

NORTH CAROLINA REGISTER

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March 1, 2019

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PUBLISHED BY

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

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

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Raleigh, North Carolina 27603

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NORTH CAROLINA REGISTER
Publication Schedule for January 2019 – December 2019

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 th day from publication in the Register
33:13	01/02/19	12/06/18	01/17/19	03/04/19	03/20/19	04/18/19	05/01/19	09/29/19
33:14	01/15/19	12/19/18	01/30/19	03/18/19	03/20/19	04/18/19	05/01/19	10/12/19
33:15	02/01/19	01/10/19	02/16/19	04/02/19	04/22/19	05/16/19	06/01/19	10/29/19
33:16	02/15/19	01/25/19	03/02/19	04/16/19	04/22/19	05/16/19	06/01/19	11/12/19
33:17	03/01/19	02/08/19	03/16/19	04/30/19	05/20/19	06/20/19	07/01/19	11/26/19
33:18	03/15/19	02/22/19	03/30/19	05/14/19	05/20/19	06/20/19	07/01/19	12/10/19
33:19	04/01/19	03/11/19	04/16/19	05/31/19	06/20/19	07/18/19	08/01/19	12/27/19
33:20	04/15/19	03/25/19	04/30/19	06/14/19	06/20/19	07/18/19	08/01/19	01/10/20
33:21	05/01/19	04/09/19	05/16/19	07/01/19	07/22/19	08/15/19	09/01/19	01/26/20
33:22	05/15/19	04/24/19	05/30/19	07/15/19	07/22/19	08/15/19	09/01/19	02/09/20
33:23	06/03/19	05/10/19	06/18/19	08/02/19	08/20/19	09/19/19	10/01/19	02/28/20
33:24	06/17/19	05/24/19	07/02/19	08/16/19	08/20/19	09/19/19	10/01/19	03/13/20
34:01	07/01/19	06/10/19	07/16/19	08/30/19	09/20/19	10/17/19	11/01/19	03/27/20
34:02	07/15/19	06/21/19	07/30/19	09/13/19	09/20/19	10/17/19	11/01/19	04/10/20
34:03	08/01/19	07/11/19	08/16/19	09/30/19	10/21/19	11/21/19	12/01/19	04/27/20
34:04	08/15/19	07/25/19	08/30/19	10/14/19	10/21/19	11/21/19	12/01/19	05/11/20
34:05	09/03/19	08/12/19	09/18/19	11/04/19	11/20/19	12/19/19	01/01/20	05/30/20
34:06	09/16/19	08/23/19	10/01/19	11/15/19	11/20/19	12/19/19	01/01/20	06/12/20
34:07	10/01/19	09/10/19	10/16/19	12/02/19	12/20/19	01/16/20	02/01/20	06/27/20
34:08	10/15/19	09/24/19	10/30/19	12/16/19	12/20/19	01/16/20	02/01/20	07/11/20
34:09	11/01/19	10/11/19	11/16/19	12/31/19	01/21/20	02/20/20	03/01/20	07/28/20
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34:12	12/16/19	11/21/19	12/31/19	02/14/20	02/20/20	03/19/20	04/01/20	09/11/20

This document is prepared by the Office of Administrative Hearings as a public service and is not to be deemed binding or controlling.

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

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 02 – DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES**

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Board of Agriculture intends to readopt with substantive changes the rule cited as 02 NCAC 52B .0207 and readopt without substantive changes the rules cited as 02 NCAC 52B .0213; 52E .0402 and 52G .0303.

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

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncagr.gov/AdministrativeRules/ProposedRules/index.htm>

Proposed Effective Date: July 1, 2019

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than 3/16/19 to Tina Hlabse, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.*

Reason for Proposed Action: *The proposed rules are being readopted after being classified as "necessary with substantive public interest" during the rules review process. Three of the rules are being readopted without any substantive changes to what is currently in the code. The rules being adopted without changes deal with the importation requirements of cervids, which was just amended in 2018, the style and location of brands and the protection of confidential information. Rule 52B .0207 is being amended to update the definition of feral swine, to reduce confusion and to clarify regulations that restricts transporting of feral swine, and to prohibit the importation of sporting swine in order to prevent infectious disease.*

Comments may be submitted to: Tina Hlabse, 1001 Mail Service Center, Raleigh, NC 27699-1001, email tina.hlabse@ncagr.gov

Comment period ends: April 30, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2)

from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

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

CHAPTER 52 – VETERINARY DIVISION

SUBCHAPTER 52B – ANIMAL DISEASE

**SECTION .0200 - ADMISSION OF LIVESTOCK TO
NORTH CAROLINA**

**02 NCAC 52B .0207 IMPORTATION
REQUIREMENTS: SWINE**

(a) All swine imported into the state, except by ~~special permit~~ an interstate commercial swine movement agreement or for immediate slaughter, shall be accompanied by ~~a health certificate~~ an interstate certificate of veterinary inspection issued by a state, federal, or accredited veterinarian stating that they are free from any signs of an infectious or communicable disease and are not known to have been exposed to same. The health certificate shall contain the ear tag or tattoo number of each animal. The health certificate must show the pseudorabies status of both the herd and state or area of origin. Swine imported for feeding or breeding purposes shall be moved in clean and disinfected trucks or other conveyances. "Accredited veterinarian" means a veterinarian accredited pursuant to Title 9, Part 161 of the Code of Federal Regulations.

(b) Breeding swine and all other swine being shipped to a breeding swine premise shall originate from a "Validated Brucellosis-Free" herd or a "Validated Brucellosis-Free" State and shall originate from a "Qualified Pseudorabies-Negative" herd, Qualified-Negative Gene-Altered Vaccinated Herd (QNV) or Pseudorabies Stage IV or V (Free) State. Breeding swine and all other swine being shipped to a breeding swine premise originating from Stage II, II/III or III areas or states must also be

isolated and test negative to a statistical 95/5 sample test using a pseudorabies serological test approved pursuant to Title 9, Part 85.1 of the Code of Federal Regulations between 30 and 60 days after arrival and before being added to the herd.

(c) All feeder swine imported into the state from a Pseudorabies Stage II, II/III, or III state or area shall be accompanied by a permit for entry issued by the State Veterinarian within 30 days prior to entry. The permit number and the date of issuance shall be shown on the health certificate. The feeder swine in the shipment must have been vaccinated for pseudorabies using a USDA-licensed pseudorabies vaccine with gI deletion and must have tested negative on a statistical (95/2) test within 30 days prior to shipment, and they shall be isolated and quarantined until slaughtered. In addition, the swine must be tested on statistical (95/2) test between 30 and 45 days after arrival. The swine must originate from a Qualified Negative herd or a pseudorabies monitored herd that has tested negative on a statistical (95/10) test within 30 days prior to shipment. Feeder swine from a pseudorabies-free state or area may be imported in accordance with Paragraph (a) of this Rule.

(d) Healthy swine for feeding purposes may move directly from a farm of origin in a contiguous state on which they have been located for not less than 30 days to a livestock market or stockyard in North Carolina that has been state-federal approved for handling feeder swine, without the health certificate required herein, provided such swine are accompanied by proof of the pseudorabies status of the herd of origin. Such swine shall be inspected by a state or federal inspector or approved accredited veterinarian prior to sale at the market.

(e) Healthy swine may be shipped into the state for immediate slaughter without a health certificate provided they go directly to a slaughtering establishment under State or Federal inspection, or to a state-federal approved livestock market or stockyard for sale to a slaughtering establishment under State or Federal inspection for immediate slaughter only.

(f) Swine from a pseudorabies-quarantined herd or swine which have been in contact with pseudorabies-quarantined swine may be imported into the state for immediate slaughter only under the following conditions:

- (1) the swine must be accompanied by a shipping permit (Veterinary Services Form 1-27) issued by a veterinarian accredited pursuant to 9 CFR 161, or a state or federal animal health employee, consigning the swine only to a slaughtering establishment under state or federal inspection;
- (2) the vehicle transporting the swine must be sealed after loading with an official USDA or state of origin seal. The seal number must be recorded on the VS Form 1-27. The seal can be broken or removed only by an NCDA&CS or a USDA employee or other individual authorized by the State Veterinarian; and
- (3) the vehicle used to transport the swine must be cleaned and disinfected immediately after unloading the swine and prior to using the vehicle to transport other livestock.

(g) ~~Sporting swine; Feral Swine;~~

- ~~(1) For purposes of this Rule;~~

~~(A) "Sporting swine" means any domestic or feral swine intended for hunting purposes and includes the progeny of these swine whether or not the progeny are intended for hunting purposes; and~~

~~(B) "Feral swine" means any swine that have lived any part of its life free roaming.~~

~~(2) No person shall import sporting swine into North Carolina unless:~~

~~(A) The swine have not been fed garbage within their lifetime; and the herd of origin is validated brucellosis free and qualified pseudorabies negative; and~~

~~(B) The swine have not been members of a herd of swine known to be infected with brucellosis or pseudorabies within the previous 12 months; and~~

~~(C) The individual animals six months of age or over have a negative brucellosis and pseudorabies test within 30 days of movement; and~~

~~(D) The swine have not been a part of a feral swine population or been exposed to swine captured from a feral swine population within the previous 12 months; and~~

~~(E) The swine are accompanied by a health certificate or certificate of veterinary inspection identifying each animal by ear tag, breed, age, sex, the state of origin, and certifying that the swine meet the import requirements of North Carolina.~~

(1) As used in this Section, "feral swine" means any untamed or undomesticated hog, boar, or pig; swine whose reversion from the domesticated state to the wild state is apparent; or an otherwise freely roaming swine having no visible tags, marking, or characteristics indicating that such swine is from a domestic herd. Feral swine includes members of the species *Sus scrofa* Linnaeus, including, but not limited to, swine commonly known as old world swine, Russian wild boar, European wild boar, Eurasian wild boar, and razorbacks. Feral swine does not include members of the species *Sus domestica* which are involved in domestic hog production.

(2) No person shall import or transport live feral swine in this state.

(3) To prevent the spread of contagious animal disease, no person shall release any hog, boar, pig, or swine to live as a feral swine in North Carolina.

Note: Violation of this Rule is a Class 2 misdemeanor under G.S. 106-307.6.

Authority G.S. 106-307.5; 106-316.1; 106-317; 106-318.

**02 NCAC 52B .0213 IMPORTATION
REQUIREMENTS: CERVIDS (NECESSARY WITHOUT
SUBSTANTIVE CHANGES)**

SUBCHAPTER 52E - MARKETING OF LIVESTOCK

SECTION .0400 - LIVESTOCK BRANDING

**02 NCAC 52E .0402 STYLE AND LOCATION OF
BRAND (NECESSARY WITHOUT SUBSTANTIVE
CHANGES)**

SUBCHAPTER 52G - BIOLOGICS

SECTION .0300 - INSPECTION AND RECORD KEEPING

**02 NCAC 52G .0303 PROTECTION OF
CONFIDENTIAL INFORMATION (NECESSARY
WITHOUT SUBSTANTIVE CHANGES)**

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

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the DHHS - Division of Aging and Adult Services intends to readopt with substantive changes the rule cited as 10A NCAC 06Q .0201 and readopt without substantive changes the rule cited as 10A NCAC 06Q .0101.

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

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncdhhs.gov/divisions/daas

Proposed Effective Date: July 1, 2019

Public Hearing:

Date: March 26, 2019

Time: 10:00 a.m.

Location: N.C. Division of Aging and Adult Services, 693 Palmer Drive, Raleigh, NC 27603, Room 301

Reason for Proposed Action: 10A NCAC 06Q .0201 specifies the maximum reimbursement rates for Adult Day Care and Adult Day Health which has not been updated since 1992 and does not reference rate increases in 1997 (S.L. 1997-443), 2004 (S.L. 2004-124), and (S.L. 2006-52) which included \$5.00 increase in the rates in the last two Appropriation Budget Acts. By updating this rule, the rates cited in the appropriation statutes will be equal to the cumulative rates allocated by the General Assembly and equal to those cited in 10A NCAC 06T .0201. In addition, the transportation rate needs to be updated to reflect the rate as cited in 10A NCAC 06T .0201.

Comments may be submitted to: Misty Piekaar-McWilliams, 2101 Mail Service Center, Raleigh, NC 27699-2101, 693 Palmer Drive, Raleigh, NC 27609, phone (919) 855-4980, fax (919) 715-0364, email Misty.Piekaar@dhhs.nc.gov

Comment period ends: April 30, 2019

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

Fiscal impact (check all that apply).

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

CHAPTER 06 - AGING - PROGRAMS OPERATIONS

SUBCHAPTER 06Q - ADULT DAY CARE

SECTION .0100 - SCOPE OF ADULT DAY CARE

**10A NCAC 06Q .0101 ADULT DAY CARE
STANDARDS (READOPTION WITHOUT SUBSTANTIVE
CHANGES)**

SECTION .0200 - REQUIREMENTS

**10A NCAC 06Q .0201 MAXIMUM REIMBURSEMENT
RATES**

(a) The maximum reimbursement rate for adult day care services shall not exceed ~~twenty-one dollars~~ thirty-three dollars and seven cents (\$21.00)(\$33.07) per day ~~and shall not exceed four hundred and fifty-five dollars (\$455.00) per month~~, per client. The maximum rate for adult day health services shall not exceed forty dollars (\$40.00) per day, per client.

(b) The maximum reimbursement rate for transporting an adult day care client to an adult day care center shall not exceed one dollar and ~~four~~ fifty cents ~~(\$1.04)(\$1.50)~~ for a one-way trip. The maximum reimbursement rate for round-trip transportation of an

adult day care client to an adult day care center shall not exceed ~~two three~~ dollars ~~and eight cents (\$2.08)~~(\$3.00) per day, per client, ~~not to exceed forty five dollars (\$45.00) per month.~~ client.

Authority G.S. 143B-181.1(c).

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Social Services Commission intends to readopt with substantive changes the rules cited as 10A NCAC 06R .0201, .0305, .0401, .0403, .0503, .0504, .0506, .0601, .0904; 06S .0301 and readopt without substantive changes the rules cited as 10A NCAC 06R .0101, .0102, .0302, .0304, .0501, .0502, .0508, .0509, .0801, .0802, .0804, .0806, .0902; 06S .0101, .0102, .0203, .0204, .0302, .0402-.0405, .0501, .0508; and 06T .0201.

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

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncdhhs.gov/divisions/daas

Proposed Effective Date: July 1, 2019

Public Hearing:

Date: March 26, 2019

Time: 10:00 a.m.

Location: N.C. Division of Aging and Adult Services, 693 Palmer Drive, Raleigh, NC 27603, Room 301

Reason for Proposed Action: These rules are being modified in response to comments received during the periodic expiration of rules period process. 10A NCAC 06R .0305, 10A NCAC 06R .0401, 10A NCAC 06R .0403, 10A NCAC 06R .0504, 10A NCAC 06R .0601 and 10A NCAC 06R .0904 provide clarity to adult day care certification standards. 10A NCAC 06R .0201 defines direct participant care, first aid kit and governing body for adult day care programs. 10A NCAC 06S .0503 removes a rule reference that had described what should be contained in a first aid kit. 10A NCAC 06R .0506 requires adult day care programs to notify their local departments of social services whether their program will be closing or have a delayed opening due to hazardous weather conditions. 10A NCAC 06S .0301 gives the adult day health programs' treatment rooms the flexibility to have emesis pails or bags. Toilet hats were added to assist the care of the participants. The Social Services Commission met on February 7, 2019 and voted to publish for public comment on the readoption of Aging and Adult Services rules relating to adult day care standards for certification, adult day health standards for certification and state adult day care funding.

Comments may be submitted to: Misty Piekaar-McWilliams, 2101 Mail Service Center, Raleigh, NC 27699-2101, 693 Palmer Drive, Raleigh, NC 27609, phone (919) 855-4980, fax (919) 715-0364, email Misty.Piekaar@dhhs.nc.gov

Comment period ends: April 30, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

Fiscal impact (check all that apply).

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

CHAPTER 06 - AGING - PROGRAMS OPERATIONS

SUBCHAPTER 06R - ADULT DAY CARE STANDARDS FOR CERTIFICATION

SECTION .0100 - INTRODUCTION

10A NCAC 06R .0101 CERTIFICATION REQUIREMENT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 06R .0102 CORRECTIVE ACTION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0200 - DEFINITION OF TERMS

10A NCAC 06R .0201 DEFINITIONS

As used in this Subchapter, unless the context requires otherwise, the following definitions shall apply:

- (1) "Activities of Daily Living (ADL)" means eating; dressing; bathing; toileting; bowel and bladder control; transfers; and ambulation.
- (2) "Adaptable space" means space in a facility that can be used for several purposes with little effort and without sacrificing safety and health standards; for example, an activities room that is used for crafts in the morning, used to serve lunch and used for exercise activities in the afternoon.

- (3) "Adaptable activity" means an activity where participation can be varied from individual, small group, or large group, and can occur seated, standing or lying down.
- (4) "Adult" means an individual 18 years of age or older.
- (5) "Adult Day Care Center" means a day care program operated in a structure other than a single family dwelling.
- (6) "Adult Day Care Home" means a day care program for up to 16 people operated in a single family dwelling where the owner resides.
- (7) "Adult Day Care Program" means the provision of group care and supervision in a place other than their usual place of abode on a less than 24-hour basis to adults who may be physically or mentally disabled. This term is used to refer to adult day care programs, adult day health programs, and adult day care and combined adult day health programs (i.e., combination programs).
- (8) "Alzheimer's Disease" means a progressive, degenerative disease of the brain resulting in impaired memory, thinking and behavior. Characteristic symptoms of the disease include gradual memory loss, impaired judgement, disorientation, personality change, difficulty in learning and loss of language skills.
- (9) "Ambulatory" means a person who is mobile and does not need the continuing help of a person or object for support (except a walking cane).
- (10) "Capacity" means the number of participants for which a day care program is certified.
- (11) "Caretaker" (or "Caregiver") means an adult who regularly provides an impaired adult with continuous supervision, assistance with preparation of meals, assistance with housework and assistance with personal grooming.
- (12) "Certification" means the process whereby an adult day care program is approved as meeting the North Carolina Adult Day Care Rules in 10A NCAC 06.
- (13) "Certifying agency" means the Department of Health and Human Services, Division of Aging and Adult Services.
- (14) "Dementia" means the loss of intellectual functions (such as thinking, remembering, and reasoning) of sufficient severity to interfere with a person's daily functioning. Dementia is not a disease itself but rather a group of symptoms that may accompany certain diseases or conditions. Symptoms may also include changes in personality, mood and behavior.
- (15) "Direct Participant Care" means the opportunity for employees, volunteer(s) and/or substitute(s) of the facility or individuals with whom the facility contracts either directly or
through an agency to physically interact, with, be in the presence of, and/or supervise participants.
- (16) "First Aid Kit" means a collection of first aid supplies (such as bandages, tweezers, scissors, disposable nonporous gloves, adhesive tape, antiseptic, micro shield or face mask, liquid soap, cold pack) for treatment of minor injuries or stabilization of major injuries.
- (17) "Governing Body" means the individual(s), organization, agency, corporation, or other entity that has full legal responsibility for policy, management, administration, operation, and financial liability for the adult day care or adult day health program.
- ~~(15)~~(18) "Group process" means at least three persons engaged in a common activity.
- ~~(16)~~(19) "Institution" means a facility that is established to serve a particular purpose and is required by state law to be provided and maintained by the state and any facility defined in federal regulations as an institution. In North Carolina, the list of institutions includes: general hospitals, state psychiatric hospitals, state centers for the mentally ill, skilled nursing facilities, and intermediate care facilities.
- ~~(17)~~(20) "Instrumental Activities of Daily Living (IADL)" means meal preparation, medication intake, housekeeping, money management, phone use, laundering, reading, shopping, communication such as speaking, writing, signing, gestures, using communication devices and going to necessary activities.
- ~~(18)~~(21) "Medication schedule" means a listing of all medications taken by participants with dosages, route of administration, and times medications are to be taken.
- ~~(19)~~(22) "Mental health disability" means disorders with psychological or behavioral symptoms or impairment in functioning due to a social, psychological, genetic, physical, chemical or biological disturbance.
- ~~(20)~~(23) "Modifiable activity" means an activity that can be simplified and adapted as a participant's abilities decline or improve.
- ~~(21)~~(24) "Non-ambulatory" means a person who is bedfast.
- ~~(22)~~(25) "Nucleus area" means adult day care programs located in a multi-use building and refers to the area not shared by any other programs located in the building but used only by the adult day care program.
- ~~(23)~~(26) "Nursing care" means skilled nursing care or intermediate care.
- ~~(24)~~(27) "On-site" means the area certified for the day care program.
- ~~(25)~~(28) "Owner" means the person who is responsible for management, operation, and financial liability of a day care home or day health home.

- ~~(26)~~(29) "Other special needs disease or condition" means a diagnosis, disease or disability, such as AIDS/HIV, that benefits from monitoring or oversight in a supervised setting.
- ~~(27)~~(30) "Participant" means a person enrolled in an adult day care program.
- ~~(28)~~(31) "Personal care" means tasks that range from assistance with basic personal hygiene and grooming, feeding, and ambulation, to medical monitoring and other health care related tasks.
- ~~(29)~~(32) "Physical therapy program" means a series of activities prescribed by a licensed physical therapist or activities administered under the supervision of a physical therapist.
- ~~(30)~~(33) "Program director" means the person responsible for program planning, development and implementation in a day care program.
- ~~(31)~~(34) "Progress notes" means written reports in the participant's file of staff discussions, conferences, or consultation with family or other interested parties, for the purpose of evaluation of a participant's progress and any other information regarding the participant's situation.
- ~~(32)~~(35) "Related disorders" means dementia or impaired memory characterized by irreversible memory dysfunction.
- ~~(33)~~(36) "Respite care," as a component of adult day care programs, means a service provided to give temporary relief to the family or caregiver. Primarily, respite is provided to families caring for children or adults with disabilities or families caring for frail or disabled older adults.
- ~~(34)~~(37) "Responsible party" means the caretaker with primary day-to-day responsibility for an impaired adult.
- ~~(35)~~(38) "Semi-ambulatory" means a person who needs and uses the assistance of objects such as a wheelchair, crutches, walker, or other appliance or the support of another person on a regular and continuing basis to move about.
- ~~(36)~~(39) "Senior center" means a community or neighborhood facility for the organization and provision of services including health, social, nutritional and educational services and a facility for recreational and group activities for older persons.
- ~~(37)~~(40) "Special care services" means services by a certified adult day care program that promotes itself as providing programming, activities or care specifically designed for persons with Alzheimer's or other dementias, or related disorders, mental health disabilities, or other special needs diseases or conditions.
- ~~(38)~~(41) "Supervising agency" means the county department of social services in the county in which the day care program is located. The county department is responsible for seeing that certification standards are met on an on-going

basis and for making a recommendation to the Division of Aging and Adult Services regarding certification.

Authority G.S. 131D-6; 143B-153; S.L. 1999-334.

SECTION .0300 – ADMINISTRATION

10A NCAC 06R .0302 PROGRAM GOALS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 06R .0304 INSURANCE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 06R .0305 PERSONNEL: CENTERS: HOMES WITH OPERATOR AND STAFF

(a) General Requirements

- (1) The owner of adult day care homes initially certified after January 1, 2003, or homes that make structural building modifications after this date, shall reside in the home.
- (2) Staff positions shall be planned and filled according to the goals of the program and the manpower needed to develop and direct the activities which meet these goals.
- (3) There shall be a statewide criminal history records search of all newly-hired employees of adult day programs for the past five years conducted by an agency approved by the North Carolina Administrative Offices of the Courts.
- (4) There shall be a written job description for each position, full-time or part-time. The job description shall specify qualifications of education and experience; to whom employee is responsible; duties and ~~responsibilities; and salary range.~~ responsibilities.
- (5) References, including ~~former employers,~~ employment verification of former employers, shall be required in recruitment of staff.
- (6) There shall be an established review process for each employee at least annually and following any probationary period.
- (7) There shall be a written plan for orientation and staff development of new employees and volunteers and ongoing development and training of all staff. Documentation of such orientation, staff development and training shall be recorded.
- (8) There shall be a written plan for staff substitutions in case of absences. The plan shall include the coverage of usual responsibilities as well as maintenance of staff/participant ratio. Substitute staff shall have the same qualifications and training as those required by the position and in this Subchapter. Substitutes are not required to have current certified CPR and First Aid training as long as other staff are present with this training at all times. Trained

volunteers may be used instead of paid substitutes.

- (9) Prior to beginning employment, each new employee shall present a written medical statement, completed within the prior 12 months by a physician, nurse practitioner or physician's assistant, certifying that the employee has no illness or health condition that would pose a health risk to others and that the employee can perform the duties assigned in the job.

(b) Personnel Policies

- (1) Personnel policies and their content are the responsibility of each adult day care program. Each program shall state its policies in writing. A copy of this statement of personnel practice shall be given to each employee and shall state the program's policy on the following:

- (A) annual leave,
- (B) educational opportunities,
- (C) pay practices,
- (D) employee benefits,
- (E) grievance procedures,
- (F) performance and evaluation procedures,
- (G) criteria for advancement,
- (H) discharge procedures,
- (I) hiring and firing responsibility,
- (J) use of any probationary period,
- (K) staff participation in reviews of personnel practices,
- (L) maternity leave,
- (M) military leave,
- (N) civil leave (jury duty and court attendance), and
- (O) protection of confidential information.

- (2) All policies developed shall conform to the United States Department of Labor wage and hour regulations.

(c) Staffing Pattern. The staffing pattern shall be dependent upon the enrollment criteria and the particular needs of the participants who are to be served. The ratio of staff to participants shall be adequate to meet the goals and objectives of the program. Whenever regularly scheduled staff are absent, substitutes shall be used to maintain the staff-participant ratio. The minimum ratios shall be as follows:

- (1) **Adult Day Care Homes**
One full-time equivalent staff person with responsibility for direct participant care for each six participants, up to 16 participants total.
- (2) **Adult Day Care Centers**
One full-time equivalent staff person with responsibility for direct participant care for each eight participants.

(d) Program Director

- (1) The program director shall have the authority and responsibility for the management of activities and direction of staff to ensure that

activities and services are provided in accordance with established program policies.

- (2) The program director shall:

- (A) be at least 18 years of age;
- (B) have completed a minimum of two years of post secondary education from an institution accredited by an accrediting agency recognized by the United States Department of Education (including colleges, universities, technical institutes, and correspondence schools) or have a high school diploma or the equivalent and a combination minimum of five years experience and training in services to elderly or adults with disabilities;
- (C) have at least two years of work experience in supervision and administration;
- (D) present prior to employment, a written medical statement, completed within the prior 12 months by a physician, nurse practitioner, or physician's assistant, certifying that the employee has no illness or health condition that would pose a risk to others and that the employee can perform the duties assigned on the job; and
- (E) provide at least three reference letters or the names of individuals who can be contacted, with whom a reference interview can be conducted, including at least one former employer, one of which shall include previous employment verification. The individuals providing reference information shall have knowledge of the applicant program director's background and qualifications.

- (3) In employing a program director, the governing body, agency or owner shall consider whether or not applicants exhibit these characteristics:

- (A) ability to make decisions and set goals;
- (B) knowledge and understanding of the needs of the aging and disabled;
- (C) ability to design and implement a varied, structured program of group and individual activities; and
- (D) managerial and administrative skills - ability to supervise staff and to plan and coordinate staff training.

- (4) The adult day care program shall have a full-time program director or a full-time substitute meeting the requirements as specified in this Paragraph. The program director shall assign authority and responsibility for the management of activities and direction of staff when the program director is not on site.

Authority G.S. 131D-6; 143B-153.

SECTION .0400 - THE FACILITY

10A NCAC 06R .0401 GENERAL REQUIREMENTS

- (a) The facility and grounds of an adult day care program shall be approved by the local environmental health specialist, the local fire safety inspector, the county department of social services, and the North Carolina Division of Aging and Adult Services.
- (b) The facility shall comply with all applicable zoning laws.
- (c) There shall be adaptable spaces, as defined in Rule .0201(2) of this Subchapter, suitable for activities for participants. Spaces shall provide opportunities for participants to get together as a group as well as privacy for quiet times.
- (d) The facility shall provide at least 40 square feet of indoor space for each participant in the portion of the buildings utilized for adult day care programs. This minimum square footage excludes hallways, offices, and restrooms.
- (e) If meals are prepared within the facility, the kitchen shall meet environmental health rules, as defined in 15A NCAC 18A .3300.
- (f) Storage areas must be adequate in size and number for storage of clean linens, dirty linens, cleaning materials, household supplies, food, equipment, and program supplies. A separate locked area for storing poisons, chemicals or other potentially harmful products (cleaning fluids, disinfectants, etc.) shall be provided.
- (g) A minimum of one male and one female toilet shall be located in each facility and accessible in accordance with the North Carolina Accessibility Code, which is hereby incorporated by reference, including any subsequent amendments or additions and can be obtained through the North Carolina Department of Insurance, 1202 Mail Service Center, Raleigh, NC 27699-1202 at a cost of sixty-two dollars and 00/100 (\$62.00). One toilet shall be available for each 12 adults, including staff and participants who utilize the facility. One hand lavatory shall be provided for each two toilets.
- (h) All rugs and floor coverings must be fastened down. Loose throw rugs are not allowed. Floors shall not be slippery.
- (i) A telephone shall be available for participants to make and receive calls. ~~A pay station telephone is not acceptable for local calls.~~
- (j) Unless identified by the Division of Aging and Adult Services as shared space, the area certified for adult day care shall be used for the sole purpose of the adult day care program and its activities during hours of program operation.

Authority G.S. 131D-6; 143B-153.

10A NCAC 06R .0403 EQUIPMENT AND FURNISHINGS

- (a) Adult Day Care facility equipment and furnishings shall meet the needs of participants and staff and enable efficient operation of the program. The facility shall have:
 - (1) at least one sturdy straight back chair or sturdy folding chair for each participant and each staff person, excluding those in wheelchairs or other specialized seating equipment;

- (2) table space adequate for all participants to be served a meal at a table ~~at the same time~~ and for program activities;
- (3) chairs or sofas that allow for position changes, are upholstered or of soft material, and water and stain resistant, so that at least half of the participants can relax and rest at the same time. If all participants take a daily rest period at the same time, the facility shall have enough of such seating for all participants. The seating requirement does not apply if the participant utilizes a wheelchair or other specialized seating equipment; and
- (4) a quiet space or room with a minimum of one bed or cot so that participants can lie down as needed separate from other program activities.

- (b) All equipment and furnishings shall be in good condition and safe for use by all participants and staff of the facility.

Authority G.S. 131D-6; 143B-153.

SECTION .0500 - PROGRAM OPERATION

10A NCAC 06R .0501 PLANNING PROGRAM ACTIVITIES (READOPTED WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 06R .0502 NUTRITION (READOPTED WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 06R .0503 TRANSPORTATION

- (a) For programs providing or arranging for public transportation, the adult day care program shall have a transportation policy that includes routine and emergency procedures. Accidents, medical emergencies, weather emergencies and escort issues shall be addressed.
- (b) When the adult day care program provides transportation, the following requirements shall be met to ensure the health and safety of the participants:
 - (1) Each person transported shall have a seat in the vehicle.
 - (2) Participants shall be transported no more than 30 minutes without being offered the opportunity to have a rest stop.
 - (3) Vehicles used to transport participants shall be equipped with seatbelts. Participants shall be instructed to use seatbelts while being transported.
 - (4) Vehicles shall be equipped with a first aid ~~kit, consisting of the items listed in 10A NCAC 06S .0301 (a);~~ kit and a fire extinguisher.
 - (5) A copy of the transportation policy shall be located in the vehicle used for transport.

Authority G.S. 131D-6; 143B-153.

10A NCAC 06R .0504 EMERGENCIES AND FIRST AID

- (a) A fire safety and evacuation plan, approved by the office of the fire marshal or its designee, shall be prepared and maintained

by each adult day care program in compliance with the North Carolina State Building Code and Fire Prevention Code.

(b) Plan for Emergencies. A written plan for handling emergencies shall be established and displayed prominently in the facility. All staff shall be knowledgeable about the plan. The plan shall:

- (1) relate to medical and non-medical emergencies; and
- (2) ~~specify~~ specify responsibilities of each staff member in an emergency;

Quarterly drills in handling emergencies, such as medical emergencies, natural disasters, fires, and facility security shall be conducted. These drills shall be documented including the date and kind of emergency.

(c) Evacuation Plan. An evacuation plan shall be posted in each room and fire drills shall be conducted quarterly by programs with a fire safety sprinkler system and monthly by programs without a fire safety sprinkler system. A record shall be kept of dates and time required to evacuate the facility.

(d) All physically able staff who ~~have~~ will provide direct ~~participant care~~ contact with participants shall complete certified training in standard first aid and cardio-pulmonary resuscitation (CPR). If a staff member is determined to be physically unable to complete this training, a signature by a licensed physician, physician's assistant or nurse practitioner attesting to such shall be provided indicating the time limit of such physical inability. The first aid and CPR training shall be:

- (1) taught by an instructor certified through the American Heart Association, American Red Cross, National Safety Council, or American Safety and Health ~~Institute, or Emergency Medical Services; Institute;~~
- (2) current, as determined by the organization conducting the training and issuing the certification; and
- (3) documented on an official attendance card issued by the organization certifying the training, or documented by the attendance course roster, in which case the roster shall be signed by the instructor, indicate pass or fail for each student, indicate the length of time the training is valid, and be accompanied by a copy of the instructor's certification.

(e) The program shall arrange for medical assistance to be available in the event of an emergency.

(f) The program shall have a portable basic emergency information file which includes electronic files available on each client that includes:

- (1) hospital preference, physician of record and telephone number;
- (2) emergency contact (family or caregiver);
- (3) insurance information;
- (4) medications and allergies;
- (5) current diagnosis and history; and
- (6) advance directives, if any.

(g) Adult day care staff shall report actions taken in case of sickness and all incidents resulting in physical injury or suspected physical injury, including incidents involving missing participants to the program director. The adult day care staff shall make sure

that all persons needing medical attention receive such attention as soon as possible. The person taking emergency action shall notify the family or responsible party of the participant involved and other program staff shall be notified of emergency action taken as soon as possible. The program director shall compile and keep on record a report of all emergency actions taken. A copy of the report shall be sent to the county department of social services within 72 hours of the incident.

Authority G.S. 131D-6; 143B-153.

10A NCAC 06R .0506 HOURS AND DAYS OF OPERATION

(a) Supervision of adult day program participants and adult day care program services shall be provided throughout all hours participants are present at the program.

(b) The program shall operate for a minimum of six hours.

(c) Day care programs shall provide supervision of participants and program activities at least five days per week, except that a facility may be closed for designated holidays, for hazardous weather conditions, emergency situations, and for vacations and for other reasons as agreed by the director and the county department of social services. ~~vacations. The county department of social services shall be notified of late late openings or early closures may be scheduled~~ on days when hazardous weather conditions exist or when emergency situations arise.

Authority G.S. 131D-6; 143B-153.

10A NCAC 06R .0508 RECORDS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 06R .0509 PROGRAM EVALUATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0600 – CERTIFICATION PROCEDURE

10A NCAC 06R .0601 PROCEDURE

(a) All individuals, groups or organizations operating or wishing to operate an adult day care program as defined by G.S. 131D-6 shall apply for a certificate to the county department of social services in the county where the program is to be operated.

(b) A social worker shall provide technical assistance and shall conduct a study of the program using the State Division of Aging and Adult Services Form DAAS-1500 or DAASS-6205, DAAS-6205.

(c) The county of social services shall submit the initial certification package to the ~~state~~ State Division of Aging and Adult Services. The materials and forms to be included in the package are:

- (1) program policies;
- (2) organizational diagram;
- (3) job descriptions;
- (4) Form 732a-ADS (Daily Rate Sheet) or the equivalent showing planned expenditures and resources available to carry out the program of service for a 12 month period;

- (5) a floor plan of the facility showing measurements, restrooms and planned use of space;
 - (6) Form DOA-1498 (Fire Inspection Report) or the equivalent completed and signed by the local fire inspector, indicating approval of the facility, no more than 30 days prior to submission with the certification package;
 - (7) Form DOA-1499 (Building Inspection Report for Adult Day Care Centers), DOA-1499a (Building Inspection Form for Adult Day Care Homes), or the equivalent completed and signed by the local building inspector indicating approval of the facility, no more than 30 days prior to submission with the certification package;
 - (8) Form DENR-4054 (Sanitation Evaluation Report) or the equivalent completed and signed by a local sanitarian, indicating approval of the facility, no more than 30 days prior to the submission with the certification package;
 - (9) written notice and the effective date if a variance of local zoning ordinances has been made in order for property to be utilized for an adult day care program;
 - (10) a copy of the articles of incorporation, bylaws and names and addresses of board members for adult day care programs sponsored by a non-profit corporation;
 - (11) the name and mailing address of the owner if a proprietary program;
 - (12) a written medical statement from a physician, nurse practitioner or a physician's assistant, completed within the 12 months prior to submission of the certification package, for each proposed staff member certifying absence of a health condition that would pose a risk to others and that the employee can perform the duties normally assigned on the job;
 - (13) verification of standard first aid and cardio-pulmonary resuscitation certification (CPR) for each proposed staff member who is physically able and who will ~~have~~ provide direct participant care, contact with participants. If a staff member is determined to be physically unable to complete this training, a signature by a licensed physician, physician's assistant or nurse practitioner attesting to such shall be provided indicating the time limit of such physical inability. The first aid and CPR training shall be:
 - (A) taught by an instructor certified through the American Heart Association, American Red Cross, National Safety Council, or American Safety and Health Institute, ~~or Emergency Medical Services Institute;~~
 - (B) current, as determined by the organization conducting the training and issuing the certification; and
 - (C) documented on an official attendance card issued by the organization certifying the training, or documented by the attendance course roster, in which case the roster shall be signed by the instructor, indicate pass or fail for each student, indicate the length of time the training is valid and be accompanied by a copy of the instructor's certification;
- (14) evidence of the completion of a statewide criminal history records search for the past five years for the program owner and each proposed staff member having direct contact with participants, conducted by an agency approved by the North Carolina Administrative Offices of the Courts; and
 - (15) DAAS-1500 (Adult Day Care Certification Report). This form must be submitted by the county department of social services with a copy to the program.
- (d) No more than 60 days prior to the end of the current period of certification, the county department of social services shall submit to the State Division of Aging and Adult Services the following forms and materials which make up a certification package for the renewal of a certification.
- (1) Form DOA-1498 (Fire Inspection Report) or the equivalent completed and signed by the local fire inspector, indicating approval of the facility, dated no more than 12 months prior to submission with the certification package;
 - (2) Form DOA-1499 (Building Inspection Report for Adult Day Care Centers), DOA-1499a (Building Inspection Form for Adult Day Care Homes), or the equivalent when structural building modifications have been made during the previous 12 months, completed and signed by the local building inspector indicating approval of the facility, within 30 days following completion of the structural building modifications;
 - (3) Form DENR-4054 (Sanitation Evaluation Report) or the equivalent completed and signed by a local environmental health specialist, indicating approval of the facility, no more than 12 months prior to submission with the certification package;
 - (4) a written medical statement from a physician, nurse practitioner or physician's assistant for each staff member hired subsequent to the previous certification or recertification expiration date, certifying absence of a health condition that would pose a risk to others and that the employee can perform the duties normally assigned on the job;

- (5) an updated copy of the program policies, organizational diagram, job descriptions, names and addresses of board members if applicable, and a floor plan showing measurements, restrooms, and planned use of space, if any changes have been made since the previous certification package was submitted;
- (6) Form 732a-ADS (Daily Rate Sheet) or the equivalent showing planned expenditures and resources available to carry out the program of service for a 12 month period;
- (7) verification of standard first aid and cardio-pulmonary resuscitation certification (CPR) for each proposed staff member who is physically able and who will have provide direct participant care. ~~direct contact with participants.~~ If a staff member is determined to be physically unable to complete this training, a signature by a licensed physician, physician's assistant or nurse practitioner attesting to such shall be provided indicating the time limit of such physical inability. The first aid and CPR training shall be:
 - (A) taught by an instructor certified through the American Heart Association, American Red Cross, National Safety Council, or American Safety and Health Institute ~~or American Safety and Health Institute of Emergency Medical Services; Institute;~~
 - (B) current, as determined by the organization conducting the training and issuing the certification; and
 - (C) documented by an official attendance card issued by the organization certifying the training, or documented by the attendance course roster, in which case the roster shall be signed by the instructor, indicate pass or fail for each student, indicate the length of time the training is valid and be accompanied by the instructor's certification.
- (8) Evidence of the completion of a statewide criminal history records search for the past five years for each staff member hired subsequent to the previous certification or recertification expiration date having direct contact with participants, conducted by an agency approved by the North Carolina Administrative Offices of the Courts; and
- (9) DAAS-1500 (Adult Day Care Certification Report). This form must be submitted with the certification package by the county department of social services to the Division of Aging and Adult Services at least 30 days in advance of the expiration date of the certificate, with a copy to the program.

(e) Following review of the certification package, a pre-certification visit may be made by staff of the State Division of Aging and Adult Services.

(f) Within 14 business days, the State Division of Aging and Adult Services shall provide written notification to the applicant and the county department of social services of the action taken after a review of the certification package and visit, if made.

Authority G.S. 131D-6; 143B-153.

SECTION .0800 - CERTIFICATION INFORMATION

10A NCAC 06R .0801 THE CERTIFICATE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 06R .0802 PROVISIONAL CERTIFICATE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 06R .0804 DENIAL OR REVOCATION OF CERTIFICATE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 06R .0806 PROCEDURE FOR APPEAL (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0900 - SPECIAL CARE FOR PERSONS WITH ALZHEIMER'S DISEASE OR OTHER DEMENTIAS, MENTAL HEALTH DISABILITIES OR OTHER SPECIAL NEEDS DISEASES OR CONDITIONS IN ADULT DAY CARE CENTERS

10A NCAC 06R .0902 POLICIES AND PROCEDURES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 06R .0904 ENROLLMENT – SPECIAL CARE SERVICES

In addition to meeting enrollment policies and procedures requirements in Rule .0501(a) of this Subchapter, an adult day care center or home shall assure the following requirements are met for participants who are enrolled for special care services:

- (1) Disclosure information shall be provided to an individual or the responsible party of an individual seeking enrollment in a center or home providing special care services. The disclosure information shall be written and address policies and procedures listed in Rule .0902 of this Subchapter.
- (2) The participant's medical examination report shall specify a diagnosis, disability or condition consistent with the special care service offered by the program.
- (3) ~~Any individual with a developmental disability being considered for adult day services programming enrollment or discharge must proceed through the Developmental Disabilities Single Portal of Entry and Exit process pursuant to G.S. 122C-132.1 and 10A NCAC 29D .0200.~~

- ~~(4)~~(3) A participant transferring from standard day care services to special care services must meet the criteria for that special care service. Family or responsible persons shall agree to the transfer decision.

Authority G.S. 131D-6; 143B-153; S.L. 1999-334.

**SUBCHAPTER 06S – ADULT DAY HEALTH
STANDARDS FOR CERTIFICATION**

SECTION .0100 - INTRODUCTION AND DEFINITIONS

**10A NCAC 06S .0101 INTRODUCTORY STATEMENT
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 06S .0102 DEFINITIONS (READOPTION
WITHOUT SUBSTANTIVE CHANGES)**

SECTION .0200 - ADMINISTRATION

**10A NCAC 06S .0203 STAFFING PATTERN
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 06S .0204 STAFF REQUIREMENTS
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .0300 - FACILITY REQUIREMENTS FOR
CENTERS AND HOMES**

10A NCAC 06S .0301 REQUIREMENTS

(a) General requirements governing facilities, construction, equipment and furnishings for adult day care as set forth in 10A NCAC 06R .0400 shall apply to adult day health.

(b) Additional facility requirements are as follows:

- (1) Facility space shall be of sufficient dimension and size to allow for required program group activities. Notwithstanding the space requirements of 10A NCAC 06R .0401:
 - (A) day health centers and day health homes shall provide at least 60 square feet of indoor space excluding hallways, offices and restrooms for each participant;
 - (B) combination programs shall provide at least 50 square feet of indoor space excluding hallways, offices and restrooms for each participant; and
 - (C) day health programs or combination programs which share space with other programs or activities in a multi-use facility shall have a nucleus area separate from other activities in the rest of the building and shall have a fire-resistant rated separation according to the North Carolina Building Code. The nucleus area must provide at least 40 square feet of indoor space per participant excluding

hallways, offices and restrooms, and a minimum of 20 square feet per participant must be provided in other space in the facility designated for use by the day health program. When the other space is being used at the same time by individuals participating in other services provided in the multi-use facility, the 20 square feet per participant is in addition to any minimum square footage requirement for other use of such space. Shared facility space outside the nucleus area which may be used by the day health program and counted in meeting the 20 square feet per participant requirement includes craft, therapy and other activity areas. Dining space may be included if also used for activities. Offices, restrooms, hallways, kitchens and shared treatment rooms shall not be counted in meeting the 20 square feet per participant requirement. Participation shall be open only to persons enrolled in the program and to visitors on a planned basis. Involvement of day health participants in other activities in the building shall be on planned basis, as a part of the day health program plan, and supervised by a day health staff member.

