements</u>	21	NCAC	23	.0401
Amend/*				
<u>Piping</u>	21	NCAC	23	.0402
Amend/*				
<u>Water Pressure</u>	21	NCAC	23	.0404
Amend/*				
<u>Drip/Microirrigation</u>	21	NCAC	23	.0405
Amend/*				
<u>Components and Zone Design</u>	21	NCAC	23	.0406
Amend/*				
<u>General Requirements</u>	21	NCAC	23	.0501
Amend/*				
<u>Site Considerations</u>	21	NCAC	23	.0502
Amend/*				
<u>Water Supply</u>	21	NCAC	23	.0503
Amend/*				
<u>System Layout</u>	21	NCAC	23	.0504
Amend/*				
<u>Trenching and Piping</u>	21	NCAC	23	.0505
Amend/*				
<u>Electrical</u>	21	NCAC	23	.0506
Amend/*				
<u>Grounding</u>	21	NCAC	23	.0507
Amend/*				
<u>Sprinklers</u>	21	NCAC	23	.0508
Amend/*				

RULES REVIEW COMMISSION

<u>Controller</u> Amend/*	21	NCAC	23	.0509
<u>Initial System Start Up</u> Amend/*	21	NCAC	23	.0510
<u>Owner's Manual</u> Amend/*	21	NCAC	23	.0511
<u>Purpose</u> Amend/*	21	NCAC	23	.0601
<u>Basic System Maintenance Practices</u> Amend/*	21	NCAC	23	.0602
<u>Scheduling</u> Amend/*	21	NCAC	23	.0603

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

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

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter	A. B. Elkins II
Don Overby	Selina Brooks
J. Randall May	Phil Berger, Jr.
J. Randolph Ward	David Sutton
Stacey Bawtinheimer	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>			
NC Alcoholic Beverage Control Commission v. Osei Enterprises LLC T/A Osei Food and Beverage	15 ABC 08455	06/02/16	31:05 NCR 426
NC Alcoholic Beverage Control Commission v. Brewers LLC T/A Two Doors Down	16 ABC 0290	06/01/16	
NC Alcoholic Beverage Control Commission v. Dasab LLC T/A D and S Kwik Stop	16 ABC 01759	05/25/16	
NC Alcoholic Beverage Control Commission v. Cristina Miron Bello and Victor Giles Bello T/A La Poblanita	16 ABC 02166	05/25/16	
NC Alcoholic Beverage Control Commission v. Aaway Inc. T/A Jacks Tap	16 ABC 02702	06/01/16	
NC Alcoholic Beverage Control Commission v. B2 Inc. T/A Cadillac Ranch the Other Side	16 ABC 02703	06/02/16	
NC Alcoholic Beverage Control Commission v. Los Amigos of Shelby Inc. T/A Los Amigos of Shelby	16 ABC 03354	06/21/16	
<u>DEPARTMENT OF PUBLIC SAFETY</u>			
Thomas Anthony Tyger v. Victim Services Janice Carmichael	15 CPS 08771	05/17/16	
George Dudley v. NC Department of Public Safety, Victim Services	16 CPS 01651	05/05/16	
Otero Lee Ingram v. NC Crime Victims Comp Commission	16 CPS 01656	06/09/16	
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>			
Agape Homes Inc. v. Department of Health and Human Services	12 DHR 11808	05/26/16	
Agape Homes Inc. v. Department of Health and Human Services	13 DHR 12398	05/26/16	
Harrold Associates II DDS Nickie Rogerson v. DHHS, DMA	15 DHR 01234	04/29/16	
WP-Beulaville Health Holdings LLC v. DHHS, Division of Health Service Regulation, Adult Care Licensure Section	15 DHR 02422	06/29/16	31:05 NCR 440
Jessie Buie, George Buie v. DHHS, DMA	15 DHR 07341	05/10/16	
Ashley Cartwright Sr. v. Department of Health and Human Services	15 DHR 08222	06/15/16	
New Hope Adult Care, Frank N. Fisher v. Office of Health and Human Services	15 DHR 08262	06/22/16	
Sandra McKinney Page v. DHHS, Division of Health Service Regulation	15 DHR 09286	05/25/16	
Jeannie Ann Kine v. Department of Health and Human Services	16 DHR 00795	05/05/16	
A Brighter Day Group Home Shannon Hairston v. Department of Health and Human Services	16 DHR 01857	05/05/16	
A Brighter Day Group Home Shannon Hairston v. Department of Health and Human Services	16 DHR 01859	05/05/16	
Sagia Grocery Inc d/b/a Red Sea Grocery III v. DHHS, Division of Public Health	16 DHR 02701	05/17/16	

CONTESTED CASE DECISIONS

Susan H. Logan v. DHHS, Division of Medical Assistance	16 DHR 03011	06/02/16	
Kathleen B. McGuire v. Department of Health Service Regulation MH Licensure Section	16 DHR 03014	05/13/16	
Kathleen B. McGuire v. Department of Health Service Regulation MH Licensure Section	16 DHR 03015	05/13/16	
Kaitlin Marie Skiba v. DHHS, Division of Health Service Regulation	16 DHR 03101	06/02/16	
Monique Brown Miller v. DHHS, Division of Health Service Regulation	16 DHR 03131	06/22/16	
Robin Braswell Ingram v. Nurse Aide Registry	16 DHR 03214	06/10/16	
Trina C. Sherrill v. DHHS, Division of Health Service Regulation	16 DHR 03315	06/02/16	
Joanne Marie Cain v. Health Care Personnel Registry	16 DHR 03404	06/02/16	
Joan Rennea Thomas v. DHHS, Division of Health Service Regulation	16 DHR 03502	06/10/16	
Nathasia Yvonne Lofton v. DHHS, Division of Health Service Regulation	16 DHR 03503	06/10/16	
Patricia Glover v. Department of Health and Human Services	16 DHR 03895	06/29/16	
Quashawn A. Washington v. NCDHHS, Division of Medical Assistance	16 DHR 03899	06/28/16	
Easter Seals United Cerebral Palsy Group Home Park NC 28711 Frank Dinkoski v. Laurel Park Group Home Division of Health Service Regulation	16 DHR 04522	06/29/16	
Valarie Neely v. Department of Health and Human Services	16 DHR 04533	06/21/16	
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Lisa Mae Parsons v. Sheriffs' Education and Training Standards Commission	15 DOJ 01540	04/06/16	
Crystal Sparks King v. Criminal Justice Education and Training Standards Commission	15 DOJ 02533	10/08/15	
Michael Eugene Rich v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 06163	05/12/16	
Robert Lee Benton v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 07342	04/22/16	
James Philip Davenport v. Sheriffs' Education and Training Standards Commission	15 DOJ 07442	04/19/16	31:01 NCR 67
John James Klaver Jr. v. Criminal Justice Education and Training Standards Commission	15 DOJ 07775	04/06/16	
Timothy Todd Stroupe v. Criminal Justice Education and Training Standards Commission	15 DOJ 08233	06/14/16	31:06 NCR 510
Donald Wayne Shaw v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 08606	06/22/16	31:05 NCR 449
Kevin Michael Weber v. Sheriffs' Education and Training Standards Commission	15 DOJ 08610	04/22/16	31:01 NCR 71
Carson Dean Berry v. Sheriffs' Education and Training Standards Commission	15 DOJ 09661	05/16/16	
Tyree Shawn Stafford v. NC Private Protective Services Board	16 DOJ 00234	05/17/16	
Porsha Denise Patterson v. NC Private Protective Services Board	16 DOJ 00235	05/17/16	
James Edward Alexander v. NC Private Protective Services Board	16 DOJ 03470	06/15/16	
Paulette Wells v. NC Private Protective Services Board	16 DOJ 03789	06/28/16	
<u>DEPARTMENT OF TRANSPORTATION</u>			
Thomas R. Baggett v. Department of Transportation	15 DOT 09852	05/20/16	
<u>DEPARTMENT OF STATE TREASURER</u>			
In the Matter of the Board of Trustees of Craven Community College v. Department of the State Treasurer and The Board of Trustees of the Teachers and State Employees Retirement System	16 DST 00053	05/11/16	
Gayle Johnson McLean v. Department of State Treasurer Retirement Systems Division	16 DST 01106	05/16/16	
<u>STATE BOARD OF EDUCATION</u>			
Crystal A. Kelly v. Department of Public Instruction	15 EDC 01828	05/11/16	31:03 NCR 206
Laura Kerrigan v. Department of Public Instruction	15 EDC 03061	09/21/15	31:01 NCR 76
Charlotte Classical School Inc v. NC State Board of Education	15 EDC 05755	05/24/16	31:03 NCR 215
TPS Publishing Inc. v. State Board of Education	15 EDC 06344	04/29/16	31:01 NCR 89
Crossroads Charter High School v. Department of Public Instruction/NC State Board of Education	16 EDC 01392	06/13/16	31:07 NCR 711
<u>DEPARTMENT OF ENVIRONMENTAL QUALITY</u>			
Environmentalee, Chatham Citizens Against Coal Ash Dump, and Blue Ridge Environmental Defense League Inc v. Department of Environment and Natural Resources, Division of Waste Management, and Division of Energy, Mineral, and Land Resources and Green Meadow LLC and Charah Inc.	15 EHR 04772	05/05/16	31:03 NCR 223
Paul and Elizabeth Winchell v. NC Department of Environmental Quality, Division of Coastal Management and Elizabeth Lentendre	15 EHR 05826	07/29/16	31:07 NCR 692
<u>BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS</u>			
Raymond Clifton Parker v. NC Board of Examiners for Engineers and Surveyors	15 ELS 04349	06/27/16	

CONTESTED CASE DECISIONS

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Angela B. O'Connell v. NC Teachers' and State Employees' Comprehensive Major Medical Plan AKA The State Health Plan	14 INS 08876	06/22/16	31:05 NCR 415
Department of Insurance v. Andre Day	15 INS 07291	04/26/16	31:01 NCR 104
Lynda F. Hodge v. NC State Health Plan	16 INS 03204	05/20/16	

MISCELLANEOUS

Daryl Zenon Bodan v. Judge David W. Aycock et al Catawba County-District 25B	16 MIS 04110	06/06/16	
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OFFICE OF STATE HUMAN RESOURCES (formerly OFFICE OF STATE PERSONNEL)

Brandon Lee Faison Sr. v. Eastern Correctional/NCDPS	15 OSP 07975	06/28/16	31:05 NCR 454
Jacqueline Renee Crocker v. Transylvania County Department of Social Services Director Tracy Jones	15 OSP 08687	05/16/16	31:03 NCR 256
Kathern Infinger Wherry v. Forsyth County Department of Social Services	15 OSP 10025	06/09/16	
Emily Williams v. Anson County Board of Social Services Ross Streater Chairman	16 OSP 01283	05/19/16	
Cithara Patra v. NCDOR	16 OSP 01808	05/13/16	
Lara Weaver v. Department of Health and Human Services	16 OSP 03540	06/02/16	

DEPARTMENT OF REVENUE

Olethia Davis v. Department of Revenue	16 REV 02286	05/10/16	
Asail Aiken-Odom v. NC Department of Revenue	16 REV 02326	06/29/16	
Jim Vang v. Department of Revenue	16 REV 03114	05/26/16	
Janna Marie Stanley v. Department of Revenue	16 REV 03318	05/27/16	
Silas Edward Gray and Dino Laurie Gray v. NC Department of Revenue	16 REV 03410	06/10/16	
Willie A. Westbrook-Bey v. Department of Revenue	16 REV 04104	06/10/16	

OFFICE OF THE SECRETARY OF STATE

Angel L. Simpson v. Department of the Secretary of State	15 SOS 07239	04/21/16	
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UNIVERSITY OF NORTH CAROLINA HOSPITALS

Marc Alperin v. University of North Carolina Hospitals	15 UNC 08353	06/28/16	
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FILED
OFFICE OF ADMINISTRATIVE HEARINGS
07/29/2016 12:35 PM

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 EHR 05826

<p>PAUL & ELIZABETH WINCHELL, Petitioners,</p> <p>v.</p> <p>NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY¹ DIVISION OF COASTAL MANAGEMENT, Respondent,</p> <p>and</p> <p>ELIZABETH LETENDRE, Respondent-Intervenor.</p>	<p><u>FINAL DECISION</u></p>
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The above captioned matter was heard on December 14-15, 2015 at the Dare County Courthouse, Manteo, North Carolina before the Honorable Julian Mann, III, Chief Administrative Law Judge. The contested case petition challenged the July 9, 2015 decision of the Division of Coastal Management (DCM) to issue a minor modification to Coastal Area Management Act (CAMA) Major Development Permit No. 25-14, authorizing the development of a woodchip dune crossover at 1441 Ocean Pearl Road in the off-road area of Corolla, North Carolina (the Site). The Site is owned by Elizabeth Letendre. On May 5, 2016 the undersigned issued an "Interim Order and Stay." The terms of that Order are incorporated herein by reference.

