

NORTH CAROLINA REGISTER

VOLUME 26 • ISSUE 18 • Pages 1434 - 1475

March 15, 2012

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

NC League of Municipalities (919) 715-4000
215 North Dawson Street
Raleigh, North Carolina 27603
contact: Erin L. Wynia ewynia@nclm.org

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

contact: Karen Cochrane-Brown, Staff Attorney Karen.cochrane-brown@ncleg.net
Jeff Hudson, Staff Attorney Jeffrey.hudson@ncleg.net

NORTH CAROLINA REGISTER
Publication Schedule for January 2012 – December 2012

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 th day from publication in the Register
26:13	01/03/12	12/08/11	01/18/12	03/05/12	03/20/12	05/01/12	05/16/12	09/29/12
26:14	01/17/12	12/21/11	02/01/12	03/19/12	03/20/12	05/01/12	05/16/12	10/13/12
26:15	02/01/12	01/10/12	02/16/12	04/02/12	04/20/12	06/01/12	01/30/13	10/28/12
26:16	02/15/12	01/25/12	03/01/12	04/16/12	04/20/12	06/01/12	01/30/13	11/11/12
26:17	03/01/12	02/09/12	03/16/12	04/30/12	05/21/12	07/01/12	01/30/13	11/26/12
26:18	03/15/12	02/23/12	03/30/12	05/14/12	05/21/12	07/01/12	01/30/13	12/10/12
26:19	04/02/12	03/12/12	04/17/12	06/01/12	06/20/12	08/01/12	01/30/13	12/28/12
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27:08	10/15/12	09/24/12	10/30/12	12/14/12	12/20/12	02/01/13	05/2014	07/12/13
27:09	11/01/12	10/11/12	11/16/12	12/31/12	01/22/13	03/01/13	05/2014	07/29/13
27:10	11/15/12	10/24/12	11/30/12	01/14/13	01/22/13	03/01/13	05/2014	08/12/13
27:11	12/03/12	11/07/12	12/18/12	02/01/13	02/20/13	04/01/13	05/2014	08/30/13
27:12	12/17/12	11/26/12	01/01/13	02/15/13	02/20/13	04/01/13	05/2014	09/13/13

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

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



EXECUTIVE ORDER NO. 115

PROCLAMATION OF A STATE OF DISASTER FOR PAMLICO AND TYRRELL
COUNTIES

WHEREAS, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes, authorizes the issuance of a proclamation declaring an area to be a disaster area as defined in N.C.G.S. § 166A-6 and categorizing the disaster as a Type I, Type II or Type III disaster; and

WHEREAS, on August 27, 2011, Hurricane Irene made landfall on the coast of North Carolina as a Category 1 Hurricane causing a storm surge of two to four feet along parts of the Outer Banks and eight to 10 feet along parts of the Pamlico Sound, resulting in sound side and inland river flooding; and

WHEREAS, on September 1, 2011, President Barack Obama approved a major federal disaster declaration for Pamlico, Tyrrell and 38 other counties for public assistance under the Robert T. Stafford Act, FEMA Declaration 4019-DR; and

WHEREAS, due to flooding from Hurricane Irene, the school systems in the counties of Pamlico and Tyrrell sustained substantial damages to many of their school facilities; and

WHEREAS, due to a lapse in the flood insurance for Pamlico and Tyrrell counties, these systems were not eligible for full public assistance from FEMA; and

WHEREAS, I have determined that a State of Disaster, as defined in N.C.G.S. §166A-6, exists in the State of North Carolina, specifically in the counties of Pamlico and Tyrrell, due to flood damage to the school facilities in those areas and the lack of adequate federal assistance under FEMA Declaration 4019-DR to repair the damage; and

WHEREAS, pursuant to N.C.G.S. § 166A-6, the criteria for a Type II disaster are met if the President of the United States has issued a major disaster declaration pursuant to the Robert T. Stafford Act; and

WHEREAS, pursuant to N.C.G.S. § 166A-5(1)a.9, the Governor is authorized and empowered to use contingency and emergency funds as necessary and appropriate to provide relief and assistance from the effects of a disaster, and to reallocate such other funds as may

reasonably be available within the appropriations of the various departments when the severity and magnitude of such disaster so requires and the contingency and emergency funds are insufficient or inappropriate; and

WHEREAS, pursuant to N.C.G.S. § 166A-6(b)(1), during a state of disaster, the Governor has the power to utilize all available State resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating emergency services.