- (2) Facilities shall have a minimum of one male and one female accessible toilet in accordance with the North Carolina Accessibility Code. One toilet shall be available for each 12 adults, including staff and participants who utilize the facility. One hand lavatory shall be provided for each two toilets.
- (3) The facility shall have a minimum of one private office for staff use with equipment and furnishings for administrative purposes and for conferences with individual participants and families.
- (4) The facility shall include a treatment room which is enclosed and private from the rest of the facility. The treatment room shall meet the requirements of the North Carolina State Building Code. The treatment room shall have a sink or have a door-way that connects it to a room containing a sink. The room shall contain a treatment table or bed with a waterproof mattress cover that will serve as a treatment table, storage cabinet for first aid and medical supplies and equipment, table or desk and two chairs. The storage cabinet shall be kept locked.
- (5) The treatment room shall provide a means of insuring the privacy of the person on the treatment table.

- (6) The treatment room shall have the following medical supplies and equipment:
- (A) first aid supplies consisting of absorbent compress, adhesive bandages, adhesive tape, antiseptic, burn treatment, medical exam gloves, sterile pads and triangular bandage;
 - (B) fever thermometer;
 - (C) blood pressure cuff;
 - (D) stethoscope;
 - (E) medical scales, or scales that can be calibrated;
 - (F) emesis ~~basin~~; pail or bag;
 - (G) toilet hat;
 - ~~(G)~~(H) bed pan;
 - ~~(H)~~(I) urinal; and
 - ~~(I)~~(J) wash basin.

Authority G.S. 131D-6; 143B-153.

10A NCAC 06S .0302 CONSTRUCTION REQUIREMENTS FOR DAY HEALTH HOMES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0400 - PROGRAM OPERATION

10A NCAC 06S .0402 ADDITIONAL ENROLLMENT AND PARTICIPATION REQUIREMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 06S .0403 HEALTH AND PERSONAL CARE SERVICES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 06S .0404 TRANSPORTATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 06S .0405 EMERGENCIES AND FIRST AID (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0500 - CERTIFICATION INFORMATION

10A NCAC 06S .0501 PROCEDURE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 06S .0508 PROCEDURE FOR APPEAL (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 06T – STATE ADULT DAY CARE FUNDING

SECTION .0200 - STATE ADULT DAY CARE FUND

10A NCAC 06T .0201 NATURE AND PURPOSE OF STATE ADULT DAY CARE FUND (READOPTION WITHOUT SUBSTANTIVE CHANGES)

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Social Services Commission intends to amend the rule cited as 10A NCAC 69 .0304, readopt without substantive changes the rules cited as 10A NCAC 67A .0101, .0103, .0105-.0108, .0201-.0206; 68 .0101-.0108, .0202-.0206, .0208, .0301-.0303; 69 .0101, .0102, .0201-.0205, .0301-.0303, .0305, .0306, .0401-.0406, .0501-.0508, .0601-.0605; 72 .0101, .0102, .0201-.0203, and .0301.

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

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www2.ncdhhs.gov/dss/sscommission/index.htm> and
<https://www.ncdhhs.gov/divisions/social-services/social-services-commission>

Proposed Effective Date: July 1, 2019

Public Hearing:

Date: March 26, 2019

Time: 2:00 p.m.

Location: Division of Social Services 820 S. Boylan Ave, McBryde Building, Raleigh, NC 27603 Room 151

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice):

Reason for Proposed Action: Pursuant to G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. The Social Services Commission met on February 7, 2019 and voted to publish for public comment on the readoption of Social Services rules relating to general administration, rulemaking, confidentiality and access to client records and education assistance. Rules in the chapters have either no changes or minor technical changes. In addition, Rule 10A NCAC 69 .0304 is proposed for amendment to update to include both pronouns in the sentence to him or her.

Comments may be submitted to: Paris Penny, 101 Blair Drive, 2001 Mail Service Center, Raleigh, NC 27699-2001; phone (919) 855-4805; fax (919) 733-7447; email paris.penny@dhhs.nc.gov

Comment period ends: April 30, 2019

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

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

Fiscal impact (check all that apply).

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Substantial economic impact (\geq \$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)

CHAPTER 67 - SOCIAL SERVICES - PROCEDURES

SUBCHAPTER 67A – GENERAL ADMINISTRATION

SECTION .0100 - ADMINISTRATION

10A NCAC 67A .0101 CONTENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 67A .0103 STANDARDS FOR OFFICE SPACE AND FACILITIES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 67A .0105 ADMINISTRATION AND AGENCY COMPLIANCE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 67A .0106 CIVIL RIGHTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 67A .0107 FORMS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 67A .0108 ADVISORY TO COUNTIES REGARDING PETITION OF GARNISHMENT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0200 - HEARING POLICY

10A NCAC 67A .0201 GENERAL (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 67A .0202 EXCEPTIONS FOR NOTIFICATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 67A .0203 GOOD CAUSE FOR DELAYED HEARINGS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 67A .0204 ATTENDANCE AT THE HEARING (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 67A .0205 APPEAL DECISION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 67A .0206 GOOD CAUSE FOR NOT REQUESTING HEARING AND REQUIRED TIME FRAMES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

CHAPTER 68 - SOCIAL SERVICES: RULEMAKING

SECTION .0100 – RULEMAKING: SOCIAL SERVICES COMMISSION

10A NCAC 68 .0101 PETITIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 68 .0102 NOTICE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 68 .0103 HEARING OFFICER (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 68 .0104 HEARINGS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 68 .0105 STATEMENT OF REASONS FOR AND AGAINST RULEMAKING DECISION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 68 .0106 RECORD OF RULEMAKING PROCEEDINGS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 68 .0107 FEES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 68 .0108 DECLARATORY RULINGS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0200 - RULEMAKING: DIVISION DIRECTOR

10A NCAC 68 .0202 NOTICE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 68 .0203 HEARING OFFICER (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 68 .0204 HEARINGS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 68 .0205 JUSTIFICATION OF RULEMAKING DECISION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

**10A NCAC 68 .0206 RECORD OF RULEMAKING
PROCEEDINGS (READOPTION WITHOUT
SUBSTANTIVE CHANGES)**

**10A NCAC 68 .0208 DECLARATORY RULINGS
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

SECTION .0300 – BOARDS OF SOCIAL SERVICES

**10A NCAC 68 .0301 EMPLOYMENT OF RELATIVES
OF COUNTY BOARD MEMBERS (READOPTION
WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 68 .0302 SELECTION OF COUNTY
BOARD MEMBERS BY SOCIAL SERVICES COMM
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 68 .0303 DELEGATION OF AUTHORITY
BY COUNTY BOARDS (READOPTION WITHOUT
SUBSTANTIVE CHANGES)**

**CHAPTER 69 – CONFIDENTIALITY AND ACCESS TO
CLIENT RECORDS**

SECTION .0100 – GENERAL PROVISIONS

**10A NCAC 69 .0101 DEFINITIONS (READOPTION
WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 69 .0102 INFORMATION FROM OTHER
AGENCIES (READOPTION WITHOUT SUBSTANTIVE
CHANGES)**

**SECTION .0200 – SAFEGUARDING CLIENT
INFORMATION**

**10A NCAC 69 .0201 CONFLICT OF LAWS
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 69 .0202 OWNERSHIP OF RECORDS
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 69 .0203 SECURITY OF RECORDS
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 69 .0204 ASSURANCE OF
CONFIDENTIALITY (READOPTION WITHOUT
SUBSTANTIVE CHANGES)**

**10A NCAC 69 .0205 LIABILITY OF PERSONS WITH
ACCESS TO CLIENT INFORMATION (READOPTION
WITHOUT SUBSTANTIVE CHANGES)**

SECTION .0300 - CLIENT ACCESS TO RECORDS

**10A NCAC 69 .0301 RIGHT OF ACCESS
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 69 .0302 PROMPT RESPONSE TO
REQUEST (READOPTION WITHOUT SUBSTANTIVE
CHANGES)**

**10A NCAC 69 .0303 WITHHOLDING
INFORMATION FROM THE CLIENT (READOPTION
WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 69 .0304 PROCEDURES FOR REVIEW
OF RECORDS**

The director or his or her delegated representative shall be present when the client reviews the record. The director or his or her delegated representative must document in the client record the review of the record by the client.

Authority G.S. 108A-80; 143B-153.

**10A NCAC 69 .0305 CONTESTED INFORMATION
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 69 .0306 REVIEW OF RECORD BY
PERSONAL REPRESENTATIVES (READOPTION
WITHOUT SUBSTANTIVE CHANGES)**

SECTION .0400 - RELEASE OF CLIENT INFORMATION

**10A NCAC 69 .0401 PROCEDURE FOR OBTAINING
CONSENT FOR RELEASE OF INFORMATION
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 69 .0402 CONSENT FOR RELEASE OF
INFORMATION (READOPTION WITHOUT
SUBSTANTIVE CHANGES)**

**10A NCAC 69 .0403 PERSONS WHO MAY CONSENT
TO THE RELEASE OF INFORMATION (READOPTION
WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 69 .0404 INFORMED CONSENT
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 69 .0405 PERSONS DESIGNATED TO
RELEASE CLIENT INFORMATION (READOPTION
WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 69 .0406 DOCUMENTATION OF
RELEASE (READOPTION WITHOUT SUBSTANTIVE
CHANGES)**

**SECTION .0500 - DISCLOSURE OF CLIENT
INFORMATION WITHOUT CLIENT CONSENT**

**10A NCAC 69 .0501 DISCLOSURE WITHIN THE
AGENCY (READOPTION WITHOUT SUBSTANTIVE
CHANGES)**

**10A NCAC 69 .0502 DISCLOSURE FOR THE
PURPOSE OF RESEARCH (READOPTION WITHOUT
SUBSTANTIVE CHANGES)**

**10A NCAC 69 .0503 DISCLOSURE FOR PURPOSES
OF ACCOUNTABILITY (READOPTION WITHOUT
SUBSTANTIVE CHANGES)**

**10A NCAC 69 .0504 DISCLOSURE PURSUANT TO
OTHER LAWS (READOPTION WITHOUT
SUBSTANTIVE CHANGES)**

**10A NCAC 69 .0505 DISCLOSURE PURSUANT TO A
COURT ORDER (READOPTION WITHOUT
SUBSTANTIVE CHANGES)**

**10A NCAC 69 .0506 NOTICE TO CLIENT
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 69 .0507 DOCUMENTATION OF
DISCLOSURE (READOPTION WITHOUT
SUBSTANTIVE CHANGES)**

**10A NCAC 69 .0508 PERSONS DESIGNATED TO
DISCLOSE INFORMATION (READOPTION WITHOUT
SUBSTANTIVE CHANGES)**

SECTION .0600 - SERVICE PROVIDERS

**10A NCAC 69 .0601 INFORMATION NEEDS OF
SERVICE PROVIDERS (READOPTION WITHOUT
SUBSTANTIVE CHANGES)**

**10A NCAC 69 .0602 CONTRACT RESTRICTION
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 69 .0603 ASSURANCE OF
CONFIDENTIALITY (READOPTION WITHOUT
SUBSTANTIVE CHANGES)**

**10A NCAC 69 .0604 OWNERSHIP OF RECORDS
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 69 .0605 LIABILITY OF SERVICE
PROVIDERS (READOPTION WITHOUT SUBSTANTIVE
CHANGES)**

CHAPTER 72 – EDUCATIONAL ASSISTANCE

SECTION .0100 - GENERAL

**10A NCAC 72 .0101 SCOPE (READOPTION
WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 72 .0102 DEFINITIONS (READOPTION
WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .0200 - STUDENT ELIGIBILITY FOR
SCHOLARSHIPS, SATISFACTORY PROGRESS
REQUIREMENTS**

**10A NCAC 72 .0201 GENERAL RULE
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 72 .0202 SATISFACTORY PROGRESS
REQUIREMENT (READOPTION WITHOUT
SUBSTANTIVE CHANGES)**

**10A NCAC 72 .0203 LIMITATION OF AWARD
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

SECTION .0300 - APPLICATION

**10A NCAC 72 .0301 SCHOLARSHIP APPLICATION
PROCEDURES (READOPTION WITHOUT
SUBSTANTIVE CHANGES)**

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Justice intends to adopt the rule cited as 12 NCAC 02I .0306 and amend the rule cited as 12 NCAC 02I .0213.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://ncdoj.gov/About-DOJ/Legal-Services>

Proposed Effective Date: *July 1, 2019*

Public Hearing:

Date: *April 30, 2019*

Time: *9:00 a.m.*

Location: *Criminal Justice Education Training and Standards Division, Conference Room, 1700 Tryon Park Drive, Raleigh, NC 27610*

Reason for Proposed Action:

12 NCAC 02I .0306 - This is an adoption of a rule to govern the identification company police officers must show on their vehicles, badges, uniforms, and other identification so that the public may clearly identify them as company police officers and so that all officers and agencies are held to the same standard with regards to identification.

12 NCAC 02I .0213 - This is an amendment to fix a portion of the rule that is no longer applicable.

Comments may be submitted to: *Randy Munn, 1700 Tryon Park Drive, Raleigh, NC 27610, email rmunn@ncdoj.gov*

Comment period ends: *April 30, 2019*

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

Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

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

CHAPTER 02 - OFFICE OF THE ATTORNEY GENERAL

**SUBCHAPTER 02I - COMPANY AND RAILROAD
POLICE**

SECTION .0200 - COMMISSIONING

**12 NCAC 02I .0213 PERIOD OF SUSPENSION,
REVOCATION OR DENIAL**

(a) When the Attorney General, or his or her designee, ~~suspends~~ revokes or denies the commission of a company police officer, the period of sanction shall be permanent when the cause of the sanction is:

- (1) commission or conviction of a felony offense,
or;
- (2) commission or conviction of a criminal offense
for which the authorized punishment includes
imprisonment for up to two years.

(b) When the Attorney General, or his or her designee, suspends, revokes, or denies the commission of a company police officer, the period of sanction shall not be less than three years. However, the Attorney General, or his designee, may either reduce or suspend the period of sanction under 12 NCAC 02I .0212(b) or substitute a period of probation in lieu of suspension of a commission ~~following an administrative hearing,~~ where the cause of sanction is:

- (1) commission or conviction of a crime other than those listed in Paragraph (a) of Rule .0212;
- (2) refusal to submit to the applicant or lateral transferee drug screen required by 12 NCAC 02I .0202(7);
- (3) production of a positive result on a drug screen reported to the Company Police Administrator where the positive result cannot be explained to the Company Police Administrator's satisfaction;

- (4) material misrepresentation of any information required for company police commissioning;
- (5) obtaining, attempting to obtain, aiding another person to obtain, or aiding another person attempting to obtain credit, training or commissioning as a company police officer by any means of false pretense, deception, defraudation, misrepresentation or cheating; or
- (6) failure to make either of the notifications as required by 12 NCAC 02I ~~.0202(8);~~ .0202(8);
or
- (7) commission of any act prohibited by 12 NCAC 02I .0304; or
- (8) termination from the company police agency for which the officer is commissioned; or
- (9) termination of the certification of the company police agency for with the officer is commissioned.

(c) When the Attorney General, or his designee, suspends or denies the commission of a company police officer, the period of sanction shall be continued so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:

- (1) failure to meet or satisfy all basic training requirements;
- (2) failure to meet or maintain the minimum standards of employment specified in 12 NCAC 02I .0202(4);
- (3) discharge from a criminal justice agency for impairment of physical or mental capabilities;
or
- (4) failure to meet the in-service training requirements as prescribed by the North Carolina Criminal Justice Education and Training Standards Commission.

Authority G.S. 74E-4.

**SECTION .0300 - CONDUCT OF COMMISSIONED
POLICEMEN**

**12 NCAC 02I .0306 BADGES, UNIFORMS,
VEHICLES AND OFFICER IDENTIFICATION**

(a) Badges:

- (1) All company police officers shall, when on duty, wear a badge bearing the name of the certified company police agency and the general title of Company Police Officer or the specific title of:
 - (A) Railroad Police officer;
 - (B) Campus Police Officer; or
 - (C) Special Police Officer.
- (2) The badge shall be carried at all times by the company police officer. The badge shall be worn in plain view, except in situations where the officer's weapon is concealed under the

provisions set forth in Rule .0304 of this Section.

(3) No identification card indicating the person is a company police officer shall be issued to or possessed by any company police officer except in the form of identification issued to the officer by the Attorney General.

(4) The Department Head shall ensure that employees who have not been commissioned as company police officers do not wear a badge used by the company police agency.

(b) Uniforms:

(1) All company police officers shall, when on duty, wear the uniform of the company police agency unless directed to wear other attire by the Department Head.

(2) Those company police agencies which employ both company police commissioned and non-commissioned security personnel shall provide the commissioned company police officers with a uniform of a different color that would distinguish the company police officer from other employees of the agency. Furthermore, the Department Head shall ensure that employees who have not been commissioned as company police officers do not wear a uniform identifying them as company police officers.

(3) The uniform of the company police officer shall bear a shoulder patch or some equivalent item containing the following information:

(A) the terms "Railroad Police Officer," "Campus Police Officer," "Special Police Officer," or "Company Police Officer"; and

(B) the name of the company police agency.

(c) Vehicles:

(1) Each marked vehicle used by a company police agency subject to this Rule shall display the agency name and one of the following agency classifications: "Railroad Police," "Campus Police," "Special Police," or "Company Police".

(2) The agency classifications required by Subparagraph (a)(1) of this Rule shall be of uniform size with any other writing on the company police vehicle.

(3) The Department Head shall ensure that employees who have not been commissioned as company police officers do not operate any marked vehicle used by the company police agency.

(4) The Department Head shall ensure that employees who are not commissioned as a company police officer do not operate any company police vehicle with a blue light contained therein.

(5) The Department Head shall ensure that any marked company police agency vehicle is not operated outside of those property jurisdiction

limitations set forth in G.S. 74E-6, unless such operation is performed by an on-duty commissioned company police officer in the performance of his official duties and authorized by the Department Head.

(d) The requirements contained in this Rule shall not apply to those agencies and commissioned officers who are regulated by the Tennessee Valley Authority, United States Nuclear Regulatory Commission, or the Railroad Police Certification Act of 1990.

Authority G.S. 74E-4; 74E-7.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Sheriffs' Education and Training Standards Commission intends to amend the rule cited as 12 NCAC 10B .2005, repeal the rules cited as 12 NCAC 10B .1003, .1203, .1403, and .1603, and readopt without substantive changes the rule cited as 12 NCAC 10B .0302.

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

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Sheriffs-Education-and-Training-Standards/All-Commission-Forms-and-Publications.aspx>

Proposed Effective Date: August 1, 2019

Public Hearing:

Date: April 16, 2019

Time: 10:00 a.m.

Location: 1700 Tryon Park Drive, Raleigh, NC 27610

Reason for Proposed Action:

12 NCAC 10B .0302 - Proposal to readopt without substantive changes.

12 NCAC 10B .2005 – Provides for acceptance of IADLEST approved training for choice in-service topics.

12 NCAC 10B .1003, .1203, .1403, and .1603 – Proposal to repeal these rules relating to the Basic Certificate Program for Law Enforcement, Detention Officers, Reserve Deputy Sheriffs and Telecommunicators. This is a voluntary program which provides no benefit that cannot be realized through an officer's achievement of General Certification.

Comments may be submitted to: Diane N. Konopka, PO Box 629, Raleigh, NC 27602; email dkonopka@ncdoj.gov

Comment period ends: April 30, 2019

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

Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

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

CHAPTER 10 - SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SUBCHAPTER 10B - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION .0300 - MINIMUM STANDARDS FOR EMPLOYMENT AND CERTIFICATION AS A JUSTICE OFFICER

12 NCAC 10B .0302 DOCUMENTATION OF EDUCATIONAL REQUIREMENT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .1000 - PROFESSIONAL CERTIFICATE PROGRAM FOR SHERIFFS AND DEPUTY SHERIFFS

12 NCAC 10B .1003 BASIC LAW ENFORCEMENT CERTIFICATE

~~In addition to the qualifications set forth in Rule .1002, an applicant for the Basic Law Enforcement Certificate shall:~~

- (1) ~~have no less than one year of service; and either~~
- (2) ~~have successfully completed a commission accredited basic law enforcement training course and any remedial training as required by the Commission; or~~
- (3) ~~have completed a minimum of 160 hours of training in the field of law enforcement.~~

Authority G.S. 17E-4.

SECTION .1200 - PROFESSIONAL CERTIFICATE PROGRAM FOR DETENTION OFFICERS

12 NCAC 10B .1203 BASIC DETENTION OFFICER PROFESSIONAL CERTIFICATE

~~In addition to the qualifications set forth in Rule .1202 of this Section, an applicant for the Basic Detention Officer Professional Certificate shall:~~

- (1) ~~have no less than one year of service; and~~
- (2) ~~have completed an accredited Detention Officer Certification Course; or~~
- (3) ~~have completed a minimum of 80 hours of training in the field of jails or corrections.~~

Authority G.S. 17E-4.

SECTION .1400 - PROFESSIONAL CERTIFICATE FOR RESERVE DEPUTY SHERIFFS

12 NCAC 10B .1403 BASIC RESERVE DEPUTY SHERIFF PROFESSIONAL CERTIFICATE

~~In addition to the qualifications set forth in Rule .1402, an applicant for the Basic Reserve Deputy Sheriff Certificate shall have no less than one year of reserve service and have either:~~

- (1) ~~successfully completed a commission accredited basic law enforcement training course and any remedial training as required by the Commission for general certification; or~~
- (2) ~~completed a minimum of 160 hours of training in the field of law enforcement.~~

Authority G.S. 17E.

SECTION .1600 - PROFESSIONAL CERTIFICATE PROGRAM FOR TELECOMMUNICATORS

12 NCAC 10B .1603 BASIC TELECOMMUNICATOR CERTIFICATE

~~In addition to the qualifications set forth in Rule .1602, an applicant for the Basic Telecommunicator Certificate shall have no less than one year of service; and, either:~~

- (1) ~~successfully completed the commission accredited Telecommunicator Certification Course and any remedial training as required by the Commission; or~~
- (2) ~~completed a minimum of 40 hours of training in the field of telecommunications.~~

Authority G.S. 17E-4.

SECTION .2000 - IN-SERVICE TRAINING FOR JUSTICE OFFICERS

12 NCAC 10B .2005 MINIMUM TRAINING REQUIREMENTS

(a) A Sheriff or Department Head may use a lesson plan developed by the North Carolina Justice Academy or a lesson plan for any of the topic areas developed by another entity. The Sheriff or Department Head may also use a lesson plan developed by a certified instructor, provided that the instructor develops the lesson plan in accordance with the Instructional Systems

Development model as taught in Criminal Justice Instructor Training and as described in 12 NCAC 09B .0209. Lesson plans shall be designed to be delivered in hourly increments. A student who completes the training shall receive the number of credits that correspond to the number of hours assigned to the course, regardless of the amount of time the student spends completing the course, where each hour of instruction shall be worth one credit (e.g., "Legal Update" is designed to be delivered in four hours and will yield four credits). With the exception of Firearms Training and Requalification, successful completion of training shall be demonstrated by passing tests as developed by the delivering agency or as written by the North Carolina Justice Academy. A written test comprised of at least five questions per hour of training shall be developed by the delivering agency, or the agency may use the written test developed by the North Carolina Justice Academy, for each in-service training topic. A student shall pass each test by achieving 70 percent correct answers. Firearms Training and Requalification shall be demonstrated qualification with a firearm as set out in Section .2100 of this Subchapter.

(b) Training described in 12 NCAC 10B .2005(a) shall satisfy the in-service training requirement for topic areas of the Sheriffs' or Department Head's choosing; or the Sheriff or Department Head may chose training delivered pursuant to National Certification Programs administered by the International Association of Directors of Law Enforcement Standards and Training (IADLEST) completed during the mandated in-service year to satisfy these topics in part or in whole. It is not required that this IADLEST training be written in the Instructional Systems Design (ISD) format or delivered by a Commission certified instructor.

~~(b)(c)~~ The 2018 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topic areas:

- (1) Legal Update;
- (2) Strategies to Improve Law Enforcement Interactions and Relationships with Minority Youth;
- (3) Equality in Policing;
- (4) Communications Skills With Persons In Crisis – De-escalation Techniques;
- (5) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
- (6) Any topic areas of the Sheriff's choosing.

~~(e)(d)~~ The 2018 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:

- (1) Recognizing Warning Signs and Strategies Associated with Mental Illness;
- (2) Equality in Detention Practices;
- (3) Communications Skills With Persons In Crisis – De-escalation Techniques;
- (4) Career Survival; and
- (5) Any topic areas of the Sheriff's or Department Head's choosing.

~~(4)(e)~~ The 2018 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:

- (1) Communications Center Trainer;

- (2) Equality in Policing;
- (3) Communications Skills With Persons In Crisis – De-escalation Techniques; and
- (4) Any topic areas of the Sheriff's or Department Head's choosing.

~~(e)(f)~~ The 2019 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topic areas:

- (1) Legal Update;
- (2) Juvenile Law Update;
- (3) Individual Wellness: Coping with Stress and PTSD;
- (4) Best Practices for Officers During Community Dissent;
- (5) Law Enforcement Intelligence Update: Gangs and Divisive Groups;
- (6) Domestic Violence: Law and Procedure Update;
- (7) Opioid Awareness and Response;
- (8) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
- (9) Any topic areas of the Sheriff's choosing.

~~(f)(g)~~ The 2019 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:

- (1) Detention Officer Legal Update;
- (2) Detention Intelligence Update: Gangs and Divisive Groups;
- (3) Individual Wellness: Coping with Stress and PTSD;
- (4) Inmate Suicide Prevention;
- (5) Opioid Awareness and Response; and
- (6) Any topic areas of the Sheriff's or Department Head's choosing.

~~(g)(h)~~ The 2019 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:

- (1) Individual Wellness: Coping with Stress and PTSD;
- (2) Civil Liability for Telecommunicators;
- (3) Human Fatigue in Shift Work; Strategies for Improving Performance;
- (4) Handling Difficult Callers; and
- (5) Any topic areas of the Sheriff's or Department Head's choosing.

Authority G.S. 17E-4; 17E-7.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 32 – MEDICAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the Medical Board intends to adopt the rules cited as 21 NCAC 32B .1706; 32N .0114; 32W .0116, and amend the rules cited as 21 NCAC 32B .1303, .1350, .1502, .2001; 32N .0110; and 32S .0219.

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncmedboard.org/about_the_board/rule_changes

Proposed Effective Date: July 1, 2019

Public Hearing:

Date: March 26, 2019

Time: 10:00 a.m.

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

Reason for Proposed Action:

21 NCAC 32B .1303 and .1350 – These amendments add the American Board of Oral and Maxillofacial Surgery (ABOMS) as a physician certification to satisfy the 3-attempt limit for passing USMLE and removed the requirements that are no longer applicable.

21 NCAC 32B .2001 – This amendment adds the American Board of Oral and Maxillofacial Surgery (ABOMS) as a physician certification to satisfy the 3-attempt limit for passing USMLE; removed the requirements that are no longer applicable; and amendments to clarify the rule.

21 NCAC 32B .1502 – This amendment updates and clarifies who is entitled to a Medical School Faculty license

21 NCAC 32B .1706; 32S .0219; and 32W .0116 – These adoptions and amendment will allow for an expeditious influx of needed physicians, physician assistants and Anesthesiologist Assistants to the state in the event of a disaster.

21 NCAC 32N .0114 - The proposed rule is to outline the process for the summary suspension of a license.

21 NCAC 32N .0110 – This amendment allows that dispositive motions shall be heard by a quorum of the Board and shall be made at least 14 days prior to the hearing of the matter.

Comments may be submitted to: Wanda Long, NC Medical Board, P.O. Box 20007, Raleigh, NC 27619; email rules@ncmedboard.org

Comment period ends: April 30, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

Fiscal impact (check all that apply).

☐ State funds affected

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

CHAPTER 32 - NORTH CAROLINA MEDICAL BOARD

**SUBCHAPTER 32B – LICENSE TO PRACTICE
 MEDICINE**

SECTION .1300 - GENERAL

**21 NCAC 32B .1303 APPLICATION FOR PHYSICIAN
 LICENSE**

(a) In order to obtain a ~~Physician License~~, physician license, an applicant shall:

- (1) submit a completed application, attesting under oath or affirmation that the information on the application is true and complete and authorizing the release to the Board of all information pertaining to the application;
- (2) submit a photograph, two inches by two inches, affixed to the oath or affirmation which has been attested to by a notary public;
- (3) submit documentation of a legal name change, if applicable;
- (4) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired US passport. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States;
- (5) submit proof on the Board's Medical Education Certification form that the applicant has completed at least 130 weeks of medical education and received a medical degree. However, the Board shall waive the 130 week requirement if the applicant has been certified or recertified by an ABMS, CCFP, FRCP, FRCS or AOA approved specialty board within the past 10 years;
- (6) for an applicant who has graduated from a medical or osteopathic school approved by the LCME, the CACMS or COCA, meet the requirements set forth in G.S. 90-9.1;
- (7) for an applicant graduating from a medical school not approved by the LCME, meet the requirements set forth in G.S. 90-9.2;
- (8) provide proof of passage of an examination testing general medical knowledge. In addition to the examinations set forth in G.S. 90-10.1 (a state board licensing examination; NBME; USMLE; FLEX, or their successors), the Board

- accepts the following examinations (or their successors) for licensure:
- (A) COMLEX,
 - (B) NBOME, and
 - (C) MCCQE;
- (9) submit proof that the applicant has completed graduate medical education as required by G.S. 90-9.1 or 90-9.2, as follows:
- (A) A graduate of a medical school approved by LCME, CACMS or COCA shall have satisfactorily completed at least one year of graduate medical education approved by ACGME, CFPC, RCPSC or AOA.
 - (B) A graduate of a medical school not approved by LCME shall have satisfactorily completed three years of graduate medical education approved by ACGME, CFPC, RCPSC or AOA.
 - (C) An applicant may satisfy the graduate medical education requirements of Parts (A) or (B) of this Subparagraph by showing proof of current certification by a specialty board recognized by the ABMS, CCFP, FRCP, FRCS or AOA;
- (10) submit a FCVS profile:
- (A) If the applicant is a graduate of a medical school approved by LCME, CACMS or COCA, and the applicant previously has completed a FCVS profile; or
 - (B) If the applicant is a graduate of a medical school other than those approved by LCME, COCA or CACMS;
- (11) if a graduate of a medical school other than those approved by LCME, AOA, COCA or CACMS, furnish an original ECFMG certification status report of a currently valid certification of the ECFMG. The ECFMG certification status report requirement shall be waived if:
- (A) the applicant has passed the ECFMG examination and successfully completed an approved Fifth Pathway program (original ECFMG score transcript from the ECFMG required); or
 - (B) the applicant has been licensed in another state on the basis of a written examination before the establishment of the ECFMG in 1958;
- (12) submit an AMA Physician Profile and, if applicant is an osteopathic physician, also submit an AOA Physician Profile;
- (13) if applying on the basis of the USMLE, submit:
- (A) a transcript from the FSMB showing a score on USMLE Step 1, both portions of Step 2 (clinical knowledge and clinical skills) and Step 3; and
 - (B) proof that the applicant has passed each step within three attempts. However, the Board shall waive the three attempt requirement if the applicant has been certified or recertified by an ABMS, CCFP, FRCP, ~~FRCS~~ or FRCS, AOA or ABOMS approved specialty board within the past 10 years;
- (14) if applying on the basis of COMLEX, submit:
- (A) a transcript from the NBOME showing a score on COMLEX Level 1, both portions of Level 2 (cognitive evaluation and performance evaluation) and Level 3; and
 - (B) proof that the applicant has passed COMLEX within three attempts. However, the Board shall waive the three attempt requirement if the applicant has been certified or recertified by an ABMS, CCFP, FRCP, ~~FRCS~~ or FRCS, AOA or ABOMS approved specialty board within the past 10 years;
- (15) if applying on the basis of any other board-approved examination, submit a transcript showing a passing score;
- ~~(16) submit a NPDB / HIPDB report, dated within 60 days of submission of the application;~~
- ~~(17) submit a FSMB Board Action Data Report;~~
- ~~(18)(16)~~ submit two completed fingerprint record cards supplied by the Board;
- ~~(19)(17)~~ submit a signed consent form allowing a search of local, state, and national files for any criminal record;
- ~~(20)(18)~~ provide two original references from persons with no family or marital relationship to the applicant. These references must be:
- (A) from physicians who have observed the applicant's work in a clinical environment within the past three years;
 - (B) on forms supplied by the Board;
 - (C) dated within six months of the submission of the application; and
 - (D) bearing the original signature of the writer;
- ~~(24)(19)~~ pay to the Board a non-refundable fee pursuant to G.S. 90-13.1(a), plus the cost of a criminal background check; and
- ~~(22)(20)~~ upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.
- (b) In addition to the requirements of Paragraph (a) of this Rule, the applicant shall submit proof that the applicant has:
- (1) within the past 10 years taken and passed either:

- (A) an exam listed in G.S. 90-10.1 (a state board licensing examination; NBOME; USMLE; COMLEX; or MCCQE or their successors);
- (B) SPEX (with a score of 75 or higher); or
- (C) COMVEX (with a score of 75 or higher);
- (2) within the past 10 years:
 - (A) obtained certification or recertification or CAQ by a specialty board recognized by the ABMS, CCFP, FRCP, ~~FRCS or AOA~~, FRCS, AOA or ABOMS; or
 - (B) met requirements for ABMS MOC (maintenance of certification) or AOA OCC (Osteopathic continuous certification);
- (3) within the past 10 years completed GME approved by ACGME, CFPC, RCPSC or AOA; or
- (4) within the past three years completed CME as required by 21 NCAC 32R .0101(a), .0101(b), and .0102.

(c) All reports must be submitted directly to the Board from the primary source, when possible.

(d) An applicant shall appear in person for an interview with the Board or its agent, if the Board needs more information to complete the application.

(e) An application must be completed within one year of submission. If not, the applicant shall be charged another application fee, plus the cost of another criminal background check.

Authority G.S. 90-8.1; 90-9.1; 90-9.2; 90-13.1.

21 NCAC 32B .1350 REINSTATEMENT OF PHYSICIAN LICENSE

(a) "Reinstatement" is for a physician who has held a North Carolina License, but whose license either has been inactive for more than one year, or whose license became inactive as a result of disciplinary action (revocation or suspension) taken by the Board. It also applies to a physician who has surrendered a license prior to charges being filed by the Board.

(b) All applicants for reinstatement shall:

- (1) submit a completed application which can be found on the Board's website in the application section at <http://www.ncmedboard.org/licensing>, attesting under oath or affirmation that information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit documentation of a legal name change, if applicable;
- (3) supply a certified copy of the applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and

unexpired U.S. passport. If the applicant does not possess proof of U.S. citizenship, the applicant shall provide information about the applicant's immigration and work status which the Board shall use to verify the applicant's ability to work lawfully in the United States. Applicants who are not present in the U.S. and who do not plan to practice physically in the US shall submit a written statement to that effect.

- (4) furnish an original ECFMG certification status report of a currently valid certification of the ECFMG if the applicant is a graduate of a medical school other than those approved by LCME, AOA, COCA, or CACMS. The ECFMG certification status report requirement shall be waived if:
 - (A) the applicant has passed the ECFMG examination and successfully completed an approved Fifth Pathway program (original ECFMG score transcript from the ECFMG required); or
 - (B) the applicant has been licensed in another state on the basis of a written examination before the establishment of the ECFMG in 1958;

- (5) submit the AMA Physician Profile; and, if the applicant is an osteopathic physician, also submit the AOA Physician Profile;
- ~~(6) submit a NPDB/HIPDB report dated within 60 days of the application's submission;~~
- ~~(7) submit a FSMB Board Action Data Bank report;~~
- ~~(8)(6)~~ submit documentation of CME obtained in the last three years, upon request;
- ~~(9)(7)~~ submit two completed fingerprint cards supplied by the Board;
- ~~(10)(8)~~ submit a signed consent form allowing a search of local, state, and national files to disclose any criminal record;
- ~~(11)(9)~~ provide two original references from persons with no family or material relationship to the applicant. These references shall be:
 - (A) from physicians who have observed the applicant's work in a clinical environment within the past three years;
 - (B) on forms supplied by the Board;
 - (C) dated within six months of submission of the application; and
 - (D) bearing the original signature of the author;

- ~~(12)(10)~~ pay to the Board a non-refundable fee pursuant to G.S. 90-13.1(a), plus the cost of a criminal background check; and
- ~~(13)(11)~~ upon request, supply any additional information the Board deems necessary to evaluate the applicant's qualifications.

(c) In addition to the requirements of Paragraph (b) of this Rule, the applicant shall submit proof that the applicant has:

- (1) within the past 10 years taken and passed either:
 - (A) an exam listed in G.S. 90-10.1 (a state board licensing examination; NBME; NBOME; USMLE; FLEX; COMLEX; or MCCQE or their successors);
 - (B) SPEX (with a score of 75 or higher); or
 - (C) COMVEX (with a score of 75 or higher);
- (2) within the past ten years:
 - (A) obtained certification or recertification of CAQ by a specialty board recognized by the ABMS, CCFP, FRCP, ~~FRCS~~ or AOA; FRCS, AOA or ABOMS; or
 - (B) met requirements for ABMS MOC (maintenance or certification) or AOA OCC (Osteopathic continuous Certification);
- (3) within the past 10 years completed GME approved by ACGME, CFPC, RCPSC or AOA; or
- (4) within the past three years completed CME as required by 21 NCAC 32R .0101(a), .0101(b), and .0102.

(d) All reports shall be submitted directly to the Board from the primary source, when possible. If a primary source verification is not possible, then a third party verification shall be submitted.

(e) An applicant shall be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character if the Board needs more information to complete the application.

(f) An application must be complete within one year of submission. If not, the applicant shall be charged another application fee plus the cost of another criminal background check.

(g) Notwithstanding the above provisions of this Rule, the licensure requirements established by rule at the time the applicant first received his or her equivalent North Carolina license shall apply. Information about these Rules is available from the Board.

Authority G.S. 90-8.1; 90-9.1; 90-10.1; 90-13.1.

SECTION .1500 – FACULTY LICENSE

21 NCAC 32B .1502 APPLICATION FOR MEDICAL SCHOOL FACULTY LICENSE

(a) The Medical School Faculty License is limited to physicians who have expertise which can be used to help educate North Carolina medical students, post-graduate residents and fellows but who do not meet the requirements for Physician licensure.

(b) In order to obtain a Medical School Faculty License, an applicant shall:

- (1) submit a completed application, attesting under oath or affirmation that the information on the

application is true and complete, and authorizing the release to the Board of all information pertaining to the application;

- (2) submit the Board's form, signed by the Dean or ~~his~~ the Dean's appointed representative, indicating that the applicant has received a full-time paid appointment as either a ~~an~~ instructor, lecturer, assistant professor, associate professor, or full professor at a medical school in the state of North Carolina;
- (3) submit documentation of a legal name change, if applicable;
- (4) submit a photograph, two inches by two inches, affixed to the oath or affirmation which has been attested to by a notary public;
- (5) submit proof on the Board's Medical Education Certification form that the applicant has completed at least 130 weeks of medical education. However, the Board shall waive the 130 week requirement if the applicant has been certified or recertified by an ABMS, ~~DDFP~~, AOA, FRCP, FRCS or AOA approved specialty board within the past 10 years;
- (6) supply a certified copy of applicant's birth certificate or a certified copy of a valid and unexpired US passport if the applicant was born in the United States. If the applicant does not possess proof of US citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ~~ability to work lawfully~~ lawful presence in the United States;
- (7) submit proof of satisfactory completion of at least one year of GME approved by ACGME, CFPC, RCPSC, or AOA; or evidence of other education, training or experience, determined by the Board to be equivalent;
- (8) submit reports from all medical or osteopathic boards from which the applicant has ever held a medical or osteopathic license, indicating the status of the applicant's license and whether or not any action has been taken against the license;
- (9) submit an AMA Physician Profile; and, if applicant is an osteopathic physician, submit an AOA Physician Profile;
- (10) submit a NPDB ~~report~~, ~~HIPDB report~~, report dated within 60 days of applicant's oath;
- (11) submit a FSMB Board Action Data Bank report;
- (12) submit two completed fingerprint record cards supplied by the Board;
- (13) submit a signed consent form allowing a search of local, state, and national files to disclose any criminal record;
- (14) provide two original ~~references~~ reference letters from persons with no family or marital relationship to the applicant. These letters must be:

- (A) from physicians who have observed the applicant's work in a clinical environment within the past three years;
 - (B) on forms supplied by the Board;
 - (C) dated within six months of the applicant's oath; and
 - (D) bearing the original signature of the writer.
- (15) pay to the Board a non-refundable fee pursuant to G.S. 90-13.1(a), plus the cost of a criminal background check; and
- (16) upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.

(c) All reports must be submitted directly to the Board from the primary source, when possible.

(d) An applicant may be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character.

(e) An application must be completed within one year of the date of the applicant's oath.

(f) This Rule applies to licenses granted after the effective date of this Rule.

Authority G.S. 90-12.3; 90-13.2.

SECTION .1700 – OTHER LICENSES

21 NCAC 32B .1706 PHYSICIAN PRACTICE AND LIMITED LICENSE FOR DISASTERS AND EMERGENCIES

(a) The Board shall, pursuant to G.S. 90-12.5, waive requirements for licensure except to the extent set forth in this Rule and after the Governor of the State of North Carolina has declared a disaster or state of emergency, or in the event of an occurrence for which a county or municipality has declared a state of emergency, or to protect the public health, safety or welfare of its citizens under G.S. 130A, Article 22. There are two ways for physicians to practice under this Rule:

- (1) Hospital to Hospital Credentialing: A physician who holds a full, unlimited and unrestricted license to practice medicine in another U.S. state, territory or district and has unrestricted hospital credentials and privileges in any U.S. state, territory or district may come to North Carolina and practice medicine at a hospital that is licensed by the North Carolina Department of Health and Human Services upon the following terms and conditions:
 - (A) the licensed North Carolina hospital shall verify all physician credentials and privileges;
 - (B) the licensed North Carolina hospital shall keep a list of all physicians coming to practice and shall provide this list to the Board within 10 days of each physician practicing at the

licensed North Carolina hospital. The licensed North Carolina hospital shall also provide the Board a list of when each physician has stopped practicing medicine in North Carolina under this Rule within 10 days after each physician has stopped practicing medicine under this Rule;

- (C) all physicians practicing under this Rule shall be authorized to practice medicine in North Carolina and shall be deemed to be licensed to practice medicine in the State of North Carolina and the Board shall have jurisdiction over all physicians practicing under this Rule for all purposes set forth in or related to G.S. 90, Article 1, and such jurisdiction shall continue in effect even after any and all physicians have stopped practicing medicine under this Rule;
- (D) a physician may practice under this Rule for the shorter of:

- (i) 30 days from the date the physician has started practicing under this Rule; or
- (ii) a statement by an appropriate authority is made that the emergency or disaster declaration has been withdrawn or ended and, at such time, the license deemed to be issued shall become inactive; and

- (E) physicians practicing under this Rule shall not receive any compensation outside of their usual compensation for the provision of medical services during a disaster or emergency.

- (2) Limited Emergency License: A physician who holds a full, unlimited and unrestricted license to practice medicine in another U.S. state, territory or district may apply for a limited emergency license on the following conditions:

- (A) the applicant must complete a limited emergency license application;
- (B) the Board shall verify that the physician holds a full, unlimited and unrestricted license to practice medicine in another U.S. state, territory or district;
- (C) in response to the specific circumstances presented by a declared disaster or state of emergency and in order to best serve the public interest, the Board may limit the physician's scope of practice;

- (D) the Board shall have jurisdiction over all physicians practicing under this Rule for all purposes set forth in or related to G.S. 90, Article 1, and such jurisdiction shall continue in effect even after such physician has stopped practicing medicine under this Rule or the Limited Emergency License has expired;
- (E) this license shall be in effect for the shorter of:
- (i) 30 days from the date it is issued; or
 - (ii) a statement by an appropriate authority is made that the emergency or disaster declaration has been withdrawn or ended and, at such time, the license issued shall become inactive; and
- (F) physicians holding limited emergency licenses shall not receive any compensation outside of their usual compensation for the provision of medical services during a disaster or emergency.

Authority G.S. 90-12.5; 90-13.2(e); 90-14(a); 166A-45.

SECTION .2000 – EXPEDITED APPLICATION FOR PHYSICIAN LICENSE

21 NCAC 32B .2001 EXPEDITED APPLICATION FOR PHYSICIAN LICENSE

(a) ~~A specialty board certified physician who has been licensed in at least one other state, the District of Columbia, U.S. territory or Canadian province for at least five years, has been in active clinical practice the past two years; and who has a clean license application, as defined in Paragraph (c) of this Rule may apply for a license on an expedited basis. A physician who meets the qualifications listed in this Rule may apply for a license on an expedited basis.~~

(b) An applicant for an expedited Physician License shall:

- (1) complete the Board's application form, attesting under oath or affirmation that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit documentation of a legal name change, if applicable;
- (3) on the Board's form, submit a photograph taken within the past year, two inches by two inches, attested to or affirmed by the applicant as a true likeness of the applicant before a notary public;
- (4) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired US passport. If the applicant does not possess proof of U.S. citizenship, the applicant

must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States; ~~States. Applicants who are not present in the U.S. and who do not plan to practice physically in the U.S. shall submit a statement to that effect;~~

~~(Note: there may be some applicants who are not present in the U.S. and who do not plan to practice physically in the U.S. Those applicants shall submit a statement to that effect);~~

- (5) provide proof that applicant has held an active unrestricted license to practice medicine in at least one other state, the District of Columbia, U.S. Territory or Canadian province continuously for at least a minimum of five years immediately preceding this application;
- (6) provide proof of clinical practice providing patient care for an average of 20 hours or more per week, for at least the last two years;
- (7) provide proof of:

- (A) current certification or current recertification by an ABMS, CCFP, FRCP, FRCS, ~~or AOA~~ AOA, or ABOMS approved specialty board obtained within the past 10 years; or
- (B) obtained certification or recertification of CAQ by a specialty board recognized by the ABMS, CCFP, FRCP, FRCS or AOA; or
- (C) met requirements for ABMS MOC (maintenance of certification) or AOA OCC (Osteopathic continuous ~~Certification~~); certification;

(8) if the applicant is a graduate of a medical school other than those approved by LCME, AOA, COCA or CACMS, the applicant shall furnish an original ECFMG certification status report of a currently valid certification of the ECFMG. The ECFMG certification status report requirement shall be waived if the applicant has passed the ECH+FMG examination and successfully completed an approved Fifth Pathway program (original ECFMG score transcript from the ECFMG required).