APPEARANCES

For Petitioners Paul & Elizabeth Winchell:	Paul Winchell, Pro-se 211 Moore Street Beaufort, NC 28516
For Respondent DEQ- DCM:	Christine A. Goebel, Asst. AG North Carolina Department of Justice 114 West Edenton Street Raleigh, NC 27602

¹ Effective September 18, 2015, the North Carolina Department of Environment and Natural Resources was renamed the North Carolina Department of Environmental Quality. Pursuant to Rule 25(f)(1) of the North Carolina Rules of Civil Procedure, DEQ is automatically substituted as party.

For Intervenor-Respondent Letendre:

Gregory E. Wills, Esq.
Gregory E. Wills, P.C.
6541 Caratoke Highway
Grandy, NC 27939

ISSUES

Did Respondent deprive Petitioners of property, and act erroneously in issuing the July 9, 2015 minor modification to CAMA Major Permit No. 25-14, as alleged in Petitioners' Petition for a Contested Case?

Specifically, it is stipulated by the parties in the Prehearing Order, signed December 14, 2015, that the issues to be decided are:

- (1) Whether the proposed location of the crossover will negatively impact the primary dune sand and vegetation which stabilizes the dune, including whether the design and construction will result in a negligible or significant alteration on the primary dune and whether the proposed accessway will diminish the dune's capacity;
- (2) Whether the proposed development will require relocating, grading and cutting the primary dune and thereby significantly impact the integrity of the primary dune; and,
- (3) Whether the proposed development meets a public purpose or need that cannot otherwise be met.

TESTIFYING WITNESSES

The following witnesses testified in this contested case hearing:

Witness for Petitioners:

1. Paul Winchell, Petitioner

Witnesses for Respondent and Respondent-Intervenor:

1. Ronald Renaldi, DCM Field Representative, Elizabeth City
2. George Wood, Consultant for Respondent-Intervenor
3. Frank A. Jennings, III, DCM District Manager, Elizabeth City

EXHIBITS

The parties, as part of the Prehearing Order, stipulated and agreed that each of the stipulated exhibits are a genuine, true and correct copy of the original, are relevant and may be received into evidence without further identification or proof. The exhibits are identified as follows:

1. Minor Modification to CAMA Permit 25-14 dated July 9, 2015,
2. General Warranty Deed (Bk 1198, pg 290-292) for Permittee Letendre,
3. Plat map dated July 7, 1978 and tax card for Permittee Letendre,
4. General Warranty Deed (Bk 491, pg 84-85) for Petitioner Winchell,
5. May 8, 2015 letter to DCM from George Wood requesting refinement of Permit 25-14 and enclosed attachments including a plan for the proposed dune crossover,
6. May 21, 2015 Memo to Daniel Govoni from Ron Renaldi re: Request for Modification
7. U.S. Postal Service, Certified Mail Receipt dated April 20, 2015 providing notice to adjacent riparian landowners and tracking information,
8. May 13, 2015 objection from Paul Winchell to proposed modification of Permit 25-14,
9. Third-Party Hearing Request Petition dated July 21, 2015 including 1 page attachment and email from Petitioners forwarding Petition,
10. July 21, 2015 ltr to Permittee Letendre from B. Davis re: request for third party hearing
11. August 3, 2015 Final Agency Decision of the CRC granting the Winchell 3rd Party Hearing Request, with cover letter

The parties, as part of the Prehearing Order, stipulated and agreed that each of the exhibits identified below is a genuine, true and correct copy of the original. The following exhibits have been received into evidence.

Petitioner's admitted exhibits as limited, noted in the record (T pp. 31-144)

1. Final Decision Coastal Resources Commission, dated Aug. 3, 2015
2. Currituck County GIS Online Mapping
3. Division of Coastal Management, Field Investigation Report, dated July 17, 2013
4. NCDENR Memorandum, dated July 18, 2013
5. NCDENR Memorandum, dated July 19, 2013
6. Environmental Professionals May 8, 2015 letter and scaled attachment
7. NCDENR Modification Memorandum dated May 21, 2015
8. Minor Modification permit dated, July 9, 2015
9. Major Development Permit, with attachments dated March 17, 2014
10. Various Photographs of subject property
11. Calculations
12. Drawings (minus page 12-1) (T pp. 145-46)
13. E-mail from Kyle Barnes at USACE dated November 9, 2015
14. CAMA Minor Development permit dated December 22, 2000
15. Email to Mary Lucasse dated July 27, 2015 (minus page 15-1) (T pp. 145-46)
16. Site Plans of subject property- sheet 2 and 3 of 4 dated 11, 28 2013

Respondent's admitted exhibits:

6. CAMA Minor Permit issued to Winchell in 2000 (T p. 276) Same as P's Ex. 14
7. DCM Field Report by Ron Renaldi for original permit, dated 7/3/13 (T pp. 164, 304)
12. CAMA Minor Permit November 22, 2002 to the Longs for a Hatteras Ramp (T p. 304)
15. A-E- Five Site photos of the Long's Driveway (T pp. 177, 304)
16. A-C- Three Site photos of the ramp north of the Site (T pp. 179, 304)
17. A, D, E, F, G, H, I- Seven Site photos (T pp. 171-73, 304)
18. A copy of 15A NCAC 7H .0300 et seq. (T p. 304)

Respondent-Intervenor's admitted exhibits:

1. GIS photograph marked up by George Wood (T p. 236-43, 302)
2. GIS photograph marked up by George Wood (T p. 236-43, 302)

SITE VISIT

Pursuant to the November 25, 2015 written motion and the November 23, 2015 oral motion of Respondent, and considering the November 26, 2015 reply of Petitioner, and following the December 7, 2015 notice for a hearing on the Motion, the undersigned granted Respondent's Motion for a Site Visit orally at the beginning of the hearing on December 14, 2015. (T pp. 7-14) This was followed with a Proposed Order sent to the undersigned on December 17, 2015. The Order was signed and filed on December 18, 2015. The Site Visit was held on the afternoon of December 15, 2015 with the undersigned along with Ms. Goebel, Mr. Renaldi and Mr. Jennings present for the Respondent, and Mr. Wills and Mr. Mancuso present for the Intervenor-Respondent. Petitioners chose not to be present at the site visit. (T pp. 12-14)

PREHEARING ORDER

Pursuant to the provisions of Rule 16 of the State Rules of Civil Procedure, and Rule 7, General Rules of Practice, a final pre-hearing conference was held on December 14, 2015. Paul and Elizabeth Winchell appeared pro-se as Petitioners, Christine A. Goebel, Asst. Attorney General appeared for Respondent, and Greg Wills, Esq. appeared for Respondent-Intervenor. At that time, Judge Mann signed and approved for filing, the final Prehearing Order. (T pp. 6-7)

MOTION FOR A DIRECTED VERDICT

At the close of Petitioners' case, Respondent, joined by Respondent-Intervenor, moved the court for a directed verdict pursuant to Rule 50. (T pp. 147-55) This motion was based on Petitioners failure to show that the permit issuance would deprive Petitioners of property, would cost them an undetermined amount of money, and that DCM acted erroneously in issuing the permit. (T pp. 147-50) Petitioner responded that it is his belief the dune will be compromised by the proposed accessway because it is located at the narrowest part of the dune so is more susceptible to being blown out in storms. (T p. 152) Petitioner also responded that the dune will be further compromised without the use of a Hatteras Ramp. (T p. 152) Petitioner also responded that the accessway's location five feet from Petitioners' property line will impact "their" dune. (T p. 154) The Court

denied this motion in part, and granted the motion “insofar as [Petitioners] asked for any monetary relief, those – that motion will be allowed” as there was no evidence presented about monetary damage to Petitioners’ property. (T p. 155)

Based upon careful consideration of the applicable law, testimony, and evidence received during the contested case hearing as well as the entire record of this proceeding, the undersigned makes the following:

FINDINGS OF FACT

The Parties

1. Petitioners are Paul & Elizabeth Winchell. They own property at 1445 Ocean Pearl Road, which is adjacent to and just north of the Site of the permitted development. They have owned this property since 2000, based on the deed recorded at Book 491, Page 84 of the Currituck County Registry. Petitioners’ property is approximately 3 acres in area and has a residence on the property. (PHO, Stip. Fact 1)
2. Mr. and Mrs. Winchell proceeded Pro-se at the hearing. (T pp. 10-11)
3. Respondent is the North Carolina Division of Coastal Management, part of the Department of Environmental Quality. (PHO, Stip. Fact 2)
4. The Division of Coastal Management (“DCM”) is charged with enforcement of the Coastal Area Management Act (“CAMA”), N.C. Gen. Stat. § 113A-100 et seq., and the State Dredge and Fill Law, N.C. Gen. Stat. § 113-229, and the rules of the Coastal Resources Commission, primarily found in Title 15A, Subchapter 7H of the North Carolina Administrative Code (“NCAC”).
5. Mr. Ronald Renaldi is a Field Representative for DCM. (T p. 157) Mr. Renaldi has a B.S. in Wildlife and Fisheries Biology and Management from the University of Wyoming. (T p. 157) He moved to the Outer Banks in 2004 and worked as a gill net technician for the North Carolina Division of Marine Fisheries from 2004 until 2008. (T p. 158) In February of 2008, Mr. Renaldi started working for DCM as a Field Representative, and covers the area including Knotts Island, mainland Currituck County, Currituck Outer Banks, the Town of Duck, the Town of Southern Shores and the Town of Kitty Hawk. (T p. 158) As a field representative, he implements and enforces the CAMA and the State Dredge and Fill Laws. (T p. 159)
6. Mr. Frank Jennings is the Elizabeth City District Manager for DCM. (T p. 261) Mr. Jennings has extensive experience with the Outer Banks, being a fourth-generation beach cottage owner and owning a cottage in Kitty Hawk for 40 years. (T p. 261) His parents also built a cottage in Kitty Hawk and earlier generations built in Nags Head. (T p. 261) Mr. Jennings served with the Coast Guard as a commissioned officer, and then as a reserve officer stationed in Elizabeth City and staffing the many stations along the Outer Banks. (T p. 262) He has been vacationing in the Outer Banks his entire life except while away in the service. (T p. 262) Mr. Jennings is a 1971 graduate of UNC with a political

science degree. (T p. 263) He joined the Coast Guard in 1972 and left in 1975 to return home to farm in Tyrrell and Pasquotank Counties for 20 years. (T p. 264) He began working with DCM, first as a field representative for 11 years [with duties similar to Mr. Renaldi and Mr. Wood] and then as District Manager for a total of about 20 years with DCM. (T pp. 264-65) As District Manager, Mr. Jennings supervises the territory from the Virginia line to Hatteras Inlet and through the Alligator River and up the Chowan River, and supervises four field representatives, a DOT representative, a district planner, and an office administrator. (T pp. 265-66) Mr. Jennings trained Mr. Renaldi and has supervised him since Mr. Jennings became District Manager. (T p. 267)

7. The Respondent-Intervenor is Elizabeth E. Letendre of Rockport, MA. Ms. Letendre owns property at 1441 Ocean Pearl Road in the off-road area of Corolla, Currituck County (the "Site"). The Permittee has owned this property since April of 2012, according to the deed recorded at Book 1198, Page 290 of the Currituck County Registry. (PHO, Stip. Fact 3)
8. Ms. Letendre named both Bernie Mancuso of Mancuso Development (for the 2014 Permit) and George Wood of Environmental Professionals, Inc. (for the 2015 Modification) as her authorized agents in the CAMA permit review process. (PHO, Stip. Fact 4)