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

Section 1. Pursuant to N.C.G.S. § 166A-6, a Type II State of Disaster is hereby declared for Pamlico and Tyrrell Counties.

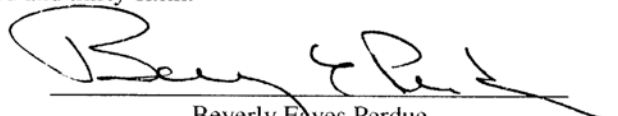
Section 2. I authorize state disaster assistance in the form of a loan program to the eligible entities located within the disaster area as allowed under N.C.G.S. § 166A-5(1)a.9.

Section 3. I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) to be promptly filed with the Secretary of the Department of Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to ensure proper implementation of this proclamation.


Section 4. This Type II Disaster Declaration shall expire six months after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of three months each, not to exceed a total of 12 months from the date of first issuance.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-first day of February in the year of our Lord two thousand and twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.




Beverly Eaves Perdue
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 116

ESTABLISH A MORATORIUM ON THE COLLECTION OF NEW TOLLS FOR THE NORTH CAROLINA FERRY SYSTEM

WHEREAS, the North Carolina Department of Transportation (“DOT”) operates ferries connecting components of the State highway system; and

WHEREAS, the ferry system is essential to our State’s citizens who use the ferries each day as a means of transportation to pursue their livelihoods; and

WHEREAS, the ferry system is also important to the State’s travel and tourism industry as a mode of transportation for thousands of tourists who explore North Carolina’s coastal areas each year; and

WHEREAS, a number of the ferries currently operating are offered at no expense to the public; and

WHEREAS, pursuant to Session Law 2011-145, section 31.30, the North Carolina General Assembly directed the Board of Transportation, no later than April 1, 2012, to establish tolls for all ferry routes, except for the Ocracoke/Hatteras Ferry and the Knotts Island Ferry; and

WHEREAS, while our State and nation are beginning to rise out of the recent economic recession, many of our citizens are still struggling to regain their economic footing; and

WHEREAS, the citizens and counties of coastal North Carolina continue to recover from the devastation caused by Hurricane Irene, which made landfall in coastal North Carolina on August 27, 2011; and

WHEREAS, North Carolina’s coastal counties continue to experience a slower economic recovery than other areas of the State due to the impact of Hurricane Irene; and

WHEREAS, it is crucial that our citizens who use the ferry system are not burdened with extra costs that threaten to negatively impact their economic progress and well-being; and

WHEREAS, it is also important that our State not impose additional costs that could reduce the attractiveness of our coastal areas as a tourist destination, thus harming our travel and tourism industry; and

WHEREAS, N.C. Gen. Stat. § 136-82 directs DOT to use its discretion to only collect such tolls as it deems expedient in the exercise of its discretion.

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

1. Due to the harm that the collection of newly established or increased tolls threatens to cause to the economic well-being of the State's citizens, immediately upon the establishment of any new tolls as set out in Session Law 2011-145, section 31.30, the DOT shall place a moratorium on the collection of all such newly established tolls and all increases in existing tolls. The moratorium shall remain in place for a minimum period of twelve (12) months unless said moratorium is ended by act of the General Assembly within that period of time.
2. At the conclusion of the moratorium, the DOT shall review the economic conditions of the State and its citizens and make a recommendation as to whether the moratorium should be extended.
3. The Secretary of DOT is also directed to immediately conduct a comprehensive review of all existing costs and expenses within the DOT to identify sufficient savings to offset budgeted revenue that was anticipated to be collected from any new or increased tolls established pursuant to Session Law 2011-145, section 31.30. Savings identified by the Secretary of DOT shall be used to offset said anticipated budgeted revenues.
4. In addition, the DOT shall immediately cease ongoing construction of all new tolling infrastructure commenced in response to Session Law 2011-145, section 31.30, and shall refrain from renewing said construction while the above-referenced moratorium is in effect.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-ninth day of February in the year of our Lord two thousand and twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.