- ~~(8)~~(9) submit an AMA Physician Profile; and, if applicant is an osteopathic physician submit an AOA Physician Profile;
- ~~(9)~~ submit a NPDB/HIPDB report dated within 60 days of the applicant's oath;
- ~~(10)~~ submit a FSMB Board Action Data Bank report;
- ~~(11)~~(10) submit two completed fingerprint record cards supplied by the Board;
- ~~(12)~~(11) submit a signed consent form allowing a search of local, state and national files to disclose any criminal record;
- ~~(13)~~(12) pay to the Board a non-refundable fee pursuant to G.S. 90-13.1(a) ~~of three hundred fifty dollars~~

~~(\$350.00),~~ plus the cost of a criminal background check; and

~~(14)(13)~~ upon request, supply any additional information the Board deems necessary to evaluate the applicant's qualifications.

(c) A ~~clean~~ physician applying for an expedited license application means that the physician has none of the following:

- (1) not have any professional liability insurance claim(s) or ~~payment(s); payments(s) within the past 10 years;~~
- (2) not have any criminal ~~record;~~ conviction;
- (3) not have any medical condition(s) which could affect the physician's ability to practice safely;
- (4) not have any regulatory board complaint(s), investigation(s), or action(s)(including applicant's withdrawal of a license ~~application;~~ application) within the past 10 years;
- (5) not have any adverse ~~action~~ action(s) taken by a health care ~~institution;~~ institution within the past 10 years;
- (6) not have any adverse ~~investigation(s) or~~ investigation(s) taken by a federal agency, the U.S. military, medical societies or ~~associations;~~ associations; within the past 10 years;
- (7) suspension or expulsion from any school, including medical school.
- (8) graduation from any United States or Canadian medical school that is not LCME or CACMS approved; or
- (9) has passed no licensing examination other than Puerto Rico Written Examination/Revalida.
- (7) have passed an examination testing general medical knowledge. In addition to the examinations set forth in G.S. 90-10.1 (a state board licensing examination: NBME; USMLE; FLEX or their successors). The Board accepts the following examinations (or their successors) for licensure:
 - (A) COMLEX;
 - (B) NBOME; and
 - (C) MCCQE.

(d) All reports must be submitted directly to the Board from the primary source, when possible.

~~(e) The application process must be completed within one year of the date on which the application fee is paid. If not, the applicant shall be charged a new applicant fee.~~

Authority G.S. 90-9.1; 90-5; 90-11; 90-13.1.

SUBCHAPTER 32N - FORMAL AND INFORMAL PROCEEDINGS

21 NCAC 32N .0110 INITIATION OF DISCIPLINARY HEARINGS

(a) The Board shall issue a Notice of Charges and Allegations only upon completion of an investigation, a finding by the Board or a committee of the Board that there exists a factual and legal

basis for an action pursuant to any subsection of G.S. 90-14(a), and a pre-charge conference, if one was requested by the licensee.

(b) Disciplinary proceedings shall be initiated and conducted pursuant to G.S. 90-14 through G.S. 90-14.7 and G.S. 150B-38 through G.S. 150B-42.

(c) A pre-hearing conference shall be held not less than seven days before the hearing date unless waived by the Board President or designated presiding officer upon written request by either party. The purpose of the conference will be to simplify the issues to be determined, obtain stipulations in regards to testimony or exhibits, obtain stipulations of agreement on undisputed facts or the application of particular laws, consider the proposed witnesses for each party, identify and exchange documentary evidence intended to be introduced at the hearing, and consider such other matters that may be necessary or advisable for the efficient and expeditious conduct of the hearing.

(d) The pre-hearing conference shall be conducted in the offices of the Medical Board, unless another site is designated by mutual agreement of all parties; however, when a face-to-face conference is impractical, the Board President or designated presiding officer may order the pre-hearing conference be conducted by telephone conference.

(e) The pre-hearing conference shall be an informal proceeding and shall be conducted by the Board President or designated presiding officer.

(f) All agreements, stipulations, amendments, or other matters resulting from the pre-hearing conference shall be in writing, signed by the presiding officer, respondent or respondent's counsel and Board counsel, and introduced into the record at the beginning of the disciplinary hearing.

(g) Motions for a continuance of a hearing shall be granted upon a showing of good cause. In determining whether to grant such motions, the Board shall consider the Guidelines for Resolving Scheduling Conflicts adopted by the State-Federal Judicial Council of North Carolina. Motions for a continuance must be in writing and received in the office of the Medical Board no less than 14 calendar days before the hearing date. A motion for a continuance filed less than 14 calendar days from the date of the hearing shall be denied unless the reason for the motion could not have been ascertained earlier. Motions for continuance shall be ruled on by the President of the Board or designated presiding officer.

(h) The Respondent may challenge on the basis of personal bias or other reason for disqualification the fitness and competency of any Board member to hear and weigh evidence concerning the Respondent. Challenges must be in writing accompanied by affidavit setting forth with specificity the grounds for such challenge and must be filed with the President of the Board or designated presiding officer at least 14 days before the hearing except for good cause shown. Nothing contained in this Rule shall prevent a Respondent appearing before the Board at a formal hearing from making inquiry of Board members as to their knowledge of and personal bias concerning that person's case and making a motion based upon the responses to those inquiries that a Board member recuse himself or herself of be removed by the Board President or presiding officer.

(i) In any formal proceeding pursuant to G.S. 90-14.1 and G.S. 90-14.2, discovery may be obtained as provided in G.S. 90-8 and 150B-39 by either the Board or the Respondent. Any discovery

request by a Respondent to the Board shall be filed with the Executive Director of the Board. Nothing herein is intended to prohibit a Respondent or counsel for Respondent from issuing subpoenas to the extent that such subpoenas are otherwise permitted by law or rule. The Medical Board may issue subpoenas for the Board or a Respondent in preparation for or in the conduct of a contested case as follows:

- (1) Subpoenas may be issued for the appearance of witnesses or the production of documents or information, either at the hearing or for the purposes of discovery;
- (2) Requests by a Respondent for subpoenas shall be made in writing to the Executive Director and shall include the following:
 - (A) the full name and home or business address of all persons to be subpoenaed; and
 - (B) the identification, with specificity, of any documents or information being sought;
- (3) Where Respondent makes a request for subpoenas and complies with the requirements in Subparagraph (2) of this Paragraph, the Board shall provide subpoenas promptly;
- (4) Subpoenas shall include the date, time, and place of the hearing and the name and address of the party requesting the subpoena. In the case of subpoenas for the purpose of discovery, the subpoena shall include the date, time, and place for responding to the subpoena; and
- (5) Subpoenas shall be served as provided by the Rules of Civil Procedure, G.S. 1A-1. The cost of service, fees, and expenses of any witnesses or documents subpoenaed shall be paid by the party requesting the witnesses.

(j) ~~All motions~~ motions, other than motions pursuant to Rules 12(b) and 56 of the North Carolina Rules of Civil Procedures, related to a contested case shall be in writing and submitted to the Medical Board at least 14 calendar days before the hearing. Pre-hearing motions shall be heard at the pre-hearing conference described in Paragraph (c) of this Rule. Motions filed fewer than 14 days before the hearing shall be considered untimely and shall not be considered unless the reason for the motion could not have been ascertained earlier. In such case, the motion shall be considered at the hearing prior to the commencement of testimony. The Board President or designated presiding officer shall hear the motions and any response from the non-moving party and rule on such motions. If the pre-hearing motions are heard by an Administrative Law Judge from Office of Administrative Hearings the provisions of G.S. 150B-40(e) shall govern the proceedings.

(k) Dispositive motions made pursuant to Rules 12(b) and 56 of the North Carolina Rules of Civil Procedure shall be filed no later than 14 calendar days before the hearing. Dispositive motions shall be heard, and decided upon, by a quorum of the Board. The Board shall receive the assistance of independent counsel when deciding a dispositive motion.

Authority G.S. 90-5.1(a)(3); 90-8; 90-14.1; 90-14.2; 90-14.3; 150B-38; 150B-39(c).

21 NCAC 32N .0114 SUMMARY SUSPENSION

(a) If the Board finds that the public health, safety, or welfare requires emergency action, it may, pursuant to G.S. 150B-3(c), summarily suspend a license without a hearing or opportunity for the licensee to be heard.

(b) A motion to summarily suspend a license pursuant to this Rule shall be supported by competent evidence of the facts alleged requiring emergency action.

(c) The Board shall consult with independent counsel prior to issuing an order of summary suspension. The role of independent counsel shall be to advise the Board on the reliability and competency of the evidence presented in support of the motion for summary suspension.

(d) An order of summary suspension shall make preliminary findings of facts indicating why the public health, safety, or welfare requires emergency action. An order of summary suspension shall be accompanied by a notice of charges setting out the licensee's alleged violations of G.S. 90-14(a). Upon service of the order of summary suspension, the licensee to whom the order is directed shall immediately cease practicing in North Carolina.

(e) The Board shall, when it summarily suspends a license, schedule a hearing to occur at the earliest practicable date, but no later than 30 days from the date of service of the order of summary suspension. The purpose of the hearing will be to determine whether there is a preponderance of competent evidence supporting the order of summary suspension. A hearing on the order of summary suspension may be combined with a hearing on the merits of the notice of charges on a date mutually agreed upon by the parties.

(f) The order of summary suspension shall remain in effect until the Board vacates it.

(g) Neither an order of summary suspension nor a decision upholding an order of summary suspension is a final agency decision.

Authority G.S. 90-5.1(a)(3); 150B-3(c).

SUBCHAPTER 32S - PHYSICIAN ASSISTANTS

SECTION .0200 – PHYSICIAN ASSISTANT REGISTRATION

21 NCAC 32S .0219 PHYSICIAN ASSISTANT PRACTICE AND LIMITED LICENSE FOR DISASTERS AND EMERGENCIES

~~(a) The Board shall, pursuant to G.S. 90-12.5, issue a limited physician assistant license under the following conditions:~~

- ~~(1) the Governor of the State of North Carolina has declared a disaster or state of emergency, or in the event of an occurrence for which a county or municipality has enacted an ordinance to deal with states of emergency under G.S. 14-288.12, 14-288.13, or 14-288.14, or to protect the public health, safety or welfare of its citizens under Article 22 of Chapter 130A of the~~

~~General Statutes, G.S. 160A-174(a) or G.S. 153A-121(a);~~

- (2) ~~the applicant provides government issued photo identification;~~
- (3) ~~the applicant provides proof of licensure, certification or authorization to practice as a physician assistant in another state, the District of Columbia, US Territory or Canadian province;~~
- (4) ~~applicant affirms under oath that such license is in good standing; and~~
- (5) ~~no grounds exist pursuant to G.S. 90-14(a) for the Board to deny a license.~~

~~(b) In response to the specific circumstances presented by a declared disaster or state of emergency and in order to best serve the public interest, the Board may limit the physician assistant's scope of practice including, but not limited to, the following: geography; term; type of practice; prescribing, administering and dispensing therapeutic measures, tests, procedures and drugs; supervision; and practice setting.~~

~~(c) The physician assistant must practice under the direct supervision of an on-site physician. The supervising physician must be licensed in this State or approved to practice in this State during a disaster or state of emergency pursuant to G.S. 90-12.5 and 21 NCAC 32B .1705. The physician assistant may perform only those medical acts, tasks, and functions delegated by the supervising physician and not limited by the physician assistant's scope of practice as set out in Paragraph (b) of this Rule.~~

~~(d) A team of physician(s) and physician assistant(s) practicing pursuant to this Rule is not required to maintain on-site documentation describing supervisory arrangements and instructions for prescriptive authority as otherwise required by 21 NCAC 32S .0213.~~

~~(e) A physician assistant holding a Limited Physician Assistant License for Disasters and Emergencies shall not receive any other or additional compensation outside his or her usual compensation, either direct or indirect, monetary, in-kind, or otherwise for the provision of medical services during a disaster or emergency.~~

(a) The Board shall, pursuant to G.S. 90-12.5, waive requirements for licensure except to the extent set forth in this Rule and after the Governor of the State of North Carolina has declared a disaster or state of emergency, or in the event of an occurrence for which a county or municipality has declared a state of emergency, or to protect the public health, safety or welfare of its citizens under G.S. 130A Article 22. There are two ways for physician assistant assistants to practice under this Rule:

- (1) Hospital to Hospital Credentialing: A physician assistant who holds a full, unlimited and unrestricted license to practice medicine in another U.S. state, territory or district and has unrestricted hospital credentials and privileges in any U.S. state, territory or district may come to North Carolina and practice medicine at a North Carolina hospital that is licensed by the North Carolina Department of Health and Human Services upon the following terms and conditions:

(A) the licensed North Carolina hospital shall verify all physician assistant credentials and privileges;

(B) the licensed North Carolina hospital shall keep a list of all physician assistants coming to practice and their respective supervising physicians and shall provide this list to the Board within 10 days of each physician assistant practicing at the licensed North Carolina hospital. The licensed North Carolina hospital shall also provide the Board a list of when each physician assistant has stopped practicing medicine in North Carolina under this Rule within 10 days after each physician assistant has stopped practicing medicine under this Rule;

(C) all physician assistants practicing under this Rule shall be authorized to practice medicine in North Carolina and deemed to be licensed to practice medicine in the State of North Carolina and the Board shall have jurisdiction over all physician assistants practicing under this Rule for all purposes set forth in or related to G.S. 90, Article 1, and such jurisdiction shall continue in effect even after any and all physician assistants have stopped practicing medicine under this Rule;

(D) the physician assistant must practice under the direct supervision of an on-site physician and the supervising physician must be licensed in this State or approved to practice in this State during a disaster or state of emergency pursuant to G.S. 90-12.5;

(E) a physician assistant may practice under this Rule for the shorter of:

(i) 30 days from the date the physician assistant has started practicing under this Rule; or

(ii) a statement by an appropriate authority is made that the emergency or disaster declaration has been withdrawn or ended and, at such time, the license deemed to be issued shall become inactive; and

(F) physician assistants practicing under this Rule shall not receive any compensation outside of their usual compensation for the provision of medical services during a disaster or emergency.

- (2) Limited Emergency License: A physician assistant who holds a full, unlimited and unrestricted license to practice medicine in another U.S. state, territory or district may apply for a limited emergency license on the following conditions:
- (A) the applicant must complete a limited emergency license application;
 - (B) the Board shall verify that the physician assistant holds a full, unlimited and unrestricted license to practice medicine in another U.S. state, territory or district;
 - (C) in response to the specific circumstances presented by a declared disaster or state of emergency and in order to best serve the public interest, the Board may limit the physician assistant's scope of practice;
 - (D) the physician assistant must practice under the direct supervision of an on-site physician and the supervising physician must be licensed in this State or approved to practice in this State during a disaster or state of emergency pursuant to G.S. 90-12.5;
 - (E) physician assistants and physicians practicing pursuant to this Rule are not required to maintain onsite documentation describing supervisory arrangements and instructions for prescriptive authority as otherwise required by 21 NCAC 32S .0213;
 - (F) the Board shall have jurisdiction over all physician assistants practicing under this Rule for all purposes set forth in or related to G.S. 90, Article 1, and such jurisdiction shall continue in effect even after such physician assistant has stopped practicing medicine under this Rule or the Limited Emergency License has expired;
 - (G) this license shall be in effect for the shorter of:
 - (i) 30 days from the date it is issued; or
 - (ii) a statement by an appropriate authority is made that the emergency or disaster declaration has been withdrawn or ended and, at such time, the license issued shall become inactive; and
 - (H) physician assistants holding limited emergency licenses shall not receive any compensation outside of their usual compensation for the provision

of medical services during a disaster or emergency.

- (3) National Guard supervision waiver. The rules of this Subchapter are waived during a declared state of emergency by the Governor of the State of North Carolina or by a resolution of the North Carolina General Assembly for members of the North Carolina National Guard who are actively licensed as physician assistants in the State of North Carolina and are serving in a State Active Duty status.

Authority G.S. 90-12.5; 90-18(c)(13); 90-13.2(e); 90-14(a); G.S. 166A-45.

SUBCHAPTER 32W - ANESTHESIOLOGIST ASSISTANT REGULATIONS

21 NCAC 32W .0116 ANESTHESIOLOGIST ASSISTANT PRACTICE AND LIMITED LICENSE FOR DISASTERS AND EMERGENCIES

(a) The Board shall, pursuant to G.S. 90-12.5, waive requirements for licensure except to the extent set for in this Rule and after the Governor of the State of North Carolina has declared a disaster or state of emergency, or in the event of an occurrence for which a county or municipality has declared a state of emergency, or to protect the public health, safety or welfare of its citizens under G.S. 130A, Article 22. There are two ways for anesthesiologist assistants to practice under this Rule:

- (1) Hospital to Hospital Credentialing: A anesthesiologist assistant who holds an unrestricted license in good standing to practice as an anesthesiologist assistant in another U.S. state, territory or district and has unrestricted hospital credentials and privileges in any U.S. state, territory or district may practice at a licensed North Carolina hospital upon the following terms and conditions:
 - (A) the licensed North Carolina hospital shall verify all anesthesiologist assistant credentials and privileges;
 - (B) the licensed North Carolina hospital shall keep a list of all anesthesiologist assistants coming to practice and shall provide this list to the Board within 10 days of each anesthesiologist assistant practicing at the licensed North Carolina hospital. The licensed North Carolina hospital shall also provide the Board a list of when each anesthesiologist assistant has stopped practicing at the hospital under this Rule within 10 days after each anesthesiologist assistant has ceased practicing under this Rule;
 - (C) all anesthesiologist assistants practicing under this Rule shall be authorized to practice in North Carolina and deemed to be licensed in

- North Carolina and the Board shall have jurisdiction over all anesthesiologist assistants practicing under this Rule for all purposes set forth in or related to G.S. 90, Article 1, and the Board shall retain jurisdiction over any and all anesthesiologist assistants after they have stopped practicing under this Rule;
- (D) anesthesiologist assistants may practice under this Rule for the shorter of:
- (i) 30 days from the date the anesthesiologist assistant has started practicing under this Rule; or
- (ii) a statement is made by the Governor or the Governor's designee that the emergency or disaster declaration has been withdrawn or ended and, at such time, the license deemed to be issued shall become inactive; and
- (E) anesthesiologist assistants practicing under this Rule shall not receive any compensation outside of their usual compensation for the provision of medical services during a disaster or emergency.
- (2) Limited Emergency License: An anesthesiologist assistant who holds an unrestricted license in good standing to practice as an anesthesiologist assistant in another U.S. state, territory or district may apply for a limited emergency license on the following conditions:
- (A) the applicant must complete an application;
- (B) the Board shall verify that the anesthesiologist assistant holds an unrestricted license in good standing
- to practice in another U.S. state, territory or district;
- (C) in response to the specific circumstances presented by a declared disaster or state of emergency and in order to best serve the public interest, the Board may limit the anesthesiologist assistant's scope of practice;
- (D) the Board shall have jurisdiction over all anesthesiologist assistants practicing under this Rule for all purposes set forth in or related to G.S. 90, Article 1, and the Board shall retain jurisdiction over any and all anesthesiologist assistants after they have stopped practicing under this Rule;
- (E) this license shall be in effect for the shorter of:
- (i) 30 days from the date the anesthesiologist assistant has started practicing under this Rule; or
- (ii) a statement is made by the Governor or the Governor's designee that the emergency or disaster declaration has been withdrawn or ended and, at such time the license issued shall become inactive; and
- (F) anesthesiologist assistants holding limited emergency licenses shall not receive any compensation outside of their usual compensation for the provision of medical services during a disaster or emergency.

Authority G.S. 90-12.5; 90-13.2(e); 90-14(a); 166A-45.

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 January 17, 2019 Meeting.

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

<u>Adoptions by Reference</u>	02 NCAC 09B .0116*	33:02 NCR
<u>Current Good Manufacturing Practices for Retail Food Esta...</u>	02 NCAC 09B .0135	33:02 NCR
<u>Nematode Advisory Service</u>	02 NCAC 37 .0203	33:02 NCR

AGRICULTURE, COMMISSIONER OF

<u>Evaluation of Applications</u>	02 NCAC 58 .0105*	33:02 NCR
<u>Grant Agreement</u>	02 NCAC 58 .0106*	33:02 NCR
<u>Reporting</u>	02 NCAC 58 .0107*	33:02 NCR
<u>Records</u>	02 NCAC 58 .0108*	33:02 NCR

AGRICULTURE, BOARD OF

<u>Administration of Program</u>	02 NCAC 60B .0701*	33:02 NCR
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INSURANCE, DEPARTMENT OF

<u>Scope and Definitions</u>	11 NCAC 20 .0101*	33:05 NCR
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ALCOHOLIC BEVERAGE CONTROL COMMISSION

<u>Location and Address</u>	14B NCAC 15A .0102*	G.S. 150B-21.5(a)(4)
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MARINE FISHERIES COMMISSION

<u>Possession or Transportation Limits Through State Waters;...</u>	15A NCAC 03I .0120*	33:03 NCR
<u>Nets or Net Stakes</u>	15A NCAC 03J .0102*	33:03 NCR
<u>Nets Pulled by More than One Vessel</u>	15A NCAC 03J .0108*	33:03 NCR
<u>Chowan River and Meherrin River</u>	15A NCAC 03J .0203*	33:03 NCR
<u>Currituck Sound and Its Tributaries</u>	15A NCAC 03J .0204*	33:03 NCR
<u>Southport Boat Harbor</u>	15A NCAC 03J .0206*	33:03 NCR
<u>Nuclear Plant Intake Canal</u>	15A NCAC 03J .0207*	33:03 NCR
<u>Albemarle Sound and Chowan River River Herring Management...</u>	15A NCAC 03J .0209*	33:03 NCR
<u>Dredges and Mechanical Methods Prohibited</u>	15A NCAC 03J .0303*	33:03 NCR
<u>Electrical Fishing Device in Cape Fear River</u>	15A NCAC 03J .0304*	33:03 NCR
<u>Hook and Line</u>	15A NCAC 03J .0306*	33:03 NCR
<u>Size and Harvest Limits</u>	15A NCAC 03K .0402*	33:03 NCR
<u>Disposition of Meats</u>	15A NCAC 03K .0403*	33:03 NCR
<u>Dredges and Mechanical Methods Prohibited and Open Season</u>	15A NCAC 03K .0404*	33:03 NCR
<u>Oysters, Hard Clams, or Mussels Prohibited</u>	15A NCAC 03K .0405*	33:03 NCR
<u>Bay Scallop Harvest Management</u>	15A NCAC 03K .0501*	33:03 NCR
<u>Taking Bay Scallops at Night and on Weekends</u>	15A NCAC 03K .0502*	33:03 NCR
<u>Bay Scallop Dredge Prohibited</u>	15A NCAC 03K .0503*	33:03 NCR
<u>Calico Scallop Harvest</u>	15A NCAC 03K .0504*	33:03 NCR
<u>Marketing Scallops Taken from Shellfish Leases or Franchises</u>	15A NCAC 03K .0507*	33:03 NCR

<u>Scallop Aquaculture Harvest Exemptions</u>	15A NCAC 03K .0508*	33:03 NCR
<u>Stone Crabs</u>	15A NCAC 03L .0208*	33:03 NCR
<u>Mutilated Finfish</u>	15A NCAC 03M .0101*	33:03 NCR
<u>Unmarketable Finfish</u>	15A NCAC 03M .0102*	33:03 NCR
<u>Minimum Size Limits</u>	15A NCAC 03M .0103*	33:03 NCR
<u>Red Drum</u>	15A NCAC 03M .0501*	33:03 NCR
<u>Mullet</u>	15A NCAC 03M .0502*	33:03 NCR
<u>Snapper Grouper Complex</u>	15A NCAC 03M .0506*	33:03 NCR
<u>Billfish</u>	15A NCAC 03M .0507*	33:03 NCR
<u>American Eel</u>	15A NCAC 03M .0510*	33:03 NCR
<u>River Herring</u>	15A NCAC 03M .0513*	33:03 NCR
<u>Dolphin</u>	15A NCAC 03M .0515*	33:03 NCR
<u>Wahoo</u>	15A NCAC 03M .0517*	33:03 NCR
<u>Kingfishes (Sea Mullet)</u>	15A NCAC 03M .0518*	33:03 NCR
<u>Tuna</u>	15A NCAC 03M .0520*	33:03 NCR
<u>Sheepshead</u>	15A NCAC 03M .0521*	33:03 NCR
<u>Display of Licenses and Registrations</u>	15A NCAC 03O .0106*	33:03 NCR
<u>For-Hire License Requirements</u>	15A NCAC 03O .0112*	33:03 NCR
<u>Procedures and Requirements to Obtain Permits</u>	15A NCAC 03O .0501*	33:03 NCR
<u>Permit Conditions; Specific</u>	15A NCAC 03O .0503*	33:03 NCR
<u>Attended Gill Net Areas</u>	15A NCAC 03R .0112*	33:03 NCR

COASTAL RESOURCES COMMISSION

<u>Public Hearing and Local Adoption Requirements</u>	15A NCAC 07B .0802	32:18 NCR
<u>Certification and Use of the Plan</u>	15A NCAC 07B .0803*	32:18 NCR
<u>Maintenance and Repair</u>	15A NCAC 07K .0103*	32:18 NCR
<u>Single Family Residences Exempted</u>	15A NCAC 07K .0208	32:18 NCR

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Incorporation by Reference</u>	15A NCAC 13B .0830*	33:04 NCR
<u>Definitions</u>	15A NCAC 13B .0831*	33:04 NCR
<u>General Provisions</u>	15A NCAC 13B .0832*	33:04 NCR
<u>Septage Management Firm Permits</u>	15A NCAC 13B .0833*	33:04 NCR
<u>Permit Fees</u>	15A NCAC 13B .0834	33:04 NCR
<u>Septage Land Application Site Permits</u>	15A NCAC 13B .0835*	33:04 NCR
<u>Septage Detention and Treatment Facility Permits</u>	15A NCAC 13B .0836*	33:04 NCR
<u>Location of Septage Land Application Sites</u>	15A NCAC 13B .0837*	33:04 NCR
<u>Management of Septage Land Application Sites</u>	15A NCAC 13B .0838*	33:04 NCR
<u>Record Keeping for Septage Management Firms</u>	15A NCAC 13B .0839	33:04 NCR
<u>Sampling and Analysis</u>	15A NCAC 13B .0840	33:04 NCR
<u>Standards for Septage Detention and Treatment Facilities</u>	15A NCAC 13B .0841*	33:04 NCR
<u>Innovative or Alternative Treatment or Storage Methods</u>	15A NCAC 13B .0842	33:04 NCR
<u>Land Use and Site Closure</u>	15A NCAC 13B .0843*	33:04 NCR
<u>Transportation of Septage</u>	15A NCAC 13B .0844*	33:04 NCR
<u>Revocation of Permits</u>	15A NCAC 13B .0845	33:04 NCR
<u>Appeals</u>	15A NCAC 13B .0846	33:04 NCR

TRANSPORTATION, DEPARTMENT OF

APPROVED RULES

<u>The Sale Of Surplus Lands</u>	19A NCAC 02B .0143	33:07 NCR
<u>Copies Of Forms</u>	19A NCAC 02B .0145	33:07 NCR
<u>Definitions</u>	19A NCAC 02B .0202	33:07 NCR
<u>Uniform Traffic Control Devices</u>	19A NCAC 02B .0208	33:07 NCR
<u>Channelization For Entrances And Exits To Property</u>	19A NCAC 02B .0240	33:07 NCR
<u>Personal Property not to be Acquired</u>	19A NCAC 02B .0316	33:07 NCR
<u>Relocation Assistance</u>	19A NCAC 02B .0432*	33:07 NCR
<u>Applicability</u>	19A NCAC 02B .0433	33:07 NCR
<u>Execution of Utility Agreement</u>	19A NCAC 02B .0507*	33:07 NCR
<u>Minimum Size of Surface Drainage Pipeline</u>	19A NCAC 02D .0102	33:07 NCR
<u>Guidelines - Curb Cuts and Ramps</u>	19A NCAC 02D .0104*	33:07 NCR
<u>General Regulations for Drawbridges</u>	19A NCAC 02D .0415	33:07 NCR
<u>Parades on Highway System Roads</u>	19A NCAC 02E .0413*	33:07 NCR
<u>Parking Vehicle for Sale or Distribution of Goods</u>	19A NCAC 02E .0414*	33:07 NCR
<u>Advertising Signs within Right of Way</u>	19A NCAC 02E .0415*	33:07 NCR
<u>Private Drives or Roads Intersecting Highways</u>	19A NCAC 02E .0416*	33:07 NCR
<u>Commercial Entrances Intersecting with Right of Way</u>	19A NCAC 02E .0417*	33:07 NCR
<u>Use of Runaway Truck Ramps</u>	19A NCAC 02E .0422*	33:07 NCR

BARBER EXAMINERS, BOARD OF

<u>Fees, Access to Forms, and Renewals</u>	21 NCAC 06N .0101*	33:06 NCR
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DENTAL EXAMINERS, BOARD OF

<u>Advertising As a Specialist</u>	21 NCAC 16P .0105*	33:05 NCR
<u>General Anesthesia Equipment and Clinical Requirements</u>	21 NCAC 16Q .0202*	33:06 NCR
<u>Procedure for General Anesthesia Evaluation or Inspection...</u>	21 NCAC 16Q .0204*	33:06 NCR
<u>Credentials and Permits for Moderate Parenteral and Enter...</u>	21 NCAC 16Q .0301	33:06 NCR
<u>Moderate Parenteral and Enteral Conscious Sedation Clinic...</u>	21 NCAC 16Q .0302*	33:06 NCR
<u>Procedure for Moderate Conscious Sedation Evaluation or I...</u>	21 NCAC 16Q .0306*	33:06 NCR
<u>Minimal Conscious Sedation Credentials, Evaluation and Pe...</u>	21 NCAC 16Q .0401*	33:06 NCR
<u>Minimal Conscious Sedation Permit Requirements, Clinical ...</u>	21 NCAC 16Q .0402*	33:06 NCR
<u>Credentials and Permits for Moderate Pediatric Conscious ...</u>	21 NCAC 16Q .0404	33:06 NCR
<u>Moderate Pediatric Conscious Sedation Clinical Requiremen...</u>	21 NCAC 16Q .0405*	33:06 NCR
<u>Procedure for Moderate Pediatric Conscious Sedation Evalu...</u>	21 NCAC 16Q .0408*	33:06 NCR
<u>Annual Renewal Required</u>	21 NCAC 16Q .0501	33:06 NCR

ELECTRICAL CONTRACTORS, BOARD OF EXAMINERS OF

<u>Requirements for All Examination Applicants</u>	21 NCAC 18B .0201	33:03 NCR
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SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD

<u>Process for Prevention Consultant Certification</u>	21 NCAC 68 .0206*	33:08 NCR
<u>Certification or Licensure Period</u>	21 NCAC 68 .0207*	33:08 NCR
<u>Renewal of Individual Licensure as Clinical Addictions Sp...</u>	21 NCAC 68 .0306	33:08 NCR

**TITLE 02 - DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES****02 NCAC 09B .0116****ADOPTIONS BY REFERENCE**

(a) The Board incorporates by reference, including subsequent amendments and editions, "Official Methods of Analysis of AOAC," published by the Association of Official Analytical

Chemists. Copies of this document may be obtained from the Association of Official Analytical Chemists International, Department 0742, 1970 Chain Bridge Road, McLean, VA 22109-0742, at a cost of seven hundred thirty dollars (\$730.00).

(b) The Board incorporates by reference, including subsequent amendments and editions, "U.S. Pharmacopeia National Formulary USP XXXIII-NFXXVIII" and supplements, published by the U.S. Pharmacopeial Convention, Inc. Copies of this document may be obtained from The United States Pharmacopeial Convention, Inc., Attention: Customer Service, 12601 Twinbrook Parkway, Rockville, MD 20852, at a cost of eight-hundred fifty dollars (\$850.00).

(c) The Board incorporates by reference, including subsequent amendments and editions, "ASTM Volume 15.05 Engine Coolants and Related Fluids; Halogenated Organic Solvents and Fire Extinguishing Agents," published by ASTM International. Copies of this document may be obtained from ASTM International, 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959, or by visiting <https://www.astm.org/BOOKSTORE/BOS/1505.htm> at a cost of one hundred ninety dollars (\$190.00).

(d) The Board incorporates by reference, including subsequent amendments and editions, "EPA Manual of Chemical Methods for Pesticides and Devices" and supplements, published by AOAC. Copies of this document may be obtained online at no cost from the Environmental Protection Agency National Service Center for Environmental Publications at <http://nepis.epa.gov/EXE/ZyPURL.cgi?Dockey=2000YS3Y.txt>.

(e) The Board incorporates by reference, including subsequent amendments and editions, "Pesticide Analytical Manual," Volumes I and II, published by the United States Department of Health and Human Services, Food and Drug Administration. Copies of this document may be obtained online at no cost at <http://www.fda.gov/Food/ScienceResearch/LaboratoryMethods/PesticideAnalysisManualPAM/default.htm>.

(f) The Board incorporates by reference, including subsequent amendments and editions, "FDA Compliance Policy Guides," published by the United States Department of Health and Human Services, Food and Drug Administration. Copies of this document may be obtained online at no cost at <http://www.fda.gov/iceci/compliancemanuals/compliancepolicyguidancemanual/default.htm> or from the State Information Branch (HFC-151), Division of Federal-State Relations, US Food and Drug Administration, 5600 Fishers Lane, Room 12-07, Rockville, MD 20857.

(g) The Board incorporates by reference, including subsequent amendments and editions, "Bergey's Manual of Determinative Bacteriology," Lippincott, Williams & Wilkins Company, Baltimore. Copies of this document may be obtained from the Lippincott, Williams & Wilkins Company, P.O. Box 1620,

Hagerstown, MD 21741 at a cost one hundred forty five dollars and ninety nine cents (\$145.99).

(h) The Board incorporates by reference, including subsequent amendments and editions, "Microbiology Laboratory Guidebook," published by the United States Department of Agriculture, Food Safety and Inspection Service, Washington, DC. Copies of this document may be obtained online at no cost from <http://www.fsis.usda.gov>.

(i) The Board incorporates by reference, including subsequent amendments and editions, "FDA Bacteriological Analytical Manual," published by the United States Department of Health and Human Services, Food and Drug Administration. Copies of this document may be obtained online at <http://www.fda.gov/Food/FoodScienceResearch/LaboratoryMethods/ucm114664.htm> at no charge.

(j) The Board incorporates by reference, including subsequent amendments and editions, "Standard Methods for the Examination of Dairy Products," published by the American Public Health Association. Copies of this document may be obtained from the American Public Health Association Publication Sales, P.O. Box 933019, Atlanta, GA at a cost of eighty-five dollars and fifty cents (\$87.50) for members and one hundred twenty-five dollars (\$125.00) for non-members.

(k) The Board incorporates by reference, including subsequent amendments and editions, "Compendium of Methods for the Microbiological Examination of Foods," published by the American Public Health Association. Copies of this document may be obtained from the American Public Health Association Publication Sales, P.O. Box 933019, Atlanta, GA at a cost of one hundred forty seven dollars and fifty cents (\$147.50).

(l) The Board incorporates by reference, including subsequent amendments and editions, "Bergey's Manual of Systematic Bacteriology," Springer Publishing, New York, NY. Copies of this document may be obtained from Springer Publishing, 233 Spring Street, New York, NY, 10013 at a cost of one hundred fifty-nine dollars (\$159.00).

(m) The Board incorporates by reference, including subsequent amendments and editions, "Manual of Clinical Microbiology," published by the American Society for Microbiology. Copies of this document may be obtained from the American Society for Microbiology Press, PO Box 605, Herndon, VA 22070, at a cost of two hundred sixty-nine dollars and ninety-five cents (\$269.95).

(n) The Board incorporates by reference, including subsequent amendments and editions, "Standard Methods for the Examination of Water and Waste Water," published by American Public Health Association, American Water Works Association, and Water Pollution Control Federation. Copies of this document may be obtained from the American Public Health Association Publication Sales, P.O. Box 933019, Atlanta, GA at a cost of two hundred ninety-five dollars (\$295.00).

(o) The Board incorporates by reference, including subsequent amendments and editions, the following parts or sections of the Code of Federal Regulations, Title 21, Chapter I, as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

	Part or	Description of Part or Section
	Section	
(1)	1.1	General
(2)	1.3	Definitions

- (3) 1.20 Presence of Mandatory Label Information
- (4) 1.21 Failure to Reveal Material Facts
- (5) 1.24 Exemptions from Required Label Statements
- (6) 1.326 Who is Subject to this Subpart?
- (7) 1.327 Who is Excluded from All or Part of the Regulations in this Subpart?
- (8) 1.328 What Definitions Apply to this Subpart?
- (9) 1.329 Do Other Statutory Provisions and Regulations Apply?
- (10) 1.330 Can Existing Records Satisfy the Requirements of this Subpart?
- (11) 1.337 What Information Must Nontransporters Establish and Maintain to Identify the Nontransporter and Transporter Immediate Previous Sources of Food?
- (12) 1.345 What Information Must Nontransporter Establish and Maintain to Identify the Nontransporter and Transporter Immediate Subsequent Recipients of Food?
- (13) 1.352 What Information Must Transporters Establish and Maintain?
- (14) 1.360 What are the Record Retention Requirements?
- (15) 1.361 What are the Record Availability Requirements?
- (16) 1.362 What Records are Excluded from this Subpart?
- (17) 1.363 What are the Consequences of Failing to Establish, or Maintain Records or Make Them Available to FDA as Required by this Subpart?
- (18) 1.368 What are the Compliance Dates for this Subpart?
- (19) 2.25 Grain Seed Treated with Poisonous Substances; Color Identification to Prevent Adulteration of Human and Animal Food
- (20) 2.35 Use of Secondhand Containers for the Shipment or Storage of Food and Animal Feed
- (21) 7.1 Scope
- (22) 7.3 Definitions
- (23) 7.12 Guaranty
- (24) 7.13 Suggested Forms of Guaranty
- (25) 7.40 Recall Policy
- (26) 7.41 Health Hazard Evaluation and Recall Classification
- (27) 7.42 Recall Strategy
- (28) 7.45 Food and Drug Administration - Requested Recall
- (29) 7.46 Firm-initiated Recall
- (30) 7.49 Recall Communications
- (31) 7.50 Public Notification of Recall
- (32) 7.53 Recall Status Reports
- (33) 7.55 Termination of a Recall
- (34) 7.59 General Industry Guidance
- (35) 70 Color Additives
- (36) 73 Listing of Color Additives Exempt from Certification
- (37) 74 Listing of Color Additives Subject to Certification
- (38) 81 General Specifications and General Restrictions for Provisional Color Additives for Use in Foods, Drugs, and Cosmetics
- (39) 82 Listing of Certified Provisionally Listed Colors and Specifications
- (40) 100 General
- (41) 101 Food Labeling
- (42) 102 Common or Usual Name for Nonstandardized Foods
- (43) 104 Nutritional Quality Guidelines for Foods
- (44) 105 Foods for Special Dietary Use
- (45) 106 Infant Formula Requirements Pertaining to Current Good Manufacturing Practice, Quality Control Procedures, Quality Factors, Records and Reports, and Notifications
- (46) 107 Infant Formula
- (47) 108 Emergency Permit Control
- (48) 109 Unavoidable Contaminants in Food for Human Consumption and Food-Packaging Material
- (49) 110 Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food
- (50) 111 Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements
- (51) 112 Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption

(52)	113	Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers
(53)	114	Acidified Foods
(54)	115	Shell Eggs
(55)	117	Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food
(56)	118	Production, Storage, and Transportation of Shell Eggs
(57)	120	Hazard Analysis and Critical Control Point (HACCP) Systems
(58)	123	Fish and Fishery Products
(59)	129	Processing and Bottling of Bottled Drinking Water (Except as amended by 02 NCAC 09C.0700 - Bottled Water)
(60)	130	Food Standards: General
(61)	131	Milk and Cream
(62)	133	Cheeses and Related Cheese Products
(63)	135	Frozen Desserts
(64)	136	Bakery Products
(65)	137	Cereal Flours and Related Products
(66)	139	Macaroni and Noodle Products
(67)	145	Canned Fruits
(68)	146	Canned Fruit Juices
(69)	150	Fruit Butters, Jellies, Preserves, and Related Products
(70)	152	Fruit Pies
(71)	155	Canned Vegetables
(72)	156	Vegetable Juices
(73)	158	Frozen Vegetables
(74)	160	Eggs and Egg Products
(75)	161	Fish and Shellfish (Except Section 161.30 and 161.130 through 161.145)
(76)	163	Cacao Products
(77)	164	Tree Nut and Peanut Products
(78)	165	Beverages
(79)	166	Margarine
(80)	168	Sweeteners and Table Syrups
(81)	169	Food Dressings and Flavorings
(82)	170	Food Additives
(83)	172	Food Additives Permitted for Direct Addition to Food for Human Consumption
(84)	173	Secondary Direct Food Additives Permitted in Food for Human Consumption
(85)	174	Indirect Food Additives: General
(86)	175	Indirect Food Additives: Adhesives and Components of Coatings
(87)	176	Indirect Food Additives: Paper and Paperboard Components
(88)	177	Indirect Food Additives: Polymers
(89)	178	Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers
(90)	179	Irradiation in the Production, Processing and Handling of Food
(91)	180	Food Additives Permitted in Food or in Contact with Food on an Interim Basis
		Pending Additional Study
(92)	181	Prior-Sanctioned Food Ingredients
(93)	182	Substances Generally Recognized as Safe
(94)	184	Direct Food Substances Affirmed as Generally Recognized as Safe
(95)	186	Indirect Food Substances Affirmed as Generally Recognized as Safe
(96)	189	Substances Prohibited from Use in Human Food
(97)	190	Dietary Supplements
(98)	200	General
(99)	201	Labeling
(100)	202	Prescription Drug Advertising
(101)	210	Current Good Manufacturing Practice in Manufacturing, Processing, Packing or Holding of Drugs; General
(102)	211	Current Good Manufacturing Practice for Finished Pharmaceuticals
(103)	225	Current Good Manufacturing Practice for Medicated Feeds
(104)	226	Current Good Manufacturing Practice for Type A Medicated Articles
(105)	250	Special Requirements for Specific Human Drugs
(106)	290	Controlled Drugs

(107)	299	Drugs; Official Names and Established Names
(108)	300	General
(109)	310	New Drugs
(110)	312	Investigational New Drug Application
(111)	314	Applications for FDA Approval to Market New Drug
(112)	320	Bioavailability and Bioequivalence Requirements
(113)	330	Over-the-Counter (OTC) Human Drugs Which Are Generally Recognized as Safe and Effective and Not Misbranded
(114)	331	Antacid Products for Over-the-Counter (OTC) Human Use
(115)	332	Antiflatulent Products for Over-the-Counter Human Use
(116)	361	Prescription Drugs for Human Use Generally Recognized as Safe and Effective and Not Misbranded: Drugs Used in Research
(117)	369	Interpretive Statements Re: Warnings on Drugs and Devices for Over-the-Counter Sale
(118)	809	In Vitro Diagnostic Products for Human Use
(119)	812	Investigational Device Exemptions
(120)	820	Quality System Regulation
(121)	860	Medical Device Classification Procedures
(122)	861	Procedures for Performance Standards Development
(123)	870	Cardiovascular Devices
(124)	882	Neurological Devices
(125)	884	Obstetrical and Gynecological Devices
(126)	895	Banned Devices
(127)	500	General
(128)	501	Animal Food Labeling
(129)	502	Common or Usual Names for Nonstandardized Animal Foods
(130)	507	Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals
(131)	509	Unavoidable Contaminants in Animal Food and Food-Packaging Material
(132)	510	New Animal Drugs
(133)	511	New Animal Drugs for Investigational Use
(134)	514	New Animal Drug Applications
(135)	520	Oral Dosage Form New Animal Drugs
(136)	522	Implantation or Injectable Dosage Form New Animal Drugs
(137)	524	Ophthalmic and Topical Dosage Form New Animal Drugs
(138)	526	Intramammary Dosage Form New Animal Drugs
(139)	529	Certain Other Dosage Form New Animal Drugs
(140)	556	Tolerances for Residues of New Animal Drugs in Food
(141)	558	New Animal Drugs for Use in Animal Feeds
(142)	570	Food Additives
(143)	573	Food Additives Permitted in Feed and Drinking Water of Animals
(144)	582	Substances Generally Recognized as Safe
(145)	584	Food Substances Affirmed as Generally Recognized as Safe in Feed and Drinking Water of Animals
(146)	589	Substances Prohibited from Use in Animal Food or Feed
(147)	700	General
(148)	701	Cosmetic Labeling
(149)	720	Voluntary Filing of Cosmetic Product Ingredient Composition Statements
(150)	740	Cosmetic Product Warning Statements

Copies of the Code of Federal Regulations may be obtained at no cost by accessing the website of the U.S. Government Printing Office at <http://www.gpoaccess.gov/cfr/index.html>.