The Site

9. The Site is approximately 3 acres in size, extending from the Atlantic Ocean to Ocean Pearl Road, based on the plat map and tax card. (PHO, Stip. Fact 5)
10. The property immediately north of the Site is owned by Petitioners. Petitioners developed a Hatteras Ramp on their property in 2000. (T p. 43) The ramp was in place for eight years. (T pp. 43-44) There were several conditions on their CAMA Minor Permit authorizing the Hatteras Ramp which were not rules of CAMA, and which Mr. Jennings guessed the CAMA Local Permit Officer who issued the permit added, including the requirement for a gate and to remove the driveway once Ocean Pearl Road was accessible. (T pp. 270-74, 284-85; R's Ex. 6)
11. The property immediately to the south of the Site is owned by the Longs. (T pp. 33, 174) The Longs have an accessway to their property from the beach that does not have a Hatteras Ramp. (T pp. 174-77; R's Ex. 15A-E) Mr. Renaldi testified that the Longs' driveway is going over the same frontal dune system as the proposed accessway on the Site. (T p. 193)
12. The west or landward side of the property is bordered by a north-south road known as Ocean Pearl Road. (T p. 33) Ocean Pearl Road is unimproved and can have deep ruts with standing water in them. (T p. 243) An east-west road north of the Site called Munson Lane connects to Ocean Pearl Road, and Petitioners access Ocean Pearl Road via Munson Lane. (T pp. 33, 36, 241-42; R-l's Ex. 2) Mr. Wood recently got stuck on Munson Lane. (T pp. 242-43)

13. Mr. Wood testified that south of the Site, there is an east-west road called Malvin (or Malbon) Drive. (T pp. 239-41; R-I's Ex. 1) Mr. Wood testified that it is his understanding that Malvin Drive is no longer an available access to Ocean Pearl because he worked with Mr. Malvin's two lots near Malvin Drive, as well as another owner's lot in the area in the past, and that Mr. Malvin denied Mr. Wood access to the private and blocked Malvin Drive to access the neighbor's lot about a year ago. (T pp. 240-41) Prior to Malvin Drive being blocked, Mr. Wood said it was the preferred way to gain access to the Site. (T p. 241)
14. At the time of the modification request in 2015, Mr. Renaldi was aware that Ocean Pearl Road could be blocked off at times, as could access to Ocean Pearl Road from the beach road. (T pp. 190-92) Mr. Renaldi acknowledged this could block access to the Site without an accessway. (T pp. 192)
15. There is an east-west accessway located to the north of the Site which has a wooden Hatteras Ramp. (T pp. 177-79, 193; R's Ex. 16A-C) Mr. Renaldi testified that this accessway is going over the same frontal dune system as the proposed accessway on the Site. (T pp. 193-94)
16. In preparation for this hearing, Mr. Renaldi reviewed aerial photography of the 4x4 area of the Currituck Outer Banks and found that in the "southern half of the 4x4 area" using 2013 photos, there were six private dune accessways going from the beach road to private homes. (T pp. 187-88) During this review, Mr. Renaldi also noted that there was one north-south road landward of the beach road, which he understands is called Ocean Pearl Road and that it is a dirt road which snakes around puddles and obstacles, and that it is not maintained by Currituck County. (T p. 188) Mr. Renaldi noted that in the northern half of the 4x4 area of the Currituck Outer Banks (from the 3 mile mark to the Virginia Border), 2014 aerial photos show there are two or three private accessways and about thirteen public accessways that go over the dune to a much more maintained road system in North Carolina which has three roads west of the dune which run north/south and are maintained by Currituck County through a service district. (T pp. 188, 191) Mr. Jennings heard Mr. Renaldi's testimony about the roads and accessways within the four-wheel area and agreed with it. (T p. 276)
17. Mr. Jennings testified that the houses in the area of the Site within the four-wheel area and without accessways now would all be eligible for accessway permits, unless there was a county prohibition of some type. (T pp. 288-89) Mr. Jennings believes that if there were multiple crossovers on the dune near the Site, if the technique of installation is used as DCM permits, there would be no diminution of the protective nature of the dune especially in areas where the dunes are large like the dune at the Site. (T p. 289)
18. The area where the dune crossover was authorized by the 2015 Modification is within the Ocean Erodible and High Hazard Flood sub-categories of the Ocean Hazard Area of Environmental Concern ("AEC"). N.C. Gen. Stat. § 113A-118 requires that the permit

applicant obtain a CAMA permit before work on the proposed project takes place. (PHO, Stip. Fact 6)

19. The Base Flood Elevation for the Site is 12 feet above sea level. (T pp. 162, 268; R's Ex. 7) The Base Flood Elevation for the Site is used as part of the definition of a primary dune, and it represents the anticipated flood water elevation during a 100-year storm. (T pp. 268-69)
20. There are primary and frontal dunes on the Site, as those terms are defined by the CRC's rules at 15A N.C.A.C. 07H .0305(a)(3) & (4). (T p. 162; R's Ex. 7) A primary dune is defined by adding 6 feet above a particular base flood elevation, so it would be 18 feet at this Site. (T p. 162, 269; R's Ex. 7)
21. At the time of the 2013 DCM Field Investigation Report for the initial permit, Mr. Renaldi stated that the dune varied in width from 112' to 162' as measured from the first line of stable natural vegetation landward, but did not now recall where those measurements were taken as it is intended to be a general description of the site for other resources agencies to review. (T pp. 207-213; Stip. Ex. 5) Mr. Renaldi testified that the narrowest part of the dune at the Site in 2015 was at the location of the proposed crossover based on his review of elevation points, which would minimize the impact on the dune. (T pp. 209- 11)
22. Respondent's Exhibits 17A, D, E, F, G, H, and I are a series of photos of the Site taken by Mr. Renaldi around May of 2015. (T pp. 164-74)

The Initial Permit Issuance

23. Mr. Renaldi's first interaction related to the permit at issue was reviewing preliminary plans with the Respondent-Intervenor's consultant George Wood, for the structures authorized under the initial permit issuance. (T p. 159)
24. Mr. Renaldi completed the DCM Field Investigation Report in 2013 for the initial permit application. (T p. 161; R's Ex. 7) To complete the Field Investigation Report, Mr. Renaldi reviewed materials provided by the applicant including site plans, and by completing a March 21, 2013 site visit to compare those materials to conditions on the Site and to aerial photography. (T pp. 161-63) At the site visit, Mr. Renaldi staked the "first line of stable and natural vegetation or FLSNV." (T p. 163) As Mr. Renaldi's supervisor, Mr. Jennings reviewed the Field Investigation Report to make sure the necessary information was included so that information needed by resource agencies was included. (T p. 267)
25. Mr. Wood was asked to review the site for wetlands by Mr. Mancuso, who is the contractor for the project, and then worked with the engineers and surveyors retained by Mr. Mancuso to formulate the design and construction of the home. (T p. 234) Mr. Wood submitted the CAMA permit application for the 2014 Permit. (T p. 234)

26. On March 17, 2014, DCM issued the 2014 Permit [CAMA Major Permit No. 25-14] for the development of the three cosmetically-attached but structurally-detached structures, pool with deck, retaining wall, gazebo, well, septic drain field, sand driveway and parking area, after the proposed development was evaluated through the CAMA major permit review process. (PHO, Stip. Fact 7)
27. During the 2013-14 CAMA major permit review process, Petitioners were provided notice of the project as adjacent riparian property owners. According to usps.gov tracking information, Petitioners received notice on December 27, 2013. Petitioners did not submit written objections to DCM at that time. The Longs, adjacent riparian property owners to the south, marked the box on the form indicating that they objected to the project. Neither the Petitioners nor the Longs filed a Third-Party Hearing Request [per G.S. 113A-121.1(b)] for the 2014 Permit. (PHO, Stip. Fact 8)

Permit Modification Request

28. Once construction of the home was underway, Mr. Mancuso contacted Mr. Wood in 2015 regarding Mr. Mancuso's concerns about whether there would be continued, reliable access to Ocean Pearl Road and asked him about possible alternative access for construction traffic or emergency vehicles to the Site. (T pp. 234-35; Stip. Ex. 3)
29. On or about May 8, 2015, Ms. Letendre, through her authorized agent George Wood of Environmental Professionals Inc., requested a modification to the 2014 Permit in order to undertake the development of a dune crossover. (PHO, Stip. Fact 9) Mr. Wood submitted a request letter and site plan drawing depicting and describing what was being requested. (T p. 180; Stip. Ex. 5) The proposed accessway was approximately 195-feet by 10-feet and would be graded and wood chipped. (T pp. 185; Stip. Ex 5, 6) No gate was proposed at the beach-end of the proposed accessway. (T p. 258-59)
30. Mr. Wood testified that the CAMA rules provide little guidance with regard to design of accessways, but that there are a number of these driveway accesses over the dunes in this part of Currituck County and it is a fairly straightforward process to obtain approval. (T pp. 244, 248)
31. To make the drawing attached to the modification request, Mr. Wood used the 2012 data that had already been collected in connection with the 2014 Permit process, along with data he collected from the Site, and amended the 2012 drawings some based on the updated data including the current FLSNV, measured where the top of the dune was and the toe of the dune was at the narrowest part of the dune. (T pp. 245-47) Mr. Wood testified that topographical surveying data was not required for the modification request because the CAMA regulations are limited, and extensive surveying data would have been "superfluous and not supporting or helpful in the decision-making process. . . particularly in light of the fact that this construction was going to proceed with minimal impact to the dune, essentially running with the lay of the land." (T p. 248) Mr. Wood's drawing for the modification request is a combination of the historic data they had from 2013 and the data he collected in May 2015, and that the depiction is "intended to show

the salient points of what we intend to do as it relates to the regulations. (T p. 248) Mr. Wood testified that an elevation survey with controls would be a considerable cost. (T pp. 254-55)

32. Mr. Renaldi testified that on the site drawing submitted by Mr. Wood for the modification, the landward toe of the dune follows the 11-foot contour. (T p. 214) Mr. Wood confirmed this was correct during his testimony. (T p. 254)
33. Petitioner argued that the drawing that was submitted in connection with the permit modification request was inaccurate. (T p. 61) Petitioner read the drawing [Stip. Ex. 5] to show the toe of the frontal dune was located along a surveyor's line that connected the north and south property lines instead of following the 11-foot contour as Mr. Renaldi understood the drawing. (T pp. 213-15) Mr. Renaldi testified that there is nothing which prohibits hand-drawn site plans for a permit modification. (T p. 216) Mr. Jennings testified that the CAMA rules require a site plan and a description of what the proposal is, and at this level, very little information is required because these types of projects are minor in nature. (T p. 282)
34. The accessway was proposed to be used for construction and emergency access and the request noted that it was being made due to the uncertain conditions of Ocean Pearl Road. (T pp. 185, 189, 255-56; Stip. Ex 5, 6)
35. Mr. Renaldi did a Site visit on May 19, 2015 in connection with the modification request. (T p. 185; Stip Ex 6) As part of the site visit, Mr. Renaldi used his tape measure to measure off 195' from the eastward toe of the dune in the location of the proposed accessway. (T pp. 199, 215, 218-19) The landward end of Mr. Renaldi's tape measure fell short of and was not within 404 wetlands. (T pp. 199, 215-16)
36. When Mr. Renaldi receives a modification request, he reviews the request, confers with his District Manager and with the DCM Major Permits Staff in Morehead City to decide if the modification should be processed as a refinement, a minor modification or a major modification. (T pp. 180, 244) In this case, if there had not been an active major permit to modify, the requested accessway would have only required a CAMA minor permit authorization by the Currituck County CAMA Local Permitting Officer. (T pp. 181, 193) Accordingly, this modification was treated as a minor modification, though because of the earlier objection to the 2014 Permit by the adjacent riparian owners, DCM required that Mr. Wood re-notice the Longs and the Petitioners about the modification request, which is not usually required for a minor modification (T pp. 181-82, 244-45, 282)
37. As part of the CAMA minor modification process, notice of the modification request for the dune crossover was given to the two adjacent riparian neighbors-- Petitioners and the Longs. Based on tracking information from usps.gov, Petitioners received notice on July 6, 2015 and the Longs received notice on April 23, 2015. Both Petitioners and the Longs returned the adjacent riparian owner forms having checked the box indicating they had objections to the project. (PHO, Stip. Fact 10; T p. 183; Stip. Ex. 8)