Beverly Eaves Perdue
Governor

ATTEST:

Elaine F. Marshall
Secretary of State



U.S. Department of Justice
Civil Rights Division

TCH:RSB:JER:ZB:maf
DJ 166-012-3
2011-3476

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

FEB 10 2012

Deborah R. Stagner, Esq.
Tharrington Smith
P.O. Box 1151
Raleigh, North Carolina 27602-1151

Dear Ms. Stagner:

This refers to Sections 2.(a) and 2.(b) of Session Law 2011-407 (H.B. 719) (2011), which provide for the change to nonpartisan elections with a plurality vote requirement, and a change to the candidate qualification dates, for the Lenoir County School District in Lenoir County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your partial response to our November 7, 2011, request for additional information on December 12, 2011; your full response was received on December 20, 2011; additional information was received through January 30, 2012.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. 28 C.F.R. 51.41 and 51.43.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Christian Herren, Jr.", written over a printed name and title.

T. Christian Herren, Jr.
Chief, Voting Section



U.S. Department of Justice
Civil Rights Division

TCH:RSB:MSR:AAO:tst
DJ 166-012-3
2011-5447

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

February 8, 2012

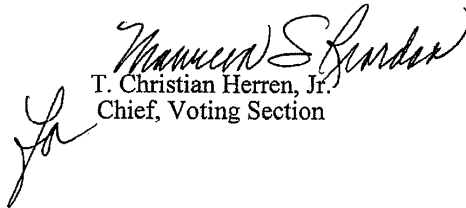
K.R. Hoyle, Sr., Esq.
County Attorney
P.O. Box 1968
Sanford, North Carolina 27331-1968

Dear Mr. Hoyle:

This refers to the 2011 redistricting plan for Lee County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on December 23, 2011.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41.

Sincerely,


T. Christian Herren, Jr.
Chief, Voting Section

FEB 13 2012

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 04 – DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Federal Tax Reform Allocation Committee (TRAC) intends to adopt the rule cited as 04 NCAC 01H .0501.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.nccommerce.com/energy/recovery-information>

Proposed Effective Date: July 1, 2012

Public Hearing:

Date: March 30, 2012

Time: 10:00-11:00 a.m.

Location: Department of Commerce, Fourth Floor Board Room, 301 N. Wilmington Street, Raleigh, NC 27601

Reason for Proposed Action: In 2008, the U.S. Congress authorized Qualified Energy Conservation Bonds (QECCBs) to finance a wide range of energy conservation measures, including construction, and allowed a maximum nationwide volume cap of \$800 million. In February of 2009, through the American Recovery and Reinvestment Act (ARRA), Congress increased the cap to \$3.2 billion, which was then to be allocated to each state based on population. The total allocation for North Carolina is \$95,677,000 in QECCB issuing authority. The TRAC has temporary rules in place that allow the TRAC to allocate QECCB capacity to eligible issuers within the State to that North Carolina's QECCB capacity can be fully utilized. However, these temporary rules are due to expire on June 30, 2012. Therefore, it is essential that the TRAC have permanent rules in place so that the TRAC can continue to allocate the QECCB capacity without interruption.

Procedure by which a person can object to the agency on a proposed rule: A public hearing is being held where interested persons can object to the proposed rule. Interested persons may also object through written comment to the agency.