(p) The Board incorporates by reference, including subsequent amendments and editions, "Tolerances and Exemptions for Pesticide Chemical Residues in Food," 40 C.F.R. Part 180. Copies of the Code of Federal Regulations may be obtained at no cost by accessing the website of the U.S. Government Printing Office at <http://www.gpoaccess.gov/cfr/index.html>.

(q) The Board incorporates by reference, including subsequent amendments and editions, "Definitions and Standards of Identity or Composition," 9 C.F.R. Part 319. Copies of the Code of Federal Regulations may be obtained at no cost by accessing the website of the U.S. Government Printing Office at <http://www.gpoaccess.gov/cfr/index.html>.

(r) The Board incorporates by reference, including subsequent amendments and editions, "Definitions and Standards of Identity or Composition," 9 C.F.R. Sections 381.155 through 381.170. Copies of the Code of Federal Regulations may be obtained at no cost by accessing the website of the U.S. Government Printing Office at <http://www.gpoaccess.gov/cfr/index.html>.

(s) The Board incorporates by reference, including subsequent amendments and editions, "Labels: Definitions; Required Features," 9 C.F.R. Section 317.2 of the Code of Federal Regulations. Copies of Title 9 of the Code of Federal Regulations may be obtained at no cost by accessing the website of the U.S. Government Printing Office at <http://www.gpoaccess.gov/cfr/index.html>.

(t) The Board incorporates by reference, including subsequent amendments and editions, "Special Handling Label Requirements," 9 C.F.R. Section 381.125 of the Code of Federal Regulations. Copies of the Code of Federal Regulations may be obtained at no cost by accessing the website of the U.S. Government Printing Office at <http://www.gpoaccess.gov/cfr/index.html>.

(u) The Board incorporates by reference, including subsequent amendments and editions, a document entitled, "Fresh Air '2000' - A Look At FDA's Medical Gas Requirements," published by the United States Department of Health and Human Services, Food and Drug Administration. A copy of this material may be obtained at no cost from the Food and Drug Protection Division of the North Carolina Department of Agriculture and Consumer Services.

(v) The Board incorporates by reference, including subsequent amendments and editions, the definition of "dietary supplement" found at 21 USC 321(ff).

(w) The Board incorporates by reference, including subsequent amendments and editions, the definition of "processed food" found at 21 USC 321(gg).

(x) The Board incorporates by reference, including subsequent amendments and editions, the definition of "major food allergen" found at 21 USC 321(qq).

(y) The Board incorporates by reference, including subsequent amendments and editions, the definition of "knowingly" or "knew" found at 21 USC 321(bb).

(z) The Board incorporates by reference, including subsequent amendments and editions, the definition of "animal feed" found at 21 USC 321(w).

History Note: Authority G.S. 106-139; 106-245.16; 106-245.22; 106-245.32; 106-267; 106-284.41; Eff. December 14, 1981;

Amended Eff. May 1, 2013; January 1, 2011; June 1, 2004; April 1, 2003; June 1, 1995; April 1, 1992; June 1, 1988; October 1, 1987;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015;

Amended Eff. February 1, 2019; May 1, 2018.

02 NCAC 09B .0135 CURRENT GOOD MANUFACTURING PRACTICES FOR RETAIL FOOD ESTABLISHMENTS

Subpart B of 21 C.F.R. Part 117, as incorporated by reference pursuant to Rule .0116(o)(55) of this Subchapter, shall apply to

"retail food establishments" as defined by 21 C.F.R. 1.227, and shall include bakeries, retail food outlets, and seafood markets.

History Note: Authority G.S. 106-139; Eff. February 1, 2019.

02 NCAC 37 .0203 NEMATODE ADVISORY SERVICE

(a) Individuals desiring nematode analysis may obtain sample containers and instructions from the Agronomic Services Division, county extension office, farm supply dealers, Agronomic Division Regional Agronomists, or other local agricultural advisors. If plant-destructive nematodes are found, the best method of control will be recommended.

(b) Per sample fees for those services, to be paid at the time of submission, are as follows:

- (1) Routine nematode assay - \$3.00.
- (2) Research nematode assay - \$10.00.
- (3) Pinewood nematode assay - \$10.00.
- (4) Nematode species identification by molecular diagnosis - \$20.00.
- (5) Out-of-state surcharge - \$10.00

History Note: Authority G.S. 106-22(17);

Eff. July 17, 1981;

Temporary Amendment Eff. July 7, 1989 for a Period of 180 Days to Expire on January 2, 1990;

Amended Eff. June 1, 1990; January 2, 1990;

Agency did not readopt rule pursuant to G.S. 150B-21.3A by RRC established deadline of March 31, 2017;

Readopted Eff. December 19, 2017;

Amended Eff. Pending consultation pursuant to G.S. 12-3.1.

02 NCAC 58 .0105 EVALUATION OF APPLICATIONS

(a) Applicants for funding from the ADFPTF shall submit a completed application.

(b) Applications and instructions shall be available online at <http://www.ncadfp.org>.

(c) To be eligible for consideration for funding for agricultural conservation easements or agricultural agreements, applicants shall complete the Agricultural Development and Farmland Preservation Application Form for Conservation Easements and Agricultural Agreements, which contain the following information:

- (1) identifying information such as location, business name, and contact information;
- (2) a description of the type of organization of the applicant;
- (3) project affiliations, matching funds, and partnerships;
- (4) whether funds are for an agricultural conservation easement or an agricultural agreement and the term years;

- (5) current land value assessment, requested amount of funds, estimated easement value, project completion date;
- (6) operation management plans;
- (7) values relevant to the easement;
- (8) agricultural, horticultural, or forestry property inventory;
- (9) what transition plans are in place to continue operations for the future;
- (10) threats of conversion;
- (11) conservation and environmental concerns; and
- (12) listed attachments.

(d) To be eligible for consideration for funding for agricultural development programs, applicants shall complete the Agricultural Development and Farmland Preservation Application Form for Public and Private Enterprise Programs, which contain the following information:

- (1) identifying information;
- (2) a description of the type of organization of the applicant;
- (3) project affiliations, matching funds, and partnerships;
- (4) a description of goals, target audience, and success measurements; and
- (5) listed attachments.

(e) Each completed application shall be evaluated by the Division staff based on the information provided in the application and in accordance with the ADFPTF criteria described in this Rule.

(f) The staff shall review all applications for completeness. If an application is incomplete after the application deadline, the applicant shall be asked to reapply for the next grant cycle, which will be publicly announced by the Commissioner on an annual basis at the quarterly Agricultural Development and Farmland Preservation Trust Fund Advisory Committee prior to the grant cycle RFP and by press release from the North Carolina Department of Agriculture and Consumer Services.

(g) During the review and evaluation of proposals, the staff shall report to the Commissioner on any site visits that may be required for full consideration of the grant proposal.

(h) The Advisory Committee shall review the project evaluations and other data prepared by the applicant and by ADFPTF staff. The Advisory Committee shall make recommendations to the Commissioner on projects for funding.

(i) The Commissioner and Advisory Committee shall consider the relative needs of the farmland preservation project and determine the proportion of available funds to be allocated for each eligible project.

(j) Grants shall be awarded contingent on the availability of sufficient funds to do so. Funds shall be conveyed to grantees through contracts with the Trust Fund. If the Commissioner determines that grant funds are not being used for the purpose for which they were awarded, the Trust Fund shall cease making payments under the grant schedule until the problem has been resolved or shall demand return of any unspent money and interest from the grant. Grantees must reimburse the Trust Fund any funds that the Division staff determines to have not been spent for the purpose for which they were granted. Grantees must return any grant money that remains unspent at the conclusion of the grant project, with any interest earned on grant money.

(k) The following general criteria shall be used to evaluate conservation easement or agricultural agreement projects only:

- (1) parcel information;
- (2) planning for the future; and
- (3) site visits.

(l) The following general criteria shall be used to evaluate agricultural development programs only:

- (1) project description;
- (2) project implementation; and
- (3) applicant interview.

(m) The Commissioner and Advisory Committee shall also consider the following factors when evaluating projects:

- (1) the geographic distribution of projects;
- (2) the presence or absence of other funding sources;
- (3) the level of compliance with prior grant agreements;
- (4) the amount of funds available;
- (5) the amount of funds requested;
- (6) priority funding map found at <http://ncadfp.org/FarmlandPreservation>; and
- (7) other relevant information requested in the application.

History Note: Authority G.S. 106-744;

Eff. January 1, 2008;

Readopted Eff. February 1, 2019.

02 NCAC 58 .0106 GRANT AGREEMENT

(a) Upon approval, a written agreement shall be executed between the grant recipient(s) and the Commissioner.

(b) The agreement shall define the Commissioner's and grant recipient's responsibilities and obligations, the project period, project scope, and the amount of grant assistance.

(c) The approved application and any support documentation submitted by the applicant shall become a part of the grant agreement.

(d) The grant agreement may be amended upon mutual consent and approval by the Commissioner and the grant recipient(s). The grant recipient(s) shall submit a written request for amendment to the Commissioner.

(e) Grant payments shall be made only for activities within the grant contract period and projects may not begin until the Commissioner and grant recipient(s) sign the agreement.

(f) The agreement shall include a requirement that, in any agricultural conservation easement funded by the ADFPTF, the State of North Carolina shall have the right to enforce the easement if the grantee of the easement fails to do so.

History Note: Authority G.S. 106-744;

Eff. January 1, 2008;

Readopted Eff. February 1, 2019.

02 NCAC 58 .0107 REPORTING

(a) Grant recipients shall submit written progress reports biannually for grants less than five hundred thousand dollars (\$500,000) and quarterly for grants more than five hundred thousand dollars (\$500,000) until completion of the project. Written reports shall describe the status of the project, progress

toward achieving program objectives, notable occurrences, and any problems encountered and steps taken to overcome the problems. Upon completion of the project, the grant recipient must make a final written report to the Commissioner that shall include project accomplishments and benefits, all expenditures by line item as established in the project budget, and verification of the number of hours or money in matching funds.

(b) The Division staff shall review the progress reports for completeness, which shall include a showing of how the project is meeting its stated goals and performance standards. If the Division staff finds that the report is deficient in showing how the project is meeting its stated goals and performance standards, the grantee shall be notified of the deficiency and must provide a changed and corrected report within 30 business days. If a corrected or changed report is not received within 30 business days, the Commissioner shall withhold the next grant payment.

(c) Grantees shall submit monitoring reports in accordance with the ADFPTF Monitoring Policies and Guidelines found at <http://ncadfp.org/downloads.htm>.

History Note: Authority G.S. 106-744;
Eff. January 1, 2008;
Readopted Eff. February 1, 2019.

02 NCAC 58 .0108 RECORDS

Grant Recipients must keep financial and other records of the project for a period of five years, following completion of the project, or until audited. The records shall be made available to the Commissioner upon request. Recipients shall contact Division staff at the North Carolina Department of Agriculture and Consumer Services before destroying records or in the event that records are destroyed. The Commissioner shall maintain and dispose of paper and electronic records in accordance with the approved Functional Schedule for North Carolina State Agencies, Program Record Retention and Disposition Schedule and Electronic Records and Imaging Policy, incorporated by reference with subsequent editions and amendments. The policy can be accessed free of charge at <https://archives.ncdcr.gov/documents/functional-schedule-state-agencies>.

History Note: Authority G.S. 106-744;
Eff. December 1, 2007;
Readopted Eff. February 1, 2019.

02 NCAC 60B .0701 ADMINISTRATION OF PROGRAM

(a) The manner and requirements of making application for cost-sharing funds pursuant to the Forest Development Act are as follows:

- (1) Any eligible landowner may apply for program cost-sharing funds.
- (2) Application may be made by completing the application forms. A management plan relating to the application shall be on file with the North Carolina Forest Service before the application may be accepted. Applications shall

include identifying information from the landowner and consultant, a description of the practices needed, acres needed, practice rate, and applicant signature.

(b) The Commissioner or his or her designee shall review submitted applications requesting program funding. Applicants who start or complete their project without prior Division approval shall not be eligible to receive funding.

(c) The Commissioner may designate a portion of funds for practices designed to encourage reforestation at reduced costs or for other purposes in designated areas. This designation by the Commissioner shall be made in writing prior to the beginning of the fiscal year.

(d) G.S. 106-1016 limits a landowner to 100 acres of cost-share funding approval per fiscal year. Cost-share paid out in any one fiscal year may include funds approved in previous fiscal years.

(e) Cost-sharing payments shall be made upon certification by the Division following completion of the practice(s) as prescribed in the management plan. Determination of completion shall include an assessment of installed practices in relation to the requirements outlined in the management plan, installation of appropriate best management practices to ensure soil protection and water quality, and assurance that the installed practice is in compliance with any environmental regulations found in Article 4, G.S. 113A.

(f) Allocated funding for approved applications shall be withdrawn as follows:

- (1) Funds may be withdrawn at the end of the first fiscal year in which the funds were allotted if no work has been started. The landowner shall provide documentation to the Division for funds availability to continue into a second year.
- (2) Funds allocated may be withdrawn at the end of the second fiscal year if the practices have not been completed.
- (3) A 12-month extension may be granted by the Division when a project cannot be completed due to circumstances beyond the control of the landowner, including adverse weather conditions or unavailability of contractors.

(g) Eligible landowners may appeal disagreements, disapproval of applications, or decisions on unsatisfactory completion of silvicultural or environmental practices.

History Note: Authority G.S. 106-22; 106-1010; 106-1011; 106-1015; 106-1018;
Eff. August 8, 1978;
Amended Eff. August 1, 2002; July 1, 1986; October 1, 1984; August 1, 1982; January 15, 1981;
Transferred from 15A NCAC 09C .0902 Eff. May 1, 2012;
Readopted Eff. April 1, 2018;
Amended Eff. February 1, 2019.

TITLE 11 - DEPARTMENT OF INSURANCE

11 NCAC 20 .0101 SCOPE AND DEFINITIONS

(a) Scope.

- (1) Sections .0200, .0300, and .0400 of this Chapter shall apply to HMOs, licensed insurers offering PPO benefit plans, and any other entity that is a network plan carrier as defined in this Rule.
 - (2) Sections .0500 and .0600 of this Chapter shall apply only to HMOs.
 - (3) Nothing in this Chapter shall apply to service corporations offering benefit plans pursuant to G.S. 58-65-25 or G.S. 58-65-30 that do not have any differences in copayments, coinsurance, or deductibles based on the use of network versus non-network providers.
- (b) Definitions. As used in this Chapter:
- (1) "Carrier" means a network plan carrier.
 - (2) "Health care provider" means any person who is licensed, registered, or certified pursuant to Chapter 90 of the General Statutes; a health care facility as defined in G.S. 131E-176(9b); or a pharmacy.
 - (3) "Health maintenance organization" or "HMO" has the same meaning as in G.S. 58-67-5(f).
 - (4) "Intermediary" or "intermediary organization" means any entity that employs or contracts with health care providers for the provision of health care services and that also contracts with a network plan carrier or its intermediary.
 - (5) "Member" means an individual who is insured by a network plan carrier.
 - (6) "Network plan carrier" means an insurer, health maintenance organization, or any other entity acting as an insurer as defined in G.S. 58-1-5(3) that provides reimbursement or provides or arranges to provide health care services and uses increased copayments, deductibles, or other benefit reductions for services rendered by non-network providers to encourage members to use network providers.
 - (7) "Network provider" means any health care provider participating in a network utilized by a network plan carrier.
 - (8) "PPO benefit plan" means a benefit plan that is offered by a hospital or medical service corporation or network plan carrier, pursuant to G.S. 58-50-56, in which plan:
 - (A) either or both of the following features are present:
 - (i) utilization review or quality management programs are used to manage the provision of covered services; or
 - (ii) enrollees are given incentives via benefit differentials to limit the receipt of covered services to those furnished by participating providers; and
 - (B) health care services are provided by participating providers who are paid on negotiated or discounted fee-for-service bases or have agreed to accept special reimbursement or other terms for health care services under a contract with the hospital or medical service corporation or network plan carrier.
 - (9) "Provider" means a health care provider.
 - (10) "Quality management" means a program of reviews, studies, evaluations, and other activities used to monitor and enhance the quality of health care and services provided to members.
 - (11) "Service area" means the geographic area in North Carolina as described by the HMO pursuant to G.S. 58-67-10(c)(11) where an HMO enrolls persons who either work in the service area, reside in the service area, or work and reside in the service area, as approved by the Commissioner pursuant to G.S. 58-67-20.
 - (12) "Service corporation" means a medical or hospital service corporation operating pursuant to Article 65 of Chapter 58 of the General Statutes.
 - (13) "Single service HMO" means an HMO that undertakes to provide or arrange for the delivery of a single type or single group of health care services to a defined population on a prepaid or capitated basis, except for a member's responsibility for non-covered services, coinsurance, copayments, or deductibles.
 - (14) "Utilization review" has the same meaning as in G.S. 58-50-61(17).
- History Note: Authority G.S. 58-2-40(1); 58-50-61; 58-65-1; 58-67-150;*
Eff. October 1, 1996;
Amended Eff. July 1, 2006; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014;
Temporary Amendment Eff. September 24, 2018;
Amended Eff. February 1, 2019.

TITLE 14B - DEPARTMENT OF PUBLIC SAFETY

14B NCAC 15A .0102 LOCATION AND ADDRESS

The principal office of the North Carolina Alcoholic Beverage Control Commission is located at 400 East Tryon Road, Raleigh, North Carolina 27610. The mailing address is 4307 Mail Service Center, Raleigh, North Carolina 27699-4307. The telephone number is (919) 779-0700. The Commission's email address is contact@abc.nc.gov. The Commission's website address is <https://abc.nc.gov>. This office is open to the public during regular business hours, from 8:00 a.m. to 5:00 p.m., Monday through Friday.

History Note: Authority G.S. 18B-100; 18B-207;
Eff. January 1, 1982;

Amended Eff. December 1, 2012; January 1, 2011; August 1, 2010; May 1, 1984;
Transferred and Recodified from 04 NCAC 02R .0102 Eff. August 1, 2015;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22, 2015;
Amended Eff. February 1, 2019; April 1, 2018.

TITLE 15A - DEPARTMENT OF ENVIRONMENTAL QUALITY

15A NCAC 03I .0120 POSSESSION OR TRANSPORTATION LIMITS THROUGH STATE WATERS; SALE OF NATIVE SPECIES

(a) It shall be unlawful to possess or transport through State coastal fishing waters any species of fish that is subject to State season, size, or harvest restrictions, regardless whether the species was taken in State or federal waters, unless all fish taken are in compliance with the restrictions for the waterbody or area being fished. If State season, size, or harvest restrictions differ from comparable restrictions pursuant to a fishery management plan adopted by the Atlantic States Marine Fisheries Commission or pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, or if there are no corresponding federal regulations, the State restrictions shall apply during such periods of possession or transportation.

(b) It shall be unlawful to import native species of fish for sale in the State that do not meet size limits, except as provided in 15A NCAC 03K .0202, .0207, .0305, and 03M .0503.

History Note: Authority G.S. 113-134; 113-170; 113-170.4; 113-170.5; 113-182; 113-182.1; 113-252; 143B-289.52;
Temporary Adoption Eff. July 1, 1999;
Eff. August 1, 2000;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. September 1, 2005; April 1, 2003;
Readopted Eff. April 1, 2019.

15A NCAC 03J .0102 NETS OR NET STAKES

It shall be unlawful to use nets, or net stakes of metallic material, in any of the following Internal Coastal Waters:

- (1) within 150 yards of any railroad or highway bridge crossing the Northeast Cape Fear River, New River, White Oak River, Trent River, Neuse River, Pamlico River, Roanoke River, and Alligator River; and
- (2) within 300 yards of any highway bridge crossing Albemarle Sound, Chowan River, Croatan Sound, Currituck Sound, and Roanoke Sound.

History Note: Authority G.S. 113-132; 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Readopted Eff. April 1, 2019.

15A NCAC 03J .0108 NETS PULLED BY MORE THAN ONE VESSEL

It shall be unlawful to pull or tow a net with more than one vessel, except in long haul operations.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Readopted Eff. April 1, 2019.

15A NCAC 03J .0203 CHOWAN RIVER AND MEHERRIN RIVER

(a) In the Chowan River and the Meherrin River, it shall be unlawful to do any of the following:

- (1) set a pound net within 150 yards of the mouth of any tributary; and
- (2) set a trotline within 100 yards of a pound net from February 1 through May 31.

(b) In the Chowan River, it shall be unlawful to do any of the following:

- (1) anchor the lead line of any net closer than 50 feet from shore;
- (2) set a pound net within 200 yards parallel to any other pound net in the Chowan River, in accordance with Rule .0502 of this Subchapter; and
- (3) use a seine within 1,000 yards of the mouth of any tributary.

History Note: Authority G.S. 113-132; 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. September 1, 1991;
Readopted Eff. April 1, 2019.

15A NCAC 03J .0204 CURRITUCK SOUND AND ITS TRIBUTARIES

In the Internal Coastal Waters of Currituck Sound and its tributaries, it shall be unlawful to do any of the following:

- (1) conduct long haul operations, as defined in 15A NCAC 03I .0101; and
- (2) use a seine that is more than 900 yards in length or that has a mesh length of less than three inches.

History Note: Authority G.S. 113-132; 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. September 1, 1991;
Readopted Eff. April 1, 2019.

15A NCAC 03J .0206 SOUTHPORT BOAT HARBOR

It shall be unlawful to use commercial fishing gear in the Southport Boat Harbor, Brunswick County, north of a line beginning at a point on the west side of the mouth of the harbor 33° 54.9656' N – 78° 01.4477' W, running easterly to a point on the east side of the mouth of the harbor 33° 54.9656' N – 78° 01.3797' W.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. August 1, 2004;
Readopted Eff. April 1, 2019.

15A NCAC 03J .0207 NUCLEAR PLANT INTAKE CANAL

It shall be unlawful to use any commercial fishing equipment in a nuclear plant intake canal between the fish diversion screen and the nuclear plant.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. May 1, 2015;
Readopted Eff. April 1, 2019.

15A NCAC 03J .0209 ALBEMARLE SOUND AND CHOWAN RIVER RIVER HERRING MANAGEMENT AREAS

It shall be unlawful to use drift gill nets with a mesh length less than three inches from January 1 through May 15 in the Albemarle Sound and Chowan River river herring management areas defined in 15A NCAC 03R .0202.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Temporary Adoption Eff. May 1, 2000;
Eff. April 1, 2001;
Amended Eff. May 1, 2015; June 1, 2013; December 1, 2007;
Readopted Eff. April 1, 2019.

15A NCAC 03J .0303 DREDGES AND MECHANICAL METHODS PROHIBITED

- (a) It shall be unlawful to use any dredge weighing more than 100 pounds, except in the Atlantic Ocean.
- (b) It shall be unlawful to use more than one dredge per vessel to take oysters or crabs or to use any dredges or mechanical methods between sunset and sunrise.
- (c) It shall be unlawful to possess oysters aboard a vessel with a dredge weighing more than 100 pounds on board.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1994; January 1, 1991;
Readopted Eff. April 1, 2019.

15A NCAC 03J .0304 ELECTRICAL FISHING DEVICE IN CAPE FEAR RIVER

It shall be unlawful to take catfish by the use of a hand-operated device generating pulsating electrical current in the Internal Coastal Fishing Waters of the Cape Fear River except:

- (1) from 800 feet downstream of Lock and Dam No. 1 in Bladen County to where the Black River joins the Cape Fear River; and
- (2) from July 1 through March 1.

History Note: Authority G.S. 113-132; 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. July 1, 2008;
Readopted Eff. April 1, 2019.

15A NCAC 03J .0306 HOOK AND LINE

It shall be unlawful to use any hook larger than 4/0 from July 1 through September 30 in the Internal Coastal Waters of Pamlico Sound and its tributaries south of the Albemarle Sound Management Area as defined in 15A NCAC 03R .0201 and north of a line beginning at a point 34° 59.7942' N – 76° 14.6514' W on Camp Point, running easterly to a point 34° 58.7853' N – 76° 09.8922' W on Core Banks, while using natural bait from 7:00 p.m. to 7:00 a.m. unless the terminal tackle consists of:

- (1) a "circle hook", which for the purpose of this Rule shall mean a hook with the point of the hook directed perpendicularly back toward the shank and with the barb either compressed or removed; and
- (2) a fixed sinker not less than two ounces in weight, secured not more than six inches from the fixed weight to the circle hook.

History Note: Authority G.S. 113-132; 113-134; 113-182; 143B-289.52;
Eff. April 1, 2009;
Readopted Eff. April 1, 2019.

15A NCAC 03K .0402 SIZE AND HARVEST LIMITS

Size and harvest limits applicable to hard clams in Rule .0301 of this Subchapter shall not apply to Rangia clams.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. August 1, 2004;
Readopted Eff. April 1, 2019.

15A NCAC 03K .0403 DISPOSITION OF MEATS

It shall be unlawful to dispose of meats from Rangia clams taken from prohibited (polluted) waters by a method that will result in human consumption or create risk of human consumption.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. August 1, 2004;
Readopted Eff. April 1, 2019.

15A NCAC 03K .0404 DREDGES AND MECHANICAL METHODS PROHIBITED AND OPEN SEASON

It shall be unlawful to use mechanical methods for oystering or clamming to take Rangia clams or their shells:

- (1) within 100 feet of any pier;
- (2) within any established bed of submerged aquatic vegetation as defined in 15A NCAC 03I .0101 or salt water cordgrass (Spartina

- alterniflora) that may exist together or separately;
- (3) in areas designated in 15A NCAC 03R .0108, except on shellfish leases and franchises with a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases and Franchises; and
- (4) in areas designated in Rule .0204 of this Subchapter and 15A NCAC 03R .0103.

Mechanical methods prohibited by this Rule shall be permitted in areas and at times specified by proclamation as authorized by Rules .0201 and .0302 of this Subchapter.

History Note: Authority G.S. 113-134; 113-182; 113-201; 143B-289.52;
Eff. August 1, 2004;
Readopted Eff. April 1, 2019.

15A NCAC 03K .0405 OYSTERS, HARD CLAMS, OR MUSSELS PROHIBITED

It shall be unlawful to possess oysters, hard clams, or mussels while taking Rangia clams or their shells from a prohibited (polluted) area.

History Note: Authority G.S. 113-134; 113-182; 113-201; 143B-289.52;
Eff. August 1, 2004;
Readopted Eff. April 1, 2019.

15A NCAC 03K .0501 BAY SCALLOP HARVEST MANAGEMENT

The Fisheries Director may, by proclamation and pursuant to 15A NCAC 03H .0103, impose any of the following restrictions on the taking of bay scallops from public bottom:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify open seasons for the taking of bay scallops during the period beginning the last Monday in January and ending the last Friday in May;
- (5) specify size; and
- (6) specify quantity, but shall not exceed possession of more than 15 standard U.S. bushels per person per day or a total of 30 standard U.S. bushels in any combined commercial fishing operation per day.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. May 1, 2015; February 1, 2008;
Readopted Eff. April 1, 2019.

15A NCAC 03K .0502 TAKING BAY SCALLOPS AT NIGHT AND ON WEEKENDS

(a) It shall be unlawful to take bay scallops between sunset and sunrise or on Saturdays or Sundays, except as provided in Rule .0105 of this Subchapter.

(b) Bay scallops taken on Saturdays or Sundays from shellfish leases or franchises in accordance with G.S. 113-208 shall be exempt from this Rule.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. May 1, 2015; August 1, 2000;
Readopted Eff. April 1, 2019.

15A NCAC 03K .0503 BAY SCALLOP DREDGE PROHIBITED

It shall be unlawful to take bay scallops with any of the following:

- (1) dredges weighing more than 50 pounds or equipped with teeth; and
- (2) any other instrument or device designed to drag the bottom to aid in the taking of bay scallops.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Readopted Eff. April 1, 2019.

15A NCAC 03K .0504 CALICO SCALLOP HARVEST MANAGEMENT

(a) It shall be unlawful to land or possess aboard a vessel calico scallops except at such times as designated by the Fisheries Director by proclamation.

(b) The Fisheries Director may, by proclamation and pursuant to 15A NCAC 03H .0103, impose any of the following restrictions on the taking of calico scallops:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify season;
- (5) specify size; and
- (6) specify quantity.

History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Readopted Eff. April 1, 2019.

15A NCAC 03K .0507 MARKETING SCALLOPS TAKEN FROM SHELLFISH LEASES OR FRANCHISES

(a) It shall be unlawful to sell, purchase, or possess scallops during the closed season without the lease or franchise holder delivering to the purchaser or other recipient a certification, on a form provided by the Division of Marine Fisheries, that the scallops were taken from a valid shellfish lease or franchise. Certification forms shall be furnished by the Division to lease and franchise holders upon request.

(b) It shall be unlawful for lease or franchise holders or their designees to take or possess scallops from public bottom while possessing aboard a vessel scallops taken from shellfish leases or franchises.

History Note: Authority G.S. 113-134; 113-182; 113-201; 143B-289.52;
Eff. May 1, 2015;
Readopted Eff. April 1, 2019.

**15A NCAC 03K .0508 SCALLOP AQUACULTURE
 HARVEST EXEMPTIONS**

The following exemptions and restrictions shall apply to the possession, sale, purchase, or transport of scallops produced in an aquaculture operation:

- (1) Possession and sale of scallops by a scallop aquaculture operation shall be exempt from restrictions set forth in Rules .0501, .0504, and .0505 of this Section.
- (2) Purchase and possession of scallops from a scallop aquaculture operation shall be exempt from restrictions set forth in Rules .0501, .0504, and .0505 of this Section.
- (3) It shall be unlawful for a person to possess, sell, purchase, or transport scallops described in Sub-Items (1) and (2) of this Rule unless in compliance with all conditions of the Aquaculture Operation Permit issued pursuant to 15A NCAC 03O .0500.

History Note: Authority G.S. 113-134; 113-182; 113-201; 143B-289.52;
Eff. May 1, 2015;
Readopted Eff. April 1, 2019.

15A NCAC 03L .0208 STONE CRABS

- (a) It shall be unlawful to possess stone crab bodies or fail to immediately return stone crab bodies to the waters from which they are taken.
- (b) It shall be unlawful to remove, take, or possess any stone crab claws from June 15 through August 15.
- (c) It shall be unlawful to remove, take, or possess any claws from egg-bearing stone crabs.
- (d) It shall be unlawful to use any device to take stone crabs that can puncture, crush, or injure the crab body, such as gigs, spears, grabs, hooks, or similar devices.
- (e) It shall be unlawful to remove, take, or possess any stone crab claws that have a propodus (forearm) less than 2 ¾ inches in length, measured by a straight line from the elbow to the tip of the lower immovable finger. For the purpose of this Rule, "propodus" shall mean the largest section of the claw assembly that has both a movable and immovable finger and is located farthest from the body of the crab.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. December 1, 2006;
Readopted Eff. April 1, 2019.

15A NCAC 03M .0101 MUTILATED FINFISH

It shall be unlawful to possess aboard a vessel or while engaged in fishing any species of finfish that is subject to a size or harvest restriction without having head and tail attached, except:

- (1) mullet when used for bait;

- (2) hickory shad when used for bait, provided that not more than two hickory shad per vessel or fishing operation may be cut for bait at any one time; and
- (3) tuna possessed in a commercial fishing operation as provided in Rule .0520 of this Subchapter.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. January 1, 1991;
Temporary Amendment Eff. May 1, 2001;
Amended Eff. May 1, 2015; April 1, 2011; July 1, 2006; August 1, 2002;
Readopted Eff. April 1, 2019.

15A NCAC 03M .0102 UNMARKETABLE FINFISH

- (a) It shall be unlawful to land finfish, taken in connection with a commercial fishing operation, that are unmarketable as individual finfish by reason of size, except a quantity not exceeding 5,000 pounds per vessel per day may be sold to a dealer that is licensed under G.S. 113-169.3(f)(6), (7), or (8).
- (b) Atlantic menhaden, Atlantic thread herring, gizzard shad, and pinfish are exempt from this Rule.

History Note: Authority G.S. 113-134; 113-182; 113-185; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. October 1, 2008;
Readopted April 1, 2019.

15A NCAC 03M .0103 MINIMUM SIZE LIMITS

It shall be unlawful to possess, sell, or purchase finfish under four inches in length except:

- (1) as bait in the crab pot fishery in North Carolina, if such crab pot bait is not transported west of U.S. Interstate 95 and, when transported, is accompanied by documentation showing the name and address of the shipper, the name and address of the consignee, and the total weight of the shipment;
- (2) bait in the finfish fishery with the following provisions:
 - (a) it shall be unlawful to possess more than 200 pounds of live finfish or 100 pounds of dead finfish; and
 - (b) such finfish bait is not transported outside of North Carolina;
- (3) live finfish in aquaria, provided that the finfish are not subject to other minimum size limits under the authority of Marine Fisheries Commission rules; and
- (4) Atlantic menhaden, Atlantic thread herring, gizzard shad, and pinfish.

Bait dealers who possess a valid finfish dealer license from the Division of Marine Fisheries shall be exempt from Sub-Items (2)(a) and (b) of this Rule. Tolerance of not more than five percent by number of species shall be allowed.

History Note: Authority G.S. 113-134; 113-182; 113-185; 143B-289.52;
Eff. July 1, 1993;
Amended Eff. April 1, 2014;
Readopted Eff. April 1, 2019.

15A NCAC 03M .0501 RED DRUM

- (a) It shall be unlawful to remove red drum from any type of net with the aid of any boat hook, gaff, spear, gig, or similar device.
- (b) It shall be unlawful to take or possess red drum taken by any boat hook, gaff, spear, gig, or similar device.
- (c) It shall be unlawful to possess red drum less than 18 inches total length or greater than 27 inches total length.
- (d) It shall be unlawful to possess more than one red drum per person per day taken by hook and line or for recreational purposes.
- (e) Annual commercial harvest limit for red drum:
 - (1) The annual commercial harvest limit for red drum shall be 250,000 pounds.
 - (2) The annual commercial harvest limit for red drum shall be calculated from September 1 through August 31 and is allotted in two periods:
 - (A) September 1 through April 30 at 150,000 pounds; and
 - (B) May 1 through August 31 at 100,000 pounds plus any remainder from the first period allotment.
 - (3) If the harvest limit is projected to be taken in any period, the Fisheries Director shall, by proclamation, prohibit possession of red drum taken in a commercial fishing operation for the remainder of that period.
 - (4) Any commercial harvest limit that is exceeded during one year shall result in the poundage overage being deducted from the subsequent year's commercial harvest limit, and the Fisheries Director shall, by proclamation, adjust the period allotments as described in this Paragraph.

History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1996; October 1, 1992; September 1, 1991;
Temporary Amendment Eff. May 1, 2000; July 1, 1999; October 22, 1998;
Amended Eff. April 1, 2001;
Temporary Amendment Eff. May 1, 2001;
Amended Eff. April 1, 2009; October 1, 2008; August 1, 2002;
Readopted Eff. April 1, 2019.

15A NCAC 03M .0502 MULLET

- (a) It shall be unlawful to possess more than 200 mullet per person per day for recreational purposes.
- (b) The Fisheries Director may, by proclamation and pursuant to 15A NCAC 03H .0103, impose any of the following restrictions on the taking of mullet:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify season;
- (5) specify size; and
- (6) specify quantity, except as provided in Paragraph (a) of this Rule.

History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. July 1, 2006;
Readopted Eff. April 1, 2019.

15A NCAC 03M .0506 SNAPPER GROUPER COMPLEX

- (a) In the Atlantic Ocean, it shall be unlawful for an individual fishing under a Recreational Commercial Gear License with seines, shrimp trawls, pots, trotlines, or gill nets to take any species of the snapper grouper complex.
- (b) The list of species of the snapper grouper complex in the South Atlantic Fishery Management Council Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region is incorporated by reference, including subsequent amendments and editions. Copies of the plan are available at www.safmc.net and at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, North Carolina 28557, at no cost.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. April 1, 1997; March 1, 1996; September 1, 1991;
Temporary Amendment Eff. December 23, 1996;
Amended Eff. August 1, 1998; April 1, 1997;
Temporary Amendment Eff. January 1, 2002; August 29, 2000;
January 1, 2000; May 24, 1999;
Amended Eff. October 1, 2008; May 1, 2004; July 1, 2003; April 1, 2003; August 1, 2002;
Readopted Eff. April 1, 2019.

15A NCAC 03M .0507 BILLFISH

- (a) It shall be unlawful to take blue marlin, white marlin, roundscale spearfish, or sailfish, except by hook and line or for recreational purposes.
- (b) For blue marlin, white marlin, and roundscale spearfish, it shall be unlawful to do any of the following:
 - (1) possess blue marlin less than 99 inches in length from the lower jaw to the fork in the tail;
 - (2) possess white marlin or roundscale spearfish less than 66 inches in length from the lower jaw to the fork in the tail;
 - (3) possess more than one blue marlin, white marlin, or roundscale spearfish in the aggregate per vessel per trip; and
 - (4) sell or offer for sale blue marlin, white marlin, or roundscale spearfish.
- (c) For sailfish, it shall be unlawful to do any of the following:
 - (1) possess sailfish less than 63 inches in length from the lower jaw to the fork in the tail;

- (2) possess more than one sailfish per person per day; and
- (3) sell or offer for sale sailfish.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;

Eff. January 1, 1991;

Amended Eff. March 1, 1996; March 1, 1994; February 1, 1992; September 1, 1991;

Temporary Amendment Eff. June 7, 1998; September 1, 1996;

Amended Eff. July 1, 1998;

Temporary Amendment Eff. July 1, 1999;

Amended Eff. August 1, 2000;

Readopted Eff. April 1, 2019.

15A NCAC 03M .0510 AMERICAN EEL

- (a) It shall be unlawful to possess, sell, or take American eels less than nine inches in length.
- (b) It shall be unlawful to possess more than 25 American eels per person per day for recreational purposes, except the master and each mate of for-hire vessels that hold a valid for-hire license may possess 50 eels each per day.
- (c) It shall be unlawful to possess American eels from September 1 through December 31, except when taken by baited pots.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;

Eff. July 1, 1993;

Temporary Amendment Eff. August 1, 2000;

Amended Eff. May 1, 2015; April 1, 2001;

Readopted Eff. April 1, 2019.

15A NCAC 03M .0513 RIVER HERRING

It shall be unlawful to take or possess river herring from North Carolina Coastal Fishing Waters. Possession of river herring from sources other than North Carolina Coastal Fishing Waters shall be limited to fish less than or equal to six inches total length when aboard a vessel or while engaged in fishing.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;

Eff. March 1, 1995;

Amended Eff. August 1, 1998;

Temporary Amendment Eff. May 1, 2000; August 1, 1999; July 1, 1999; March 1, 1999;

Amended Eff. June 13, 2016; October 1, 2008; December 1, 2007; April 1, 2001;

Readopted Eff. April 1, 2019.

15A NCAC 03M .0515 DOLPHIN

- (a) It shall be unlawful to possess for recreational purposes any of the following:
 - (1) more than 10 dolphin per person per day taken by hook and line; and
 - (2) more than 60 dolphin per vessel per day regardless of the number of individuals on board, except headboat vessels with a valid U.S. Coast Guard Certificate of Inspection may possess 10 dolphin per paying customer.

(b) It shall be unlawful for a commercial fishing operation without a valid federal Atlantic Dolphin/Wahoo Commercial vessel permit to do any of the following:

- (1) take or possess more than 10 dolphin per person per day; and
- (2) sell dolphin.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;

Temporary Adoption Eff. July 1, 1999;

Temporary Adoption Eff. January 1, 2000;

Eff. April 1, 2001;

Amended Eff. September 1, 2005;

Readopted Eff. April 1, 2019.

15A NCAC 03M .0517 WAHOO

- (a) It shall be unlawful to possess for recreational purposes more than two wahoo per person per day taken by hook and line.
- (b) It shall be unlawful for a commercial fishing operation to do any of the following:
 - (1) without a valid federal Atlantic Dolphin/Wahoo Commercial vessel permit:
 - (A) to take or possess more than two wahoo per person per day; and
 - (B) to sell wahoo; and
 - (2) to possess aboard a vessel or land more than 500 pounds of wahoo per trip.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;

Eff. September 1, 2005;

Readopted Eff. April 1, 2019.

15A NCAC 03M .0518 KINGFISHES (SEA MULLET)

The Fisheries Director may, by proclamation and pursuant to 15A NCAC 03H .0103, impose any of the following restrictions on the taking of kingfishes:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify season;
- (5) specify size; and
- (6) specify quantity.

History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;

Eff. October 1, 2008;

Readopted Eff. April 1, 2019.

15A NCAC 03M .0520 TUNA

- (a) It shall be unlawful to possess for recreational purposes any of the following:
 - (1) yellowfin tuna less than 27 inches curved fork length;
 - (2) bigeye tuna less than 27 inches curved fork length; and
 - (3) more than three yellowfin tuna per person per day.

(b) It shall be unlawful to possess in a commercial fishing operation any of the following:

- (1) yellowfin tuna less than 27 inches curved fork length or 27 inches from the fork of the tail to the forward edge of the cut of beheaded tuna;
- (2) bigeye tuna less than 27 inches curved fork length or 27 inches from the fork of the tail to the forward edge of the cut of beheaded tuna;
- (3) Atlantic bluefin tuna less than 73 inches curved fork length or 54 inches pectoral fin curved fork length; and
- (4) tuna subject to a size or harvest restriction without having the tail attached.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;

Eff. October 1, 2008;

Amended Eff. April 1, 2011;

Readopted Eff. April 1, 2019.

15A NCAC 03M .0521 SHEEPSHEAD

The Fisheries Director may, by proclamation and pursuant to 15A NCAC 03H .0103, impose any of the following restrictions on the taking of sheepshead:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify season;
- (5) specify size; and
- (6) specify quantity.

History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;

Eff. April 1, 2014;

Readopted Eff. April 1, 2019.

15A NCAC 03O .0106 DISPLAY OF LICENSES AND REGISTRATIONS

(a) It shall be unlawful:

- (1) for any person to use a vessel required to be registered under the provisions of G.S. 113-168.6 in a commercial fishing operation without a current Commercial Fishing Vessel Registration decal mounted on an exterior surface so as to be plainly visible when viewed from the port side; and
- (2) to display any Commercial Fishing Vessel Registration decal not issued for the vessel displaying it.

(b) It shall be unlawful to fail to display a Fish Dealer License required by G.S. 113-169.3 or Ocean Fishing Pier License required by G.S. 113-169.4 in prominent public view in each location subject to licensing.

(c) It shall be unlawful for any person licensed under G.S. 113-174.3 to fail to display a current for-hire vessel decal on the exterior surface of the vessel so as to be visible when viewed from the port side while engaged in for-hire recreational fishing.

History Note: Authority G.S. 113-134; 113-168.6; 113-169.3; 113-169.4; 113-174.1; 113-182; 143B-289.52;

Eff. January 1, 1991;

Temporary Amendment Eff. July 1, 1999;

Amended Eff. May 1, 2015; December 1, 2006; August 1, 2000;

Readopted Eff. April 1, 2019.

15A NCAC 03O .0112 FOR-HIRE LICENSE REQUIREMENTS

(a) The license requirements for an operator of a vessel engaged in a for-hire operation are set forth in G.S. 113-174.3. Either the vessel owner or the for-hire vessel operator may seek to obtain the applicable for-hire vessel license. Only the vessel owner shall seek to obtain the applicable registration and endorsement required by G.S. 113-168.6. For the purpose of this Rule, "for-hire vessel operator" shall include the holder of a Blanket For-Hire Captain's Coastal Recreational Fishing License, Blanket For-Hire Vessel Coastal Recreational Fishing License, or Non-Blanket For-Hire Vessel License, as set forth in G.S. 113-174.3.

(b) It shall be unlawful for a for-hire vessel operator to operate without:

- (1) holding the United States Coast Guard certification required in Rule .0101(a) of this Section;
- (2) having a copy of the for-hire license in possession and ready at hand for inspection; and
- (3) having current picture identification in possession and ready at hand for inspection.

(c) If requested by the Division of Marine Fisheries, it shall be unlawful for a for-hire vessel operator to fail to participate in and provide accurate information for biological sampling in accordance with 15A NCAC 03I .0113 and for survey programs administered by the Division.

(d) Requirements for display of licenses and registrations for a vessel engaged in for-hire recreational fishing are set forth in Rule .0106 of this Section.

History Note: Authority G.S. 113-134; 113-168.6; 113-174.1; 113-174.3; 143B-289.52;

Eff. July 1, 2008;

Readopted Eff. April 1, 2019.