38. Based on the nature of the modification request, notice of the request was sent to the DENR Division of Water Resources - Stormwater and Aquifer Protection Sections, Division of Energy, Minerals, and Land Resources, the U.S. Army Corps of Engineers based on their jurisdiction over 404 wetlands, and the Currituck County Local Permitting Officer. No objections were received by DCM from these agencies. (PHO, Stip. Fact 11; T pp. 182-83)
39. As part of the modification process, Mr. Renaldi drafted a memo to DCM Major Permits Staff in Morehead City with his recommendation concerning the modification request. (T pp. 184-85; Stip. Ex. 6) In this case, Mr. Renaldi recommended that the modification be issued as it met the rules, specifically 15A N.C.A.C. 07H .0306. (T pp. 185-86; Stip. Ex. 6) Mr. Renaldi's District Manager and Supervisor Frank Jennings reviewed the recommendation memo before it was sent to DCM Major Permits Staff. (T p. 186; Stip. Ex. 6)
40. Mr. Renaldi testified that the CAMA regulations allow accessways over dunes. (T p. 194) Mr. Renaldi testified that the use of a Hatteras Ramp on an accessway will arrest the dune in place whereas an accessway without a ramp will allow the dune to grow. (T p. 194) Mr. Renaldi testified that having a woodchip accessway is different than a Hatteras Ramp following a storm event where the ramp will be undermined and scattered on the beach and requires a new ramp to be laid, where with wood chips, new wood chips would just have to be placed, and are less impactful to the dune. (T p. 195)
41. Mr. Wood testified that he remembers the discussion while with DCM, about how to safely get people to their property over the dunes, and that Hatteras Ramps were new at that time about 30 years ago. (T pp. 251-52) An early problem identified with Hatteras Ramps is that after a storm when the ramps often were damaged, people would bypass the ramps, and so when they work, they work well, but when damaged they cause problems. (T pp. 251-52) Mr. Wood testified that he believed that the wood chips cause less impact than a Hatteras Ramp in the long run. (T p. 253) Mr. Wood testified that the CAMA regulations allow the use of wood chips and that in this case where limited use is anticipated, the packed sand and wood chips were a better option. (T p. 253) Mr. Wood testified that the use of wood chips would allow more flexibility with regards to the changing elevation of the dune compared to a Hatteras Ramp. (T p. 257)
42. Mr. Jennings testified that while the use of wood chips for beach accessways was new, we know they will not become debris like Hatteras Ramps can and they will be similar to clay, packed sand or gravel that has been permitted for some time. (T pp. 290-91) While we can't be sure about the degradation on the face of the frontal dune long term, he feels confident that the degradation will be minimal and that the dune will still continue to have this protective capability. (T pp. 290-91)
43. On July 9, 2015, DCM issued a minor modification to CAMA Major Permit No. 25-14 ("2015 Modification") for the development of the crossover for construction and emergency use, as proposed. (PHO, Stip. Fact 12; Stip. Ex. 1)

44. Also on July 9, 2015, notice was sent to the Longs and Petitioners that the 2015 Modification was issued, and includes information about the administrative appeals process. (T p. 187)

Administrative Appeal Process

45. On July 21, 2015, Petitioners filed a third-party hearing request pursuant to G.S. 113A-121.1(b). (PHO, Stip. Fact 13)
46. The Chairman of the Coastal Resources Commission granted Petitioners' request to file a contested case hearing. This Order was signed on August 3, 2015. Based on the "green card", Petitioners received a copy of this Order on August 18, 2015. (PHO, Stip. Fact 14)
47. The Office of Administrative Hearings received an incomplete petition from Petitioners on August 11, 2015. On August 12, 2015, OAH returned the petition in order to have Mr. Winchell complete his signature on the form along with Mrs. Winchell's signature. OAH filed the completed petition on August 21, 2015. (PHO, Stip. Fact 15)
48. Elizabeth Letendre was granted the right to intervene as a Respondent-Intervenor on October 22, 2015. (PHO, Stip. Fact 16)

Testimony at the Hearing

49. Mr. Winchell was not admitted as an expert witness. (T pp. 44-46) Mr. Winchell has a college degree in civil engineering with a minor in math. He has done work designing roads, bridges, dams, structural steel buildings, concrete, water, and wastewater treatment systems. (T p. 45) Mr. Winchell operated a business for 30 years where they designed, engineered and manufactured products that improve the safety and productivity of their employees. (T p. 45)
50. Mr. George Wood, President of Environmental Professionals, Inc. testified but was not offered as an expert witness. (T pp. 228-60) Mr. Wood started his company 28 years ago. (T p. 229) Mr. Wood's company specializes on water quality testing, environmental assessments, wetlands delineation, permitting, and expert witness consultation. (T p. 229) Mr. Wood has been qualified before as an expert in the Coastal Area Management Act and in state regulations in both administrative cases and state court. (T p. 229) Before starting his company, Mr. Wood worked for DCM, first in Raleigh as a permits coordinator and then as a field representative in the Elizabeth City office for nine years, doing the same work Mr. Renaldi does now. (T p. 230) Mr. Wood has a BS in Biology and a Masters in Biology from ECU. (T p. 231) He is also a professional wetlands scientist- a certification to delineate federal wetlands, and is a certified environmental professional. (T p. 231)
51. Mr. Wood's experience with the area near the Site began when he worked for DCM, covering the Currituck Outer Banks area for four or five years. (T p. 232) In private practice, Mr. Wood has done several projects in the area near the Site including 40-50

construction sites and 10-15 subdivision sites. (T pp. 232-33) He worked to get the Longs' home and driveway permitted. (T p. 233) During his 28 years, he has been stuck on the unimproved section of the road four times, including two times trying to get to or traverse Ocean Pearl Road. (T p. 233)

52. Mr. Renaldi testified that he knew Mr. Wood had worked for DCM prior to starting his own consulting business, and that he is "very knowledgeable about the CAMA rules and regulations, and he's very easy to work with." (T p. 179) Mr. Renaldi said that the quality of Mr. Wood's work is "very good" and that they have worked on between five and ten projects together during Mr. Renaldi's tenure with DCM. (T p. 179) Mr. Jennings has a high opinion of George Wood based on interacting with him professionally about 100 times, and confers with him often regarding CAMA issues. (T pp. 276-77)
53. Mr. Renaldi testified that if sand was moved during the construction of the accessway, that sand is required by rule to remain within the AEC dune system. (T p. 196) Mr. Renaldi's understanding about the construction method to be used was a simple scraping of the dune to even it out and then spreading woodchips on it. (T p. 197)
54. Mr. Wood testified that his understanding about how the driveway would be installed from Mr. Mancuso is that they would "just scrape the top of the sand to level it to a small degree to prepare for the wood chips, and that there was no indication that a large amount of sand would be either removed or brought in, and that the crest of the dune would remain the same height. (T p. 249)
55. Mr. Jennings has been to the Site twice in connection with this case, but has been by the Site many times as it is in the lower Currituck Outer Banks 4x4 area. (T pp. 266-67)
56. Mr. Jennings testified that DCM does not typically get requests for dune crossovers in areas that are serviced by hard paved roads. (T p. 2374) Dune crossovers are more typically requested in the Park Service land on Hatteras Island or by a town for emergency vehicle access to the beach. (T p. 274) The four-wheel drive area of Currituck is a special, unique situation where there are no state roads. NC 12 ends and so these owners have no dedicated state access to their property. (T pp. 274-75)
57. Mr. Jennings testified that during the war [World War II], Marston mats were used which are metal mats, and after the war, this surplus of mats were used. (T p. 275) These mats would rust easily and could be undermined. (T p. 275) When the CAMA rules came about, they preferred the use of wooden ramps instead of metal ramps, and now he is seeing the use of plastic mats, along with geoweb and wood chips. (T p. 275)
58. Mr. Jennings testified that the CAMA rules, specifically those found at 15A N.C.A.C. 07H .0309 require most development to be set back a prescribed distance from the vegetation line which DCM staff delineates. (T pp. 277-78) However, the rules allow some development to be built waterward of the setback but behind the vegetation line, including "driveways and parking areas with clay, packed sand or gravel. (T p. 278) Mr.

Jennings believes that this rule authorizes the use of wood chips as a substitute product that serves a similar function. (T pp. 278-79)

59. Mr. Jennings testified that while the modification request and permit noted that the accessway was for construction and emergency vehicle use, DCM's enforcement ability to regulate the use of a permitted structure is limited, as DCM permits structures with DCM input front-end loaded. (T pp. 280-81) Mr. Jennings testified that he doesn't believe DCM has authority to regulate the use of the accessway in this case. (T pp. 281, 296-97) In 15A N.C.A.C. 07H .0308(c), there is no limitation language only allowing the use of structural accessways by emergency vehicles. (T pp. 297-99) Mr. Jennings testified that if the Petitioners or the Letendres in this case had proposed a dune accessway without limitations on the type of use, the permit would have been allowed under the CAMA rules. (T p. 301)
60. Mr. Jennings noted that with all CAMA permits issued, including CAMA minor permits, the division has a responsibility to monitor the development activity and has enforcement authority if the development is out of compliance with the CAMA permit. (T pp. 294-96)

CONCLUSIONS OF LAW

I. Jurisdiction and Burden of Proof

1. It is stipulated that all parties are properly before the Office of Administrative Hearings and that OAH has jurisdiction of the parties and the subject matter. All parties have been correctly designated, and there is no question as to misjoinder or nonjoinder of parties. The Office of Administrative Hearings has jurisdiction to hear this case pursuant to N.C.Gen. Stat. § 113A-121.1(b) and N.C.G.S. § 150B-23. (PHO, p. 1)
2. It is stipulated that Petitioners bear the burden of proof per N.C.G.S. § 150B-23. (PHO pp. 1-2) Judge Mann acknowledged that Petitioners bear the burden of proof. (T p. 30)
3. Under N.C. Gen. Stat. § 150B-23(a), the administrative law judge in a contested case hearing is to determine whether petitioners have met their burden in showing that the agency substantially prejudiced petitioners' rights, and that the agency also acted outside its authority, acted erroneously, acted arbitrarily and capriciously, used improper procedure, or failed to act as required by law or rule. Britthaven, Inc. v. Dep't of Human Resources, 118 N.C. App. 379, 382, 455 S.E.2d 455, 459, rev. denied, 341 N.C. 418, 461 S.E.2d 745 (1995). In their Petition for a Contested Case, Petitioners alleged that Respondent deprived them of property with the damage amount "to be determined", and acted erroneously in issuing the July 9, 2015 minor modification to CAMA Major Permit No. 25-14.

II. Other Conclusions of Law

4. Respondent DCM regulates the coastal areas of the State pursuant to authority conferred upon it by the CAMA, N.C. Gen. Stat. § 113A-100 *et seq.*, and the State Dredge and Fill Law, N.C. Gen. Stat. § 113-229, and various regulations promulgated thereunder by the Coastal Resources Commission. Under these laws and rules, all “development” in an AEC must be permitted. N.C.Gen. Stat. § 113A-103, -107, -113, -118.
5. The Site is adjacent to the Atlantic Ocean, and is within the Ocean Erodible Area of Environmental Concern (AEC); and, as such, DCM has administrative permitting authority over development within the AEC on the Site. N.C. Gen. Stat. §§ 113A-103, -107, -113, and -118.
6. Respondent-Intervenor’s proposed project to add a beach crossover or accessway over the dune from the beach road to their property requires a CAMA Permit. N.C. Gen. Stat. § 113A-118. While such development is within the scope of a CAMA minor permit as that is defined by N.C. Gen. Stat. § 113A-118(d)(2), it was pursued through a modification of the existing, active CAMA Major Permit No. 25-14, which had authorized the development of the residential structures. (Stip. Facts 7, 9, 12; FOF 26, 36)
7. The Respondent’s issuance of the 2015 Modification was not erroneous and did not deprive Petitioners of property where these primary and frontal dunes are over 100 feet in width, extend for several lots north and south of the Site, and have elevations of 20 feet or more in an area with a base flood level of 12 feet. The construction of the accessway is not anticipated to require significant lowering of the existing dune elevation. The use of wood chips is not anticipated to harm the existing dune system. No significant alteration on the primary dune is anticipated and the authorized accessway is not anticipated to diminish the dune’s capacity. (Stip. Ex. 5; R’s Ex. 7, 15, 17; FOF 11, 19, 20, 21, 22)
8. The Respondent’s issuance of the 2015 Modification was not erroneous and did not deprive Petitioners of property where the permit did not authorize trespass onto their property by others in authorizing the development of the dune accessway. (Stip. Ex. 1, 5; FOF 29)
9. The Respondent’s issuance of the 2015 Modification was not erroneous and did not deprive Petitioners of property where the drawing submitted with the modification request satisfied the requirements of 15A N.C.A.C. 07J .0203. (Stip. Ex 1, 5; FOF 29, 30, 31, 32, 33)
10. The Respondent’s issuance of the 2015 Modification was not erroneous and did not deprive Petitioners of property where the authorized development is projected not require significant relocating, grading and cutting of the primary dune. (FOF 29-31, 35, 38-43, 50-54, 56-58)

11. The Respondent's issuance of the 2015 Modification was not erroneous and did not deprive Petitioners of property where, due to the unreliable access to the Site via Ocean Pearl Road, alternative access was requested over the primary dune in the four wheel drive area of the Currituck Outer Banks where there is no maintained state road. (FOF 7, 9-14, 16, 17, 28, 34, 51, 56, 59)
12. The Respondent's issuance of the 2015 Modification was not erroneous and did not deprive Petitioners of property where several other oceanfront lots in the southern part of the four wheel drive area and in the vicinity of the Site, have been authorized to develop dune crossovers, beach accessways, driveways, with or without Hatteras Ramps, in order to access their property, including Petitioners and the Longs to the immediate south of the Site. (FOF 10-14, 16, 17, 30, 51, 56-59)
13. Petitioners are entitled to strict compliance with all requirements of the dune crossover permit issued by Respondent which will be constructed and maintained by Respondent-Intervenor. It is Respondent's obligation to ensure full compliance with the permit's terms and conditions in the construction and maintenance of the dune crossover and all requirements that enure to the benefit of the other adjacent landowners, the Petitioners, Respondent-Intervenors, and the public at large.