Comments may be submitted to: Mark Poole, Commerce Finance Center, 4301 Mail Service Center, Raleigh, NC 27699-4301, phone (919)733-4151

Comment period ends: May 14, 2012

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
- Date submitted to OSBM: 02/13/12
- Substantial economic impact (≥\$500,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 01 - DEPARTMENTAL RULES

SUBCHAPTER 01H - PRIVATE ACTIVITY BOND VOLUME CAPACITY PROGRAM

SECTION .0500 - QUALIFIED ENERGY CONSERVATION BONDS

04 NCAC 01H .0501 PROCEDURES AND CRITERIA FOR ALLOCATION OF QUALIFIED ENERGY CONSERVATION BONDS

(a) The North Carolina Tax Reform Allocation Committee (the "Committee") shall allocate Qualified Energy Conservation Bond ("QECCB") capacity to entities eligible to issue the bonds under 26 U.S.C.S. 54D as follows:

- (1) To "large local governments," as the term is used in 26 U.S.C.S. 54D(e)(2) in the amounts and manner as directed by the United States Internal Revenue Service ("IRS") in 26 U.S.C.S. 54D and all relevant implementing notices provided by the IRS (including IRS Notice 2009-29), as modified, amended or supplemented. For purposes of calculating the populations of local governments to determine which constitutes a "large local government," the Committee shall use population estimates as of July 1, 2007, as directed by the IRS.

(2) To "Indian tribal governments," as the term is used in 26 U.S.C.S. 54D(h) in the amounts as directed by the IRS in 26 U.S.C.S. 54D and relevant implementing notices provided by the IRS (including IRS Notice 2009-29), as modified, amended or supplemented.

(b) Following the allocations described in Paragraph (a) of this Rule, the Committee shall allocate the remaining QECB capacity to other issuers. The allocation shall be made by the Committee upon completed application by an issuer, and after consideration of the following factors:

- (1) The ability of the State to ensure that at least 70 percent of the State's allocation is used for government projects, and no more than 30 percent for projects considered QECB private activity bonds under IRS rules, regulations and guidelines;
- (2) The extent to which the project constitutes an eligible conservation purpose under 26 U.S.C.S. 54D and all relevant implementing notices provided by the IRS (including IRS Notice 2009-29), as may be modified, amended or supplemented;
- (3) The extent to which the project demonstrates the potential to directly conserve energy;
- (4) The extent to which the project supports the development or implementation of innovative energy conservation technology;
- (5) The extent to which the project uses renewable resources to produce energy;
- (6) The number of citizens benefiting from the project;
- (7) The estimated number of jobs to be produced by the projects (for private activity allocations) and the amount of QECB authority per job produced;
- (8) The readiness of the project to proceed;
- (9) The certainty of the issuer using the allocation within the estimated timelines;
- (10) The amount of other public and private funding leveraged by the QECB allocation;
- (11) The amount of local community support for the project;
- (12) The best interests of the State of North Carolina with regard to economic development, energy conservation, green initiatives and the general prosperity of the State;
- (13) Whether the unit of local government is in competition with another state for project benefits such as jobs and tax base;
- (14) Whether the availability of the allocation is a crucial part of attracting a new company or keeping an existing company in place;
- (15) Whether the requested allocation will benefit a project for which an eligible issuer is already issuing QECBs;
- (16) The ability of the unit of local government or company benefiting from the QECB to obtain

financing and close the issue in a timely manner, including demonstration of a commitment from a bank or other financial institution to purchase or underwrite the QECBs;

- (17) The total amount of capacity available to the Committee for allocation in relation to the total number of pending requests for allocation;
- (18) The tier status of the county in which the project is to be located, as defined in G.S. 143B-437.08; and
- (19) The geographic location of the project in light of the location of other projects benefitting from QECB capacity.

(c) If so required by G.S. Chapter 159 or G.S. 160A-20, local governments shall coordinate issuance of QECBs with and through the North Carolina Local Government Commission (the "LGC") in the Office of the North Carolina State Treasurer and shall obtain approval from the LGC for QECB issuance.