15A NCAC 03O .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS

(a) To obtain a Division of Marine Fisheries permit, an applicant, responsible party, or person holding a power of attorney shall provide the following information:

- (1) the full name, physical address, mailing address, date of birth, and signature of the applicant on the application and, if the applicant is not appearing before a license agent or the designated Division of Marine Fisheries contact, the applicant's signature on the application shall be notarized;
- (2) a current picture identification of the applicant, responsible party, or person holding a power of attorney, acceptable forms of which shall

- include 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 or, if applying by mail, a copy thereof;
- (3) for permits that require a list of designees, the full names and dates of birth of the designees of the applicant who will be acting pursuant to the requested permit;
 - (4) certification that the applicant and his or her designees do not have four or more marine or estuarine resource convictions during the previous three years;
 - (5) for permit applications from business entities:
 - (A) the business name;
 - (B) the type of business entity: corporation, "educational institution" as defined in 15A NCAC 03I .0101, limited liability company (LLC), partnership, or sole proprietorship;
 - (C) the 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 a corporation applying for a permit in a corporate name, the current articles of incorporation and a current list of corporate officers;
 - (E) for a partnership that is established by a written partnership agreement, a current copy of such agreement shall be provided when applying for a permit; and
 - (F) for business entities other than corporations, copies of current assumed name statements if filed with the Register of Deeds office for the corresponding county and copies of current business privilege tax certificates, if applicable; and
 - (6) additional information as required for specific permits.
- (b) A permittee shall hold a valid:
- (1) Standard or Retired Standard Commercial Fishing License in order to hold:
 - (A) an Atlantic Ocean Striped Bass Commercial Gear Permit;
 - (B) a Permit for Weekend Trawling for Live Shrimp; or
 - (C) a Pound Net Set Permit.

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.
 - (2) Fish Dealer License in the proper category in order to hold dealer permits for monitoring fisheries under a quota or allocation for that category.
- (c) An individual who is assigned a valid Standard Commercial Fishing License with applicable endorsements shall be eligible to hold any permit that requires a Standard Commercial Fishing License except a Pound Net Set Permit.
- (d) If 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 in order for a permittee to hold a:
- (1) Depuration Permit;
 - (2) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas;
 - (3) Permit to Transplant Oysters from Seed Oyster Management Areas;
 - (4) Permit to Transplant Prohibited (Polluted) Shellfish; or
 - (5) Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises, except as provided in G.S. 113-169.2.
- (e) If 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) Depuration Permit;
 - (2) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas;
 - (3) Permit to Transplant Oysters from Seed Oyster Management Areas; or
 - (4) Permit to Transplant Prohibited (Polluted) Shellfish.
- (f) Aquaculture Operation Permit and Aquaculture Collection Permit:
- (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) Atlantic Ocean Striped Bass Commercial Gear Permit:
- (1) An applicant for an Atlantic Ocean Striped Bass Commercial Gear Permit shall declare one of the following types of gear for an initial permit and at intervals of three consecutive license years thereafter:
 - (A) a gill net;
 - (B) a trawl net; or
 - (C) a beach seine.

For the purpose of this Rule, a "beach seine" shall mean 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 that person.

(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 the deficiency in the application noted.

(i) A permit shall be issued only after the application is deemed complete and the applicant certifies his or her agreement to abide by the permit general and specific conditions established under 15A NCAC 03J .0501, .0505, 03K .0103, .0104, .0107, .0111, .0401, and Rules .0502 and .0503 of this Section, as applicable to the requested permit.

(j) In determining whether to issue, modify, or renew a permit, the Fisheries Director or his or her agent shall evaluate factors such as the following:

- (1) potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries Commission;
- (2) the applicant's demonstration of a valid justification for the permit; and
- (3) whether the applicant has a history of eight or more fisheries violations within 10 years.

(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) 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 is true and accurate. Notarized signatures on renewal applications shall not be required.

(n) It shall be 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.

(o) It shall be 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.

(p) Permit applications shall be available at all Division of Marine Fisheries offices.

History Note: Authority G.S. 113-134; 113-169.1; 113-169.2; 113-169.3; 113-182; 113-210; 143B-289.52; Temporary Adoption Eff. September 1, 2000; May 1, 2000; Eff. April 1, 2001;

Temporary Amendment Eff. October 1, 2001;

Amended Eff. May 1, 2017; May 1, 2015; April 1, 2011; April 1, 2009; July 1, 2008; December 1, 2007; September 1, 2005; April 1, 2003; August 1, 2002;

Readopted Eff. April 1, 2019.

**15A NCAC 03O .0503 PERMIT CONDITIONS;
SPECIFIC**

(a) Aquaculture Operation Permit and Aquaculture Collection Permit:

- (1) It shall be unlawful to conduct aquaculture operations using marine and estuarine resources without first securing an Aquaculture Operation Permit from the Fisheries Director.
- (2) It shall be 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;
 - (B) to sell or use for any purpose not related to North Carolina aquaculture marine and estuarine resources taken pursuant to an Aquaculture Collection Permit; or
 - (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 of Marine Fisheries, stating the amount and disposition of marine and estuarine resources collected under authority of an Aquaculture Collection Permit.
- (3) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 03K .0103 and .0104 shall be exempt from requirements to have an Aquaculture Operation Permit or Aquaculture Collection Permit issued by the Fisheries Director.
- (4) Aquaculture Operation Permits and Aquaculture Collection Permits shall be issued or renewed on a calendar year basis.
- (5) It shall be unlawful to fail to provide the Division with a listing of all designees acting pursuant to an Aquaculture Collection Permit at the time of application.

(b) Atlantic Ocean Striped Bass Commercial Gear Permit:

- (1) It shall be 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 shall be unlawful to obtain more than one Atlantic Ocean Striped Bass Commercial Gear Permit during a license year, regardless of the number of Standard Commercial Fishing licenses, Retired Standard Commercial Fishing licenses, or assignments.

(c) Blue Crab Shedding Permit: It shall be 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) Coastal Recreational Fishing License Exemption Permit:

- (1) It shall be 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 impairment;
 - (B) members of the United States Armed Forces and their dependents, upon presentation of a valid military identification card;
 - (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 as set forth in 42 U.S. Code 12511.

For the purpose of this Paragraph, educational institutions include high schools and other secondary educational institutions.

- (3) The Coastal Recreational Fishing License Exemption Permit shall be valid for the date, time, and physical location of the organized fishing event for which the exemption is granted and the duration of the permit shall not exceed one year from the date of issuance.
- (4) The Coastal Recreational Fishing License Exemption Permit shall only be issued if all of the following, in addition to the information required in Rule .0501 of this Section, is submitted to the Fisheries Director, in writing, at least 30 days prior to the event:
 - (A) the name, date, 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.

(e) Dealer permits for monitoring fisheries under a quota or allocation:

- (1) During the commercial season opened by proclamation or rule for the fishery for which a dealer permit for monitoring fisheries under a quota or allocation shall be issued, it shall be unlawful for a fish dealer issued such permit to fail to:

- (A) fax or send via electronic mail by noon daily, on forms provided by the Division of Marine Fisheries, the previous day's landings for the permitted fishery to the Division. Landings for Fridays or Saturdays shall be submitted on the following Monday. If the dealer is unable to fax or electronically mail the required information, the permittee shall call in the previous day's landings to the Division;
- (B) submit the required form set forth in Part (e)(1)(A) of this Rule 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 Division daily, regardless of whether 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) Atlantic Ocean Flounder Dealer Permit:

- (A) It shall be 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 shall be 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.

- (3) Black Sea Bass North of Cape Hatteras Dealer Permit: It shall be 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.

- (4) Spiny Dogfish Dealer Permit: It shall be 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.

- (5) Striped Bass Dealer Permit:

(A) It shall be 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) the Atlantic Ocean;
- (ii) the Albemarle Sound Management Area as designated in 15A NCAC 03R .0201; or
- (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 valid Division of Marine Fisheries-issued 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. Division striped bass tags shall not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the Division offices. The Division shall specify the quantity of tags to be issued based on historical striped bass landings. It shall be unlawful for the permittee to fail to surrender unused tags to the Division upon request.

- (f) Horseshoe Crab Biomedical Use Permit:

- (1) It shall be unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.
- (2) It shall be unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit an annual 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, a statement of percent mortality up

to the point of release, the harvest method, the number or percent of males and females, and the disposition of bled crabs prior to release.

- (3) It shall be 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.asmfcr.org/fisheries-management/program-overview> and at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557, at no cost.

- (g) Permit for Weekend Trawling for Live Shrimp:

- (1) It shall be unlawful to take shrimp with trawls from 9:00 p.m. on Friday through 12 noon on Saturday without first obtaining a Permit for Weekend Trawling for Live Shrimp.
- (2) It shall be 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 shall be 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 aerators or circulating water, with a minimum combined tank capacity of 50 gallons; or
 - (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.

- (h) Pound Net Set Permit: The holder of a Pound Net Set Permit shall follow the Pound Net Set Permit conditions as set forth in 15A NCAC 03J .0505.

- (i) Scientific or Educational Activity Permit:

- (1) It shall be 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 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 15A NCAC 03I .0101.
- (4) It shall be unlawful for the responsible party issued a Scientific or Educational Activity Permit to fail to submit an annual report on collections and, if authorized, sales to the Division, 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 shall be unlawful to sell marine or estuarine species taken under a Scientific or Educational Activity Permit without:
 - (A) the required license for such sale;
 - (B) an authorization stated on the permit for such sale; and
 - (C) providing the information required by 15A NCAC 03I .0114 if the sale is to a licensed fish dealer.
- (6) It shall be unlawful to fail to provide the Division with a list 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.

(j) Under Dock Oyster Culture Permit:

- (1) It shall be 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), demonstrating 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.

History Note: Authority G.S. 113-134; 113-169.1; 113-169.2; 113-169.3; 113-182; 113-210; 143B-289.52; Temporary Adoption Eff. September 1, 2000; August 1, 2000; May 1, 2000; Eff. April 1, 2001; Amended Eff. May 1, 2017; May 1, 2015; April 1, 2014; April 1, 2009; July 1, 2008; January 1, 2008; September 1, 2005; October 1, 2004; August 1, 2004; August 1, 2002; Readopted Eff. April 1, 2019.

15A NCAC 03R .0112 ATTENDED GILL NET AREAS

(a) The attended gill net areas referenced in 15A NCAC 03J .0103(g) are delineated in the following areas:

- (1) Pamlico River, west of a line beginning at a point 35° 27.5768' N – 76° 54.3612' W on Ragged Point; running southwesterly to a point 35° 26.9176' N – 76° 55.5253' W on Mauls Point;
- (2) within 200 yards of the shoreline in Pamlico River and its tributaries east of a line beginning at a point 35° 27.5768' N – 76° 54.3612' W on Ragged Point; running southwesterly to a point 35° 26.9176' N – 76° 55.5253' W on Mauls Point; and west of a line beginning at a point 35° 22.3622' N – 76° 28.2032' W on Roos Point; running southerly to a point at 35° 18.5906' N – 76° 28.9530' W on Pamlico Point;
- (3) Pungo River, east of the northern portion of the Pantego Creek breakwater and a line beginning at a point 35° 31.7198' N – 76° 36.9195' W on the northern side of the breakwater near Tooleys Point; running southeasterly to a point 35° 30.5312' N – 76° 35.1594' W on Durants Point;
- (4) within 200 yards of the shoreline in Pungo River and its tributaries west of the northern portion of the Pantego Creek breakwater and a line beginning at a point 35° 31.7198' N – 76° 36.9195' W on the northern side of the breakwater near Tooleys Point; running southeasterly to a point 35° 30.5312' N – 76° 35.1594' W on Durants Point; and west of a line beginning at a point 35° 22.3622' N – 76° 28.2032' W on Roos Point; running southerly to a point at 35° 18.5906' N – 76° 28.9530' W on Pamlico Point;

- (5) Neuse River and its tributaries northwest of the Highway 17 highrise bridge;
 - (6) Trent River and its tributaries; and
 - (7) within 200 yards of the shoreline in Neuse River and its tributaries east of the Highway 17 highrise bridge and south and west of a line beginning on Maw Point at a point 35° 09.0407' N – 76° 32.2348' W; running southeasterly near the Maw Point Shoal Marker "2" to a point 35° 08.1250' N – 76° 30.8532' W; running southeasterly near the Neuse River Entrance Marker "NR" to a point 35° 06.6212' N – 76° 28.5383' W; running southerly to a point 35° 04.4833' N – 76° 28.0000' W near Point of Marsh in Neuse River. In Core and Clubfoot creeks, the Highway 101 Bridge shall constitute the attendance boundary.
- (b) The attended gill net areas referenced in 15A NCAC 03J .0103(h) are delineated in the following Internal Coastal Waters and Joint Fishing Waters of the State south of a line beginning on Roanoke Marshes Point at a point 35° 48.3693' N – 75° 43.7232' W; running southeasterly to a point 35° 44.1710' N – 75° 31.0520' W on Eagles Nest Bay to the South Carolina state line:
- (1) all primary nursery areas described in 15A NCAC 03R .0103, all permanent secondary nursery areas described in 15A NCAC 03R .0104, and no-trawl areas described in 15A NCAC 03R .0106(2), (4), (5), (8), (10), (11), and (12);
 - (2) in the area along the Outer Banks, beginning at a point 35° 44.1710' N – 75° 31.0520' W on Eagles Nest Bay; running northwesterly to a point 35° 45.1833' N – 75° 34.1000' W west of Pea Island; running southerly to a point 35° 40.0000' N – 75° 32.8666' W west of Beach Slough; running southeasterly and passing near Beacon "2" in Chicamicomico Channel to a point 35° 35.0000' N – 75° 29.8833' W west of the Rodanthe Pier; running southwestly to a point 35° 28.4500' N – 75° 31.3500' W on Gull Island; running southerly to a point 35° 22.3000' N – 75° 33.2000' W near Beacon "2" in Avon Channel ; running southwestly to a point 35° 19.0333' N – 75° 36.3166' W near Beacon "2" in Cape Channel; running southwestly to a point 35° 15.5000' N – 75° 43.4000' W near Beacon "36" in Rollinson Channel; running southeasterly to a point 35° 14.9386' N – 75° 42.9968' W near Beacon "35" in Rollinson Channel; running southwestly to a point 35° 14.0377' N – 75° 45.9644' W near a "Danger" Beacon northwest of Austin Reef; running southwestly to a point 35° 11.4833' N – 75° 51.0833' W on Legged Lump; running southeasterly to a point 35° 10.9666' N – 75° 49.7166' W south of Legged Lump; running southwestly to a point 35° 09.3000' N – 75° 54.8166' W near the west end of Clarks Reef; running westerly to a point 35° 08.4333' N – 76° 02.5000' W near Nine Foot Shoal Channel; running southerly to a point 35° 06.4000' N – 76° 04.3333' W near North Rock; running southwestly to a point 35° 01.5833' N – 76° 11.4500' W near Beacon "HL"; running southerly to a point 35° 00.2666' N – 76° 12.2000' W; running southerly to a point 34° 59.4664' N – 76° 12.4859' W on Wainwright Island; running easterly to a point 34° 58.7853' N – 76° 09.8922' W on Core Banks; running northerly along the shoreline and across the inlets following the COLREGS Demarcation Line to the point of beginning;
- (3) in Core and Back sounds, beginning at a point 34° 58.7853' N – 76° 09.8922' W on Core Banks; running northwesterly to a point 34° 59.4664' N – 76° 12.4859' W on Wainwright Island; running southerly to a point 34° 58.8000' N – 76° 12.5166' W; running southeasterly to a point 34° 58.1833' N – 76° 12.3000' W; running southwestly to a point 34° 56.4833' N – 76° 13.2833' W; running westerly to a point 34° 56.5500' N – 76° 13.6166' W; running southwestly to a point 34° 53.5500' N – 76° 16.4166' W; running northwesterly to a point 34° 53.9166' N – 76° 17.1166' W; running southerly to a point 34° 53.4166' N – 76° 17.3500' W; running southwestly to a point 34° 51.0617' N – 76° 21.0449' W; running southwestly to a point 34° 48.3137' N – 76° 24.3717' W; running southwestly to a point 34° 46.3739' N – 76° 26.1526' W; running southwestly to a point 34° 44.5795' N – 76° 27.5136' W; running southwestly to a point 34° 43.4895' N – 76° 28.9411' W near Beacon "37A"; running southwestly to a point 34° 40.4500' N – 76° 30.6833' W; running westerly to a point 34° 40.7061' N – 76° 31.5893' W near Beacon "35" in Back Sound; running westerly to a point 34° 41.3178' N – 76° 33.8092' W near Buoy "3"; running southwestly to a point 34° 39.6601' N – 76° 34.4078' W on Shackleford Banks; running easterly and northeasterly along the shoreline and across the inlets following the COLREGS Demarcation lines to the point of beginning;
 - (4) within 200 yards of the shoreline in the area upstream of the 76° 28.0000' W longitude line beginning at a point 35° 22.3752' N – 76° 28.0000' W near Roos Point in Pamlico River; running southeasterly to a point 35° 04.4833' N – 76° 28.0000' W near Point of Marsh in Neuse River; and

- (5) within 50 yards of the shoreline east of the 76° 28.0000' W longitude line beginning at a point 35° 22.3752' N – 76° 28.0000' W near Roos Point in Pamlico River; running southeasterly to a point 35° 04.4833' N – 76° 28.0000' W near Point of Marsh in Neuse River, except from October 1 through November 30, south and east of Highway 12 in Carteret County and south of a line from a point 34° 59.7942' N – 76° 14.6514' W on Camp Point; running easterly to a point at 34° 58.7853' N – 76° 09.8922' W on Core Banks; to the South Carolina state Line.

History Note: Authority G.S. 113-134; 113-173; 113-182; 143B-289.52;
Eff. August 1, 2004;
Amended Eff. April 1, 2016; June 1, 2013; April 1, 2011; April 1, 2009;
Readopted Eff. April 1, 2019.

15A NCAC 07B .0802 PUBLIC HEARING AND LOCAL ADOPTION REQUIREMENTS

- (a) Notice of Public Hearing. The local government shall provide the Secretary or his or her designee written notice of the public hearing for local adoption and a copy of the proposed land use plan or comprehensive plan, hereinafter referred to as "the plan", or amendment no less than five business days prior to publication of a public hearing notice. The public hearing notice shall include, as set forth in Rule .0803(a)(2) of this Section, disclosure of the public's opportunity to provide written comment to the Secretary following local adoption of the plan.
- (b) Final Plan Content. The final plan or amendment shall be adopted by the elected body of each participating local government.
- (c) Transmittal to the Division for Certification. The local government shall provide the Executive Secretary of the CRC or his or her designee the locally adopted plan, a certified statement of the local government adoption action, and documentation that it has followed the public hearing process required in G.S. 113A-110.
- (d) For joint plans originally adopted by each participating jurisdiction, each government retains its sole and independent authority to make amendments to the plan as it affects its jurisdiction.

History Note: Authority G.S. 113A-107(a); 113A-110; 113A-124;
Eff. August 1, 2002;
Amended Eff. January 1, 2007; February 1, 2006;
Readopted Eff. February 1, 2016;
Amended Eff. February 1, 2019.

15A NCAC 07B .0803 CERTIFICATION AND USE OF THE PLAN

- (a) Certification of Plans and Amendments: This Rule outlines the certification procedures and conditions for locally adopted land use plans or comprehensive plans, hereinafter referred to as

"the plan," or plan amendments. The procedures shall be as follows:

- (1) The Division District Planner shall submit a written report to the CRC, or qualified employee of the Department pursuant to G.S. 113A-124(c)(9), on the locally adopted plan or amendment and either recommend certification or identify how the plan or amendment does not meet the procedures and conditions for certification as set forth in Subparagraph (a)(3) of this Rule.
 - (2) The public shall have an opportunity to submit written objections or comments on the locally adopted plan or amendment prior to certification pursuant to G.S. 113A-110(e). Written objections or comments shall be received by the Division no more than 30 calendar days after local adoption of the plan or amendment. Written objections shall be limited to the criteria for certification as defined in Subparagraph (a)(3) of this Rule, and shall identify the specific plan elements that are opposed. Written objections or comments shall be sent by the Division to the local government submitting the plan or amendment. Written objections or comments shall be considered in the certification of the local plan or amendment.
 - (3) The CRC or qualified employee of the Department, pursuant to G.S. 113A-124(c)(9), shall certify plans and amendments following the procedures and conditions specified in this Rule, and that the plans and amendments meet the following conditions:
 - (A) are consistent with the Coastal Area Management Act G.S. 113A-110;
 - (B) are consistent with the rules of the CRC;
 - (C) do not violate State or federal law; and
 - (D) contain policies that address each management topic as set forth in Rule .0702(d)(2) of this Subchapter.
 - (4) If the plan or amendment does not meet certification requirements, the applicant shall be informed by the Division of Coastal Management within 45 calendar days regarding how the plan or amendment does not meet the procedures and conditions for certification.
- (b) Copies of the Plan. Within 90 calendar days of certification of the plan or an amendment, the local government shall provide one printed and one digital copy of the plan to the Division. Amendments shall be incorporated in all copies of the plan. The dates of local adoption, certification, and amendments shall be published on the cover.
- (c) Use of the Plan. Once certified, the plan shall be utilized in the review of the CAMA permits in accordance with G.S. 113A-111. Local governments shall have the option to exercise their enforcement responsibility by choosing from the following:

- (1) Local administration: The local government reviews the CAMA permits for consistency with the plan;
- (2) Joint administration: The local government identifies policies, including the future land use map and implementation actions that will be used by the Division for the CAMA permit consistency reviews or;
- (3) Division administration: The Division reviews the CAMA permits for consistency with the plan policies, including the future land use map and implementation actions.

(d) Plan updates and Amendments. Local governments shall determine the scope, timing, and frequency of plan updates and amendments.

History Note: Authority G.S. 113A-107(a); 113A-110; 113-111; 113A-124;
Eff. August 1, 2002;
Amended Eff. April 1, 2008; September 1, 2006;
Readopted Eff. February 1, 2016;
Amended Eff. February 1, 2019.

15A NCAC 07K .0103 MAINTENANCE AND REPAIR

(a) "Maintenance and "repairs" are specifically excluded from the definition of "development" under the conditions and in the circumstances set out in G.S. 113A-103(5)(b)(5). Individuals required to take such measures within an AEC shall contact the local CAMA representative for consultation before beginning work.

(b) Beach bulldozing, defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation, for the purpose of preventing damage to imminently threatened structures as defined in 15A NCAC 07H .0308(a), by the creation of protective sand dunes shall qualify for an exclusion under G.S. 113A-103(5)(b)(5) subject to the following limitations:

- (1) The area on which this activity is being performed must maintain a slope that follows the pre-emergency slope as closely as possible so as not to endanger the public or hinder the public's use of the beach. All mechanically disturbed areas shall be graded smooth of ruts and spoil berms that are perpendicular to the shoreline. The movement of material utilizing a bulldozer, front-end loader, back hoe, scraper or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the surface elevation;
- (2) The activity shall not exceed the lateral bounds of the applicant's property without written permission of adjoining landowners;
- (3) Movement of material from seaward of the mean low water line shall not be permitted under this exemption;
- (4) The activity shall not significantly increase erosion on neighboring properties and shall not have a significant adverse effect on natural or cultural resources; and

- (5) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.

(c) Redistribution of sand that results from storm overwash or aeolian transport around buildings, pools, roads, parking areas and associated structures is considered maintenance so long as the sand remains within the Ocean Hazard AEC. Individuals proposing such activities shall consult with the Division of Coastal Management or the local permit officer to determine whether the proposed activity qualifies for the exclusion under G.S. 113A-103(5)(b)(5).

History Note: Authority G.S. 113A-103(5)(b)(5); 113A-118(a);
Eff. November 1, 1984;
Amended Eff. March 1, 1985;
RRC Objection Eff. January 18, 1996 due to ambiguity;
Amended Eff. February 1, 2019; March 1, 1996.

15A NCAC 07K .0208 SINGLE FAMILY RESIDENCES EXEMPTED

(a) All single family residences constructed within the Coastal Shorelines Area of Environmental Concern that are more than 40 feet landward of normal high water or normal water level, and involve no land disturbing activity within the 40 feet buffer area are exempted from the CAMA permit requirement as long as this exemption is consistent with all other applicable CAMA permit standards and local land use plans and rules in effect at the time the exemption is granted.

(b) This exemption allows for the construction of a generally shore perpendicular access to the water, provided that the access shall be no wider than six feet. The access may be constructed out of materials such as wood, composite material, gravel, paver stones, concrete, brick, or similar materials. Any access constructed over wetlands shall be elevated at least three feet above any wetland substrate as measured from the bottom of the decking.

(c) Within the AEC for estuarine shorelines contiguous to waters classified as Outstanding Resource Waters (ORW), no CAMA permit shall be required if the proposed development is a single-family residence that has a built upon area of 25 percent or less and is at least 40 feet from waters classified as ORW.

(d) Before beginning any work under this exemption, the CAMA local permit officer or the Department of Environmental Quality representative shall be notified of the proposed activity to allow on-site review. Notification may be by telephone at (252) 808-2808, in person, or in writing to the North Carolina Division of Coastal Management, 400 Commerce Ave., Morehead City, NC 28557. Notification shall include:

- (1) the name, address, and telephone number of the landowner and the location of the work, including the county, nearest community, and water body; and
- (2) the dimensions of the proposed project, including proposed landscaping and the location of normal high water or normal water level.

(e) In eroding areas, this exemption shall apply only when the local permit officer has determined that the house has been located

the maximum feasible distance back on the lot but not less than forty feet.

(f) Construction of the structure authorized by this exemption shall be completed by December 31 of the third year of the issuance date of this exemption.

*History Note: Authority G.S. 113A-103(5)c;
Eff. November 1, 1984;
Amended Eff. February 1, 2019; May 1, 2015; December 1, 2006;
December 1, 1991; May 1, 1990; October 1, 1989.*

15A NCAC 13B .0830 INCORPORATION BY REFERENCE

(a) All Sections of the Code of Federal Regulations (CFR) cited in this Section are hereby incorporated by reference, including subsequent amendments or additions, and may be obtained free of charge at <https://www.gpo.gov/fdsys/>.

(b) US Environmental Protection Agency (EPA) and American Society for Testing Materials (ASTM) test methods and procedures, and other published standards referenced in this Section are hereby incorporated by reference, including subsequent amendments or additions.

(c) Copies of all material incorporated by reference in this Section are available for inspection free of charge at the Department of Environmental Quality Division of Waste Management, Solid Waste Section, 217 West Jones Street, Raleigh, N.C. 27603 or the Division's website at <https://deq.nc.gov/about/divisions/waste-management>.

*History Note: Authority G.S. 130A-291.1;
Eff. October 1, 2009;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24, 2017;
Amended Eff. February 1, 2019.*

15A NCAC 13B .0831 DEFINITIONS

In addition to the terms defined in G.S. 130A-290, as used in this Section the following terms are defined as follows:

- (1) "Agronomic rates" means those rates that provide the nitrogen and other nutrient needs of the crop based on available realistic yield expectations (RYE) established for a soil series through published Cooperative Extension Service bulletins, Natural Resources Conservation Service publications, or county soil surveys, but do not overload the soil with nutrients or other constituents that may eventually leach to groundwater, limit crop growth, or degrade soil quality.
- (2) "Annual septage application rate" means the maximum amount, in gallons, of septage that may be applied to a unit area of land during a 365-day period.
- (3) "Land application" means the spraying or spreading of septage onto the land surface; the injection of septage below the land surface; or the incorporation of septage into the soil so that

the septage conditions the soil or fertilizes crops or vegetation grown in the soil.

- (4) "Licensed Geologist" means licensed geologist as defined in G.S. 89E-3.
- (5) "Licensed Soil Scientist" means licensed soil scientist as defined in G.S. 89F-3.
- (6) "Nutrient Management Plan" means a plan to define the management requirements and nutrient needs of crops to be grown on a septage land application site, including the amount, sources, placement, and timing of nutrient applications to maximize the nutrient uptake of the crop. Plan implementation shall protect the environment and maintain crop productivity.
- (7) "Place of business" means place of business as defined in G.S. 130A-334.
- (8) "Place of public assembly" means place of public assembly as defined in G.S. 130A-334.
- (9) "Professional Engineer" means professional engineer as defined in G.S. 89C-3.
- (10) "Residence" means residence as defined in G.S. 130A-334.
- (11) "Rock" means the consolidated or partially consolidated mineral matter or aggregate, including bedrock or weathered rock, not exhibiting the properties of soil.
- (12) "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.
- (13) "Septage Management Facility" means land, personnel, and equipment used in the management of septage, including septage management firms as defined in G.S. 130A-290(a)(33), septage detention and treatment facilities, and septage land application sites.
- (14) "Soil" means the unconsolidated mineral and organic material of the land surface. It consists of sand, silt, and clay minerals and variable amounts of organic materials.
- (15) "Soil textural classes" means soil classification based upon size distribution of mineral particles in the fine-earth fraction less than two millimeters in diameter. The fine-earth fraction includes sand (2.0 – 0.05 mm in size), silt (0.05 mm – 0.002 mm), and clay (less than 0.002 mm in size) particles. The specific textural classes shall be defined as follows:
 - (a) "Sand" means soil material that contains 85 percent or more of sand; the percentage of silt plus 1.5 times the percentage of clay less than 15;
 - (b) "Loamy sand" means soil material that contains 70 to 91 percent sand, and the percentage silt plus 1.5 times the

- percentage of clay is not less than 15, and the percentage of silt plus twice the percentage of clay is less than 30;
- (c) "Sandy loam" means soil material that contains either:
- (i) 7 to 20 percent clay, 52 percent or more sand, and the percentage of silt plus twice the percentage of clay exceeds 30; or
- (ii) less than 7 percent clay, less than 50 percent silt, and more than 43 percent sand;
- (d) "Loam" means soil material that contains 7 to 27 percent clay, 28 to 50 percent silt, and 52 percent or less sand;
- (e) "Silt loam" means soil material that contains either:
- (i) 50 percent or more silt and 12 to 27 percent clay; or
- (ii) 50 to 80 percent silt and less than 12 percent clay;
- (f) "Silt" means soil material that contains 80 percent or more silt and less than 12 percent clay;
- (g) "Sandy clay loam" means soil material that contains 20 to 35 percent clay, less than 28 percent silt, and more than 45 percent sand;
- (h) "Clay loam" means soil material that contains 27 to 40 percent clay and 20 to 46 percent sand;
- (i) "Silty clay loam" means solid material that contains 27 to 40 percent clay and 20 percent or less sand;
- (j) "Sandy clay" means soil material that contains 35 percent or more clay and 45 percent or more sand;
- (k) "Silty clay" means soil material that contains 40 percent or more clay and 40 percent or more silt; and
- (l) "Clay" means soil material that contains 45 percent or less sand and less than 40 percent silt.
- (16) "Treatment of septage" means the preparation of septage for final use or disposal. Treatment may include thickening, stabilization, and dewatering of septage. Treatment shall not include storage of septage.

Definitions in 40 CFR 503.9(d), (g), (h), (j), (k), (l), (r), (t), (u), (v), (w), (bb), and in 40 CFR 503.11(a), (c), (d), (f), (g), (i), (k), (l), (m), (n) are incorporated by reference including subsequent amendments and editions.

History Note: Authority G.S. 130A-291.1;
Eff. October 1, 2009;
Readopted Eff. February 1, 2019.

15A NCAC 13B .0832 GENERAL PROVISIONS

(a) General permitting requirements.

- (1) No person shall manage septage, or any part of septage, or operate a Septage Management Firm without first obtaining a permit from the Division as required under G.S. 130A-291.1(c);
- (2) The permit requirement of G.S. 130A-291.1(c) applies to persons who remove septage, and other waste materials or spent media from wastewater systems permitted by the Department of Health and Human Services, under the authority of Article 11, Chapter 130A of the North Carolina General Statutes;
- (3) The permit requirement of G.S. 130A-291.1(c) applies to persons who manage septage generated from properties that they own, lease, or manage as part of a business, such as mobile homes, mobile home parks, restaurants, and other residential and commercial property;
- (4) The Division may deny a permit application in accordance with G.S. 130A-295.3(c);
- (5) The Division may require an applicant to demonstrate substantial compliance in accordance with G.S. 130A-294(b2)(2);
- (6) Permits issued in accordance with this Section shall be followed;
- (7) Where specified in this Section, permit applications or specific portions of applications shall be prepared in accordance with Rule .0202(a)(3) of this Subchapter; and
- (8) Initial septage land application site and detention and treatment facility permits shall be valid for one year. Subsequent permits shall be valid for five years. The Division may issue a subsequent permit for less than five years based on any of the following factors:
- (A) the duration of the landowner authorization or wastewater treatment plant authorization;
- (B) the compliance history of the operator;
- (C) if any of the information for the permit application was received after the due date; or
- (D) to allow the due date for a subsequent permit application to be the same date as the septage firm permit application due date.

(b) Portable sanitation permitting provisions.

- (1) A mobile or modular office that meets the criteria of G.S. 130A-291.2 shall be considered a chemical or portable toilet as defined in G.S. 130A-290(a)(1c). A storage tank at a mobile or modular office shall not release septage onto the ground. The owner and the lessee of the mobile or modular office shall be considered to be the responsible parties and shall be subject to the requirements of Paragraph (a) of this Rule.
- (2) No person shall rent or lease portable toilet(s) or contract or subcontract to rent or lease

- portable toilet(s) to another person or manage or dispose of waste from portable toilet(s), regardless of ownership of the toilet(s), unless that person is permitted to operate a septage management firm.
- (3) Placement of a chemical or portable toilet as defined in G.S. 130A-290(a)(1c) for potential use in North Carolina shall be considered operation of a septage management firm that requires a permit.
- (c) Recreational vehicle waste provisions.
- (1) Domestic septage from a recreational vehicle shall be managed in accordance with this Section or shall flow directly into a wastewater treatment system permitted by the Department of Environmental Quality.
- (2) Wastewater from recreational vehicles that are tied down, blocked up, or that are not relocated, and that are not connected to an approved wastewater system shall be managed in accordance with Article 11, Chapter 130A of the NC General Statutes.
- (3) Recreational vehicle dump stations that do not discharge directly to a wastewater treatment system permitted by the Department of Environmental Quality shall be permitted as a septage detention and treatment facility in accordance with Rule .0837 of this Section.
- (d) Alternate septage management method limitations.
- (1) Grease septage, or any part of grease septage, shall not be introduced or reintroduced into a grease trap, interceptor, separator, or other appurtenance used for the purpose of removing cooking oils, fats, grease, and food debris from the waste flow generated from food handling, preparation, and cleanup unless the Division has received written approval from the wastewater treatment plant operator or the onsite wastewater system permitting authority that reintroduction is acceptable.
- (2) Septage, or any part of septage, shall not be reintroduced into an onsite wastewater system unless approved pursuant to G.S. 130A-343(c).
- (3) Septage, or any part of septage, shall not be placed in containers at restaurants designated for yellow grease.
- (4) Septage, or any part of septage, shall not be disposed of in a municipal solid waste landfill unless the waste passes the Paint Filter Liquids Test as defined by EPA S.W. 846 Test Method 9095B which can be accessed at no cost at <https://www.epa.gov/hw-sw846>, and the landfill receiving the waste has provided the Division written documentation that the specific material will be accepted.
- (5) Septage, or any part of septage, shall not be disposed of in a dumpster unless the waste passes the Paint Filter Liquids Test and the landfill receiving the waste is a permitted municipal solid waste landfill, in accordance with Section .1600 of this Subchapter.
- (6) Septage, or any part of septage, managed through subsurface disposal shall be considered a treatment facility and shall require a permit in accordance with this Section and G.S. 130A-343.
- (7) Facilities receiving septage, or any part of septage, for composting shall be permitted in accordance with Section .1400 of this Subchapter.
- (e) All training to meet the requirements of G.S. 130A-291.3(a) and (b) shall be pre-approved by the Division. Approval by the Division shall be based on whether the training is in accordance with the rules in this Section.
- (f) Waste from holding tanks not otherwise addressed in this Section, and from wastewater systems pumped more often than every 30 days, shall not be considered domestic septage and shall not be land applied at a permitted septage land application site.
- (g) Inspection and entry. The permit holder of a septage management firm or facility shall allow a representative of the Division to:
- (1) enter the permit holder's premises where a regulated facility or activity is located or conducted;
- (2) access and copy any records required in accordance with this Section or conditions of the permit;
- (3) inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated by the Division;
- (4) sample or monitor for the purposes of assuring permit compliance or as otherwise authorized by the Federal Clean Water Act or the North Carolina Solid Waste Management Act, any substances, parameters, or soils at any location; and
- (5) photograph for the purpose of documenting times of compliance or noncompliance at septage management facilities or to require the permit holder to make such photos for the Division.
- (h) Washings from the interior of septage handling containers such as pump trucks shall be managed as septage.
- History Note: Authority G.S. 130A-291.1; 130A-291.2; 130A-295.3(c); 130A-335;
Eff. October 1, 2009;
Amended Eff. January 1, 2014;
Readopted Eff. February 1, 2019.*

15A NCAC 13B .0833 PERMIT FEES

- (a) Every septage management firm shall pay an annual permit fee by January 1 of each year in accordance with G.S. 130A-291.1(e) or (e1), unless the firm notifies the Division prior to January 1 that the firm will not operate during the next year. Fees shall be paid to the Division of Waste Management, Solid Waste Section, 1646 Mail Service Center, Raleigh, NC 27699-1646.

- (b) Annual fees are not pro-rated and shall not be refunded or credited to a subsequent year.
- (c) Failure to apply for permit renewal or failure to pay the permit fee by January 1 shall result in assessment of a late fee in accordance with G.S. 130A-291.1(e2). Failure to pay the appropriate fees within 45 days after January 1 shall result in an additional administrative penalty pursuant to G.S. 130A-22(a) of ten dollars (\$10.00) per day for each day thereafter that the fees are not paid.
- (d) Annual permit renewal, including fee payment, shall be the responsibility of the operator of the septage management firm. If the operator did not receive annual permit renewal forms, it shall not be a defense to assessment of late fees.
- (e) A food service facility that is permitted to operate a septage detention facility in accordance with Rules .0834 and .0837 of this Section and that has paid the fee specified in G.S. 130A-291.1(e1) shall be allowed to empty their own grease interceptors, separators, traps, or other appurtenances used for the purpose of removing cooking oils, fats, grease, and food debris from the waste flow generated from food handling, preparation, and cleanup, that have a volume of 25 gallons or less, into the permitted detention facility. The permitted facility shall be constructed and located in accordance with the requirements of Rule .0838 of this Section and emptied at least quarterly by a permitted septage management firm.

History Note: Authority G.S. 130A-291.1; Eff. October 1, 2009; Readopted Eff. February 1, 2019 (Recodified from 15A NCAC 13B .0834).

15A NCAC 13B .0834 SEPTAGE MANAGEMENT FIRM PERMITS

- (a) Septage management firm names shall be distinguishable upon the records of the Division from the name of other septage management firms, limited liability companies, non-profit corporations, business corporations, limited partnerships, sole proprietors, general partners, and limited liability partnerships operating in North Carolina. Naming preference shall be given to companies that are listed as incorporated with the NC Secretary of State's office.
- (b) A person who has not operated a septage management firm during the previous calendar year shall obtain four hours of new operator training from the Division prior to receiving a permit to operate a septage management firm.
- (c) To apply for a permit, a person proposing to operate a septage management firm shall submit the following information to the Division by January 1 of each year:
- (1) owner's name, address, and phone number;
 - (2) business name, address, and phone number;
 - (3) operator name, address, and phone number, if different from owner;
 - (4) permit number, if existing firm;
 - (5) type(s) of septage handled, and the quantity pumped the previous 12 months, if in operation;
 - (6) number of pumper trucks;
 - (7) capacity and type of septage handled by each pumper truck;

- (8) vehicle license and serial numbers of each pumper truck;
- (9) counties in which the firm operates;
- (10) disposal method(s) for septage;
- (11) permit number for each septage land application site to be used;
- (12) permit number for each septage detention and treatment facility to be used;
- (13) any other information that the Division may request that is pertinent to the operation of a septage management firm if it is necessary to determine compliance with the rules of this Section;
- (14) written authorization on official letterhead or a notarized wastewater treatment plant authorization form shall be submitted from an individual responsible for the operation of each wastewater treatment plant used for disposal indicating:
 - (A) type(s) of septage that may be discharged at the plant;
 - (B) where septage, including grease septage, may be discharged at the plant or in the collection system;
 - (C) geographic area from which septage will be accepted; and
 - (D) duration of authorization;
- (15) the appropriate annual permit fee in accordance with G.S. 130A-291.1(e); and
- (16) the date, location, number of hours, and provider of annual septage management firm training required in accordance with G.S. 130A-291.3(a).

(d) Persons that operate a septage land application site or a septage treatment and detention facility, but do not pump septage, shall submit the following information to the Division by January 1 of each year to apply for a permit:

- (1) facility name, address, phone number, and county;
- (2) owner's name, address, and phone number;
- (3) operator name, address, and phone number, if different from owner;
- (4) permit number, if existing firm;
- (5) type(s) of septage managed;
- (6) facility types and their permit numbers;
- (7) the name and permit number of all permitted septage management firms using the facility;
- (8) the date, location, number of hours, and provider of annual training in accordance with G.S. 130A-291.3(b); and
- (9) the appropriate annual permit fee in accordance with G.S. 130A-291.1(e1).

(e) A septage management firm permit shall not be issued unless the applicant has submitted to the Division written documentation of authorized access to dispose or otherwise manage septage, or any part of septage, at a wastewater treatment plant, a permitted septage land application site, a permitted septage treatment facility, or other permitted solid waste management facility.

Documentation from each plant, site, or other facility shall include the types and amount of septage that may be discharged.

(f) Septage management firm permits shall not be issued until all parts of the application have been completed.

(g) Prior to the issuance of a septage management firm permit to firms that pump septage, all pumper trucks for the firm shall be inspected and approved by the Division for compliance with Rule .0835 of this Section.

(h) Permits shall not be transferable.

(i) Septage management firm permits issued on or after January 1 shall be effective until December 31 of that calendar year.

History Note: Authority G.S. 130A-291.1;

Eff. November 1, 2009;

Readopted Eff. February 1, 2019 (Recodified from 15A NCAC 13B .0833).

15A NCAC 13B .0835 TRANSPORTATION OF SEPTAGE

(a) Vehicles used for the transportation of septage shall be operated and maintained to prevent leaks and spills of septage and shall comply with the following:

- (1) all tanks shall be constructed of metal and affixed to the truck bed with permanent fixtures such as bolts;
- (2) all valves shall be in working order and be closed during transportation;
- (3) all access ports shall have lids in good repair in accordance with manufacturer specifications and sealed during transportation;
- (4) portable toilet pump units that slide into pickup truck beds shall be bolted to the trucks in accordance with manufacturer specifications;
- (5) boats used to pump or transport septage shall be United States Coast Guard approved or construction plans shall be available indicating that the specific craft is stable in the water when fully loaded with septage, and if required by G.S. 89C, a professional engineer shall prepare these documents; and
- (6) tanks that are mounted on trailers for the pumping or transportation of septage shall meet all applicable State and federal requirements for highway use.

(b) All permitted septage management firms shall display lettering on each side of every pumper vehicle operated by the firm. The lettering shall include the firm name, town name, phone number, and septage management firm permit number as shown on the firm application. All lettering required by this Rule on the pumper vehicle shall be no less than three inches in height and legible, distinguishable from the background, and not obstructed from view. Identification shall not be removable (i.e. no magnetic signs).

(c) Applicants for septage management firm permits that were not permitted in the previous calendar year shall have each pump truck inspected prior to the Division's issuance of a permit.

(d) Septage to be discharged at a wastewater treatment plant or any part of the collection system for that plant shall be handled in accordance with the plant rules and policies.

(e) All vehicles used in the transportation of septage, including spare vehicles and tankers, shall meet the requirements of this Section and be included in the permit application.

(f) Vehicles used in the transportation of septage, that are listed on an approved septage management firm permit application, may remain loaded or partially loaded on land owned by the septage management firm for up to seven days without obtaining a permit for a detention or treatment facility. Such vehicles shall comply with this Rule.

History Note: Authority G.S. 130A-291.1;

Eff. October 1, 2009;

Readopted Eff. February 1, 2019 (Recodified from 15A NCAC 13B .0844).

15A NCAC 13B .0836 RECORD KEEPING FOR SEPTAGE MANAGEMENT FIRMS

(a) Each permit holder shall maintain a log that includes the following information for each septage pumping event:

- (1) the date, type, quantity, and location of septage pumped; the location for tanks shall be a street address and the location for portable toilets shall be a route; and
- (2) location of the discharge of the septage.

(b) A septage management firm shall make all records, documents, or logs required in accordance with this Section or conditions of the permit available for review by the Division at the time and place of an inspection of the firm's septage pumper truck(s) or upon the Division's request.

History Note: Authority G.S. 130A-291.1;

Eff. October 1, 2009;

Readopted Eff. February 1, 2019 (Recodified 15A NCAC 13B .0839).

15A NCAC 13B .0837 SEPTAGE DETENTION AND TREATMENT FACILITY PERMITS

(a) No person shall establish, or allow to be established upon any real property owned, operated, leased, or controlled by that person, a septage detention and treatment facility, unless a permit has been obtained from the Division or the facility is operating in accordance with a NPDES permit issued by the NC Division of Water Resources.

(b) Septage detention and treatment facilities shall be designed, located, constructed, and operated in accordance with the standards specified in Rule .0838 of this Section.