DECISION

Based on the foregoing findings of fact and conclusions of law, Respondent's issuance of CAMA Major Permit No. 25-14 as modified on July 9, 2015 is AFFIRMED. This is the final decision in this contested case, in accordance with N.C. Gen. Stat. § 150B-34(a). Petitioners have not met their burden of proof in showing that Respondent deprived Petitioners of property, exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule in issuing the permit modification at issue, as alleged in Petitioners' petition for a contested case hearing.

NOTICE

Pursuant to N.C. Gen. Stat. § 150B-37(c), a copy of this final decision will be sent to each of the parties. Pursuant to N.C. Gen. Stat. § 150B-43, any party or person aggrieved by this final decision is entitled to judicial review of this decision, pursuant to the requirements of N.C. Gen. Stat. § 150B-45.

This the 29th day of July, 2016.

A handwritten signature in black ink, appearing to read "Julian Mann III", written over a horizontal line.

Julian Mann III
Chief Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
08/03/2016 10:31 AM

STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 EHR 05826

<p>PAUL & ELIZABETH WINCHELL, Petitioners,</p> <p>v.</p> <p>NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY DIVISION OF COASTAL MANAGEMENT, Respondent,</p> <p>and</p> <p>ELIZABETH LETENDRE, Respondent-Intervenor.</p>	<p style="text-align: center;">ORDER AMENDING DECISION</p>
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PURSUANT to 26 NCAC 3.0129, for the purpose of correcting a clerical error, **IT IS HEREBY ORDERED** that the above-captioned Final Decision, issued from this Office on July 29, 2016, is amended to correct the Notice in the above-captioned case as follows:

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34. Under the provisions of North Carolina General Statutes Chapter 150B-45, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the Final Decision was filed. **The appealing party must file the Petition for Judicial Review within 30 days after being served with a written copy of this Amended Final Decision.**

Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. N. C. Gen Stat. §150B-46 describes the contents of the Petition for Judicial Review, and requires service of the Petition for Judicial Review on all parties. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

Except for the above amendment, the Final Decision issued on July 29, 2016 remains in effect.

IT IS SO ORDERED.

This the 3rd day of August, 2016.

A handwritten signature in black ink, appearing to read "Julian Mann III", written over a solid horizontal line.

Julian Mann III
Chief Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
07/13/2016 10:28 AM

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 EDC 01392

Crossroads Charter High School Petitioner, v. N C Department Of Public Instruction/North Carolina State Board of Education Respondent.	FINAL DECISION
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THIS MATTER came on to be heard before the undersigned Administrative Law Judge, Selina Malherbe Brooks, on May 25-27 and June 20, 2016, in Charlotte, North Carolina. Based on a consent Order entered on June 20, 2016, the decision of the State Board of Education not to renew Petitioner's charter effective June 30, 2016, was STAYED through July 15, 2016 and the record was left open for the Parties' submission of additional testimony via video-recorded depositions held on June 13, 2016. After filings by Petitioner and Respondent on June 27, 2016 with the Clerk of the Office of Administrative Hearings (OAH) and receipt by the Undersigned on that same date, the record was closed.

APPEARANCES

For the Petitioner: Edana Lewis
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For the Respondent: Tiffany Lucas
Assistant Attorney General
Laura E. Crumpler
Special Deputy Attorney General
NC Department of Justice
PO Box 629
Raleigh, NC 27602

ISSUE

Petitioner has claimed in this action that the decision of the State Board of Education not to renew Petitioner's charter is: (1) erroneous; (2) arbitrary and capricious; (3) in violation of law or rule; and/or (4) in violation of proper procedures.

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner ("Pet. Ex."): 5, 6, 13, 18, 28, 29, 35, 38, 45, 53, 55, 61-68, 73, 74, 81-84
For Respondent ("Resp. Ex."): 1-44, 47, 49, 50-61

APPLICABLE AUTHORITIES

North Carolina Constitution Article IX, Section 4-5
N.C. Gen. Stat. §§150B-22 & -23
N.C. Gen. Stat. §§115C-218(b), -218.1, -281.10, -218.15 & -218.55
State Board of Education Policies TCS-U-006, -007 & -010

PETITIONER'S MOTION *IN LIMINE*

On May 26, 2016, after testimony was given by the first witness on the second day of the contested case hearing, Petitioner made a Motion *In Limine* to exclude various of Respondent's exhibits from evidence on the ground that Respondent had not complied with Petitioner's public records request under North Carolina Public Records Law. Oral argument was held on the record. The motion was denied. (Transcript ("Tr.") pp. 358-392; see Conclusion of Law 15 below.)

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing and through video recorded depositions, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge (ALJ) makes the following Findings of Fact. In making these findings of fact, the ALJ has weighed all the evidence and has assessed the credibility, including, but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in the case. In addition, the Undersigned viewed the videotaped depositions taken on June 13, 2016 of Dr. Chance Lewis and Ms. Alexis Schauss, and transcripts were available for reference for hearing dates May 25-27, 2016.

FINDINGS OF FACT

1. The North Carolina State Board of Education (SBE) is constitutionally mandated to "supervise and administer the free public school system and the educational funds provided for its support." N.C. Const. art. IX, §5.
2. The Charter School Advisory Board (CSAB) oversees all public charter schools in North Carolina and is charged with making recommendations for rules and matters concerning

charter schools, including renewal and nonrenewal recommendations, to the SBE. N.C. Gen. Stat. §115C-218(b)(10)c.

3. The North Carolina Department of Public Instruction (DPI) is the administrative agency that implements the State's K-12 public education laws and SBE policies.

4. The Office of Charter Schools (OCS) is a division of DPI tasked with overseeing and managing public charter schools in the State of North Carolina. The Office of Charter Schools makes reports to the CSAB and SBE.

5. Charter schools in North Carolina are public schools operated by nonprofit corporations. A nonprofit corporation applies to the SBE for approval and, if granted a charter, is entitled to receive public monies to operate a charter school. Charter schools are governed by North Carolina General Statutes, by the charter issued by the SBE, and by policies and rules adopted by the SBE. In addition, charter schools must comply with any applicable federal laws and regulations. N.C. Gen. Stat. §§ 115C-218.10, -218.15 & -218.55.

6. In order to receive a charter to operate a charter school, a nonprofit corporation must submit a detailed application outlining its plans for operation of a public school. The application is developed by the OCS, contains at a minimum the requirements set forth in N.C. Gen. Stat. § 115C-218.1(b), and is approved by the SBE.

7. During the time relevant to this contested case, a charter application was reviewed first by the OCS, external evaluators, other divisions within DPI, and then by the Charter School Advisory Committee ("CSAC"). The CSAC was an advisory board whose members were appointed by the SBE and whose job it was to oversee charter applications, renewals, and operations, and to make recommendations as appropriate to the SBE.

8. In 2013, the General Assembly created the Charter School Advisory Board ("CSAB") which replaced the CSAC. N.C. Sess. Laws 2013-355 s.1. The CSAB was established to advise and report to the SBE on matters regarding the creation, oversight, and termination of charter schools. Its members are appointed by various agencies and officials, including the Governor and General Assembly, and are required to possess "strong experience and expertise" in various areas such as nonprofit governance, finance, education, and charter schools. N.C. Gen. Stat. § 115C-218(b).

9. Among other duties, the CSAB is required to "make recommendations to the State Board on actions regarding a charter school, including renewals of charters, nonrenewals of charters, and revocation of charters." N.C. Gen. Stat. § 115C-218(b)(10). The CSAB reviews applications, both for initial charters and for renewals, and reviews any requests for changes to the charter, such as enrollment increases, changes to the by-laws, or changes to the location of the school. In addition, if a school is experiencing difficulty, the CSAB often requests or requires that the board of directors for the school, or representatives from the school, appear at a CSAB meeting and respond to questions by the Board. Most of the members of CSAB have extensive experience and involvement in operating a charter school.

10. The CSAB is staffed by the OCS and works closely with other divisions in DPI – including the Exceptional Children Division (“EC Division”) and the Office of Financial and Business Services – in order to stay apprised of all issues involving charter schools, both individually and collectively. In addition, the OCS reports regularly to the Education Innovation and Charter Schools Committee (EICS), a standing committee of the SBE for which charter schools are a primary and ongoing focus.

11. Upon approval by the SBE, a charter school is issued a charter that entitles it to begin operation and to begin receiving federal, state, and local public funds. The charter document contains numerous provisions regulating various aspects of charter school operation. The charter school is bound to comply with the representations in its application, the terms of the charter, any relevant SBE policies, and federal and state laws. Any request by a charter school to deviate from its application must be approved in advance by the SBE. N.C. Gen. Stat. §§ 115C-218.1 & 115C-218.15.

12. Crossroads Charter High School (“Crossroads”) is a high school in Charlotte, North Carolina that received a 5-year charter from the SBE effective July 1, 2001 through June 30, 2006. (See Resp. Ex. 5) Prior to the scheduled expiration of the school’s charter on June 30, 2006, Petitioner submitted a request to the SBE for a 10-year renewal of the charter.