(d) Entities allocated QECB capacity by the Committee and entities who issue QECBs shall ensure compliance with all federal and state laws, rules, regulations and requirements applicable to the allocation or issue.

(e) Entities receiving an allocation under Subparagraph (a)(1) of this Rule ("large local governments" and "Indian tribal governments") may waive or reallocate to the State of North Carolina all or a portion of their allocation. Upon the State's receipt of any additional QECB capacity through any waiver or reallocation, the Committee shall allocate the capacity to eligible issuers in the manner described in Subparagraph (a)(2) this Rule.

(f) To ensure timely use of any QECB allocation, the Committee shall attach to an allocation of capacity made under Paragraph (b) of this Rule contingencies relating to a time deadline for issuance of the QECBs pursuant to the allocated capacity and contingencies limiting the use of the allocated QECB capacity for public or private activity bonds.

Authority G.S. 143-433.6(d); 143-433.8; 143-433.9(a); 150B-21.1B; S.L. 2009-140; S.L. 2009-475.

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commissioner of Insurance intends to amend the rules cited as 11 NCAC 04 .0116, .0313, .0319, .0417, .0430, .0432; and repeal the rules cited as 11 NCAC 01 .0603; 06A .0806; 10 .0714; 12 .0325, .0545, .0560, .1306; 14 .0413-.0414, .0418-.0426, .0432, .0501.

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

Proposed Effective Date: July 1, 2012

Public Hearing:
Date: April 13, 2012

Time: 10:00 a.m.

Location: 430 N. Salisbury Street, 3rd Floor Hearing Room, Raleigh, NC 27603

- Substantial economic impact (≥\$500,000)
- Approved by OSBM
- No fiscal note required

Reason for Proposed Action:

11 NCAC 04 .0116 – This Rule is being amended to update the current mailing address and phone numbers for the NC Department of Insurance, Consumer Services Division.

11 NCAC 04 .0313 – To delete Item (1) House Confinement because it is in direct conflict with 11 NCAC 12 .0313. To delete Item (2) because it is superseded by G.S. 58-51-130(h).

11 NCAC 04 .0319 – This Rule is being amended to bring current as per G.S. 58-3-225.

11 NCAC 04 .0417 – To update the language to allow for an additional option.

11 NCAC 04 .0430 – To update the methods for proof of mailing certificates.

11 NCAC 04 .0432 – To update and to be consistent with 11 NCAC 19 .0102 (Market Regulations Division) which requires companies to maintain records for five years.

11 NCAC 01 .0603; 06A .0806; 10 .0714; 12 .0325, .0545, .0560, .1306; 14 .0413-.0414, .0418-.0426, .0432, .0501 – These rules are no longer necessary and are redundant as per the requirement in 150B-19.1(b).

Procedure by which a person can object to the agency on a proposed rule: The Department of Insurance will accept written objections to these rules until the expiration of the comment period on May 14, 2012.

Comments may be submitted to: Karen Waddell, 1201 Mail Service Center, Raleigh, NC 27699-1201; phone (919) 733-4529; email karen.waddell@ncdoi.gov

Comment period ends: May 14, 2012

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
- Date submitted to OSBM:

CHAPTER 01 - DEPARTMENTAL RULES

SECTION .0600 - GENERAL DEPARTMENTAL POLICIES

11 NCAC 01 .0603 FACSIMILE COUNTERSIGNATURE NOT VALID

If a countersignature of an insurance policy is required pursuant to G.S. 58-33-60, the use by an agent of a facsimile signature for countersignature shall not constitute a legal signature and such facsimile countersignature is not valid.

Authority G.S. 58-2-40; 58-33-30(i); 58-33-60.