(c) To apply for a permit to operate a septage detention facility the applicant shall submit the following information to the Division:

- (1) name, address, and phone number of
 - (A) the applicant;
 - (B) the landowner or the landowner's legal representative in control of the site; and
 - (C) the proposed operator;
- (2) location of the facility;
- (3) vicinity map or county road map showing the site location;
- (4) types of septage to be stored or treated;

- (5) a description of the facility including the size, number, and type of structures to be used at the site and construction materials to be used;
- (6) an explanation of the methods for discharge into and removal from the detention or treatment facility, the methods for treating leaks or spills at the site, and methods for odor control;
- (7) septage land application site permit number and the name of any wastewater treatment plant(s) where the septage will be disposed;
- (8) written documentation of approved locations to manage any solid or liquid wastes generated at a treatment facility;
- (9) an aerial photograph, extending for a distance of at least 1,000 feet in all directions from the site property lines;
- (10) written authorization to operate a septage detention or treatment facility signed by each landowner (if other than the permit holder) or the landowner's legal representative;
- (11) any other information that the Division may request that is pertinent to the suitability of the proposed facility if it is necessary to determine compliance with this Section; and
- (12) an approval letter from the unit of local government having zoning authority over the area where the facility is to be located, stating that the proposed facility meets all of the requirements of the local zoning ordinance, or that the site is not zoned.

(d) Treatment of septage shall include aerobic or anaerobic digestion, dewatering or thickening, pressing, centrifuging, the use of organisms or enzymes, and pathogen reduction methods or vector attraction reduction methods other than lime stabilization.

(e) To apply for a permit to operate a septage treatment facility, plans and specifications shall be submitted. If required by G.S. 89C, a professional engineer shall prepare these documents. The plans shall include the information set forth in Paragraph (c) of this Rule and the following:

- (1) site plan at a scale appropriate to show the detail of the facility, but in no case greater than 100 feet per inch;
- (2) engineering plans for the entire system, including treatment, storage, and disposal equipment, and containment structures;
- (3) drawings that shall be at a scale appropriate to show pumps, tanks, valves, controls, meters, pipes, and other items critical to the operation of the facility. As-built drawings shall be submitted if the facility construction is not consistent with the initial drawings;
- (4) an operation and maintenance manual signed by the applicant outlining information and instruction on how the facility is to be operated, equipment maintenance, minimization of odors, required safety and personnel training, and an outline of reports to be submitted to the Division. Contingency plans shall be included

to address at least equipment failure, human error, inclement weather, and spill and leak cleanup;

- (5) a quality assurance plan signed by the applicant for the process and final product if treatment involves meeting pathogen reduction or vector attraction reduction standards.
- (6) compliance history for the facility showing no unresolved violations of Federal, State, or local laws, rules, regulations, or ordinances; and
- (7) certification that the construction of the treatment facility is complete and consistent with the plans submitted in accordance with this Paragraph;

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter and resolution dated March 11, 2010, that preparation of engineering design documents pursuant to this Paragraph constitutes practicing engineering under G.S. 89C.]

(f) A permit to operate a new septage detention and treatment facility shall not be issued until the proposed site has been approved by the Division. Approval by the Division shall be based on whether the facility is in accordance with the rules of this Section.

(g) Operation of a new septage detention or a new septage treatment facility shall not commence until the facility has been inspected by the Division and found to be consistent with the permit application.

(h) A permit to operate a treatment facility shall not be issued until the facility has been inspected by the Division and found to be consistent with the permit application and operation has been found to be consistent with the operation and maintenance manual.

(i) Application packages for permit renewals for septage treatment facilities shall include:

- (1) updated drawings, if there are changes to the facility;
- (2) updated site plans, if there are changes to the initial site plan;
- (3) updated operation and maintenance manual, if there are changes to the operation and maintenance manual; and
- (4) updated quality assurance plan, if there are changes to the quality assurance plan.

(j) Engineering plans and specifications for marina detention tanks that do not meet the minimum setbacks in Rule .0838(m) of this Section or are located below grade shall be submitted. If required by G.S. 89C, a professional engineer shall prepare these documents. The facilities shall be certified to be constructed in substantial compliance with the plans and specifications submitted in accordance with this Rule. If required by G.S. 89C, a professional engineer shall certify this compliance. [Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter and resolution dated March 11, 2010, that preparation of engineering design documents pursuant to this Paragraph constitutes practicing engineering under G.S. 89C.]

(k) Parts of detention and treatment facilities located below grade and lagoons shall be certified to be constructed in substantial compliance with the plans and specifications submitted in

accordance with this Rule. If required by G.S. 89C, a professional engineer shall certify this compliance. [Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter and resolution dated March 11, 2010, that preparation of engineering design documents pursuant to this Paragraph constitutes practicing engineering under G.S. 89C.]

(l) Applications shall be submitted to the Division of Waste Management, Solid Waste Section, 1646 Mail Service Center, Raleigh NC 27699-1646. Applications for permits will not be reviewed until all parts of the application have been completed and submitted to the Division.

(m) Applications for renewal permits shall be submitted to the Division at least 90 days prior to the expiration of the permit. The Division shall notify permit holders of facility permit expiration dates 120 days prior to permit expiration.

(n) Applications for renewal permits submitted in accordance with Paragraphs (i) and (m) of this Rule and applications for permit modifications shall not be required to resubmit the information required in Subparagraphs (c)(3) and (9), and Paragraph (d) of this Rule unless changes are made in those plans.

(o) Septage detention and treatment facility permits shall not be transferable.

(p) Permit duration shall be in accordance with Rule .0832(a)(8) of this Section.

(q) Applications for permit modifications shall be required for the following changes:

- (1) property ownership;
- (2) treatment methods;
- (3) types of septage to be stored or treated; or
- (4) size and number of treatment or storage structures.

(r) Applications for facilities that do not meet the standards set forth in this Section shall be denied.

(s) An application requesting reduced setbacks in accordance with Rule .0838(m)(7) of this Section shall include a letter from the appropriate local zoning office approving proposed reduced setbacks.

History Note: Authority G.S. 130A-291.1;

Eff. April 1, 2010;

Readopted Eff. February 1, 2019 (Recodified from 15A NCAC 13B .0836).

15A NCAC 13B .0838 STANDARDS FOR SEPTAGE DETENTION AND TREATMENT FACILITIES

(a) Septage detention facilities used to meet the requirements of Rule .0842(a)(19) of this Section shall have a minimum size equal to two percent of the maximum annual application rate. The Division shall increase the minimum size requirement for any increase in the maximum annual application rate or if it is demonstrated during site operation that this volume is inadequate or if specific site considerations would warrant such increases. The Division shall notify the owner or operator of the facility of the increase. This Paragraph does not limit the maximum capacity of a septage detention facility.

(b) Each site shall have an all weather access road.

(c) Septage treatment and detention facility containers shall be constructed of steel, concrete, plastic, or fiberglass; and shall be

free of evidence of damage or weakness such as holes or cracks that may allow the escape of septage.

If required by G.S. 89C, plans and specifications for proposed containers constructed of materials not specifically addressed in this Rule shall be prepared by a professional engineer. [Note: The North Carolina Board of Examiners for Engineers and Surveyors, has determined, via letter and resolution dated March 11, 2010, that certification of documents pursuant to this Paragraph constitutes practicing engineering, under G.S. 89C.]

(d) A septage treatment and detention facility permit holder and operator shall be responsible for the actions of any septage management firm that uses the detention or treatment facility.

(e) Each detention and treatment facility shall be designed, constructed, and maintained to:

- (1) prevent leaks or the flow of septage out of the facility into the seasonally high water table, onto the ground surface, or into any surface waters;
- (2) minimize the attraction or admittance of vectors; and
- (3) prevent unauthorized entry into septage containers or lagoons.

(f) Septage detention and treatment facilities located below grade shall:

- (1) be constructed in substantial compliance with the plans and specifications prior to any waste being introduced into the system. If required by G.S. 89C, a professional engineer shall certify this compliance. [Note: The North Carolina Board of Examiners for Engineers and Surveyors, has determined, via letter and resolution dated March 11, 2010, that certification of documents pursuant to this Paragraph constitutes practicing engineering, under G.S. 89C.];
- (2) be constructed to a traffic rated standard or protected from vehicular traffic; and
- (3) not be constructed of used metal tanks. Used metal tanks may be located beside a wall or embankment for gravity access as long as the entirety of the tank is visible.

(g) The permit holder of a septage treatment or detention facility shall minimize odors from the facility at the property boundary.

(h) The Division may require that groundwater monitoring wells or a leak detection system be installed around treatment or detention systems for protection of public health and the environment if there is evidence of a leaking tank.

(i) The area around tanks shall be free of debris and vegetation to allow for access and inspection for a distance of 5 feet.

(j) Septage shall be transferred to and from a detention system in a manner that prevents leaks or spills of septage onto the ground surface or exterior surface of the detention system, including septage in pipes used for transferring waste to and from vehicles.

(k) Access roads or paths crossing or leading to the facility shall be posted with "NO TRESPASSING" signs.

(l) Requirements for lined lagoons:

- (1) Lined lagoons shall be permitted only at sites where the construction and use of a lagoon does not jeopardize the public health or environment.

- (2) Portions of lined lagoons located below grade shall be in substantial compliance with the plans and specifications prior to any waste being introduced into the system. If required by G.S. 89C, a professional engineer shall certify this compliance. [Note: The North Carolina Board of Examiners for Engineers and Surveyors, has determined, via letter and resolution dated March 11, 2010, that certification of documents pursuant to this Paragraph constitutes practicing engineering, under G.S. 89C.];
- (3) Only lagoons designed, constructed and inspected in accordance with accepted engineering principles providing for the protection of the underlying groundwater will be considered for use in a septage treatment or detention system. If required by G.S. 89C, a professional engineer shall certify that the construction was completed in substantial compliance with the plans and specifications prior to any waste being introduced into the system. [Note: The North Carolina Board of Examiners for Engineers and Surveyors, has determined, via letter and resolution dated March 11, 2010, that certification of documents pursuant to this Paragraph constitutes practicing engineering under G.S. 89C.]
- (4) Liners shall be a minimum of 12 inches of clay compacted to a maximum permeability of 10^{-7} cm/sec or equivalent synthetic liner.
- (5) Synthetic liners shall have a minimum thickness of 30 mils. A synthetic liner shall have a demonstrated water vapor transmission rate of not more than 0.03 gm/m²/day. Liner material and any seaming materials shall have chemical and physical resistance not adversely affected by environmental exposure or waste placement.
- (6) Clay liners with a permeability more than 10^{-7} cm/sec may be used in conjunction with a synthetic liner to meet the maximum permeability of 10^{-7} cm/sec or equivalent.
- (7) The surface of the supporting soil on which the liner will be installed shall be free of stones, organic matter, protrusions, loose soil, and any abrupt changes in grade that could affect the integrity of the liner.
- (8) Lagoons shall be designed and maintained to have adequate storage to handle the additional water from a 25-year storm.
- (9) Lagoons shall be protected from entry by unauthorized individuals by fencing or other means.
- (m) Septage detention and treatment facilities shall adhere to the following minimum setback requirements:
 - (1) residence, place of business, except septage firm business, or place of public assembly – 100 feet;
 - (2) well or water supply spring – 100 feet;
 - (3) surface waters – 100 feet;
 - (4) property lines – 50 feet;
 - (5) facilities permitted after April 1, 2010 shall not be located in the 100-year flood plain hazard area;
 - (6) soil wetness, as determined in of Rule .0841(a)(3)(A) of this Section – 12 inches;
 - (7) setbacks in Subparagraphs (1) and (4) of this Paragraph may be in accordance with local zoning ordinances if located in areas zoned for industrial use;
 - (8) setbacks in Subparagraphs (1) through (4) of this Paragraph shall be increased 100% for lagoons; and
 - (9) accurate property line location shall be the responsibility of the site operator.
- (n) At the time of initial permitting, septage detention and treatment facilities shall observe the minimum setback distances specified in this Rule. Minimum setbacks shall be maintained throughout the life of the facility only on land owned, operated, or controlled by the permittee or by the landowner(s) at the time of initial permitting. Any sale, lease, or other conveyance of land by the permittee, or by the landowner(s) if different from the permittee, subsequent to the initial permitting of the facility shall include restrictions to ensure continued maintenance of the setbacks.
- (o) The setbacks in Subparagraph (m)(1) through (4) of this Rule shall be increased for storage facilities with a capacity in excess of 25,000 gallons permitted after April 1, 2010 to prevent offsite contamination from major spills, or 100% containment shall be provided. Increased setbacks shall be twice the minimum distance as indicated in Subparagraph (m)(1) through (4) of this Rule, unless the permitted volume and the proximity to residences, wells or water supply springs, surface waters, or property lines dictate a reduced setback determined by the Division on a case-by-case basis.
- (p) Storage containers for individual restaurants shall be:
 - (1) located above grade and protected from vehicular traffic;
 - (2) kept free of grease on the exterior surface of the container and the ground surface, maintained to be impervious to flies, and shall not attract vectors;
 - (3) placed at a location and acceptable to and determined by the local health department and the NC Department of Health and Human Services; and
 - (4) no greater than 200 gallons in size.
- (q) Setbacks for detention tanks at marinas may be reduced for storage capacity of 2000 gallons or less when the facility is designed to prevent leaks or spills or has containment equaling 100% of the storage volume plus rainfall from a 25-year storm event. Setbacks shall in no case be less than what is approved by applicable local government, State, or federal laws or rules.
- (r) Permit holders of all septage detention and treatment facilities shall have all records required in accordance with this Section available for review during inspections by the Division or upon the Division's request.

(s) Septage shall not be stored or treated at a new septage treatment or detention facility until a representative of the Division has inspected the facility to determine compliance with these Rules and consistency with the permit application and all permit conditions.

(t) Septage detention and treatment facility closure shall include:

- (1) a written notification of cease of operations submitted to the Division that shall include the permit number, the date of cease of operations, and the signature of the operator;
- (2) all liquids and solids, resulting from septage detention or treatment, removed from all portions of the facility and managed or disposed at an approved facility; and
- (3) all parts of the facility removed from property under separate ownership, unless all landowners provide the Division with written documentation that the facility may remain at the site.

(u) Record keeping for detention facilities that receive septage from more than one septage management firm shall include:

- (1) the date that the septage is received at and removed from the facility;
- (2) name of the septage management firm that delivered the septage;
- (3) type and amount, in gallons, of septage received; and
- (4) where septage is discharged.

(v) Record keeping for treatment facilities shall include:

- (1) date septage is received at the facility;
- (2) name of the septage management firm that delivered the septage;
- (3) type and amount, in gallons, of septage received;
- (4) date processed material(s) is removed from the facility;
- (5) type and amount, in tons or gallons, of material removed from the facility; and
- (6) management methods for each type of material removed by the facility.

(w) Alarms shall be required to detect high liquid levels, leaks and spills, or system operation parameters at detention or treatment facilities when the location, design, capacity, or operational complexities of the facility warrant the additional safety precautions.

History Note: Authority G.S. 130A-291.1;

Eff. April 1, 2010;

Readopted Eff. February 1, 2019 (Recodified from 15A NCAC 13B .0841).

15A NCAC 13B .0839 INNOVATIVE OR ALTERNATIVE TREATMENT OR STORAGE METHODS

(a) Applications for permits for innovative or alternative treatment, storage, or land application methods that do not fit the criteria outlined in this Section shall be reviewed in accordance with G.S. 130A-291.1(i).

(b) Applications shall include:

- (1) the information required in Rule .0837(c) of this Section;
- (2) an operation and maintenance manual consistent with the requirements of Rule .0837(e)(4) of this Section;
- (3) means of demonstrating that the proposed method of treatment or storage will meet the appropriate standards for vector attraction reduction and pathogen reduction in this Section; and
- (4) testing methods and schedule to document Subparagraph (3) of this Paragraph.

If required by G.S. 89C, a professional engineer shall prepare these documents. [Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated March 11, 2010, that preparation of engineering design documents for alternative treatment methods that do not fit the criteria outlined in this Section constitutes practicing engineering under G.S. 89C.]

(c) Innovative or alternative design criteria shall be approved in cases where the applicant can demonstrate that the alternative design criteria will provide the following:

- (1) equal or better treatment of the waste;
- (2) equal or better protection of the waters of the state; and
- (3) no increased potential for nuisance conditions from noise, odor, or vermin.

History Note: Authority G.S. 130A-291.1;

Eff. April 1, 2010;

Readopted Eff. February 1, 2019 (Recodified from 15A NCAC 13B .0842).

15A NCAC 13B .0840 SEPTAGE LAND APPLICATION SITE PERMITS

(a) No person shall establish, or allow to be established upon any real property owned, operated, leased, or controlled by that person, a septage management facility to treat, manage, store, or dispose of septage, or any component of septage, unless a permit has been obtained from the Division. Septage shall not be disposed of by trenching or burial.

(b) Any person that has not operated as a septage land application site during the previous calendar year shall receive at least three hours of new land application site operator training from the Division prior to receiving a permit to operate a septage land application site.

(c) To apply for a permit for a septage land application site, the following information shall be submitted to the Division:

- (1) name, address, and phone number of:
 - (A) the applicant;
 - (B) the landowner or the landowner's legal representative in control of the site; and
 - (C) the proposed operator;
- (2) location of the site;
- (3) written authorization to operate a septage land application site signed by each landowner (if other than the permit holder) or the landowner's legal representative;

- (4) types of septage and the proposed annual volume of each type of septage proposed for land application per acre, based on the nutrient management plan submitted in accordance with Subparagraph (c)(12) of this Rule;
 - (5) substances other than septage previously disposed of at this location, and the amounts of those substances;
 - (6) aerial photography extending for a distance of at least 2500 feet in all directions from the site, with site property boundaries depicted;
 - (7) alternative plan for the detention or disposal of septage, during conditions that cause the site to be unavailable for use, such as adverse weather conditions;
 - (8) treatment method for each type of septage to be discharged and the permit number of any treatment facilities;
 - (9) vicinity map (county road map) showing the site location;
 - (10) a written report that documents compliance with Rule .0841 of this Section including:
 - (A) a representative soils analysis such as the Standard Soil Fertility Analysis, conducted within the last six months, on each proposed field of each proposed land application site. The representative soils analysis shall include acidity, base saturation (by calculation), calcium, cation exchange capacity, exchangeable sodium percentage (by calculation), magnesium, manganese, percent humic matter, pH, phosphorus, potassium, and sodium, and may include additional analyses;
 - (B) a total metal analysis for each proposed field shall be conducted for arsenic, cadmium, copper, lead, nickel, selenium, and zinc. A North Carolina Department of Agriculture & Consumer Services (NCDA & CS) mehlich-3 extraction shall be an acceptable substitute for a total metal analysis. Mercury shall be sampled if the applicant proposes to land apply domestic or industrial or commercial treatment plant septage, or if warranted by previous site use;
 - (C) field description of soil profile(s), based on examinations of excavation pits and auger borings, within four feet of the land surface or to bedrock describing the following parameters by individual diagnostic horizons: thickness of the horizon; texture; color and other diagnostic features; structure; internal drainage; depth, thickness, and type of restrictive horizon(s); and presence or absence and depth of evidence of any seasonal high water table. Applicants may be required to dig pits when necessary for evaluation of the soils at the site;
 - (D) a soil map delineating major soil mapping units within each proposed land application site and showing all physical features, location of pits and auger borings, setbacks required in accordance with this Section, legends, scale, and a north arrow;
 - (E) if the annual application rate is proposed to exceed 125,000 gallons per acre per year, field descriptions to a depth of six feet shall be required; and
 - (F) Global Positioning System (GPS) data compatible with the Division's datalogger shall be provided for proposed sites 30 acres or more in size.
- If required by G.S. 89F, G.S. 89C, and G.S. 89E, a licensed soil scientist, professional engineer, or licensed geologist shall prepare these documents. [Note: The North Carolina Board of Licensing of Soil Scientists, Board of Examiners for Engineers and Surveyors, and the Board of Licensing of Geologists has determined, via letters dated November 16, 2009, March 11, 2010, and January 7, 2010, that preparation of documents pursuant to this Paragraph constitutes soil science, practicing engineering, or geology under G.S. 89F, G.S. 89C, and G.S. 89E.]
- (11) applicants proposing to land apply 200,000 gallons per acre per year or more shall provide a plan for monitoring soil moisture levels and the depth to seasonal wetness to determine when land application may occur without impacting groundwater or hydraulic overloading. The plan shall include recommendations concerning annual and instantaneous loading rates of liquids, solids, other wastewater constituents, and amendments based on in-situ measurement of saturated hydraulic conductivity in the most restrictive horizon. If required by G.S. 89C, G.S. 89F, and G.S. 89E, a professional engineer, licensed soil scientist, or licensed geologist shall prepare these documents. [Note: The North Carolina Board of Examiners for Engineers and Surveyors, Board of Licensing of Soil Scientists, and the Board of Licensing of Geologists has determined, via letters dated March 11, 2010, November 16, 2009, and January 7, 2010, that preparation of documents pursuant to this Paragraph constitutes practicing engineering, soil science, or geology under G.S. 89C, G.S. 89F, and G.S. 89E.]

- (12) a nutrient management plan prepared by an environmental professional that shall include the following:
- (A) crops that will be planted on the site, including cover crops, and where each crop will be planted. Crop planting locations shall be depicted on an aerial photograph or on a plat map;
 - (B) nitrogen needs of the crops based on the realistic yield expectations for the soils on the site, and crop management practices proposed;
 - (C) crop stand density required to meet the realistic yield expectations for the proposed crop;
 - (D) approximate crop planting times and the seeding or sprigging rates for crops to be established;
 - (E) crop harvest frequency appropriate for the proposed realistic yield expectations and nitrogen needs, and approximate crop harvest times;
 - (F) approximate monthly discharge rate to match the nitrogen needs and potential uptake of the crop;
 - (G) sites proposed to receive more than 50,000 gallons per acre per year of domestic or industrial or commercial treatment plant septage, or domestic or grease septage that has been treated to remove solids, fats, oils, and grease shall include nitrogen carry over when determining annual application rates;
 - (H) weed control recommendations;
 - (I) crop use or removal;
 - (J) results from at least four samples of treated septage if the application is proposing an increased application rate for the land application of septage treated to reduce nutrients; and
 - (K) the signature of the site operator.
- For the purposes of this Rule, an environmental professional means a person who has received a post-secondary degree from a college or university and has training and experience in or related to agronomic principles utilized to manage wastewater. Preparation by an environmental professional shall not be required for nutrient management plans for renewal applications that do not contain changes that would affect nutrient uptake.
- (13) application rates for sites proposed to receive treated septage shall be determined based on the most limiting nutrient;
- (14) erosion and runoff management plan showing:
- (A) buffer locations and widths based on the direction and amount of slope adjacent to the land application site;
 - (B) vegetation type and stand density in the buffer areas; and
 - (C) buffer maintenance fertility requirements.
- (15) proposed land application method;
- (16) proposed distribution plan if required in Paragraph (e) of Rule .0841 of this Section;
- (17) sites proposing to use spray irrigation as a land application method shall include:
- (A) the location of all fixed irrigation heads or the location of traveling gun irrigation lanes;
 - (B) irrigation head spacing and traveling gun lane spacing shall be determined based on standards in NC Cooperative Extension Documents AG-553-6 and AG-553-7 which are hereby incorporated by reference including subsequent amendments and additions;
 - (C) the size of all spray nozzles;
 - (D) system operating pressure at the irrigation head;
 - (E) calculation of the wettable acres vs. permitted acreage;
 - (F) calibration methods and frequency; and
 - (G) irrigation system operation and maintenance plan.
- (18) documentation from the Department of Natural and Cultural Resources that the land application site complies with Rule .0841(g) of this Section if any part of the site specified for land application is not agricultural land;
- (19) the date, location, number of hours, and provider of annual septage land application site operator training required in accordance with G.S. 130A-291.3(b);
- (20) any other information that the Division may request that is pertinent to the suitability of the proposed site if it is necessary to determine compliance with this Section;
- (21) an applicant who proposes to land apply septage on a public contact site, shall provide the Division evidence of public notice and the applicant shall have completed the Land Application of Residuals Course and maintain a Land Application of Residuals Certificate issued by the Department of Environmental Quality;
- (22) an applicant who proposes to land apply industrial or commercial treatment plant septage or domestic treatment plant septage shall have completed the Land Application of Residuals Course and maintain a Land Application of Residuals Certificate issued by the Department of Environmental Quality;
- (23) an applicant who proposes to land apply septage in excess of 50,000 gallons per acre per

year shall provide the Division with evidence of public notice which shall at a minimum be publication with a local news organization, and shall have completed the Land Application of Residuals Course and maintain a Land Application of Residuals Certificate issued by the Department of Environmental Quality; and

(24) an approval letter from the unit of local government having zoning authority over the area where the facility is to be located stating that the proposed facility meets all of the requirements of the local zoning ordinance, or that the site is not zoned.

(d) The Division shall not issue a permit to land apply septage at a rate in excess of 50,000 gallons per acre per year or a permit to land apply domestic treatment plant septage or industrial or commercial treatment plant septage until the applicant has operated a septage land application site in accordance with this Section for at least a 12 month period.

(e) Applications for permits issued in accordance with this Rule shall be submitted to the Division of Waste Management, Solid Waste Section, 1646 Mail Service Center, Raleigh NC 27699-1646. Applications for permits will not be reviewed until all parts of the application have been completed and submitted to the Division.

(f) Applications for permits that do not meet the standards in accordance with this Section shall be denied.

(g) Applications for renewal permits issued in accordance with this Rule shall be submitted to the Division at least 90 days prior to the expiration date of the permit. The Division shall notify permit holders of facility permit expiration dates 120 days prior to permit expiration.

(h) Applications for permit modification shall be required for the following changes:

- (1) permitted area or field boundaries;
- (2) property ownership;
- (3) annual application rates;
- (4) receiver crop; or
- (5) types of septage discharged.

(i) Applications for renewal permits submitted in accordance with Paragraph (g) of this Rule and applications for permit modifications shall not be required to resubmit the information required in Subparagraphs (c)(6), (8), (9), (10), (16), (17), and (18) unless changes are made in those plans.

(j) Septage land application site permits shall not be transferable.

(k) Permit duration shall be in accordance with Rule .0832(a)(8) of this Section.

History Note: Authority G.S. 130A-291.1;

Eff. April 1, 2010;

Readopted Eff. February 1, 2019 (Recodified from 15A NCAC 13B .0835).

15A NCAC 13B .0841 LOCATION OF SEPTAGE LAND APPLICATION SITES

(a) Soil characteristics (Morphology) that shall be evaluated are as follows:

- (1) Texture – The relative proportions of the sand, silt, and clay sized mineral particles in the fine-

earth fraction of the soil are referred to as soil texture. The texture of the different horizons of soils shall be classified into three general groups and 12 soil textural classes based upon the relative proportions of sand, silt, and clay sized mineral particles.

(A) Soil Group I – Sandy Texture Soils: The sandy group includes the sand and loamy sand textural classes.

(B) Soil Group II – Coarse Loamy and Fine Loamy Texture Soils: The coarse loamy and fine loamy group includes sandy loam, loam, silt, silt loam, sandy clay loam, clay loam, and silty clay loam textural classes.

(C) Soil Group III – Clayey Texture Soils: The clayey group includes sandy clay, silty clay, and clay textural classes.

(2) The soil textural class shall be determined in the field by hand texturing samples of each soil horizon in the soil profile using the following criteria:

(A) Sand: Sand has a gritty feel, does not stain the fingers, and does not form a ribbon or ball when wet or moist;

(B) Loamy Sand: Loamy sand has a gritty feel, stains the fingers, forms a weak ball, and cannot be handled without breaking;

(C) Sandy Loam: Sandy loam has a gritty feel and forms a ball that can be picked up with the fingers and handled with care without breaking;

(D) Loam: Loam may have a slightly gritty feel but does not show a fingerprint and forms only short ribbons of from 0.25 inch to 0.50 inch in length. Loam forms a ball that can be handled without breaking;

(E) Silt Loam: Silt loam has a floury feel when moist and shows a fingerprint but does not form a ribbon and forms only a weak ball;

(F) Silt: Silt has a floury feel when moist and sticky when wet but does not form a ribbon and forms a ball that tolerates some handling;

(G) Sandy Clay Loam: Sandy clay loam has a gritty feel but contains enough clay to form a firm ball and may form ribbons from 0.75 inch to one-inch long pieces;

(H) Silty Clay Loam: Silty clay loam is sticky when moist and forms a ribbon from one to two inches. Rubbing silty clay loam with the thumbnail produces a moderate sheen. Silty clay loam produces a distinct fingerprint;

- (I) Clay Loam: Clay loam is sticky when moist. Clay loam forms a thin ribbon of one to two inches in length and produces a slight sheen when rubbed with the thumbnail. Clay loam produces a nondistinct fingerprint;
 - (J) Sandy Clay: Sandy clay is plastic, gritty, and sticky when moist and forms a firm ball and produces a thin ribbon over two inches in length;
 - (K) Silty Clay: Silty clay is both plastic and sticky when moist and lacks gritty feeling. Silty clay forms a ball and ribbons to over two inches in length;
 - (L) Clay: Clay is both sticky and plastic when moist, produces a thin ribbon over two inches in length, produces a high sheen when rubbed with the thumbnail, and forms a strong ball resistant to breaking;
 - (M) The Division shall allow laboratory determination of the soil textural class as defined in this Section by particle-size analysis of the fine-earth fraction (less than 2.0 mm in size) using the sand, silt, and clay particle sizes as defined in this Section for field testing when conducted in accordance with ASTM standard test methods D6913 for sieve analysis or D7928 for hydrometer analysis.
- (3) Wetness Condition:
- (A) Soil wetness conditions caused by a seasonal high water table, perched water table, tidal water, or seasonally saturated soils shall be determined by observation of common soil mottles of colors of chroma 2 or less, using the Munsell color chart, in mottle or a solid mass. If drainage modifications have been made, the soil wetness conditions may be determined by direct observation of the water surface in monitoring wells during periods of typically high water elevations. However, colors of chroma 2 or less that are relic from minerals of the parent material shall not be considered indicative of a soil wetness condition.
 - (B) Soils that do not meet the required depths to a soil wetness condition as set forth in Subparagraphs (4) – (7) of this Paragraph shall be considered unsuitable and septage shall not be applied, unless the required depths may be maintained. Water table monitoring wells may be utilized to determine the actual depth to a soil wetness condition. The Division may limit discharges to certain months where soil wetness conditions are marginal for use.
 - (C) The required depth to a soil wetness condition is determined by the Soil Group Textural Classification, as set forth in Subparagraphs (4) – (7) of this Paragraph.
 - (4) Soil Group I soil shall be considered suitable where soil wetness conditions are deeper than 36 inches below the point of septage application or incorporation.
 - (5) Soil Group II soils shall be considered suitable where soil wetness conditions are deeper than 24 inches below the point of septage application or incorporation.
 - (6) Soil Group III soils shall be considered suitable where soil wetness conditions are deeper than 18 inches below the point of septage application or incorporation.
 - (7) Depth to rock: soil depth shall be considered suitable where depth to rock is deeper than 24 inches below the point of septage application or incorporation or deeper than 18 inches if the septage is pretreated to accomplish pathogen reduction and surface applied over vegetation.
 - (8) Mine reclamation sites shall be considered on a case-by-case basis, based on compliance with the Rules of this Section, the previous use of the mine, and the current condition of the mine.
- (b) Septage land application sites shall not be located in the watershed of a Class WS-I stream. New septage land application sites shall not be located in the water quality critical area of Class WS-II, WS-III, or WS-IV streams or reservoirs. This prohibition shall not apply to those portions of a water supply watershed that are drained by Class B or Class C streams.
- (c) At the time of initial permitting, septage land application sites shall observe the minimum setback distances specified in this Rule. Minimum setbacks shall be maintained throughout the life of the site only on land owned, operated, or controlled by the permittee or by the landowner(s) at the time of initial permitting. Any sale, lease, or other conveyance of land by the permittee, or by the landowner(s) if different from the permittee, subsequent to the initial permitting of the site shall include restrictions to ensure continued maintenance of the setbacks.
- (d) All septage disposal sites shall be located at least the minimum distance specified for the following:
- (1) residence:
 - (A) not occupied by the applicant – 500 feet;
 - (B) occupied by the applicant – 100 feet;
 - (2) place of business, other than the septage management firm's office or related buildings, or place of public assembly – 500 feet;
 - (3) well or water supply spring – 500 feet;
 - (4) surface waters – stream classification shall be determined in accordance with 15A NCAC 02B .0301 through .0317 Assignment of Stream Classifications;

- (5) fresh waters:
- (A) Class WS-I, Class WS-II, or Class WS-III streams – 300 feet;
 - (B) Class B stream – 300 feet;
 - (C) Class C stream – 200 feet;
 - (D) other streams and bodies of water – 200 feet;
- (6) tidal salt waters:
- (A) Class SA or Class SB – 300 feet from mean high water mark;
 - (B) Class SC and other coastal waters – 200 feet from mean high water mark;
- (7) supplemental classifications:
- (A) trout waters and swim waters – 200 feet;
 - (B) nutrient sensitive waters and outstanding resource waters – 300 feet;
- (8) groundwater lowering ditches and devices – 100 feet;
- (9) adjoining property under separate ownership or control – 50 feet;
- (10) public road right of ways – 100 feet;
- (11) food crops – 50 feet;
- (12) wetlands – 50 feet;
- (13) woods line – five feet, unless greater distance is required as part of an erosion and runoff control plan;
- (14) land application site on the same tract of land, permitted to a different operator – 100 feet; and
- (15) setbacks in Subparagraphs (d)(3), (4), (5), (6), (7), and (8) of this Rule may be reduced 50 percent when septage is pretreated to accomplish pathogen reduction and when the land within the setback area is in permanent, established grass with at least 95 percent cover or when the setback area is in forest with a continuous canopy and a 95 percent forest litter cover. Accurate property line locations shall be the responsibility of the site operator.
- (e) Septage land application sites less than five acres in size, individual fields of a site less than two acres in size, and sites with complex soil patterns or unusual shapes shall be permitted only if the applicant demonstrates to the Division that the site will be managed for crop production and that septage will be applied with uniform distribution over the entire permitted application area.
- (f) Septage land application sites shall not be located where the slope of the land is greater than 12 percent unless all of the conditions of this Paragraph are met:
- (1) the site is in permanent, established grass with at least 95 percent cover or is in forest with a continuous canopy and a 95 percent forest litter cover;
 - (2) the erosion and runoff management plans submitted to the Division in accordance with Rule .0840(c)(14) of this Section shall indicate the following:
 - (A) management practices and discharge methods that will be used to reduce the potential for run-off from the site and allow for the uniform distribution of septage over the entire permitted application area; and
 - (B) location of potential surface water monitoring devices upslope and downslope from the area proposed to be permitted and identification of sampling methods. Monitoring may be required if there is an indication that septage is entering surface waters.
- (3) The Division may increase setbacks or decrease application rates for the protection of surface waters; and
- (4) no site shall include slopes in excess of 25 percent.
- (g) A new septage land application site shall not jeopardize the continued existence of threatened or endangered species or result in the destruction or adverse modification of a critical habitat protected under the Federal Endangered Species Act of 1973. Agricultural land shall not be considered potential habitat.
- (h) Septage, or any part of septage, treated to meet the standard for Class A sewage sludge in accordance with the federal regulations for pathogen reduction and vector attraction reduction in 40 CFR Part 503, Subpart D, may be permitted by the Division for application to a public contact site, home lawns and gardens, or to be sold or given away in a bag or other container, provided it can be demonstrated that pollutant limits in 40 CFR 503.13(b)(3) Table 3 Pollutant Concentrations are not exceeded. Persons who prepare the septage, and persons who derive material from the septage, shall comply with the applicable record keeping requirements in 40 CFR 503.17(a)(1), (2) or (6). Documentation and certification by the operator that the treatment method meets the Class A standard shall be available to the Division upon request. All treatment methods and facilities shall obtain a permit from the Division in accordance with Rule .0837 of this Section.

History Note: Authority G.S. 130A-291.1;

Eff. October 1, 2009;

Readopted Eff. February 1, 2019 (Recodified from 15A NCAC 13B .0837).

15A NCAC 13B .0842 MANAGEMENT OF SEPTAGE LAND APPLICATION SITES

(a) General requirements for septage land application sites shall include the following:

- (1) only domestic septage, as defined in G.S. 130A-290, shall be land applied or otherwise placed on a septage land application site, unless specified in the permit;
- (2) each site shall be posted with visible and legible "NO TRESPASSING" signs. All access roads or paths crossing or leading to the disposal area shall be posted "NO TRESPASSING" and a visible and legible sign stating "SEPTAGE LAND APPLICATION SITE" shall be maintained at each entrance to the land application area;
- (3) each site shall have an all weather access road;

- (4) no hazardous wastes shall be permitted on the site;
 - (5) no site shall be permitted for land application of industrial or commercial septage unless the applicant demonstrates to the Division that the strength of the organic and inorganic components of the septage is within the normal range for domestic septage;
 - (6) treatment plant septage generated by the operation of a wastewater system permitted under Article 11 of Chapter 130A may be land applied at a septage land application site permitted under this Section;
 - (7) septage shall be applied to the surface of the land from a moving vehicle to have no standing liquid or soil disturbance resulting from the waste flow after the discharge is complete;
 - (8) septage shall not be applied to a site if any liquid is ponded on the site or if the site is flooded, frozen, or snow covered;
 - (9) septage shall not be applied to a site if the application method will result in ruts greater than three inches in the soil surface;
 - (10) disposal area boundaries shall be marked on the ground while a site or any portion of a site is in use. Markers shall be of adequate height and spacing such that they are visible and distinguishable from the surrounding landscape for determining the disposal boundaries when the site is in use;
 - (11) all septage discharges shall be made at a location on the site consistent with the nutrient management plan;
 - (12) all septage discharges, including aerial drift from discharges, shall be made within the permitted boundaries of the land application site;
 - (13) land application of septage shall be limited to a maximum daily hydraulic application rate of one acre inch;
 - (14) grease septage shall be diluted at least 1:1 from its concentration when pumped with domestic septage or water if land applied over perennial vegetation. This dilution shall be increased if crop damage occurs. This dilution requirement shall not apply to the liquid portion of grease septage that has been treated to remove solids, fats, oils, and grease as long as crop damage does not occur;
 - (15) solids resulting from septage treatment shall not be land applied unless the solids are treated to meet pathogen reduction and vector attraction reduction requirements in 40 CFR 503, and the permittee has demonstrated to the Division that the solids will be land applied with uniform distribution over the entire permitted application area at agronomic rates with standard agricultural spreading equipment;
 - (16) the site shall be managed to minimize soil erosion and surface water runoff. Appropriate soil and water management practices shall be implemented and maintained in accordance with the erosion and run-off management plan submitted in accordance with Rule .0840(c)(14) of this Section. All water control structures shall be designed, installed, and maintained to control the run-off resulting from a 10-year storm;
 - (17) approved nutrient management plans shall be followed;
 - (18) land application sites or portions of land application sites that do not follow the approved nutrient management plan shall not be used for land application until brought into compliance with the nutrient management plan;
 - (19) land application sites permitted for the management of grease septage, or commercial or industrial septage, shall have a septage detention facility available, of adequate size to meet the requirement of Subparagraph (a)(14) of this Rule; and
 - (20) a septage land application site permit holder or operator is responsible for the actions of any septage management firm that the permit holder or operator allows to use his or her land application site.
- (b) Maximum land application rates for septage shall be determined based upon the following:
- (1) domestic septage land application rates shall be in accordance with 40 CFR 503.12(c);
 - (2) land application of domestic treatment plant septage shall not exceed the rate in 40 CFR 503.14(d);
 - (3) pollutant limits for regulated metals in 40 CFR 503.13 shall not be exceeded for any type of septage;
 - (4) grease septage shall be land applied at a rate that is equal to or less than the agronomic rate, but in no case shall the application of untreated grease septage exceed 25,000 gallons per acre per year;
 - (5) sites permitted for the land application of grease septage shall meet the requirements of 40 CFR 257.3-5;
 - (6) land application rates for septage treated to reduce solids, nutrients, or pollutants shall be determined based on the analysis of the treated material;
 - (7) at least four analyses of treated liquid shall be required prior to receiving an adjusted land application rate. Additional samples may be required for inconsistent analysis results;
 - (8) each analysis shall include nitrogen panel, phosphorus, potassium, soluble salts, pH, and regulated metals except mercury, calcium, manganese, magnesium, iron, sulfur, boron and chlorine;

- (9) after an adjusted land application rate is approved, sampling shall be required every 60 days for the initial 12 months of operation;
- (10) after the initial 12 months, wastes with consistent sample results shall be sampled quarterly; and
- (11) land application rates for industrial or commercial septage, or commercial or industrial treatment plant septage shall be determined as specified in Subparagraphs (b)(1) and (b)(2) of this Rule unless testing determines that a lower rate is necessary due to other non-domestic pollutants.
- (c) Septage treatment standards:
- (1) domestic septage shall be treated in accordance with the requirements in 40 CFR 503 D (including Appendix A and B) except that 503.33(b)(11) is not incorporated;
 - (2) grease septage, treated grease septage, industrial or commercial treatment plant septage, and industrial or commercial septage shall be treated in accordance with 40 CFR 257.3-6 or treated by an equivalent or more stringent process in 40 CFR 503 D;
 - (3) grease septage, or any part of grease septage, mixed with domestic septage shall be treated as grease septage; and
 - (4) domestic treatment plant septage shall be treated to meet the pathogen reduction and the vector attraction reduction requirements in 40 CFR 503 D.
- (d) No one other than the permit holder shall land apply septage at a permitted site unless approved in writing by the Division. The permit holder shall submit a written request and written authorization from the landowner(s), if different from the permit holder. The request shall include the name of the firm requesting approval and the type and amount of septage proposed to be discharged. The Division may approve the request if the land application activity, the permit holder, and the firm requesting approval to land apply are in compliance with rules of this Section.
- (e) Permit holders of septage land application sites shall develop and maintain records and reports to demonstrate compliance with this Section and the permit requirements of each site.
- (1) permit holders of sites receiving septage shall maintain a log which meets the requirements of 40 CFR 503.17(b);
 - (2) permit holders of all septage land application sites shall have all records and certifications and test results required in accordance with this Section available for review during inspections by the Division or upon the Division's request; and
 - (3) the permit holder of a site where more than one septage management firm has been authorized by the Division to discharge septage shall submit a monthly report to the Division that shall include the following information for each discharge: the date and quantity of each discharge, the type of septage discharged, and the name of the septage management firm discharging.
- (f) Septage shall not be land applied at a new septage land application site until a representative of the Division has inspected the site to determine compliance with these rules and consistency with the permit application and all permit conditions.
- History Note: Authority G.S. 130A-291.1; Eff. October 1, 2009; Readopted Eff. February 1, 2019 (Recodified from 15A NCAC 13B .0838).*
- 15A NCAC 13B .0843 SAMPLING AND ANALYSIS**
- (a) Monitoring or sample collection, handling, and analysis required by this Section and all costs involved shall be the responsibility of the septage management firm permit holder.
- (b) The permit holder of a septage land application site shall obtain representative soil samples once every two years from each field, as designated in permit, during the last quarter of the calendar year.
- (c) Soil samples shall be analyzed for cation exchange capacity, pH, phosphorus, potassium, calcium, manganese, magnesium, zinc, and copper. If the results for zinc analysis are equal to or above 30 pounds per acre or the results for copper analysis are equal to or above 35 pounds per acre, analysis for the metals listed in Rule .0840(c)(10)(B) of this Section shall be required. Sites permitted to receive septage other than domestic septage shall be analyzed for cadmium to determine compliance with 40 CFR 257.3-5.
- (d) Domestic septage and grease septage shall be monitored in accordance with 40 CFR 503.16(b).
- (e) Domestic treatment plant septage proposed to be land applied at a permitted septage land application site shall be sampled before the initial application, and annually thereafter, prior to being removed from a treatment facility. Samples shall be analyzed for:
- (1) Metals listed in 40 CFR 503.13; and
 - (2) Total solids, pH, ammonia, nitrates, total kjeldahl nitrogen (TKN), biochemical oxygen demand (BOD), chemical oxygen demand (COD), total phosphorus, potassium, sodium, and magnesium.
- (f) Industrial or commercial septage proposed to be land applied at a permitted septage land application site shall be sampled prior to being removed from a wastewater system. Analytical results shall be submitted to the Division prior to the issuance of a permit or approval to land apply the septage. Samples shall be analyzed for:
- (1) Metals listed in 40 CFR 503.13;
 - (2) Total solids, pH, ammonia, nitrates, TKN, BOD, COD, total phosphorus, potassium, sodium, and magnesium; and
 - (3) Organic chemicals, using a complete EPA Test Method 1311 Toxicity Characteristic Leaching Procedure or other appropriate analysis, such as EPA Test Method 8260 Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry or 8270 Semivolatile Organic

Compounds by Gas Chromatography/Mass Spectrometry, unless an examination of the industrial process and the material used indicates less extensive analysis is acceptable.

(g) Sample analysis required by this Section shall be performed either by the North Carolina Department of Agriculture and Consumer Services laboratory or by a laboratory certified by the North Carolina Division of Water Resources for waste analysis. Analysis for inorganic constituents shall be conducted in accordance with 40 CFR 503.8.

*History Note: Authority G.S. 130A-291.1;
Eff. October 1, 2009;
Amended Eff. May 1, 2017;
Readopted Eff. February 1, 2019 (Recodified from 15A NCAC 13B .0840).*

**15A NCAC 13B .0844 LAND APPLICATION SITE
LAND USE AND SITE CLOSURE**

(a) Upon closure of a land application site permitted in accordance with this Section, the site shall meet the site restriction requirements set forth in 40 CFR 503.32(c)(1).

(b) Nursery and horticultural products, trees and other forest products, such as pine straw and pine bark, shall not be harvested or gathered for 30 days after septage application.

(c) Public access is to be controlled in accordance with 40 CFR 503.32(c)(1).