13. Prior to the CSAC meeting on June 9, 2005, Crossroads had been placed on Governance Cautionary Status due to a decrease in board members and continued conflicts of interest resulting from board involvement in administrative affairs. (Resp. Ex. 7)

14. As part of the renewal process, representatives from Crossroads attended a meeting with the CSAC on June 9, 2005, to discuss concerns in the areas of governance, academic accountability, and school safety. Specific issues discussed included: instability on Crossroads’ board of directors, the proper role of a charter school board of directors, several years of academic low performance, and inadequate student and testing data reports. Crossroads’ new board chair, Ms. Cowan, and the school’s interim principal, Dr. Elmore (the school’s fourth principal since the school began in 2001), spoke on behalf of and in support of the school. (Resp. Ex. 7)

15. After the CSAC meeting, Crossroads was charged by the OCS to create a plan addressing several items, including a plan for reconstruction of the board and replacement of the current school administration. The plan was due to the OCS on or before June 18, 2005. (Resp. Ex. 7a)

16. On June 16, 2005, Crossroads submitted a final Plan of Reorganization to the OCS. Thereafter, Crossroads received a 10-year renewal charter from the SBE effective July 1, 2006 through June 30, 2016. (Resp. Ex.(s) 8 & 11)

17. In compliance with Crossroads’ Plan of Reorganization, a new principal, Kenneth Simmons, was hired for the 2005-2006 school year. Throughout the 2005-2007 school years, in light of the concerns that had arisen about the school during the period of the initial charter, staff from the OCS increased the number of visits to the school to meet with the school principal and

administration in order to continuously monitor the academic and professional conditions at Crossroads. (Resp. Ex.(s) 9, 14-17)

18. In 2006, the SBE adopted the current "Policy Regarding Charter Schools Renewal Process" (SBE Policy TCS-U-007). By its plain language, this Policy states that the "Renewal Report," is the process for charter school renewals. Per the timeline set out in the SBE Policy, the renewal process is a two-year process and it is referred to as a school's "renewal cycle." (Resp. Ex. 2)

19. On February 16, 2007, Paul LeSieur, Director of the Division of School Business for DPI, sent a Financial Warning Notification to Crossroads. The school was placed on Financial Cautionary Status for failure to have specific language required by state law in all contracts and leases. N.C. Gen. Stat. § 115C-238.29H. The school was on Financial Cautionary Status for 60 days. (Resp. Ex. 12)

20. On April 26, 2007, OCS staff visited Crossroads in connection with a Title II Monitoring Visit conducted by DPI. The Title II Monitoring Visit Team Report found that in school year 2004-2005, Crossroads provided "incomplete documentation to substantiate that the professional development opportunities were grounded in scientifically based research, focused on improving student achievement, evaluated for impact on teacher effectiveness, or aligned with the state's academic content standards." (Resp. Ex. 13) Additional findings included the misuse of Title I funds. (Resp. Ex.14)

21. On May 24, 2007, OCS staff visited Crossroads to follow up with Mr. Simmons and to discuss the steps he was taking as a result of the Monitoring Visit in April. OCS staff noted a concern that "professional development is needed for staff in safe schools area and a mock crisis plan with review of lock-down procedures." (Resp. Ex. 15)

22. OCS staff also visited Crossroads on September 14, 2007. OCS staff learned that over the summer, Crossroads interviewed every student who applied to attend the school and after the interview process, Crossroads excluded some students who were otherwise eligible to enroll. OCS staff informed Mr. Simmons that this was an illegal practice and that Crossroads was required to admit every student who met the statutory residence requirements up to the school's average daily membership (ADM) maximum number of 240 students and, that if more than 240 students applied, the school was required to hold a lottery. (Resp. Ex. 16)

23. For the 2008-2009 school year, the school principal for Crossroads was replaced by Gentry Campbell and several members of the board were replaced, including the board chair. (See Resp. Ex. 17)

24. On January 16, 2009, Ben Putnam conducted an introductory visit with Ms. Campbell to introduce himself as a new OCS consultant. During that visit, Ms. Campbell described the school environment as challenged and divided by disagreements between administration and Crossroads' board members. Mr. Putnam agreed to attend the next scheduled board training meeting for Crossroads. (Resp. Ex. 32)

25. On March 10, 2009, Mr. Putnam participated in Crossroads' board training. Afterward, he noted that the relationship between the board and the administration was improving and that they "were working to all get on the same page for the benefit of the students and the school." Mr. Putnam observed, however, that the board was "somewhat unclear as to the expectations of a Board", and there "still appear[ed] to be some leftover tension between the Board and the administration." (Resp. Ex. 17)

26. On or about December 3, 2009, the SBE modified its policy, TCS-U-010 – Revocation of Charter for Lack of Academic Performance, to eliminate the "alternative status" designation for charter schools which designation had exempted those schools so designated from meeting certain academic performance standards set by the SBE. Under that policy, the SBE could revoke the charter of any charter school when, for two of three consecutive school years, the school did not meet or exceed expected growth and had fewer than 60% of its students scoring at or above grade level. (Resp. Ex. 3A)

27. Consequently, beginning with the 2010-2011 school year, Crossroads, previously designated as an "alternative status" school, would be required to meet the mandates of TCS-U-010.

28. On or about May 19, 2010, representatives from the OCS met with Ms. Campbell and Crossroads board members, including a new board chair, Ruth Amerson, to explain the implications of the SBE policy change and to share concerns over historical End-of-Course (EOC) data for the school. OCS staff presented reports from the prior three years of Crossroads' academic data and informed the board that if there were no significant changes to EOC data over the next year, the school would not achieve the new standards under SBE policy TCS-U-010. (Resp. Ex. 18)

29. As part of its duties, the SBE reviews the operations of each charter school at least once every five years to ensure that the school is meeting the expected academic, financial, and governance standards. N.C. Gen. Stat. § 115 C-218.5(d).

30. On May 27, 2011, as part of the five-year review process, the OCS sent a request for information about the school to Crossroads about how the school was fulfilling its SBE-approved mission, purpose, curriculum education plan, and charter school bylaws. (Resp. Ex. 21)

31. The information provided by Crossroads in response to the request indicated that EOC proficiency levels remained low in both reading and math, and for three of three consecutive school years the school had fewer than 60% of its students scoring at or above grade level:

- For 2007-2008 school year, 48.6% of the tested students were proficient in reading and 24.6% were proficient in math.
- For 2008-2009 school year, 11.1 % tested students were proficient in reading and less than 5% were proficient in math.
- For 2009-2010 school year, 35.5% of the tested students were proficient in reading and 33.3% were proficient in math.

(Resp. Ex. 21)

32. On or about May 19, 2014, Alexis Schauss (Director, Division of School Business (“DSB”) within DPI’s Office of Financial and Business Services), sent Ms. Campbell a letter informing her that Crossroads fell below the requirement of the No Child Left Behind (NCLB) Act of 2001 “to maintain fiscal effort from non-federal funds from one year to the next in order to receive federal funds under certain programs.” As a result, the DSB was required to reduce the 2013-2014 allotments for Crossroads for covered programs by 11.14%. (Resp. Ex. 22)

33. On May 30, 2014, Ms. Schauss sent another letter to Ms. Campbell in response to a review by the DSB of an audit report for Crossroads for the fiscal year ending June 30, 2013. Under state laws, as an agency that provides state and federal funds to sub-recipients, DPI is required to review audit reports in order to determine that the sub-recipients spent such funds in accordance with applicable laws and regulations. Upon review of Crossroads’ audit report, the Schedule of Findings and Questioned Costs disclosed a finding, namely “Finding 2013-1,” that required a refund to DPI in the amount of \$21,531.00. (Resp. Ex. 23)

34. Finding 2013-1 revealed several deficiencies and areas of concern about Crossroads’ fiscal management practices, including that “[d]ocumentation of goods and services purchased using [Crossroads’] credit card did not include receipts for the majority of credit purchases, evidence that the Finance Officer had the opportunity to reconcile receipts to the credit card statements, ... evidence that the purchases were known to have been within [Crossroads’] budget, or, evidence of Board approval before the statements invoicing the School were presented to the third party recordkeeping provider for payment.” Crossroads was notified that if the school was unable to provide supporting documentation for the questioned costs, Crossroads would be required to refund the State from local funds in the amount of \$21,531.00 on or before June 13, 2014. (Resp. Ex. 23)

35. In response to the letter sent from Ms. Schauss, Crossroads sent DPI additional documentation which DPI determined to be incomplete and insufficient to support the questioned costs identified in Finding 2013-1. DPI then made an additional request to Ms. Campbell for complete supporting documentation for the school’s credit card and, in an effort to be helpful, included presentation materials that outline the expectations for procurement and contractual processes. (Resp. Ex.(s) 57 & 58)

36. On or about July 7, 2014, Ms. Campbell called a DSB accountant at DPI and stated that in lieu of providing additional supporting documentation, she would repay the full amount of questioned costs totaling \$21,531.00 by personally delivering a check to DPI on July 9, 2014. Ms. Campbell failed to deliver the check to DPI on July 9, 2014, and also failed to notify DPI that payment would not be made. (See Resp. Ex. 24)

37. In the following months, DPI received no additional communication from Ms. Campbell regarding repayment of the questioned costs of \$21,531.00. Eventually, as a result of the school’s inability to provide adequate documentation regarding the purchase of goods and services with the school’s credit card and because Crossroads failed to respond to DPI’s request for repayment, the school was placed on Financial Probationary Status effective September 4,

2014. Ms. Campbell and Crossroads' newest board chair, Larry TraBue, were also notified that the school was required to repay from local funds the questioned costs totaling \$21,531.00 to DPI no later than September 19, 2014, and that failure to repay the questioned costs by that deadline would result in the school being placed on Disciplinary Status and the school would be referred to the SBE. (Resp. Ex. 24)

38. On September 18, 2014, Crossroads sent a letter to DPI requesting to be removed from Financial Probationary Status and for an extension of time for the school to continue its pursuit of documents needed to support the expenditures. Ms. Campbell also provided additional documentation to the DSB for its review and consideration. (See Resp. Ex. 25)

39. DSB staff reviewed the additional documentation provided by Ms. Campbell and found it to be duplicative of the insufficient documentation previously provided by the school on June 23 and 26, 2014. Therefore, on September 19, 2014, Ms. Schauss sent a letter to Mr. TraBue, informing him that DPI would not honor the school's request to be removed from Financial Probationary Status nor would it grant an extension for the school to continue to attempt to locate documentation in support of the questioned costs as identified in the school's 2012-2013 audit. In addition, the DSB requested a meeting with the school's principal and board chair for the following week. (Resp. Ex. 25)

40. On September 30, 2014, OCS Consultant Robin Kendall visited Crossroads, conducted a site visit and reported that when she asked Ms. Campbell about the financial inquiry sent by the DSB to the school, Ms. Campbell stated that the issues had been clarified and that the financial issues of the school were behind them. (Resp. Ex. 32)

41. On or about October 3, 2014, Ms. Schauss and Leigh Ann Kerr from the DSB met with Ms. Campbell and Mr. TraBue to discuss the \$21,531.00 in questioned costs that were still outstanding and required to be refunded to DPI. Ms. Schauss and Ms. Kerr assumed they were talking to Mr. TraBue as board chair; however, during the course of the meeting, Mr. TraBue informed Ms. Schauss and Ms. Kerr for the first time that he was not the board chair for Crossroads and that, instead, the board had elected another new board chair, Brian Willis. (See Resp. Ex. 52)

42. In follow-up email correspondence with Ms. Kerr and Ms. Campbell, Ms. Gentry agreed to provide documentation regarding questioned costs related to the use of the school credit card as identified in the 2013 audit and for re-evaluation of Crossroads' financial noncompliance status. (Resp. Ex. 53)

43. On or about October 6, 2014, the Director of OCS, Dr. Joel E. Medley, notified Crossroads by letter that the school was in danger of receiving an "inadequate performance" designation for a charter school with "no growth in student performance and has annual performance composites below sixty percent (60%) in any two years in a three-year period. The letter advised that based upon the school's assessment results from the previous two years that if the school did not meet state standards in the 2014-2015 school year, it might result in the termination of the school's charter. Dr. Medley's letter also notified Crossroads that for the 2012-2013 school year, less than five percent of the school's tested students were grade-level proficient.

and for the 2013-2014 school year, 22.2 % were grade-level proficient. (Pet. Ex. 66; Resp. Ex. 26)

44. On November 3, 2014, the DSB sent Crossroads a fourth letter informing the school that Crossroads did not maintain adequate documentation of goods and services purchased using the school's credit card, and that documentation provided by Crossroads was insufficient to avoid repayment of the questioned costs. DPI informed Crossroads that the school must repay from local funds the questioned costs totaling \$21,531.00 by November 10, 2014 or Crossroads would be placed on Disciplinary Status and referred to the SBE. (Resp. Ex. 27)

45. Crossroads repaid the State for the disallowed costs of \$21,531.00 on November 10, 2014. Ms. Schauss sent Crossroads a letter on November 18, 2014 to notify the school of the resolution of the debt owed to the State and to recommend that Crossroads monitor its existing policies for documentation of all invoices. (See Resp. Ex. 33)

46. On or about December 4 and 5, 2014, an on-site Program Compliance Review was conducted at Crossroads by the EC Division of DPI. Noncompliance was found in individual students' records and the EC Division worked with Crossroads to ensure proper corrections were made. (See Resp. Ex. 33)

47. For the 10-year charter renewal process, Petitioner's renewal cycle was 2014-2016. The OCS collected and analyzed compliance documents, academic and enrollment data on the school, conducted site visits to the school and then compiled a renewal portfolio which was presented to the CSAB for its review and consideration. (Resp. Ex. 40)