(d) The permit holder or operator of the site shall submit a written notification to the Division at least 30 days prior to final closure of a septage land application site in order to schedule a site inspection for determination of compliance with this Section. The notification shall include the permit number, the date of cease of operations, and the signature of the operator.

(e) Prior to final closure, the soil pH of the site shall be raised to 6.5, unless the fertility requirements for crops to be grown in the following year dictate less.

*History Note: Authority G.S. 130A-291.1;
Eff. October 1, 2009;
Readopted Eff. February 1, 2019 (Recodified from 15A NCAC 13B .0843).*

15A NCAC 13B .0845 REVOCATION OF PERMITS

*History Note: Authority G.S. 130A-291.1;
Eff. October 1, 2009;
Repealed Eff. February 1, 2019.*

15A NCAC 13B .0846 APPEALS

Appeals shall be made in accordance with G.S. 150B, Article 3.

*History Note: Authority G.S. 130A-291.1;
Eff. October 1, 2009;
Readopted Eff. February 1, 2019.*

19A NCAC 02B .0143 THE SALE OF SURPLUS LANDS

*History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g); 150B-21.3A;
Eff. July 1, 1978;
Amended Eff. November 1, 1993; October 1, 1991; February 1, 1988; November 1, 1982;
Repealed Eff. February 1, 2019.*

19A NCAC 02B .0145 COPIES OF FORMS

*History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g); 150B-21.3A;
Eff. July 1, 1978;
Amended Eff. November 1, 1991;
Repealed Eff. February 1, 2019.*

19A NCAC 02B .0202 DEFINITIONS

*History Note: Authority G.S. 136-18; 136-20; 136-45; 136-66.1; 150B-21.3A;
Eff. July 1, 1978;
Amended Eff. November 1, 1992;
Repealed Eff. February 1, 2019.*

**19A NCAC 02B .0208 UNIFORM TRAFFIC CONTROL
DEVICES**

*History Note: Authority G.S. 20-158; 20-169; 136-18(5); 136-30; 150B-21.3A;
Eff. July 1, 1978;
Amended Eff. October 1, 1993; October 1, 1991; January 1, 1986; April 3, 1981;
Repealed Eff. February 1, 2019.*

**19A NCAC 02B .0240 CHANNELIZATION FOR
ENTRANCES AND EXITS TO PROPERTY**

*History Note: Authority G.S. 136-18(5);
Eff. July 1, 1978;
Repealed Eff. February 1, 2019.*

**19A NCAC 02B .0316 PERSONAL PROPERTY NOT
TO BE ACQUIRED**

*History Note: Authority G.S. 136-18(2); 136-19; 143B-350(f),(g); 150B-21.3A;
Eff. July 1, 1978;
Transferred and Recodified from 19A NCAC 2B .0124 Eff. October 1, 1993;
Repealed Eff. February 1, 2019.*

19A NCAC 02B .0432 RELOCATION ASSISTANCE

The Department of Transportation incorporates by reference 49 CFR Subpart 24 and 23 CFR Subpart C, Section 710.313, including subsequent amendments and editions. Copies are available for inspection at no cost to the public, from the Right of

TITLE 19A - DEPARTMENT OF TRANSPORTATION

Way Unit of the Department of Transportation. The Code of Federal Regulations may be accessed, at no cost to the public, by visiting <https://www.ecfr.gov>.

History Note: Authority G.S. 133-6; 133-14; 143B-350;
Eff. October 1, 1993;
Readopted Eff. February 1, 2019.

19A NCAC 02B .0433 APPLICABILITY

The rules in this Section shall apply to all federal and State Highway projects, except State secondary road projects.

History Note: Authority G.S. 133-6; 133-14; 143B-350;
Eff. October 1, 1993;
Readopted Eff. February 1, 2019.

19A NCAC 02B .0507 EXECUTION OF UTILITY AGREEMENT

(a) This Rule specifies the attestation requirements for utility encroachment agreements between the Department and external parties. All applicable rules regarding utility encroachment agreements may be found in this Section.

(b) If the applicant as defined in Rule .0501 of this Section is a corporation or a municipality, the agreement shall have the corporate seal and be attested by the corporate secretary, or by the empowered city official, unless a waiver of corporate seal and attestation by the corporate secretary, or by the empowered city official, is on file in the office of the State Utilities Manager, located at 1000 Birch Ridge Drive, Raleigh, NC 27610. Within each agreement, in the space provided for execution, the name of the corporation or municipality shall be typed above the signature, and the name and title of all persons signing the agreement shall be typed directly below their signature.

(c) If the applicant is not a corporation, the signature shall be witnessed by one other person. The address of the applicant shall be included in the agreement and the names of all witnesses and persons signing the agreement shall be typed directly below their signature.

History Note: Authority G.S. 136-18(5); 136-18(10); 136-93;
Eff. April 3, 1981;
Amended Eff. October 1, 1993;
Readopted Eff. February 1, 2019.

19A NCAC 02D .0102 MINIMUM SIZE OF SURFACE DRAINAGE PIPELINE

All installation of pipe for surface drainage purposes on the State Highway System right of way shall be a minimum diameter of 12".

History Note: Authority G.S. 136-18(1); 136-92; 136-93;
156-88;
Eff. July 1, 1978;
Amended Eff. January 1, 1984; April 3, 1981;
Readopted Eff. February 1, 2019.

19A NCAC 02D .0104 GUIDELINES - CURB RAMPS

(a) Guidelines for the design and construction of curb ramps are available from the Division of Highways, 1 S. Wilmington Street, Raleigh, North Carolina 27601, (919) 707-2500.

(b) The party or parties cutting an existing curb or constructing a new curb shall ensure that all work is in compliance with all applicable laws.

History Note: Authority G.S. 136-44.14(c);
Legislative Objection (a) Lodged Eff. August 19, 1980;
Legislative Objection (a) Removed Eff. April 23, 1981;
Eff. July 1, 1978;
Amended Eff. December 1, 1993; April 3, 1981; April 11, 1980;
Readopted Eff. February 1, 2019.

19A NCAC 02D .0415 GENERAL REGULATIONS FOR DRAWBRIDGES

History Note: Authority G.S. 136-18(5); 150B-21.3A;
Eff. July 1, 1978;
Amended Eff. August 1, 2000; April 1, 1999; August 1, 1998;
January 1, 1996; November 1, 1993;
Repealed Eff. February 1, 2019.

19A NCAC 02E .0413 PARADES ON HIGHWAY SYSTEM ROADS

It shall be unlawful for any person, firm, organization, school, or other group of persons to conduct or participate in a parade on any street or highway of the State Highway System located outside the limits of a municipality.

History Note: Authority G.S. 136-18(5);
Eff. July 1, 1978;
Readopted Eff. February 1, 2019.

19A NCAC 02E .0414 PARKING VEHICLE FOR SALE OR DISTRIBUTION OF GOODS

It shall be unlawful to sell any fruits, vegetables, goods, wares, or merchandise of any character from a vehicle, stand, or structure, or from any place on the right-of-way of any primary or secondary highway, or road of the State Highway System.

History Note: Authority G.S. 136-18(5);
Eff. July 1, 1978;
Readopted Eff. February 1, 2019.

19A NCAC 02E .0415 ADVERTISING SIGNS WITHIN RIGHT-OF-WAY

It shall be unlawful for any person, firm, or corporation to erect, place, or allow any advertising, or other sign, except regulation traffic and warning signs approved by the Department, on any highway or the right-of-way thereof, or so as to overhang the right-of-way, or to permit the erection or placing of any advertising or other sign, as herein prohibited, on any highway right-of-way which is situated over any land owned, rented, leased, or claimed by such person, firm, or corporation.

History Note: Authority G.S. 136-18(10); 136-30;
Eff. July 1, 1978;

Readopted Eff. February 1, 2019.

19A NCAC 02E .0416 PRIVATE DRIVES OR ROADS INTERSECTING HIGHWAYS

(a) It shall be unlawful to intersect the State highways with any private driveway or roadway, unless approved by the Department of Transportation, and provided by the party responsible for the private driveway or roadway.

(b) It shall be unlawful to obstruct any drainage ditch within the right-of-way of any road or State highway.

History Note: Authority G.S. 136-18(10); 136-93;

Eff. July 1, 1978;

Readopted Eff. February 1, 2019.

19A NCAC 02E .0417 COMMERCIAL ENTRANCES INTERSECTING WITH RIGHT-OF-WAY

It shall be unlawful to revise or construct any commercial entrances to intersect with the right-of-way of any primary or secondary highway, or road of the State Highway System, unless a permit has first been obtained from the Department of Transportation, or its duly authorized officers and employees, in accordance with the rules contained in 19A NCAC 2B, Section .0600, titled "Driveway Entrances".

History Note: Authority G.S. 136-18(10); 136-93;

Eff. July 1, 1978;

Amended Eff. November 1, 1993; October 1, 1991;

Readopted Eff. February 1, 2019.

19A NCAC 02E .0422 USE OF RUNAWAY TRUCK RAMPS

It shall be unlawful for any operator of a motor vehicle, non-motorized vehicle, moped, bicycle, or any pedestrian or any person having custody or control of any animal or animal powered vehicle to park on, stand upon, obstruct, or otherwise use any runaway truck ramp, as designated by signs, except to bring an out-of-control vehicle to a halt.

History Note: Authority G.S. 136-18(5);

Eff. August 10, 1981;

Readopted Eff. February 1, 2019.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 06 – BOARD OF BARBER EXAMINERS

21 NCAC 06N .0101 FEES, ACCESS TO FORMS, AND RENEWALS

(a) The Board charges the following amounts for the fees authorized by G.S. 86A-25:

- | | | |
|-----|--|---------|
| (1) | Certificate of registration or renewal as a barber | \$50.00 |
| (2) | Certificate of registration or renewal as an apprentice barber | \$50.00 |
| (3) | Barbershop permit or renewal | \$50.00 |

- | | | |
|------|---|--|
| (4) | Examination to become a registered barber | \$85.00 |
| (5) | Examination to become a registered apprentice barber | \$85.00 |
| (6) | Late fee for restoration of an expired barber certificate within first year after expiration | \$35.00 |
| (7) | Late fee for restoration of an expired barber certificate after first year after expiration but within five years after expiration | \$70.00 |
| (8) | Late fee for restoration of an expired apprentice certificate within the first year after expiration | \$35.00 |
| (9) | Late fee for restoration of an expired apprentice certificate after first year after expiration but within three years of first issuance of the certificate | \$45.00 |
| (10) | Late fee for restoration of an expired barber shop certificate | \$45.00 |
| (11) | Examination to become a barber school instructor | \$165.00 |
| (12) | Student permit | \$25.00 |
| (13) | Issuance of any duplicate copy of a license, certificate, or permit | \$10.00 |
| (14) | Barber school permit or renewal | \$130.00 |
| (15) | Late fee for restoration of an expired barber school certificate | \$85.00 |
| (16) | Barber school instructor certificate or renewal | \$85.00 |
| (17) | Late fee for restoration of an expired barber school instructor certificate within first year after expiration | \$45.00 |
| (18) | Late fee for restoration of an expired barber school instructor certificate after first year after expiration but within three years after expiration | \$85.00 |
| (19) | Inspection of newly established barbershop | \$120.00 |
| (20) | Inspection of newly established barber school | \$220.00 |
| (21) | Issuance of a registered barber or apprentice certificate by certification | \$120.00 |
| (22) | Charge for certified copies of public documents | \$10.00 for first page, \$0.25 per page thereafter |
| (23) | Charge for duplication services and material shall be as set forth in 26 NCAC 01 .0103(a), including any subsequent amendments and editions of the Rule | |
| (24) | Certificate of registration or renewal as a barber for barbers over 70 years of age | \$0.00 |
| (25) | Administrative fee under G.S. 86A-27(d) for paying any required fee for renewal or restoration, or a civil penalty and attorney fee, where the apprentice barber or registered barber is subject to a pick-up order issued to an inspector. | \$70.00 |

(b) Except as set forth in Paragraph (c) of this Rule, if an applicant is unable to attend an examination, he or she may request a refund of the fee. To request the refund, the applicant shall submit a

written request to the address listed in 21 NCAC 06A .0102 at least 10 days before the scheduled examination.

(c) If an applicant submits a request for a refund of examination fees later than 10 days before the scheduled examination, the Board shall consider the request on a case-by-case basis and only grant the request if the applicant demonstrates good cause for not complying with Paragraph (b) of this Rule. For the purpose of this Rule, "good cause" means that the applicant could not have submitted the written request as set forth in Paragraph (b) of this Rule due to circumstances such as illness, injury, or death in the family.

(d) In the event the Board's authority to expend funds is suspended pursuant to G.S. 93B-2, the Board shall continue to issue and renew licenses and all fees tendered shall be placed in the escrow account maintained by the Board for this purpose.

(e) The forms set forth in this Subchapter may be obtained on the website or at the address listed in 21 NCAC 06A .0102.

(f) All timely renewals of licenses, permits, or certificates of registration shall be submitted online at the Board's website, along with any fees required by this Rule.

(g) Barber school permits shall be exempt from the online renewal requirement in Paragraph (f) of this Rule.

(h) Registered barbers, apprentice barbers, barber instructors, or barber shops that are unable to comply with the online requirement of Paragraph (f) of this Rule may submit the renewal and payment by mail or in person after receiving a waiver from the Board. This waiver shall be effective only for one renewal period. The Board shall issue a waiver within five business days after receiving the following:

- (1) For registered barbers, apprentice barbers, or barber instructors, a statement from the holder of the license, permit, or certificate of registration that the individual is not able to renew online; or
- (2) For barber shops, a statement from the manager or owner that neither the manager nor owner are able to renew online.

History Note: Authority G.S. 86A-5; 86A-25; 86A-27(d); 93B-2;

Eff. February 1, 1976;

Readopted Eff. February 8, 1978;

Amended Eff. April 1, 2010; September 1, 2009; June 1, 2008; April 1, 2005; May 1, 1989; March 1, 1983;

Readopted Eff. July 1, 2016;

Amended Eff. February 1, 2019; January 1, 2018; April 1, 2017.

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

21 NCAC 16P .0105 ADVERTISING AS A SPECIALIST

(a) A dentist shall not advertise or otherwise hold himself or herself out to the public as a specialist, or use any variation of the term, in an area of practice if the communication is false or misleading under Rule .0101 of this Section.

(b) It shall be false or misleading for a dentist to hold himself or herself out to the public as a specialist, or any variation of that term, in a practice area unless the dentist:

- (1) has completed a qualifying postdoctoral educational program in that area as set forth in Paragraph (c) of this Rule; or
- (2) holds a current certification by a qualifying specialty board or organization as set forth in Paragraph (d) of this Rule.

(c) For purposes of this Rule, a "qualifying postdoctoral educational program" is a postdoctoral advanced dental educational program accredited by an agency recognized by the U.S. Department of Education (U.S. DOE).

(d) In determining whether an organization is a qualifying specialty board or organization, the Board shall consider the following criteria:

- (1) whether the organization requires completion of an educational program with didactic, clinical, and experiential requirements appropriate for the specialty or subspecialty field of dentistry in which the dentist seeks certification, and the collective didactic, clinical and experiential requirements are similar in scope and complexity to a qualifying postdoctoral educational program. Programs that require solely experiential training, continuing education classes, on-the-job training, or payment to the specialty board shall not constitute a qualifying specialty board or organization;
- (2) whether the organization requires all dentists seeking certification to pass a written or oral examination, or both, that tests the applicant's knowledge and skill in the specialty or subspecialty area of dentistry and includes a psychometric evaluation for validation;
- (3) whether the organization has written rules on maintenance of certification and requires periodic recertification;
- (4) whether the organization has written by-laws and a code of ethics to guide the practice of its members;
- (5) whether the organization has staff to respond to consumer and regulatory inquiries; and
- (6) whether the organization is recognized by another entity whose primary purpose is to evaluate and assess dental specialty boards and organizations.

(e) A dentist qualifying under Paragraph (d) of this Rule and advertising or otherwise holding himself or herself out to the public as a specialist, or any variation of that term, shall disclose in the advertisement or communication the specialty board by which the dentist was certified and provide information about the certification criteria or where the certification criteria may be located.

(f) A dentist shall maintain documentation of either completion of a qualifying postdoctoral educational program or of his or her current specialty certification and provide the documentation to the Board upon request. Dentists shall maintain documentation

demonstrating that the certifying board qualifies under the criteria in Subparagraphs (d)(1) through (6) of this Rule and provide the documentation to the Board upon request.

(g) Nothing in this Section shall be construed to prohibit a dentist who does not qualify to hold himself or herself out to the public as a specialist under Paragraph (b) of this Rule from restricting his or her practice to one or more specific areas of dentistry or from advertising the availability of his or her services, provided that such advertisements do not include the term "specialist," or any variation of that term, and must state that the services advertised are to be provided by a general dentist.

History Note: Authority G.S. 90-41(a)(16),(17),(18); 90-48; Eff. March 1, 1985; Amended Eff. April 1, 2003; May 1, 1989; Readopted Eff. February 1, 2019.

21 NCAC 16Q .0202 GENERAL ANESTHESIA EQUIPMENT AND CLINICAL REQUIREMENTS

(a) A dentist administering general anesthesia shall ensure that the facility where the general anesthesia is administered meets the following requirements:

- (1) The facility shall be equipped with the following:
 - (A) an operatory of size and design to permit access of emergency equipment and personnel and to permit emergency management;
 - (B) a CPR board or dental chair without enhancements, suitable for providing emergency treatment;
 - (C) lighting as necessary for specific procedures and back-up lighting;
 - (D) suction equipment as necessary for specific procedures, including non-electrical back-up suction;
 - (E) positive pressure oxygen delivery system, including full face masks for small, medium, and large patients, and back-up E-cylinder portable oxygen tank apart from the central system;
 - (F) small, medium, and large oral and nasal airways;
 - (G) blood pressure monitoring device;
 - (H) EKG monitor;
 - (I) pulse oximeter;
 - (J) automatic external defibrillator (AED);
 - (K) precordial stethoscope or capnograph;
 - (L) thermometer;
 - (M) vascular access set-up as necessary for specific procedures, including hardware and fluids;
 - (N) laryngoscope with working batteries;
 - (O) intubation forceps and advanced airway devices;
 - (P) tonsillar suction with back-up suction;
 - (Q) syringes as necessary for specific procedures; and

- (R) tourniquet and tape.
- (2) The following unexpired drugs shall be maintained in the facility and with access from the operatory and recovery rooms:
 - (A) Epinephrine;
 - (B) Atropine;
 - (C) antiarrhythmic;
 - (D) antihistamine;
 - (E) antihypertensive;
 - (F) bronchodilator;
 - (G) antihypoglycemic agent;
 - (H) vasopressor;
 - (I) corticosteroid;
 - (J) anticonvulsant;
 - (K) muscle relaxant;
 - (L) appropriate reversal agents;
 - (M) nitroglycerine;
 - (N) antiemetic; and
 - (O) Dextrose.
- (3) The permit holder shall maintain written emergency and patient discharge protocols. The permit holder shall also provide training to familiarize auxiliaries in the treatment of clinical emergencies.
- (4) The permit holder shall maintain the following records for 10 years:
 - (A) Patient's current written medical history, including a record of known allergies and previous surgeries;
 - (B) Consent to general anesthesia, signed by the patient or guardian, identifying the risks and benefits, level of anesthesia, and date signed;
 - (C) Consent to the procedure, signed by the patient or guardian identifying the risks, benefits, and date signed; and
 - (D) Patient base line vital signs, including temperature, SPO2, blood pressure, and pulse.
- (5) The anesthesia record shall include:
 - (A) base line vital signs, blood pressure (unless patient behavior prevents recording), oxygen saturation, ET CO2 if capnography is utilized, pulse and respiration rates of the patient recorded in real time at 15 minute intervals;
 - (B) procedure start and end times;
 - (C) gauge of needle and location of IV on the patient, if used;
 - (D) status of patient upon discharge; and
 - (E) documentation of complications or morbidity.
- (6) The facility shall be staffed with at least two BLS certified auxiliaries, one of whom shall be dedicated to patient monitoring and recording general anesthesia or sedation data throughout the sedation procedure. This Subparagraph shall not apply if the dentist permit holder is

dedicated to patient care and monitoring regarding general anesthesia or sedation throughout the sedation procedure and is not performing the surgery or other dental procedure.

(b) During an inspection or evaluation, the applicant or permit holder shall demonstrate the administration of anesthesia while the evaluator observes, and shall demonstrate competency in the following areas:

- (1) monitoring of blood pressure, pulse, ET CO₂ if capnography is utilized, and respiration;
- (2) drug dosage and administration;
- (3) treatment of untoward reactions including respiratory or cardiac depression;
- (4) sterile technique;
- (5) use of BLS certified auxiliaries;
- (6) monitoring of patient during recovery; and
- (7) sufficiency of patient recovery time.

(c) During an inspection or evaluation, the applicant or permit holder shall demonstrate competency in the treatment of the following clinical emergencies:

- (1) laryngospasm;
- (2) bronchospasm;
- (3) emesis and aspiration;
- (4) respiratory depression and arrest;
- (5) angina pectoris;
- (6) myocardial infarction;
- (7) hypertension and hypotension;
- (8) syncope;
- (9) allergic reactions;
- (10) convulsions;
- (11) bradycardia;
- (12) hypoglycemia;
- (13) cardiac arrest; and
- (14) airway obstruction.

(d) During the evaluation, the permit applicant shall take a written examination on the topics set forth in Paragraphs (b) and (c) of this Rule. The permit applicant must obtain a passing score on the written examination by answering 80 percent of the examination questions correctly. If the permit applicant fails to obtain a passing score on the written examination that is administered during the evaluation, he or she may be re-examined in accordance with Rule .0204(h) of this Section.

(e) A general anesthesia permit holder shall evaluate a patient for health risks before starting any anesthesia procedure.

(f) Post-operative monitoring and discharge shall include the following:

- (1) the permit holder or a BLS certified auxiliary under his or her direct supervision shall monitor the patient's vital signs throughout the sedation procedure until the patient is recovered as defined by Subparagraph (f)(2) of this Rule and is ready for discharge from the office; and
- (2) recovery from general anesthesia shall include documentation of the following:
 - (A) cardiovascular function stable;
 - (B) airway patency uncompromised;
 - (C) patient arousable and protective reflexes intact;

- (D) state of hydration within normal limits;
- (E) patient can talk, if applicable;
- (F) patient can sit unaided, if applicable;
- (G) patient can ambulate, if applicable, with minimal assistance; and
- (H) for the special needs patient or a patient incapable of the usually expected responses, the pre-sedation level of responsiveness or the level as close as possible for that patient shall be achieved; and

(3) before allowing the patient to leave the office, the dentist shall determine that the patient has met the recovery criteria set out in Subparagraph (f)(2) of this Rule and the following discharge criteria:

- (A) oxygenation, circulation, activity, skin color, and level of consciousness are stable and have been documented;
- (B) explanation and documentation of written postoperative instructions have been provided to the patient or a person responsible for the patient at time of discharge; and
- (C) a person authorized by the patient is available to transport the patient after discharge.

History Note: Authority G.S. 90-28; 90-30.1; 90-48; Eff. February 1, 1990; Amended Eff. June 1, 2017; November 1, 2013; August 1, 2002; August 1, 2000; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018; Amended Eff. February 1, 2019; August 1, 2018.

21 NCAC 16Q .0204 PROCEDURE FOR GENERAL ANESTHESIA EVALUATION OR INSPECTION AND RE-INSPECTION

(a) When both an evaluation and on-site inspection is required, the Board shall designate two or more qualified persons to serve as evaluators, each of whom has administered general anesthesia for at least three years preceding the inspection. Training in general anesthesia shall not be counted in the three years. The fee for an evaluation and on-site inspection shall be three-hundred seventy-five dollars (\$375.00). When an on-site inspection involves only a facility and equipment check and not an evaluation of the dentist, the inspection may be accomplished by one evaluator, and the fee for the on-site inspection shall be two-hundred seventy-five dollars (\$275.00).

(b) An inspection fee of two-hundred seventy-five dollars (\$275.00) shall be due 10 days after the dentist receives notice of the inspection of each additional location at which the dentist administers general anesthesia.

(c) Any dentist-member of the Board may observe or consult in any evaluation or inspection.

(d) The inspection team shall determine compliance with the requirements of the rules in this Subchapter, as applicable, by assigning a grade of "pass" or "fail."

(e) Each evaluator shall report his or her recommendation to the Board's Anesthesia and Sedation Committee, setting forth the details supporting his or her conclusion. The Committee shall not be bound by these recommendations. The Committee shall determine whether the applicant has passed the evaluation and inspection and shall notify the applicant in writing of its decision.

(f) An applicant who fails an inspection or evaluation shall not receive a permit to administer general anesthesia. If a permit holder's facility fails an inspection, no further general anesthesia procedures shall be performed at the facility until it passes a re-inspection by the Board.

(g) An applicant who fails an inspection or evaluation may request a re-evaluation or re-inspection within 15 days of receiving the notice of failure. The request shall be directed to the Board in writing and shall include a statement of the grounds supporting the re-evaluation or re-inspection. Except as set forth in Paragraph (h) of this Rule, the Board shall require the applicant to receive additional training prior to the re-evaluation to address the areas of deficiency determined by the evaluation. The Board shall notify the applicant in writing of the need for additional training.

(h) A permit applicant who has failed the written examination portion of the evaluation but passed all other aspects of the evaluation and inspection may retake the written examination two additional times at the Board office. The applicant must wait a minimum of 72 hours before attempting to retake a written examination. Any applicant who has failed the written portion of the examination three times shall complete an additional Board approved course of study in the area(s) of deficiency and provide the Board evidence of the additional study before written reexamination.

(i) Re-evaluations and re-inspections shall be conducted by Board-appointed evaluators not involved in the failed evaluation or inspection.

(j) An applicant must complete all the requirements of Rule .0202, including passing the written examination, evaluation and inspection, within 12 months of submitting the application to the Board.

History Note: Authority G.S. 90-28; 90-30.1; 90-39;

Eff. February 1, 1990;

Amended April 1, 2016; February 1, 2009; December 4, 2002; January 1, 1994;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;

Amended Eff. February 1, 2019; August 1, 2018.

21 NCAC 16Q .0301 CREDENTIALS AND PERMITS FOR MODERATE PARENTERAL AND ENTERAL CONSCIOUS SEDATION

(a) Before a dentist licensed to practice in North Carolina may administer or supervise a CRNA employed to administer or RN employed to deliver moderate conscious sedation, the dentist shall obtain a permit from the Board by completing the application requirements in this Rule and paying a fee of three hundred seventy-five dollar (\$375.00) that includes the one-hundred dollar

(\$100.00) application fee and the two-hundred seventy-five dollar (\$275.00) inspection fee. The permit shall be renewed annually and shall be displayed with the current renewal at all times in the facility of the permit holder where it is visible to patients receiving treatment.

(b) The permit holder shall provide supervision to any CRNA employed to administer or RN employed to deliver sedation, and shall ensure that the level of the sedation does not exceed the level of the sedation allowed by the permit holder's permit.

(c) A dentist applying for a permit to administer moderate conscious sedation shall document the following:

(1) Training that may consist of either:

(A) Completion of 60 hours of Board approved didactic training in intravenous conscious sedation, and 30 hours of clinical training that shall include successful management of a minimum of 20 live patients, under supervision of the course instructor, using intravenous sedation. Training shall be provided by one or more individuals who meet the American Dental Association Guidelines for Teaching Pain Control and Sedation to Dentists that is hereby incorporated by reference, including subsequent amendments and editions. The guidelines may be found at www.ada.org/coda; or

(B) Completion of a pre-doctoral dental or postgraduate program that included intravenous conscious sedation training equivalent to that defined in Part (c)(1)(A) of this Rule;

(2) Unexpired ACLS certification; and

(3) That all auxiliaries involved in sedation procedures have unexpired BLS certification.

(d) All applicants for a moderate conscious sedation permit shall be in good standing with the Board.

(e) Prior to issuance of a moderate conscious sedation permit, the applicant shall pass an evaluation and a facility inspection. The applicant shall be responsible for passing the evaluation and inspection of his or her facility.

(f) A dentist who holds a moderate conscious sedation permit shall not intentionally administer deep sedation.

(g) A moderate conscious sedation permit holder may provide moderate conscious sedation at the office of another licensed dentist, regardless of the permit, if any held, by the hosting dentist. The permit holder shall ensure that the facility where the moderate conscious sedation is administered has been inspected and complies with the requirements set out in Rule .0302 of this Section. The permit holder shall also obtain an itinerant moderate conscious sedation permit and comply with the requirements of Rule .0304 of this Section.

History Note: Authority G.S. 90-30.1; 90-39; 90-48;

Eff. February 1, 1990;

Amended Eff. April 1, 2001; August 1, 2000; January 1, 1994;

Temporary Amendment Eff. December 11, 2002;

Amended Eff. June 1, 2017; July 1, 2010, July 3, 2008; August 1, 2004;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;

Amended Eff. February 1, 2019; August 1, 2018.

21 NCAC 16Q .0302 MODERATE PARENTERAL AND ENTERAL CONSCIOUS SEDATION CLINICAL REQUIREMENTS AND EQUIPMENT

(a) A dentist administering moderate conscious sedation or supervising any CRNA employed to administer or RN employed to deliver moderate conscious sedation shall ensure that the facility where the sedation is administered meets the following requirements:

- (1) The facility shall be equipped with the following:
 - (A) an operatory of size and design to permit access of emergency equipment and personnel and to permit emergency management;
 - (B) a CPR board or a dental chair without enhancements, suitable for providing emergency treatment;
 - (C) lighting as necessary for specific procedures and back-up lighting;
 - (D) suction equipment as necessary for specific procedures, including non-electrical back-up suction;
 - (E) positive pressure oxygen delivery system, including full face masks for small, medium, and large patients and back-up E-cylinder portable oxygen tank apart from the central system;
 - (F) small, medium, and large oral and nasal airways;
 - (G) blood pressure monitoring device;
 - (H) EKG monitor;
 - (I) pulse oximeter;
 - (J) automatic external defibrillator (AED);
 - (K) precordial stethoscope or capnograph;
 - (L) thermometer;
 - (M) vascular access set-up as necessary for specific procedures, including hardware and fluids;
 - (N) laryngoscope with working batteries;
 - (O) intubation forceps and advanced airway devices;
 - (P) tonsillar suction with back-up suction;
 - (Q) syringes as necessary for specific procedures; and
 - (R) tourniquet and tape.
- (2) The following unexpired drugs shall be maintained in the facility and with access from the operatory and recovery rooms:
 - (A) Epinephrine;
 - (B) Atropine;
 - (C) antiarrhythmic;
 - (D) antihistamine;

- (E) antihypertensive;
- (F) bronchodilator;
- (G) antihypoglycemic agent;
- (H) vasopressor;
- (I) corticosteroid;
- (J) anticonvulsant;
- (K) muscle relaxant;
- (L) appropriate reversal agents;
- (M) nitroglycerine;
- (N) antiemetic; and
- (O) Dextrose.

- (3) The permit holder shall maintain written emergency and patient discharge protocols. The permit holder shall also provide training to familiarize auxiliaries in the treatment of clinical emergencies;
- (4) The dentist shall maintain the following records for at least 10 years:
 - (A) patient's current written medical history and pre-operative assessment;
 - (B) drugs administered during the procedure, including route of administration, dosage, strength, time, and sequence of administration; and
 - (C) a sedation record;
- (5) The sedation record shall include:
 - (A) base line vital signs, blood pressure (unless patient behavior prevents recording), oxygen saturation, ET CO2 if capnography is utilized, pulse and respiration rates of the patient recorded in real time at 15 minute intervals;
 - (B) procedure start and end times;
 - (C) gauge of needle and location of IV on the patient, if used;
 - (D) status of patient upon discharge;
 - (E) documentation of complications or morbidity; and
 - (F) consent form, signed by the patient or guardian, identifying the procedure, risks and benefits, level of sedation, and date signed; and
- (6) The following conditions shall be satisfied during a sedation procedure:
 - (A) The facility shall be staffed with at least two BLS certified auxiliaries, one of whom shall be dedicated to patient monitoring and recording sedation data throughout the sedation procedure. This Subparagraph shall not apply if the dentist permit holder is dedicated to patient care and monitoring regarding sedation throughout the sedation procedure and is not performing the surgery or other dental procedure; and
 - (B) If IV sedation is used, IV infusion shall be administered before the start

of the procedure and maintained until the patient is ready for discharge.

(b) During an inspection or evaluation, the applicant or permit holder shall demonstrate the administration of moderate conscious sedation on a patient, including the deployment of an intravenous delivery system, while the evaluator observes. During the demonstration, the applicant or permit holder shall demonstrate competency in the following areas:

- (1) monitoring blood pressure, pulse, ET CO₂ if capnography is utilized, and respiration;
- (2) drug dosage and administration;
- (3) treatment of untoward reactions including respiratory or cardiac depression if applicable;
- (4) sterile technique;
- (5) use of BLS certified auxiliaries;
- (6) monitoring of patient during recovery; and
- (7) sufficiency of patient recovery time.

(c) During an inspection or evaluation, the applicant or permit holder shall demonstrate competency to the evaluator in the treatment of the following clinical emergencies:

- (1) laryngospasm;
- (2) bronchospasm;
- (3) emesis and aspiration;
- (4) respiratory depression and arrest;
- (5) angina pectoris;
- (6) myocardial infarction;
- (7) hypertension and hypotension;
- (8) allergic reactions;
- (9) convulsions;
- (10) syncope;
- (11) bradycardia;
- (12) hypoglycemia;
- (13) cardiac arrest; and
- (14) airway obstruction.

(d) During the evaluation, the permit applicant shall take a written examination on the topics set forth in Paragraphs (b) and (c) of this Rule. The permit applicant must obtain a passing score on the written examination by answering 80 percent of the examination questions correctly. If the permit applicant fails to obtain a passing score on the written examination that is administered during the evaluation, he or she may be re-examined in accordance with Rule .0306(h) of this Section.

(e) A moderate conscious sedation permit holder shall evaluate a patient for health risks before starting any sedation procedure as follows:

- (1) a patient who is medically stable and who is ASA I or II shall be evaluated by reviewing the patient's current medical history and medication use or;
- (2) a patient who is not medically stable or who is ASA III or higher shall be evaluated by a consultation with the patient's primary care physician or consulting medical specialist regarding the potential risks posed by the procedure.

(f) Post-operative monitoring and discharge:

- (1) the permit holder or a BLS certified auxiliary under his or her direct supervision shall monitor the patient's vital signs throughout the sedation

procedure until the patient is recovered as defined in Subparagraph (f)(2) of this Rule and is ready for discharge from the office.

(2) recovery from moderate conscious sedation shall include documentation of the following:

- (A) cardiovascular function stable;
- (B) airway patency uncompromised;
- (C) patient arousable and protective reflexes intact;
- (D) state of hydration within normal limits;
- (E) patient can talk, if applicable;
- (F) patient can sit unaided, if applicable;
- (G) patient can ambulate, if applicable, with minimal assistance; and
- (H) for the special needs patient or patient incapable of the usually expected responses, the pre-sedation level of responsiveness or the level as close as possible for that patient shall be achieved.

(3) before allowing the patient to leave the office, the dentist shall determine that the patient has met the recovery criteria set out in Subparagraph (f)(2) of this Rule and the following discharge criteria:

- (A) oxygenation, circulation, activity, skin color, and level of consciousness are stable, and have been documented;
- (B) explanation and documentation of written postoperative instructions have been provided to the patient or a person responsible for the patient at the time of discharge; and
- (C) a person authorized by the patient is available to transport the patient after discharge.

History Note: Authority G.S. 90-28; 90-30.1; 90-48;

Eff. February 1, 1990;

Amended Eff. August 1, 2002; August 1, 2000;

Temporary Amendment Eff. December 11, 2002;

Amended Eff. June 1, 2017; November 1, 2013; July 1, 2010; July 3, 2008; August 1, 2004;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;

Amended Eff. February 1, 2019; August 1, 2018.

21 NCAC 16Q .0306 PROCEDURE FOR MODERATE CONSCIOUS SEDATION EVALUATION OR INSPECTION AND RE-INSPECTION

(a) When an evaluation or on-site inspection is required, the Board shall designate one or more qualified persons to serve as evaluators each of whom has administered moderate conscious sedation for at least three years preceding the inspection. Training in moderate conscious sedation shall not be counted in the three years.

(b) An inspection fee of two-hundred seventy-five dollars (\$275.00) shall be due 10 days after the dentist receives notice of

the inspection of each additional location at which the dentist administers moderate conscious sedation.

(c) Any dentist-member of the Board may observe or consult in any evaluation or inspection.

(d) The inspection team shall determine compliance with the requirements of the rules in this Subchapter, as applicable, by assigning a grade of "pass" or "fail."

(e) Each evaluator shall report his or her recommendation to the Board's Anesthesia and Sedation Committee, setting forth the details supporting his or her conclusion. The Committee shall not be bound by these recommendations. The Committee shall determine whether the applicant has passed the evaluation or inspection and shall notify the applicant in writing of its decision.

(f) An applicant who fails an inspection or evaluation shall not receive a permit to administer moderate conscious sedation. If a permit holder's facility fails an inspection, no further moderate sedation procedures shall be performed at the facility until it passes a re-inspection by the Board.

(g) An applicant who fails an inspection or evaluation may request a re-evaluation or re-inspection within 15 days of receiving the notice of failure. The request shall be directed to the Board in writing and shall include a statement of the grounds supporting the re-evaluation or re-inspection. Except as set forth in subsection (h) of this Rule, the Board shall require the applicant to receive additional training prior to the re-evaluation to address the areas of deficiency determined by the evaluation. The Board shall notify the applicant in writing of the need for additional training.

(h) A permit applicant who has failed the written examination portion of the evaluation but passed all other aspects of the evaluation and inspection may retake the written examination two additional times at the Board office. The applicant must wait a minimum of 72 hours before attempting to retake a written examination. Any applicant who has failed the written portion of the examination three times shall complete an additional Board approved course of study in the area(s) of deficiency and provide the Board evidence of the additional study before written reexamination.

(i) Re-evaluations and re-inspections shall be conducted by Board-appointed evaluators not involved in the failed evaluation or inspection.

(j) An applicant must complete all the requirements of Rule .0302, including passing the written examination, evaluation and inspection, within 12 months of submitting the application to the Board.

History Note: Authority G.S. 90-30.1; 90-39; 90-48;

Eff. April 1, 2016;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;

Amended Eff. February 1, 2019; August 1, 2018.

21 NCAC 16Q .0401 MINIMAL CONSCIOUS SEDATION CREDENTIALS, EVALUATION AND PERMIT

(a) Before a dentist licensed to practice in North Carolina may administer or supervise a certified registered nurse anesthetist to administer minimal conscious sedation, the dentist shall obtain a Board-issued permit for minimal conscious sedation, moderate

pediatric conscious sedation, moderate conscious sedation or general anesthesia. A permit is not required for prescription administration of DEA controlled drugs prescribed for postoperative pain control intended for home use. A dentist may obtain a minimal conscious sedation permit from the Board by completing the application requirements of this Rule and paying a fee of three-hundred seventy-five dollars (\$375.00) that includes the one-hundred dollar (\$100.00) application fee and the two-hundred seventy-five dollar (\$275.00) inspection fee. Such permit must be renewed annually and shall be displayed with the current renewal at all times in the facility of the permit holder where it is visible to patients receiving treatment.

(b) Only a dentist who holds a general anesthesia license may administer deep sedation or general anesthesia.

(c) An applicant for a minimal conscious sedation permit shall be licensed and in good standing with the Board in order to be approved. For purposes of these Rules "good standing" means that the applicant is not subject to a disciplinary investigation and his or her licensee has not been revoked or suspended and is not subject to a probation or stayed suspension order.

(d) Evaluation:

- (1) Prior to issuance of a minimal conscious sedation permit the applicant shall pass an evaluation and a facility inspection.
- (2) During an inspection or evaluation, the applicant shall demonstrate the administration of minimal conscious sedation on a patient while the evaluator observes. During the observation, the applicant shall demonstrate competency in the following areas:
 - (A) Monitoring of blood pressure, pulse, pulse oximetry and respiration;
 - (B) Drug dosage and administration;
 - (C) Treatment of untoward reactions including respiratory or cardiac depression (by verbal demonstration);
 - (D) Sterile technique;
 - (E) Use of BLS certified auxiliaries;
 - (F) Monitoring of patient during recovery; and
 - (G) Sufficiency of patient recovery time.
- (3) During an inspection or evaluation, the applicant or permit holder shall demonstrate competency to the evaluator in the treatment of the following clinical emergencies:
 - (A) Laryngospasm;
 - (B) Bronchospasm;
 - (C) Emesis and aspiration;
 - (D) Respiratory depression and arrest;
 - (E) Angina pectoris;
 - (F) Myocardial infarction;
 - (G) Hypertension/Hypotension;
 - (H) Syncope;
 - (I) Allergic reactions;
 - (J) Convulsions;
 - (K) Bradycardia;
 - (L) Hypoglycemia;
 - (M) Cardiac arrest; and
 - (N) Airway obstruction.

- (4) During the evaluation, the permit applicant shall take a written examination on the topics set forth in Subparagraphs (d)(2) and (d)(3) of this Rule. The permit applicant must obtain a passing score on the written examination by answering 80 percent of the examination questions correctly. If the permit applicant fails to obtain a passing score on the written examination that is administered during the evaluation, he or she may be re-examined in accordance with Subparagraph (d)(7) of this Rule.
- (5) The evaluator shall assign a recommended grade of pass or fail and shall report his or her recommendation to the Board, setting out the basis for his conclusion. The Board is not bound by the evaluator's recommendation and shall make a final determination regarding whether the applicant has passed the evaluation. The applicant shall be notified of the Board's decision in writing.
- (6) An applicant who fails an inspection or evaluation may request a re-evaluation or re-inspection within 15 days of receiving the notice of failure. The request shall be directed to the Board in writing and shall include a statement of the grounds supporting the re-evaluation or re-inspection. Except as set forth in Subparagraph (d)(7) of this Rule, the Board shall require the applicant to receive additional training prior to the re-evaluation to address the areas of deficiency determined by the evaluation. The Board shall notify the applicant in writing of the need for additional training.
- (7) A permit applicant who has failed the written examination portion of the evaluation but passed all other aspects of the evaluation and inspection may retake the written examination two additional times at the Board office. The applicant must wait a minimum of 72 hours before attempting to retake a written examination. Any applicant who has failed the written portion of the examination three times shall complete an additional Board approved course of study in the area(s) of deficiency and provide the Board evidence of the additional study before written reexamination.
- (8) Re-evaluations and re-inspections shall be conducted by Board-appointed evaluators not involved in the failed evaluation or inspection.
- (9) An applicant must complete all the requirements of this Rule, including passing the written examination, evaluation and inspection, within 12 months of submitting the application to the Board.

(e) Educational/Professional Requirements:

- (1) The dentist applying for a minimal conscious sedation permit shall meet one of the following criteria:

- (A) completion of an ADA accredited post-doctoral training program which affords comprehensive training necessary to administer and manage minimal conscious sedation;
- (B) completion of an 18-hour minimal conscious sedation course which must be approved by the Board based on whether it affords comprehensive training necessary to administer and manage minimal conscious sedation; or
- (C) completion of an ADA accredited postgraduate program in pediatric dentistry;

(2) All applicants for a minimal sedation permit must document completion of an ACLS course within the 12 months prior to the date of application;

(3) The permit holder shall maintain written emergency and patient discharge protocols. The permit holder shall also provide training to familiarize auxiliaries in the treatment of clinical emergencies.

(f) Annual Permit Renewal:

(1) Minimal conscious sedation permits shall be renewed by the Board annually at the same time as dental licenses by the dentist paying a one-hundred dollar (\$100.00) fee and completing the application requirements in this Rule. If the completed permit renewal application and renewal fee are not received before January 31 of each year, a fifty dollar (\$50.00) late fee shall be paid.

(2) Any dentist who fails to renew a minimal conscious sedation permit before March 31 of each year shall complete a reinstatement application, pay the renewal fee, late fee, and comply with all conditions for renewal set out in this Rule. Dentists whose sedation permits have been lapsed for more than 12 calendar months shall pass an inspection and an evaluation as part of the reinstatement process.

(3) As a condition for renewal of the minimal conscious sedation permit, the permit holder shall meet the requirements of Rule .0402 of this Subchapter and shall document unexpired ACLS certification and obtain three hours of continuing education every year in one or more of the following areas, which may be counted toward fulfillment of the continuing education required each calendar year for license renewal:

- (A) pediatric or adult sedation;
- (B) medical emergencies;
- (C) monitoring sedation and the use of monitoring equipment;
- (D) pharmacology of drugs and agents used in sedation;

- (E) physical evaluation, risk assessment, or behavioral management; or
- (F) airway management.
- (4) The minimal conscious sedation permit holder shall further document that the permit holder and all auxiliaries involved in sedation procedures have read the practice's emergency manual in the preceding year and that all auxiliaries involved in sedation procedures have completed BLS certification and, within the past two years, completed three hours of continuing education in any of the areas set forth in Parts (f)(3)(A)-(F) of this Rule.
- (5) All permit holders applying for renewal of a minimal conscious sedation permit shall be in good standing and their office shall be subject to inspection by the Board.

(g) A dentist who administers minimal conscious sedation in violation of this Rule shall be subject to the penalties prescribed by Rule .0701 of this Subchapter.