48. Per SBE Policy, a charter school's Renewal Report must include the school's self-study and a report prepared by DPI which is composed of all information pertinent to the evaluation of the charter school for renewal purposes from the relevant DPI divisions. The policy cites examples of sources of documentation from DPI including audit reports, financial records, concern brought to the OCS, interviews, school site visits by the OCS educational consultants, ABC accountability results, and EC Division compliance records. (Resp. Ex. 2)

49. On or about December 5, 2014, as part of its request to have its charter renewed, Crossroads submitted the Renewal Self-Study document to DPI. (Resp. Ex.(s) 28 & 2) The Renewal Self-Study document indicated that the Crossroads' board chair as of December 5, 2014, was Brian Willis and that for the 2011-2012 school year, only 84% of the school's teachers were highly trained and for the 2012-2013 school year, only 80% were highly trained. (Resp. Ex. 28)

50. On January 28, 2015, DPI completed an on-site Title I and federal programs fiscal monitoring review of Crossroads, and a final Fiscal Monitoring Report was sent to Ms. Campbell on March 3, 2015. The Fiscal Monitoring Report identified multiple areas of fiscal monitoring deficiencies. Some of the deficiencies included the school's: (a) inability to provide documentation to support that it had conducted the required minimum quarterly comparisons of actual costs to budgeted distributions; (b) not having policies and procedures in place for managing equipment purchased with public funds; (c) payment of prior year invoices with current year

federal funds; and (d) lack of adequate fiscal policies in place regarding critical financial compliance. (Resp. Ex. 31)

51. On February 10, 2015, Ms. Schauss sent notification of the school's financial noncompliance status and placement of the school on a monthly allotments schedule to Crossroads' board chair, Brian Willis, and to Ms. Campbell. This action by the DSB was caused by the school's failure to provide its audited financial statements for the fiscal year ending June 30, 2014, to the Local Government Commission (LGC) as of February 10, 2015. The school was also notified that it would be referred to the CSAB due to the school's financial noncompliance. (Resp. Ex. 29)

52. The CSAB discussed Crossroads at its meeting on March 9, 2015. DSB staff presented their concerns about the school's finances. OCS staff presented information to the CSAB concerning Crossroads' "significantly low academic performance that is not comparable to the [local school district]." In response, the Crossroads' board chair Mr. Willis told the CSAB that the current board had only been together for 90 days and had been dealing with issues attributable to the previous board. Alex Quigley, a member of the CSAB, noted that the school needed to make a lot of growth in the area of academics and then made a recommendation that Crossroads continue to work on becoming fiscally up to date since the school would be before the CSAB in the fall of 2015 as part of the renewal process. No action was taken on Crossroads' charter at the conclusion of the meeting. (Resp. Ex. 33a)

53. David Jean testified at the contested case hearing that he presented information as a member of the Crossroads' board on behalf of Crossroads to the CSAB at this meeting, that the Board was "satisfied" with the school's presentation and that in response the board gave "a compliment" to the school and encouraged the school to "keep doing what you're doing". (Tr. pp. 584-585)

54. As part of the process for considering Crossroads' request for renewal of its charter, OCS staff conducted on-site visits at Crossroads in March 2015. The purpose of these visits was for the OCS to collect information and documentation about Crossroads to present to the CSAB, along with academic and enrollment data about the school, to assist the CSAB in its review and consideration of the school's request for renewal.

55. OCS consultant Darrell Johnson visited the school on or about March 4, 2015. Prior to visiting the school, Mr. Johnson completed several pre-site visit documents with information and data about how the school was performing in the areas of academics, finances, and operations, based on data and information about the school collected by and/or provided to DPI. He specifically noted that there was "very low academic performance" at the school:

- For the 2011-2012 school year, 22.9% of Crossroads' Math I students were grade level proficient; 45.8% of the school's English I/English II students were grade level proficient; and 14.5% of the school's Biology students were grade level proficient;
- For the 2012-2013 school year, less than 5% of the school's Math I students were grade level proficient; 5.4% of the school's English I/English II students were grade

- level proficient; and less than 5% of the school's Biology students were grade level proficient; and
- For the 2013-2014 school year, 13.5% of the school's Math I students were grade level proficient; 27.1% of the school's English I/English II students were grade level proficient; and 25.8% of the school's Biology students were grade level proficient.

(Resp. Ex. 32)

56. OCS staff conducted an on-site visit of the school on March 26, 2015 after which they reported that the school needed to "continue striving to improve the student proficiency and growth," and that the school should work with both the EC Division and the DSB to ensure compliance in those areas. (Resp. Ex. 32)

57. On July 9, 2015, DPI sent a letter to Crossroads advising that the deficiencies identified in the Fiscal Monitoring Report dated March 3, 2015 had been satisfied. (Pet. Ex. 84)

58. On or about July 13, 2015, DSB staff sent a letter to Crossroads' board chair Mr. Willis regarding an Audit Report for Crossroads for the fiscal year ended June 30, 2014. The Audit Report disclosed several deficiencies concerning the school's noncompliance with various laws and regulations that were outlined as Findings 2014-1, 2014-02, 2014-03, 2014-04, and 2014-05. The letter included a summary of DPI's position on the findings and determined that Crossroads must reimburse the State a total of \$27,948.00 in questioned costs from local funds and must provide evidence that corrective action was taken. The Audit Report also revealed that a total questioned cost of \$53,893.00 was referred to Charlotte-Mecklenburg County Schools for determination of repayment of local funds. (Resp. Ex. 35)

59. The July 13, 2015 letter also stated that DPI determined Crossroads remained on Probationary Financial Noncompliance Status which had been in effect since September 2014. The school was notified that its noncompliance status would be reassessed upon receipt and review of the school's audited financial statements for the year ending June 30, 2015. (Resp. Ex.(s) 35 & 24)

60. Throughout the 2014-2015 school year, Crossroads continued to have board turnover and in July 2015, board chair Brian Willis was replaced by David Jean.

61. During August 2015, the State Auditor's Office, Petitioner's Counsel and DPI corresponded via email concerning whether Crossroads was delinquent in paying its employees. (Pet. Ex. 28)

62. In October 2015, an informal meeting was held between the State Auditor's Office and DPI concerning Petitioner. (Pet. Ex.(s) 29 & 38)

63. At its November 17, 2015 meeting, in accordance with the timeline for renewal set forth in SBE Policy TCS-U-007, the CSAB noted that Crossroads was "noncompliant in finances and there [sic] academics were not comparable to the local school district." (Resp. Ex. 37) A

letter was sent to Crossroads notifying the school that its request for renewal would be considered at the December 7, 2015 meeting, that representatives from the school would be required to attend, and that the OCS recommended that "at a minimum [the school's] lead administrator and board chair attend the meeting." (Resp. Ex. 38)

64. Representatives from Crossroads attended the December 7, 2015 CSAB meeting. The new Board Chair David Jean, presented information to the CSAB and addressed concerns regarding the school's reported noncompliance in the areas of academics, governance and finances. Crossroads' Dean of Students, Adrian Sundiata, also presented to the CSAB on the topic of the school's academics. It was explained that "the 2012-2013 audit was late due to record keeping issues" and "the 2014-15 audit was late because of concerns that the bank's documentation was inaccurate." (Resp. Ex. 39 & 39A)

65. Mr. Jean testified at the contested case hearing that he and Mr. Sundiata "were blindsided" at this meeting, that their presentation was disrupted by board members who interrupted and had "outdated information", and that Crossroads was not given a fair opportunity to share information. (Tr. pp. 585-589)

66. Members of the CSAB asked questions of the Crossroads' representatives and expressed their concerns about the academics and financial situation at the school.

67. Alex Quigley, chairman on the CSAB, noted his concerns with the school's academic performance which involved "two consecutive years of not meeting growth followed by one year of meeting growth, [and] two consecutive F grades" for the school under the State's accountability model. (Resp. Ex. 39a, pp. 13, 30)

68. Steven Walker, vice-chair of the CSAB, expressed his concerns that although the school had met growth standards, the percentage of students who were grade-level proficient had gone down, as well as the percentage of students who were deemed college and career ready. In addition, Mr. Walker expressed his concerns that: the school's enrollment had declined significantly; the school did not meet growth two out of three years; the school had received an "F" grade twice; the school's proficiency level was 41% below the level of the local school district; the school had a three-year history of late audits; the school had repeat findings around tens of thousands of dollars in questioned costs; and the school had continued with the same school administrator despite ongoing issues regarding finances, many of which involved allegations of questionable or undocumented expenditures by that administrator. (Resp. Ex. 39A, pp. 28-30)

69. Following the presentation and interview of Crossroads, and consideration of the Renewal Report, the CSAB deliberated and then CSAB member, Joe Maimone, made a motion to recommend to the SBE non-renewal of Crossroads' charter. Mr. Maimone is a long-time charter school operator and has been a member of both the CSAC and the CSAB, stating, "this is as clear a case as I've seen in all the years I've been on this advisory board that this is not a case for renewal. If we're going to stick to being accountable to the State of North Carolina for student achievement, I cannot in good conscience vote to renew this charter." The vote to recommend non-renewal of Crossroads' charter to the SBE carried unanimously. (Resp. Ex.(s) 39, 39A p. 31, 37 & 38)

70. Cheryl Turner, a CSAB member, testified about the CSAB's concerns about the school's poor academic performance over the years, the low academic performance of the school compared to other schools in Mecklenburg County and in the State, the financial struggles of the school, the declining enrollment at the school, and the instability of the board. (Testimony on June 22, 2016.)

71. On December 7, 2015, the Charter School Advisory Board (CSAB) voted to recommend the nonrenewal of Petitioner's charter to the State Board of Education (SBE) based on "substantial noncompliance in finances and academics." (Pet. Ex. 82)

72. Crossroads had retained Elizabeth Gomes (formerly Elizabeth Keels and also known as "BJ" and "Beth") to prepare the school's annual audits for school years 2012-2013, 2013-2014 and 2014-2015. (Tr. pp. 552-554, 560)

73. Mr. Jean testified that the Crossroads' board had multiple issues with Ms. Gomes's auditing firm: incorrect explanations of information; incorrect billing for services; appearing uninvited at a board meeting and expecting the board to immediately review and approve an audit report; and in December 2015, Ms. Gomes attempted to renegotiate the terms of her contract before the contracted work was completed. (Tr. pp. 554-571; Pet. Ex.(s) 73 & 74) At some point, the board learned that in July 2015, Ms. Gomes's firm failed a peer review of "the system of quality control of her accounting and auditing practice for the year ended December 31, 2014." (Pet. Ex. 62) In spite of these issues, the Board did not want to terminate her contract because the audit was late. (Tr. p. 571)

74. At its regularly scheduled meeting on January 7, 2016, the SBE took up as a discussion item the slate of charter schools with charters set to expire on June 30, 2016 that were being considered for renewal. The SBE's EICS Chair, Rebecca Taylor, noted that the renewal recommendation for each school had been thoroughly discussed during the EICS meeting the prior day and it was unanimously recommended that Crossroads' charter not be renewed. (Resp. Ex. 43, pp. 38-44)

75. During its consideration, discussion and action on the request for renewal of Crossroads' charter, the SBE had access to information and data about the school's academics, finances, and governance (as that information is posted online and sent to SBE members in advance of the SBE meeting), including the Renewal Report prepared by OCS. (Resp. Ex. 43)

76. DPI provided financial information to the CSAB and SBE in the Renewal Report. The financial information that DPI uses and analyzes as part of the renewal process is based on the Petitioner's audited financial statements. During Petitioner's renewal cycle, DPI made this operating procedure known through its statement that "DPI works based on information provided by the independent auditor." (Resp. Ex. 57; *see also* Resp. Exs. 23, 60).

77. The Renewal Report included a document of statistics that reports the academic performance of Crossroads students compared to the local school district as follow:

- For 2013, Crossroads <5%, local school district 47.2%;
- For 2014, Crossroads 22.2%, local school district 59.2%; and
- For 2015, Crossroads 18.8%, local school district 59.4%.

(Pet. Ex. 5; see Resp. Ex. 40)

78. Based upon Findings of Fact 55 and 77 above, the Undersigned finds that Crossroads's academic performance was lower than 60% for the school years ending in June of 2012, 2013, 2014 and 2015 and, therefore, did not meet the mandates of SBE Policy TCS-U-010. (See Findings of Fact 26, 27 & 43 above.)