History Note: Authority G.S. 90-28; 90-30.1; 90-39; Temporary Adoption Eff. March 13, 2003; December 11, 2002; Eff. August 1, 2004; Amended Eff. July 3, 2008; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018; Amended Eff. February 1, 2019.

21 NCAC 16Q .0402 MINIMAL CONSCIOUS SEDATION PERMIT REQUIREMENTS, CLINICAL PROVISIONS AND EQUIPMENT

- (a) Minimal conscious sedation is indicated for use only as defined in Rule .0101(15) of this Subchapter (relating to Definitions). Minimal conscious sedation shall not be used to achieve a deeper level of sedation.
- (b) A minimal conscious sedation permit is not required for Schedule IV agents used for anxiolysis prescribed for administration outside of the dental office when a dentist determines that the patient is capable of following pre-procedure instructions. Medication administered for the purpose of minimal conscious sedation shall not exceed the maximum doses recommended by the drug manufacturer, sedation textbooks, or juried sedation journals. Except for nitrous inhalation, drugs in combination are not permitted for minimal conscious sedation. During longer periods of minimal conscious sedation, in which the amount of time of the procedures exceeds the effective duration of the sedative effect of the drug used, the incremental doses of the sedative shall not exceed total safe dosage levels based on the effective half-life of the drug used.
- (c) Each dentist shall:
 - (1) adhere to the clinical requirements as detailed in Paragraph (e) of this Rule;
 - (2) maintain under continuous direct supervision any auxiliary personnel, who shall be capable of assisting in procedures, problems, and emergencies incident to the use of minimal conscious sedation or secondary to an unexpected medical complication;

- (3) utilize auxiliary personnel for each procedure performed who shall document annual completion of basic life support training; and
- (4) not allow a minimal conscious sedation procedure to be performed in his or her office by a Certified Registered Nurse Anesthetist (CRNA) unless the dentist holds a permit issued by the Board for the procedure being performed. This provision addresses dentists and is not intended to address the scope of practice of persons licensed by any other agency.
- (d) Each dentist shall meet the following requirements:
 - (1) Patient Evaluation. Patients who are administered minimal conscious sedation must be evaluated for medical health risks prior to the start of any sedative procedure. A patient receiving minimal conscious sedation must be healthy or medically stable (ASA I, or ASA II as defined by the American Society of Anesthesiologists). An evaluation is a review of the patient's current medical history and medication use. However, for individuals who are not medically stable or who have a significant health disability Physical Status III (ASA III, as defined by the American Society of Anesthesiologists) a consultation with their primary care physician or consulting medical specialist regarding potential procedure risk is required.
 - (2) Pre-procedure preparation, informed consent:
 - (A) The patient or guardian must be advised of the procedure associated with the delivery of the minimal conscious sedation.
 - (B) Equipment must be evaluated and maintained for operation.
 - (C) Baseline vital signs shall be obtained at the discretion of the operator depending on the medical status of the patient and the nature of the procedure to be performed.
 - (D) Dentists administering minimal conscious sedation shall use sedative agents that he or she is competent to administer and shall administer such agents in a manner that is within the standard of care.
- (e) Patient monitoring shall be conducted as follows:
 - (1) Patients who have been administered minimal conscious sedation shall be monitored during waiting periods prior to operative procedures. An adult who has accepted responsibility for the patient and been given written pre-procedural instruction may provide such monitoring. The patient shall be monitored for alertness, responsiveness, breathing and skin coloration.

- (2) Dentists administering minimal conscious sedation shall maintain direct supervision of the patient during the operative procedure and for such a period of time necessary to establish pharmacologic and physiologic vital sign stability.
 - (A) Oxygenation. Color of mucosa, skin or blood shall be evaluated throughout the sedation procedure. Oxygen saturation shall be evaluated continuously by pulse oximetry, except as provided in Paragraph (e)(4) of this Rule.
 - (B) Ventilation. Observation of chest excursions or auscultation of breath sounds or both shall be performed.
 - (C) Circulation. Blood pressure and pulse shall be taken and recorded initially and thereafter as appropriate except as provided in Paragraph (e)(4) of this Rule.
 - (D) AED. Dentists administering minimal conscious sedation shall maintain a functioning automatic external defibrillator (AED).
 - (3) A time oriented anesthetic record of vital signs shall be maintained in the permanent record including documentation of individual(s) administering the drug and showing the name of drug, strength and dosage used.
 - (4) If the dentist responsible for administering minimal conscious sedation must deviate from the requirements set out in this Rule, he or she shall document the occurrence of such deviation and the reasons for such deviation.
- (f) Post-operative procedures:
- (1) Following the operative procedure, positive pressure oxygen and suction equipment shall be available in the recovery area or operatory.
 - (2) the permit holder or a BLS certified auxiliary under his or her direct supervision shall monitor the patient's vital signs throughout the sedation procedure until the patient is recovered as defined in Subparagraph (f)(4) of this Rule and is ready for discharge from the office.
 - (3) Patients who have adverse reactions to minimal conscious sedation shall be assisted and monitored either in an operatory chair or recovery area until stable for discharge.
 - (4) Recovery from minimal conscious sedation shall include:
 - (A) cardiovascular function stable;
 - (B) airway patency uncompromised;
 - (C) patient arousable and protective reflexes intact;
 - (D) state of hydration within normal limits;
 - (E) patient can talk, if applicable;
 - (F) patient can sit unaided, if applicable;
 - (G) patient can ambulate, if applicable, with minimal assistance; and
 - (H) for the patient who is disabled, or incapable of the usually expected responses, the pre-sedation level of responsiveness or the level as close as possible for that patient shall be achieved.
- (5) Prior to allowing the patient to leave the office, the dentist shall determine that the patient has met the recovery criteria set out in Paragraph (f)(4) of this Rule and the following discharge criteria:
- (A) oxygenation, circulation, activity, skin color and level of consciousness are sufficient and stable and have been documented;
 - (B) explanation and documentation of written postoperative instructions have been provided to the patient or a person responsible for the patient at the time of discharge;
 - (C) a person authorized by the patient must be available to transport the patient and for patients for whom a motor vehicle restraint system is required, an additional individual must be available to attend to the patient.
- (g) The dentist, personnel and facility shall be prepared to treat emergencies that may arise from the administration of minimal conscious sedation, and shall have the ability to provide positive pressure ventilation with 100% oxygen with an age appropriate device.

*History Note: Authority G.S. 90-28; 90-30.1;
Temporary Adoption Eff. December 11, 2002;
Eff. August 1, 2004;
Amended Eff. July 3, 2008;
Readopted Eff. February 1, 2019.*

21 NCAC 16Q .0404 CREDENTIALS AND PERMITS FOR MODERATE PEDIATRIC CONSCIOUS SEDATION

- (a) Before a dentist licensed to practice in North Carolina may administer moderate pediatric conscious sedation, the dentist shall obtain a general anesthesia or moderate pediatric conscious sedation permit from the Board by completing the application requirements of this Rule and paying a fee of three hundred seventy-five dollars (\$375.00) that includes the one-hundred dollar (\$100.00) application fee and the two-hundred seventy-five dollar (\$275.00) inspection fee. The permit shall be renewed annually and shall be displayed with the current renewal at all times in the permit holder's facility where it is visible to patients receiving treatment.
- (b) A dentist applying for a permit to administer moderate pediatric conscious sedation shall hold an unexpired PALS certification and meet at least one of the following criteria:
 - (1) completion of a postgraduate program that included pediatric intravenous conscious sedation training;

- (2) completion of a Commission On Dental Accreditation (CODA) approved pediatric residency that included intravenous conscious sedation training; or
- (3) completion of a pediatric degree or pediatric residency at a CODA approved institution that includes training in the use and placement of IVs or intraosseous vascular access. A list of CODA approved institutions that is hereby incorporated by reference, including subsequent amendments and editions, appears at www.ada.org/coda and is available at no cost.

(c) All applicants for moderate pediatric conscious sedation permits shall have completed the training required by Paragraph (b) of this Rule within the last two years or show evidence of moderate pediatric conscious sedation practice within the last two years in another state or U.S. Territory.

(d) All applicants for moderate pediatric conscious sedation permits shall be in good standing with the Board.

(e) Prior to issuance of a moderate pediatric conscious sedation permit, the applicant shall pass an evaluation and a facility inspection. The applicant shall be responsible for passing the evaluation and inspection of his or her facility.

(f) A moderate pediatric conscious sedation permit holder may provide moderate pediatric conscious sedation at the office of another licensed dentist, regardless of the permit, if any held, by the hosting dentist. The permit holder shall ensure that the facility where the moderate pediatric conscious sedation is administered has been inspected and complies with the requirements set out in Rule .0405 of this Section. The permit holder shall also obtain an itinerant moderate pediatric conscious sedation permit and comply with the requirements of Rule .0406 of this Section.

History Note: Authority G.S. 90-30.1; 90-39; 90-48;

Eff. June 1, 2017;

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Amended Eff. February 1, 2019; August 1, 2018.

21 NCAC 16Q .0405 MODERATE PEDIATRIC CONSCIOUS SEDATION CLINICAL REQUIREMENTS AND EQUIPMENT

(a) A dentist administering moderate pediatric conscious sedation shall ensure that the facility where the sedation is administered meets the following requirements:

- (1) The facility shall be equipped with the following:
 - (A) an operatory of size and design to permit access of emergency equipment and personnel and to permit emergency management;
 - (B) a CPR board or a dental chair without enhancements, suitable for providing emergency treatment;
 - (C) lighting as necessary for specific procedures and back-up lighting;
 - (D) suction equipment as necessary for specific procedures, including non-electrical back-up suction;

- (E) positive pressure oxygen delivery system, including full face masks for small, medium, and large patients and back-up E-cylinder portable oxygen tank apart from the central system;
- (F) small, medium, and large oral and nasal airways;
- (G) blood pressure monitoring device;
- (H) EKG monitor;
- (I) pulse oximeter;
- (J) automatic external defibrillator (AED);
- (K) precordial stethoscope or capnograph;
- (L) thermometer;
- (M) vascular access set-up as necessary for specific procedures, including hardware and fluids;
- (N) laryngoscope with working batteries;
- (O) intubation forceps and advanced airway devices;
- (P) tonsillar suction with back-up suction;
- (Q) syringes as necessary for specific procedures; and
- (R) tourniquet and tape.

(2) The following unexpired drugs shall be maintained in the facility and with access from the operatory and recovery rooms:

- (A) Epinephrine;
- (B) Atropine;
- (C) antiarrhythmic;
- (D) antihistamine;
- (E) antihypertensive;
- (F) bronchodilator;
- (G) antihypoglycemic agent;
- (H) vasopressor;
- (I) corticosteroid;
- (J) anticonvulsant;
- (K) muscle relaxant;
- (L) appropriate reversal agents;
- (M) nitroglycerine;
- (N) antiemetic; and
- (O) Dextrose.

(3) The permit holder shall maintain written emergency and patient discharge protocols. The permit holder shall also provide training to familiarize auxiliaries in the treatment of clinical emergencies;

(4) The following records are maintained for at least 10 years:

- (A) patient's current written medical history and pre-operative assessment;
- (B) drugs administered during the procedure, including route of administration, dosage, strength, time, and sequence of administration;
- (C) a sedation record; and
- (D) a consent form, signed by the patient or a guardian, identifying the

- procedure, risks and benefits, level of sedation, and date signed;
 - (5) The sedation record shall include:
 - (A) base line vital signs, blood pressure (unless patient behavior prevents recording), oxygen saturation, ET CO₂ if capnography is utilized, pulse and respiration rates of the patient recorded in real time at 15 minute intervals;
 - (B) procedure start and end times;
 - (C) gauge of needle and location of IV on the patient, if used;
 - (D) status of patient upon discharge; and
 - (E) documentation of complications or morbidity; and
 - (6) The following conditions shall be satisfied during a sedation procedure:
 - (A) the facility shall be staffed with at least two BLS certified auxiliaries, one of whom shall be dedicated to patient monitoring and recording sedation data throughout the sedation procedure. This Subparagraph shall not apply if the dentist permit holder is dedicated to patient care and monitoring regarding sedation throughout the sedation procedure and is not performing the surgery or other dental procedure; and
 - (B) when IV sedation is used, IV infusion shall be administered before the commencement of the procedure and maintained until the patient is ready for discharge.
- (b) During an inspection or evaluation, applicants and permit holders who use intravenous sedation shall demonstrate the administration of moderate pediatric conscious sedation on a live patient, including the deployment of an intravenous delivery system, while the evaluator observes. Applicants and permit holders who do not use IV sedation shall describe the proper deployment of an intravascular delivery system to the evaluator and shall demonstrate the administration of moderate pediatric conscious sedation on a live patient while the evaluator observes.
- (c) During the demonstration, all applicants and permit holders shall demonstrate competency in the following areas:
 - (1) monitoring blood pressure, pulse, and respiration;
 - (2) drug dosage and administration;
 - (3) treatment of untoward reactions including respiratory or cardiac depression if applicable;
 - (4) sterile technique;
 - (5) use of BLS certified auxiliaries;
 - (6) monitoring of patient during recovery; and
 - (7) sufficiency of patient recovery time.
- (d) During an inspection or evaluation, the applicant or permit holder shall demonstrate competency in the treatment of the following clinical emergencies:
 - (1) laryngospasm;
 - (2) bronchospasm;
 - (3) emesis and aspiration;
 - (4) respiratory depression and arrest;
 - (5) angina pectoris;
 - (6) myocardial infarction;
 - (7) hypertension and hypotension;
 - (8) allergic reactions;
 - (9) convulsions;
 - (10) syncope;
 - (11) bradycardia;
 - (12) hypoglycemia;
 - (13) cardiac arrest; and
 - (14) airway obstruction.
- (e) During the evaluation, the permit applicant shall take a written examination on the topics set forth in Paragraphs (c) and (d) of this Rule. The permit applicant must obtain a passing score on the written examination by answering 80 percent of the examination questions correctly. If the permit applicant fails to obtain a passing score on the written examination that is administered during the evaluation, he or she may be re-examined in accordance with Rule .0408(h) of this Section.
- (f) A moderate pediatric conscious sedation permit holder shall evaluate patients for health risks before starting any sedation procedure as follows:
 - (1) a patient who is medically stable and who is ASA I or II shall be evaluated by reviewing the patient's current medical history and medication use; or
 - (2) a patient who is not medically stable or who is ASA III or higher shall be evaluated by a consultation with the patient's primary care physician or consulting medical specialist regarding the potential risks posed by the procedure.
- (g) Patient monitoring:
 - (1) Patients who have been administered moderate pediatric conscious sedation shall be monitored for alertness, responsiveness, breathing, and skin coloration during waiting periods before operative procedures.
 - (2) The permit holder or a BLS certified auxiliary under his or her direct supervision shall monitor the patient's vital signs throughout the sedation procedure until the patient is recovered as defined in Subparagraph (g)(3) of this Rule and is ready for discharge from the office.
 - (3) Recovery from moderate pediatric conscious sedation shall include documentation of the following:
 - (A) cardiovascular function stable;
 - (B) airway patency uncompromised;
 - (C) patient arousable and protective reflexes intact;
 - (D) state of hydration within normal limits;
 - (E) patient can talk, if applicable;
 - (F) patient can sit unaided, if applicable;
 - (G) patient can ambulate, if applicable, with minimal assistance; and

- (H) for the special needs patient or a patient incapable of the usually expected responses, the pre-sedation level of responsiveness or the level as close as possible for that patient shall be achieved.
- (4) Before allowing the patient to leave the office, the dentist shall determine that the patient has met the recovery criteria set out in Subparagraph (g)(3) of this Rule and the following discharge criteria:
 - (A) oxygenation, circulation, activity, skin color, and level of consciousness are stable, and have been documented;
 - (B) explanation and documentation of written postoperative instructions have been provided to a person responsible for the patient at time of discharge; and
 - (C) a person responsible for the patient is available to transport the patient after discharge, and for the patient for whom a motor vehicle restraint system is required, an additional responsible individual is available to attend to the patient.

History Note: Authority G.S. 90-28; 90-30.1; 90-48; Eff. June 1, 2017; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018; Amended Eff. February 1, 2019; August 1, 2018.

21 NCAC 16Q .0408 PROCEDURE FOR MODERATE PEDIATRIC SEDATION EVALUATION OR INSPECTION AND RE-INSPECTION

- (a) When an evaluation or on-site inspection is required, the Board shall designate one or more qualified persons to serve as evaluators, each of whom has administered moderate pediatric sedation for at least three years preceding the evaluation or inspection. Training in moderate pediatric sedation shall not count toward the three years.
- (b) An inspection fee of two-hundred seventy-five dollars (\$275.00) shall be due 10 days after the dentist receives notice of the inspection of each additional location at which the dentist administers moderate pediatric sedation.
- (c) Any dentist-member of the Board may observe or consult in any evaluation or inspection.
- (d) The inspection team shall determine compliance with the requirements of the rules in this Subchapter, as applicable, by assigning a grade of "pass" or "fail."
- (e) Each evaluator shall report his or her recommendation to the Board's Anesthesia and Sedation Committee, setting forth the details supporting his or her conclusion. The Committee shall not be bound by these recommendations. The Committee shall determine whether the applicant has passed the evaluation or inspection and shall notify the applicant in writing of its decision.
- (f) An applicant who fails an inspection or evaluation shall not receive a permit to administer moderate pediatric sedation. If a

permit holder's facility fails an inspection, no further moderate pediatric sedation procedures shall be performed at the facility until it passes a re-inspection by the Board.

(g) An applicant who fails an inspection or evaluation may request a re-evaluation or re-inspection within 15 days of receiving the notice of failure. The request shall be directed to the Board in writing and include a statement of the grounds supporting the re-evaluation or re-inspection. Except as set forth in subsection (h) of this Rule, the Board shall require the applicant to receive additional training prior to the re-evaluation to address the areas of deficiency determined by the evaluation. The Board shall notify the applicant in writing of the need for additional training.

(h) A permit applicant who has failed the written examination portion of the evaluation but passed all other aspects of the evaluation and inspection may retake the written examination two additional times at the Board office. The applicant must wait a minimum of 72 hours before attempting to retake a written examination. Any applicant who has failed the written portion of the examination three times shall complete an additional Board approved course of study in the area(s) of deficiency and provide the Board evidence of the additional study before written reexamination.

(i) Re-evaluations and re-inspections shall be conducted by Board-appointed evaluators not involved in the failed evaluation or inspection.

(j) An applicant must complete all the requirements of Rule. 0405, including passing the written examination, evaluation and inspection, within 12 months of submitting the application to the Board.

History Note: Authority G.S. 90-30.1; 90-39; 90-48; Eff. April 1, 2016; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018; Amended Eff. February 1, 2019; August 1, 2018.

21 NCAC 16Q .0501 ANNUAL RENEWAL REQUIRED

History Note: Authority G.S. 90-28; 90-30.1; 90-48; Eff. February 1, 1990; Amended Eff. August 1, 2002; Transferred and Recodified from 16Q .0401 to 16Q .0501; Temporary Amendment Eff. December 11, 2002; Amended Eff. November 1, 2013; July 3, 2008; August 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018; Amended Eff. August 1, 2018; Repealed Eff. February 1, 2019.

CHAPTER 18 – BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

21 NCAC 18B .0201 REQUIREMENTS FOR ALL EXAMINATION APPLICANTS

- (a) To take an examination in any electrical contracting license classification, the applicant shall:

- (1) be 18 years of age;
 - (2) submit the required duly filed application as defined in Rule .0210 of this Section;
 - (3) submit with the application written statements from two persons, attesting to the applicant's good character; and
 - (4) meet the requirements set out in Paragraph (b) of this Rule.
- (b) Examination applicants shall meet the following requirements for the specified license classifications:
- (1) Limited classification. An applicant shall have two years of experience, as defined in Rule .0202 of this Section, of which one year shall be primary experience. The balance of experience may be primary, secondary, or both.
 - (2) Intermediate classification. An applicant shall have four years of experience, as defined in Rule .0202 of this Section, of which two and one half years shall be primary experience. The balance of experience may be primary, secondary, or both.
 - (3) Unlimited classification. An applicant shall:
 - (A) have five years of experience, as defined in Rule .0202 of this Section, of which four years shall be primary experience. The balance of experience may be primary, secondary, or both; and
 - (B) submit with the application written statements from two persons who are knowledgeable of the applicant's electrical experience, attesting to the applicant's ability to supervise and direct all electrical wiring or electrical installation work of an electrical contracting business in the unlimited classification.
 - (4) Single family detached residential dwelling (SP-SFD) classification. An applicant shall have two years of experience, as defined in Rule .0202 of this Section, of which one year shall be primary experience. The balance of experience may be primary, secondary, or both.
 - (5) Special restricted fire alarm/low voltage (SP-FA/LV) classification. An applicant shall have two years of experience, as defined in Rule .0202 of this Section, of which one year shall be primary experience. The balance of experience may be primary, secondary, or both. An applicant in this classification may also receive creditable experience for service in any of the capacities listed in Rule .0202 that the applicant gained in the low voltage field.
 - (6) Special restricted elevator (SP-EL) classification. An applicant shall:
 - (A) have two years of experience, as defined in Rule .0202 of this Section, of which one year shall be primary experience. The balance of experience may be primary, secondary, or both.
 - (B) include on the application information to establish that the applicant is regularly on active duty in, and will be the listed qualified individual for a firm that is primarily engaged in, a lawful elevator business in this State, consistent with G.S. 87-43 and 21 NCAC 18B .0301.
 - (7) Special restricted plumbing and heating (SP-PH) classification. An applicant shall:
 - (A) have two years of experience, as defined in Rule .0202 of this Section, of which one year shall be primary experience. The balance of experience may be primary, secondary, or both. An applicant in this classification shall also receive creditable experience for service in any of the capacities listed in Rule .0202 that the applicant gained in the plumbing, heating, or air conditioning field; and
 - (B) include on the application information verifying that the applicant is regularly on active duty in, and will be the listed qualified individual for a firm that is primarily engaged in, a lawful plumbing, heating, or air conditioning business in this State consistent with G.S. 87-43 and 21 NCAC 18B .0301.
 - (8) Special restricted ground water pump (SP-WP) classification. An applicant shall:
 - (A) have two years of experience, as defined in Rule .0202 of this Section, of which one year shall be primary experience. The balance of experience may be primary, secondary, or both. An applicant in this classification shall also receive creditable experience for service in any of the capacities listed in Rule .0202 that the applicant gained in the ground water pump field; and
 - (B) include on the application information to establish that the applicant is regularly on active duty in, and will be the listed qualified individual for a firm that is primarily engaged in, a lawful ground water pump business in this State, consistent with G.S. 87-43 and 21 NCAC 18B .0301.
 - (9) Special restricted electric sign (SP-ES) classification. An applicant shall:
 - (A) have two years of experience, as defined in Rule .0202 of this Section,

- of which one year shall be primary experience. The balance of experience be primary, secondary, or both. An applicant in this classification shall also receive creditable experience in any of the capacities listed in Rule .0202 that the applicant gained in the electric sign field; and
- (B) include on the application information to establish that the applicant is regularly on active duty in, and will be the listed qualified individual for a firm that is primarily engaged in, a lawful electric sign business in this State.
- (10) Special restricted swimming pool (SP-SP) classification. An applicant shall:
- (A) have two years of experience, as defined in Rule .0202 of this Section, of which one year shall be primary experience. The balance of experience may be primary, secondary, or both. An applicant in this classification shall also receive creditable experience for service in any of the capacities listed in Rule .0202 that the applicant gained in the swimming pool field; and
- (B) include on the application information verifying that the applicant is regularly on active duty in, and will be the listed qualified individual for a firm that is primarily engaged in, a lawful swimming pool business in this State, consistent with G.S. 87-43 and 21 NCAC 18B .0301.

History Note: Authority G.S. 87-42; 87-43.3; 87-43.4; 87-44; Eff. October 1, 1988; Amended Eff. January 1, 2010; March 1, 1999; February 1, 1990; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016; Amended Eff. February 1, 2019; October 1, 2017.

CHAPTER 68 - SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD

21 NCAC 68 .0206 PROCESS FOR PREVENTION CONSULTANT CERTIFICATION

(a) The Board shall certify an applicant as a certified substance abuse prevention consultant as set out in Article 5C of Chapter 90 of the North Carolina General Statutes. A certified substance abuse prevention consultant's primary responsibilities are to provide substance use disorder information and education, environmental approaches, alternative activities, community organization, networking, and referral to promote personal health and well-being to individuals, families, and communities who

may not otherwise be clients receiving substance use disorder treatment.

(b) The requirements for certification are:

- (1) Supervised work experience as set out in G.S. 90-113.40(a)(8) in prevention consultation.
- (2) 270 hours of academic and didactic training divided in the following manner:
 - (A) 170 hours primary and secondary prevention and in the prevention performance domains; and
 - (B) 100 hours in substance use disorder specific studies, which includes six hours of HIV/AIDS/STDS/TB/Bloodborne pathogens training and education, six hours professional ethics education, and six hours of education to be selected from the following:
 - (i) nicotine use disorder;
 - (ii) psychopathology;
 - (iii) evidence-based treatment;
 - (iv) substance use disorder issues and older adults;
 - (v) substance use disorder issues affecting veterans; and
 - (vi) substance use disorder and domestic violence.
- (3) A minimum of 300 hours of supervised practical training practice hours documented by a certified clinical supervisor, clinical supervisor intern, or certified substance abuse prevention consultant who has been certified more than three years;
- (4) An attestation or otherwise signed adherence by the applicant to the Ethical Standards of the Board;
- (5) An application fee of twenty-five dollars (\$25.00), a certification fee of two hundred dollars (\$200.00) and an examination fee of one hundred fifty dollars (\$150.00).

History Note: Authority G.S. 90-113.30; 90-113.31B; 90-113.33; 90-113.38; 90-113.39; 90-113.40; 90-113.41; Eff. August 1, 1996; Amended Eff. January 1, 2014; August 1, 2002; April 1, 2001; August 1, 2000; Readopted Eff. Pending consultation pursuant to G.S. 12-3.1.

21 NCAC 68 .0207 CERTIFICATION OR LICENSURE PERIOD

Certification or licensure is for a period of two years after which renewal is necessary. Failure to renew a credential within 30 business days following the end of the two-year period shall result in a late renewal fee of fifty dollars (\$50.00) to be paid by the professional in addition to the renewal fee of one hundred and fifty dollars (\$150.00).

History Note: Authority G.S. 90-113.30; 90-113.33; 09-113.37A; 90-113.38;

*Eff. August 1, 1996;
Amended Eff. January 1, 2010;
Readopted Eff. Pending consultation pursuant to G.S. 12-3.1.*

**21 NCAC 68 .0306 RENEWAL OF LICENSED
CLINICAL ADDICTIONS SPECIALIST**

(a) An applicant who is in the deemed status group shall submit the following every two years:

- (1) A completed application and a copy of the applicant's current substance abuse licensure or its equivalent from the deemed status professional discipline.
- (2) A non-refundable renewal fee of thirty-five dollars (\$35.00).

(b) All other individual applicants shall:

- (1) Renew licensure as classified by the criteria for their original licensing every two years.
- (2) Document completing 40 hours of education pursuant to Section .0400 of this Chapter, during the current licensing period. A minimum of 30 hours shall be substance use disorder specific. This education may include a combination of hours including attending and providing workshops.
- (3) Meet re-licensing educational guidelines as a substance use disorder professional as follows:
 - (A) No more than 25 percent may be in-service education, received within the applicant's organization by staff of the same employment.

- (B) No more than 25 percent receiving supervision with two hours of supervision translating to one hour of education.
- (C) No more than 25 percent of workshop presentation with one hour of presentation translating to one hour of education. Workshop presentation shall be pursuant to Rule .0213 of this Chapter.
- (D) All applicants shall include three hours of HIV/AIDS/STDS/TB/Bloodborne pathogens training and education, three hours of professional ethics training and education, and three hours of education to be selected from the list appearing in Rule.0305(1)(d) of this Section.
- (4) Submit a completed application with continuing education documented.
- (5) Submit a non-refundable one hundred fifty dollar (\$150.00) renewal fee.

*History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.37A; 90-113.38; 90-113.39; 90-113.41A;
Temporary Adoption Eff. November 15, 1997;
Eff. August 1, 1998;
Amended Eff January 1, 2014; April 1, 2003; August 1, 2002;
Readopted Eff. Pending consultation pursuant to G.S. 12-3.1.*

This Section contains information for the meeting of the Rules Review Commission March 21, 2019 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS**Appointed by Senate**

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

Appointed by House

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

COMMISSION COUNSEL

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

RULES REVIEW COMMISSION MEETING DATES

March 21, 2019 April 18, 2019
May 16, 2019 June 20, 2019

AGENDA**RULES REVIEW COMMISSION****THURSDAY, MARCH 21, 2019 9:00 A.M.****1711 New Hope Church Rd., Raleigh, NC 27609**

- I. Ethics reminder by the chair as set out in G.S. 163A-159(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters
 - A. Soil and Water Conservation Commission – 02 NCAC 59D .0101, .0102, .0103, .0104, .0105, .0106, .0107, .0108, .0109, .0110; 59H .0101, .0102, .0103, .0104, .0105, .0106, .0107, .0108 (Reeder)
 - B. Board of Elections and Ethics Enforcement - 08 NCAC 02 .0112, .0113; 03 .0101, .0102, .0103, .0104, .0105, .0106, .0201, .0202, .0301, .0302; 04 .0302, .0304, .0305, .0306, .0307; 06B .0103, .0104, .0105; 08 .0104; 09 .0106, .0107, .0108, .0109; 10B .0101, .0102, .0103, .0104, .0105, .0106, .0107 (May)
 - C. Commission for the Blind - 10A NCAC 63C .0203, .0204, .0403, .0601 (Reeder)
 - D. Coastal Resources Commission - 15A NCAC 07H .0209, .0308, 1704, .1705 (May)
- IV. Review of Log of Filings (Permanent Rules) for rules filed January 23, 2019 through February 20, 2019
 - Commerce/Credit Union Division (Reeder)
 - Medical Care Commission (May)
 - Department of Health and Human Services (Reeder)
 - Alcoholic Beverage Control Commission (Reeder)
 - Department of Transportation (May)
 - Board of Barber Examiners (Reeder)
 - Medical Board (May)
- 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. 12 NCAC 09 - Criminal Justice Education and Training Standards Commission (May)
 - 2. 17 NCAC 07- Department of Revenue (May)
- VII. Commission Business
 - E. Periodic Review and Expiration of Existing Rules Readoption Schedule

- Next meeting: Thursday, April 18, 2019
-

**Commission Review
Log of Permanent Rule Filings
January 23, 2019 through February 20, 2019**

COMMERCE - CREDIT UNION DIVISION

The rules in Chapter 6 are from the Credit Union Division.

The rules in Subchapter 6C concern credit unions and include general information (.0100); organization of credit unions (.0200); basic internal controls: accounting procedures and operation standards for state-chartered credit unions (.0300); loans (.0400); impairment and insolvency (.0500); dividends deposits and interest rebate (.0600); accounts (.0700); reports to administrator (.0800); pension plans (.0900); retention of records (.1000); forms used by credit union division (.1100); investments (.1200); reserves (.1300); and signature guarantee services.

<u>Charitable Contributions and Charitable Donation Accounts</u>	04	NCAC	06C	.0708
Adopt*				

MEDICAL CARE COMMISSION

The rules in Chapter 13 are from the NC Medical Care Commission.

The rules in Subchapter 13B set standards for the licensing of hospitals including supplemental rules for the licensure of skilled intermediate, adult care home beds in a hospital (.1900); specialized rehabilitative and rehabilitative services (.2000); general information (.3000); procedure (.3100); general requirements (.3200); patients' bill of rights (.3300); supplemental rules for the licensure of critical care hospitals (.3400); grievance and management (.3500); management and administration of operations (.3600); medical staff (.3700); nursing services (.3800); medical record services (.3900); outpatient services (.4000); emergency services (.4100); special care units (.4200); maternal-neonatal services (.4300); respiratory care services (.4400); pharmacy services and medication administration (.4500); surgical and anesthesia services (.4600); nutrition and dietetic services (.4700); diagnostic imaging (.4800); laboratory services and pathology (.4900); physical rehabilitation services (.5000); infection control (.5100); psychiatric services (.5200); nursing and adult care beds (.5300); comprehensive inpatient rehabilitation (.5400); supplemental rules for hospitals providing living organ donation transplant services (.5500); physical plant (.6000); general requirements (.6100); and construction requirements (.6200).

<u>Plan Approval</u>	10A	NCAC	13B	.3102
Readopt with Changes*				
<u>List of Referenced Codes, Rules, Regulation, and Standards</u>	10A	NCAC	13B	.6101
Readopt with Changes*				
<u>General</u>	10A	NCAC	13B	.6102
Readopt with Changes*				
<u>Equivalency and Conflicts with Requirements</u>	10A	NCAC	13B	.6103
Readopt with Changes*				
<u>Outpatient Surgical Facilities</u>	10A	NCAC	13B	.6207
Readopt with Changes*				

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

The rules in Subchapter 14J concern jails and local confinement facilities including definitions and applicability for jails (.0100); operation manual for jails (.0200); classification and housing (.0300); fire safety (.0400); security (.0500); supervision (.0600); sanitation and personal hygiene (.0700); commissary or canteen services (.0800); food (.0900); health care of inmates and exercise (.1000); reports (.1100); standards for new jail design and construction (.1200); inspection and enforcement of minimum standards (.1300); satellite jail/work release units (.1400); construction

standards for existing facilities (.1500); construction standards for existing state-funded satellite jail/work release units (.1600); and municipal lockups (.1700).

<u>Definitions</u>	10A	NCAC	14J	.0101
Readopt with Changes*				
<u>Applicability - Operations and Enforcement and Incorporat...</u>	10A	NCAC	14J	.0102
Readopt with Changes*				
<u>Applicability - Construction</u>	10A	NCAC	14J	.0103
Readopt with Changes*				
<u>Requirement for Operations Manual</u>	10A	NCAC	14J	.0201
Readopt with Changes*				
<u>Contents of Operations Manual</u>	10A	NCAC	14J	.0203
Readopt with Changes*				
<u>Review of Manual</u>	10A	NCAC	14J	.0204
Readopt with Changes*				
<u>Classification System and Total Design Capacity</u>	10A	NCAC	14J	.0301
Readopt with Changes*				
<u>Separation of Male and Female Inmates</u>	10A	NCAC	14J	.0302
Readopt with Changes*				
<u>Confinement of Inmates Under 18 Years of Age</u>	10A	NCAC	14J	.0303
Readopt with Changes*				
<u>Portable Fire Extinguishers</u>	10A	NCAC	14J	.0402
Readopt with Changes*				
<u>Fire Plan, Fire Evacuation Training, and Disaster Plan</u>	10A	NCAC	14J	.0403
Readopt with Changes*				
<u>Mattresses</u>	10A	NCAC	14J	.0404
Readopt with Changes*				
<u>Keys</u>	10A	NCAC	14J	.0405
Readopt with Changes*				
<u>General Security Requirements</u>	10A	NCAC	14J	.0501
Readopt with Changes*				
<u>Supervision</u>	10A	NCAC	14J	.0601
Readopt with Changes*				
<u>Mattresses and Bedding</u>	10A	NCAC	14J	.0702
Readopt with Changes*				
<u>Personal Hygiene Items</u>	10A	NCAC	14J	.0705
Readopt with Changes*				
<u>Menus</u>	10A	NCAC	14J	.0904
Readopt with Changes*				
<u>Medical Plan</u>	10A	NCAC	14J	.1001
Readopt with Changes*				
<u>Screening of Inmates</u>	10A	NCAC	14J	.1002
Readopt with Changes*				
<u>Applicability - Construction</u>	10A	NCAC	14J	.1201
Readopt/Repeal*				
<u>Consultation and Technical Assistance</u>	10A	NCAC	14J	.1202
Readopt with Changes*				
<u>Compliance Review and Approval</u>	10A	NCAC	14J	.1203
Readopt with Changes*				
<u>Inmate Processing Area and Padded Cell</u>	10A	NCAC	14J	.1207
Readopt with Changes*				
<u>Other Areas</u>	10A	NCAC	14J	.1210

Readopt with Changes*				
<u>Floors, Ceilings, and Walls</u>	10A	NCAC	14J	.1212
Readopt with Changes*				
<u>Showers and Plumbing Fixtures</u>	10A	NCAC	14J	.1213
Readopt with Changes*				
<u>Windows and Glazing</u>	10A	NCAC	14J	.1214
Readopt with Changes*				
<u>Doors, Bunks, Locks, and Fasteners</u>	10A	NCAC	14J	.1215
Readopt with Changes*				
<u>Plumbing Systems</u>	10A	NCAC	14J	.1218
Readopt with Changes*				
<u>Electrical Systems</u>	10A	NCAC	14J	.1219
Readopt with Changes*				
<u>Standards for Dayrooms</u>	10A	NCAC	14J	.1225
Readopt with Changes*				
<u>Standards for Dormitories</u>	10A	NCAC	14J	.1226
Readopt with Changes*				

ALCOHOLIC BEVERAGE CONTROL COMMISSION

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

<u>Requirements for Storage</u>	14B	NCAC	15A	.1603
Amend*				
<u>Prohibited Practices</u>	14B	NCAC	15A	.1604
Amend*				
<u>Removal of Beverages from ABC Stores</u>	14B	NCAC	15A	.1701
Amend*				
<u>Mixed Beverages Tax Stamp</u>	14B	NCAC	15A	.1901
Amend*				
<u>Nonprofit Sales at Raffle or Auction</u>	14B	NCAC	15A	.2206
Adopt*				

The rules in Subchapter 15B concern retail beer, wine, mixed beverages, brownbagging, advertising, and special permits. The rules include definitions and permit application procedures (.0100); general rules affecting retailers and brownbagging permittees (.0200); malt beverages and the wine retailer/wholesaler relationship (.0300); additional requirements for brownbagging permittees (.0400); additional requirements for mixed beverages permittees (.0500); special requirements for convention centers, community theatres, sports clubs, and nonprofit and political organizations (.0600); special occasions permits (.0700); culinary permits (.0800); wine and beer tastings (.0900); advertising (.1000); and effect of administrative action, fines, and offers in compromise (.1100).

<u>Definitions</u>	14B	NCAC	15B	.0101
Amend*				
<u>Consumption: Intoxication by Permittee Prohibited</u>	14B	NCAC	15B	.0209
Amend*				
<u>Advertising of Malt Beverages, Wine and Beverages by Reta...</u>	14B	NCAC	15B	.1006

Amend*

The rules in Subchapter 15C concern industry members, retail/industry member relationships, ship chandlers, air carriers, and fuel alcohol including definitions and application procedures (.0100); product approvals, listing procedures and product lists (.0200); packaging and labeling of malt beverages and wine (.0300); standards of identity for wine containers (.0400); general provisions for industry members (.0500); sales and deliveries of malt beverages and wine (.0600); alcoholic beverages, retailer/industry member relationship and trade practices (.0700); ships chandler's permit (.0800); distillers and representatives (.0900); air carriers (.1000); fuel alcohol permits (.1100); administrative action by commission (.1200); and special event permits (.1300).

<u>Definitions</u>	14B	NCAC	15C	.0101
Amend*				
<u>Application Procedures</u>	14B	NCAC	15C	.0102
Amend*				
<u>Distiller, Supplier and Brokerage Representatives: Prohib...</u>	14B	NCAC	15C	.0901
Amend*				
<u>Definitions</u>	14B	NCAC	15C	.1301
Adopt*				
<u>Other Similar Events Approval</u>	14B	NCAC	15C	.1302
Adopt*				
<u>Tastings Held for Consumers</u>	14B	NCAC	15C	.1303
Adopt*				
<u>Special Event Compliance Procedure</u>	14B	NCAC	15C	.1304
Adopt*				
<u>Special Event Sale of Branded Merchandise, Point-of-Sale ...</u>	14B	NCAC	15C	.1305
Adopt*				
<u>Special Event Participation Limitations</u>	14B	NCAC	15C	.1306
Adopt*				

TRANSPORTATION, DEPARTMENT OF

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

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

<u>Purpose and Scope</u>	19A	NCAC	02D	.1101
Readopt without Changes*				
<u>Definitions</u>	19A	NCAC	02D	.1102
Readopt without Changes*				
<u>Certification of Firms</u>	19A	NCAC	02D	.1103
Readopt without Changes*				
<u>Renewal of Certification</u>	19A	NCAC	02D	.1104
Readopt without Changes*				
<u>Change in Ownership or Control</u>	19A	NCAC	02D	.1105
Readopt without Changes*				
<u>Decertification</u>	19A	NCAC	02D	.1106
Readopt without Changes*				
<u>Appeals of Denial of Certification</u>	19A	NCAC	02D	.1107
Readopt without Changes*				
<u>Goals</u>	19A	NCAC	02D	.1108

Readopt without Changes*

Counting Participation Toward Meeting the Goal 19A NCAC 02D .1109

Readopt without Changes*

Non-Attainment of Goals 19A NCAC 02D .1110

Readopt without Changes*

Performance Related Replacement of Eligible Firms 19A NCAC 02D .1111

Readopt without Changes*

Replacement of a Firm Removed by Decertification 19A NCAC 02D .1112

Readopt without Changes*

BARBER EXAMINERS, BOARD OF

The rules in Subchapter 06A are departmental rules including organizational rules (.0100); and rules about the executive secretary (.0300).

Physical and Mailing Address 21 NCAC 06A .0102

Amend*

The rules in Subchapter 06F concern barber schools.

Student Permit 21 NCAC 06F .0113

Amend*

State Authorization as a Postsecondary Institution 21 NCAC 06F .0127

Amend*

MEDICAL BOARD

The rules in Subchapter 32S regulate physician assistants including physician assistant registration (.0200).

Qualifications and Requirements for License 21 NCAC 32S .0202

Amend*

Annual Renewal 21 NCAC 32S .0204

Amend*

Expedited Application for Physician Assistant Licensure 21 NCAC 32S .0220

Amend*

CONTESTED CASE DECISIONS

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

OFFICE OF ADMINISTRATIVE HEARINGS**Chief Administrative Law Judge****JULIAN MANN, III****Senior Administrative Law Judge****FRED G. MORRISON JR.****ADMINISTRATIVE LAW JUDGES**

Melissa Owens Lassiter
Don Overby
J. Randall May
David Sutton
Tenisha Jacobs

A. B. Elkins II
Selina Malherbe
J. Randolph Ward
Stacey Bawtinheimer

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
				<u>PUBLISHED</u>			
18	ABC	03865	11/15/2018	NC Alcoholic Beverage Control Commission	v.	Davidson Ventures LLC T/A Wine and Canvas	Malherbe
18	DHR	02700	11/2/2018	Myronette Alspaugh	v.	NC Department of Health and Human Services Medicaid/ NC Health Choice Program	May
18	DHR	03934	11/8/2018	Erica Fennell	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Malherbe
18	DOJ	02094	11/5/2018	Erica Nicole Selby	v.	NC Criminal Justice Education and Training Standards Commission	Ward
18	DOJ	02763	11/30/2018	Brice K Marshall	v.	NC Sheriffs Education and Training Standards Commission	Overby
18	DOJ	02967	11/29/2018	Scott D Helton Sr	v.	NC Sheriffs Education and Training Standards Commission	Overby
18	DOJ	03216	11/27/2018	Alfred Wortham	v.	NC Sheriffs Education and Training Standards Commission	Overby
18	DOJ	03842	11/27/2018	Joshua M Bunton	v.	NC Sheriffs Education and Training Standards Commission	Overby
18	DOJ	04489	11/27/2018	Emily Greer Bell	v.	NC Sheriffs Education and Training Standards Commission	Overby

CONTESTED CASE DECISIONS

18	EDC	02121	11/5/2018	Renita Harvey	v.	North Carolina State Board of Education	Ward
				<u>UNPUBLISHED</u>			
18	ABC	05383	11/2/2018	NC Alcoholic Beverage Control Commission	v.	Ambience Special Event Center LLC T/A Ambience Special Event Center	Jacobs
18	ABC	05594	11/28/2018	NC Alcoholic Beverage Control Commission	v.	Crazy Iguana Bar and Grill LLC T/A Crazy Iguana Bar and Grill	Jacobs
17	CSE	07635	11/9/2018	John G Currall	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Elkins
18	CSE	03833	11/14/2018	Timothy F Bourque	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
18	CSE	05358	11/15/2018	Johnathan Lee Antinori	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
18	DHR	03955	11/15/2018	Lucia M Gonzalez	v.	NC Department of Health and Human Services	Malherbe
18	DHR	04726	11/14/2018	Patrice Michelle Harris Powell	v.	NC Healthcare Registry Department of Health & Human Svcs	Ward
18	DHR	04798	11/28/2018	Living Waters Home Care LLC	v.	NCDHHS NCDHHS Legal Counsel	Sutton
18	DHR	05158	11/27/2018	Dwayne S Williams	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Lassiter
18	DHR	05271	11/5/2018	Moyer Ideas LLC Brandon Moyer	v.	Buncombe County Health Department	Sutton
18	DHR	05522	11/8/2018	Margaret Newman	v.	Department of Health and Human Services	Malherbe
18	DHR	05716	11/21/2018	LSM Enterprizes Inc Marshall Elmore	v.	Cardinal Innovations Healthcare	May
18	DHR	05810	11/16/2018	Love and Learn Academy Regina Ross	v.	Department of Health and Human Services	Malherbe
18	DHR	05878	11/27/2018	Deborah P Reyes	v.	Department of Health and Human Services, Division of Health Service Regulation	Sutton