79. The Renewal Report included a chart of data for Crossroads' financial performance framework which notes that the school was in noncompliance status for the years 2011, 2012, and 2013, and on probationary status for the years 2014 and 2015. This information was derived from Petitioner's audits. (Resp. Ex. 40)

80. In addition to the renewal portfolio, the SBE had access to any and all correspondence sent to it from or about any charter school that was being considered for non-renewal including from Crossroads' board chair, David Jean, who corresponded with SBE members via e-mail on February 2, 2016, advocating for the renewal of the school's charter. (Resp. Ex. 45)

81. The Crossroads' audit for the fiscal year ended June 30, 2015 was received in January 2016.

82. On January 20, 2016, DSB notified Crossroads that due to "significant signs of financial insolvency" that the school's Financial Compliance Status was elevated from Probationary to Disciplinary, effective immediately. The financial issues noted in the 2015 audit included: "Notice of Going Concern; material contingent liabilities and obligations; unassigned general fund balance deficit; and an annual decline in ADM from 232 in 2013 to 163 in 2016, a 30% reduction." (Resp. Ex. 42)

83. By letter dated February 4, 2016, the DSB notified Crossroads that "while on Financial Disciplinary Status the school will receive its third and final state fund allotment in four monthly installments beginning in February." (Resp. Ex. 46)

84. At its regularly scheduled meeting on February 4, 2016, the SBE voted on each school with a charter set to expire on June 30, 2016 that was being considered for renewal. The SBE voted unanimously not to renew Crossroads' charter. (Resp. Ex. 44, pp. 39-41)

85. On or about February 6, 2016, Crossroads filed a Petition for Contested Case Hearing in the Office of Administrative Hearings, challenging the SBE's decision not to renew the school's charter and requesting a three (3) year renewal term, among other things.

86. Subsequently, Crossroads responded to the independent auditor's findings on March 10, 2016 which were accepted by DPI on April 27, 2016, resolving the audit for the fiscal year ending June 30, 2014. (Resp. Ex.(s) 48 & 49)

87. On March 24, 2016, DPI sent a letter to Board Chair David Jean, advising that the SBE voted not to renew Petitioner's charter on February 4, 2016. (Pet. Ex. 83)

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. To the extent the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to their given labels.

2. Petitioner has claimed in this action that it is entitled to relief on grounds that the State Board of Education has (a) deprived it of property; (b) ordered it to pay a fine or civil penalty; and (c) otherwise substantially prejudiced its rights.

3. Petitioner has also claimed in this action that the State Board of Education has (a) exceeded its authority or jurisdiction; (b) acted erroneously; (b) failed to use proper procedure; (d) acted arbitrarily or capriciously, and (e) failed to act as requested by law or rule. The Petitioner, Crossroads Charter High School, has the burden of proof by a greater weight or preponderance of the evidence regarding its claims. The Undersigned finds and concludes that Petitioner has failed to carry its burden of proof with respect to any of the claims asserted in the Petition.

4. As an initial matter, Petitioner has no right in a continued charter and a non-renewal of a charter does not implicate a property right. *Board v. Regents v. Roth*, 408 U.S. 564 (1972). Because the Petitioner cannot show that it has a right to a continued charter, it, therefore, cannot prove any deprivation of property rights or that any of its other rights have been substantially prejudiced by the SBE's decision not to renew the school's charter. In addition, Petitioner has not been ordered to pay a fine or civil penalty. Accordingly, Petitioner has not satisfied the first prong of the test for bringing a claim under N.C. Gen. Stat. § 150B-23.

5. Assuming arguendo that Petitioner has stated a claim that the SBE's decision to non-renew the school's charter substantially prejudiced its rights, the Undersigned finds that the Petitioner has failed to carry its burden of proving by a greater weight or preponderance of the evidence that by not renewing the Petitioner's charter, the agency's decision was erroneous in one or more of the ways enumerated in N.C. Gen. Stat. § 150B-23. *Surgical Care Affiliates, LLC v. N.C. Dep't of Health and Human Servs., Div. of Health Serv. Regulation, Certificate of Need Section*, 762 S.E.2d 468, 474-475 (N.C. Ct. App. 2014), *review denied*, 768 S.E.2d 564 (N.C. 2015)

6. In North Carolina the State Board of Education is constitutionally mandated to "supervise and administer the free public school system and the educational funds provided for its support." N.C. Const. art. IX, §5.

7. In accordance with *Painter v. Wake County Bd. of Educ.*, 217 S.E.2d 650, 288 N.C. 165 (1975), absent evidence to the contrary, it will be presumed that “public officials will discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law. Every reasonable intentment will be made in support of the presumption.” See also *Huntley v. Potter*, 122 S.E. 2d 681, 255 N.C. 619 (1961). The burden is upon the party asserting the contrary to overcome the presumption by competent and substantial evidence. “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Rusher v. Tomlinson*, 119 N.C. App. 458, 465, 459 S. E. 2d 285, 289 (1995), *aff’d*, 343 N.C. 119, 468 S.E. 2d 57 (1996); *Comm’r of Ins. v. Fire Ins. Rating Bureau*, 292 N.C. 70, 80, 231 S.E. 2d 882, 888 (1977). “It is more than a scintilla or a permissible inference.” *Lackey v. Dep’t of Human Res.*, 306 N.C. 231, 238, 293 S.E.2d 171, 177 (1982). In weighing evidence which detracts from the agency decision, “[i]f, after all of the record has been reviewed, substantial competent evidence is found which would support the agency ruling, the ruling must stand.” *Little v. Bd. of Dental Exams*, 64 N.C. App. 67, 69, 306 S.E.2d 534, 536 (1983) (citations omitted).

8. N.C. Gen. Stat. § 115C-218.95(a) sets forth the grounds for non-renewal of a charter by the SBE and includes, *inter alia*, the following:

....

- (2) Failure to meet generally accepted standards of fiscal management;
- (3) Violations of law;
- (4) Material violations of any of the conditions, standards, or procedures set forth in the charter; . . .
- (6) Other good causes identified.

9. In this case, the SBE voted to non-renew Petitioner’s charter. The SBE did so based upon many factors, information provided by CSAB and considered by CSAB in its recommendation including enrollment, academics, finances, changes in administration and lack of board governance. The Petitioner’s record in all these areas was extremely weak despite having had 15 years to prove itself a school entitled to a charter and entitled to receive public monies.

10. The obligations that a charter school assumes by accepting an award of a charter is to provide the opportunity for all its students to receive a sound basic education consistent with the mandates and guarantees of the North Carolina Constitution. Likewise, the obligation of the State Board of Education, under the Constitution and laws of the State, is to ensure that every child has the opportunity to receive a sound basic education. *Leandro v. State of North Carolina, et al.*, 346 N.C. 336, 488 S.E. 2d 249 (1997).

11. Consistent with its Constitutional mandate, the SBE must continually monitor charter schools and must hold charter schools to a standard that complies with the Constitutional guarantee. This includes terminating or non-renewing a charter when circumstances indicate the school’s failure to provide academic services. Likewise, the SBE owes a fiduciary obligation to the public and to the taxpayers to ensure the integrity of the financial dealings of the charter school.

12. The CSAB heard from DPI staff and from the school’s representatives on more than one occasion. The CSAB considered all of the evidence before it as well as historical information and the readily available information about the current academic health of the school. Consistent

with its statutory duties, the CSAB determined that the Petitioner was not of a caliber that deserved another charter and recommended to the SBE that the latter not renew the charter.

13. Petitioner argued that Respondent bore some level of responsibility for relying upon audits prepared Ms. Gomes, the auditor retained by Petitioner, and had some level of responsibility to investigate her credentials and apprise Petitioner of those credentials. (Tr. pp. 12-14) The Undersigned finds this argument unpersuasive. Petitioner retained Ms. Gomes's service and as problems arise with her work over the years, Petitioner bore the responsibility of terminating their relationship with her and retaining another auditor.

14. The Undersigned finds that the SBE had grounds, well supported by the evidence before it, not to renew the Petitioner's charter.

15. Petitioner argued throughout this case that Respondent violated the Public Records Law in failing to turn over numerous documents requested pursuant to that law and made a Motion *In Limine* upon it. N.C. Gen. Stat. 132-01 *et seq.* The Undersigned finds this argument without merit. First, the Undersigned finds that it has no jurisdiction over requests made pursuant to the Public Records Law. There are specific remedies provided for that in law which require action by the Superior Court, not this tribunal. (N.C. Gen. Stat. § 132-9) Second, the Petitioner did not file any motion or other documents with this tribunal claiming any violations of the discovery rules, over which matters this tribunal does have jurisdiction. (N.C. Gen. Stat. § 150B-33) Therefore, it is presumed that Respondent has complied with discovery requests in this case. Third, it appears that Respondent has attempted, in good faith, to comply with the public records request and Petitioner has not shown what documents have not been provided and has not shown any prejudicial results from any alleged nonproduction. Fourth, a Motion *In Limine* is a prehearing motion and any claim that opposing counsel has failed to produce requested discovery is properly brought before the commencement of a hearing and the admission of evidence.

16. Petitioner contended at the hearing of this matter that Respondent should not be permitted to present evidence regarding its deficiencies if that evidence was not actually presented to the CSAB and the SBE. Petitioner essentially wants this tribunal to disregard any document that was not before the boards when they decided to non-renew the Petitioner's charter. In essence, Petitioner is claiming that nothing "outside the record" is properly considered in determining the propriety and legality of the SBE's ultimate decision not to renew the school's charter even if it was in the Agency's records but not specifically produced to the SBE for review.

17. Upon Petitioner's objection to this historical evidence at the contested case hearing, the Undersigned informed Petitioner she would limit consideration of the historical evidence as appropriate. This tribunal is charged with determining whether the decision of the agency is legally correct and is also charged with making a final decision. Accordingly, whatever evidence is relevant to the decision in this case is properly considered and will be given appropriate weight. The Undersigned gives the same latitude to both parties in considering evidence and determining the weight to be given.

18. Furthermore, even if the Undersigned were charged with rendering the Final Decision based solely upon the specific evidence that was before the SBE, she finds and concludes

that the decision of the SBE is supported by that evidence standing alone, even disregarding the allegedly historical evidence as presented at the hearing.

19. The Undersigned finds and concludes that the Petitioner has failed to meet its burden to show that the SBE (1) exceeded its authority or jurisdiction; (2) acted erroneously; (3) failed to use proper procedure; (4) acted arbitrarily or capriciously; or (5) failed to act as required by law or rule.

20. “[A]gency action is considered ‘arbitrary and capricious’ only if it indicates a lack of fair and careful consideration and fails ‘to indicate any course of reasoning and the exercise of judgment.’” *Watson v. N.C. Real Estate Comm’n*, 87 N.C. App. 637, 649, 362 S.E.2d 294, 301 (1987) quoting *State ex rel. Comm’r of Ins. v. North Carolina Rate Bureau*, 300 N.C. 381, 420, 269 S.E.2d 547, 573 (1980). Conduct is only arbitrary and capricious when there is no rational basis for a decision, the decision is motivated by bad faith or ill will, or the decision is “whimsical.” *Comm’r of Ins. v. Rate Bureau*, 300 N.C. 381, 420, 269 S.E.2d 547, 573 (1980). This standard is a difficult one to meet. *Teague v. W. Carolina Univ.*, 108 N.C. App. 689, 424 S.E.2d 684 (1993).

21. The Petitioner has failed to overcome the presumption set forth by law that the SBE’s decision not to renew Petitioner’s charter was lawful and correct. As such, the presumption granted by law remains that the SBE did not fail to use proper procedure, or act arbitrarily or capriciously, as alleged in the Petition.

22. The preponderance of the evidence in the record supports the SBE’s decision not to renew Petitioner’s charter to operate a public school in North Carolina. Petitioner has failed to carry the burden of proof assigned to it by law.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following:

DECISION

Petitioner failed to carry its burden of proof by a preponderance of the evidence to show that the Respondent (1) exceeded its authority or jurisdiction; (2) acted erroneously; (3) failed to use proper procedure; (4) acted arbitrarily or capriciously; or (5) failed to act as required by law or rule. Based upon the foregoing, the Undersigned concludes that the State Board of Education’s decision not to renew Petitioner’s charter to operate a charter school should be upheld.

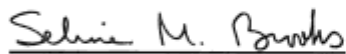
NOTICE

This is a **Final Decision** issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case

which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 13th day of July, 2016.



Selina Malherbe Brooks
Administrative Law Judge