CHAPTER 04 - CONSUMER SERVICES DIVISION

SECTION .0100 - GENERAL PROVISIONS

11 NCAC 04 .0116 INQUIRIES AND INFORMATION

The Division maintains facilities and personnel to receive inquiries and complaints by telephone, letter or personal visit. The telephone numbers for the Division are toll-free 1-800-662-7777 or 1-800-546-5664 and 1-919-807-6750. ~~number of the Division is (919) 733-2032.~~ The mailing address of the Division is: North Carolina Department of Insurance, ~~Post Office Box 26387,~~ 1201 Mail Service Center, Raleigh, North Carolina ~~27611, 27699-1201;~~ (Attention: Consumer Services Division). The street address of the Division is: Room 3040, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina.

Authority G.S. 58-2-25; 58-2-40.

SECTION .0300 - LIFE: ACCIDENT AND HEALTH

11 NCAC 04 .0313 PROVISIONS OF CONTRACTS

In order to prevent unfair discrimination among insureds, the following phrases and provisions commonly found in life, accident, health and disability contracts, if not expressly defined in such contracts, shall be construed by the Department in the following manner:

- (1) ~~House Confinement.~~ As used in disability contracts, "house confinement" shall be considered a description of the extent of illness rather than a restriction of the insured's conduct or activities. The insured's participation in activities which are considered by his physician to be for therapeutic rather than for business or personal reasons shall not prevent recovery under such disability contracts.
- (2) ~~Offsets Against Social Security Awards.~~ As used in disability contracts, "offsets against social security awards" shall be construed as permitting the insurer to offset only the

~~amount of the original social security award and not subsequent cost of living increases.~~

- ~~(3)~~(1) Regular Care and Attendance of a Physician. As used in life, accident and health and disability policies, "regular care and attendance of a physician" shall not be construed to require insureds to see or be under the care of a physician on a regular basis if it can be shown that the insured has reached his maximum point of recovery yet is still disabled under the terms of the insurance contract. This requirement shall not, however, restrict the right of the insurer at its own expense, to periodically examine or cause to have examined the insured according to the terms of the contract of insurance.
- ~~(4)~~(2) Premature Baby. A premature baby shall not be considered a well baby. The protection afforded newborn infants under G.S. 58-51-30 shall be provided to premature babies.
- ~~(5)~~(3) Medical Necessity. "Medical necessity" shall be construed as including treatment which restores not only the insured's physical but also his mental well-being. As used in this Section, "restoration of mental well-being" does not require coverage of psychiatric disorders when such disorders are excluded under the express terms of the contract.
- ~~(6)~~(4) Sound Health. The question, "Are you in sound health?" shall be considered ambiguous, and therefore answers to that question on an insurance application shall not be used as the basis for rescission of a policy or denial of a claim.

- (2) Settlement Offers. Initial offers of settlement or compromise made by an insurer or its representative shall remain open for a reasonable period of time.
- (3) Multiple Health Impairments. When an insured is confined to the hospital with multiple health impairments some of which may be excluded from coverage, the insurer or its representative shall make pro rata payments where treatment for excluded conditions can be separated.
- (4) Assignment of Benefits. If an accident, health or disability contract does not prohibit assignment of benefits and a proper assignment (including notice to the insurer prior to the payment of the claim) is made, the insurer shall honor the assignment even though it may have erroneously paid the insured. Submission of a completed claims form G33H and its successor(s) indicating that an assignment is on file shall be treated as though it were submission of the actual assignment.
- (5) Claim Status Reports. Health insurance claims subject to G.S. 58-3-225 shall be processed in accordance with the provisions of the statute. If benefits claimed under an accident, health, or disability contract have not been paid within 45 days after receipt of the initial claim by the insurer, the insurer shall at that time mail a claim status report to the insured.

Authority G.S. 58-2-40; 58-3-225; 58-63-15; 58-63-65; 58-65-1; 58-65-40; 58-65-125; 58-67-65; 58-67-150.

SECTION .0400 - PROPERTY AND LIABILITY

11 NCAC 04 .0417 DRIVE-IN CLAIM SERVICE FACILITIES

No insurer shall require any claimant to use a drive-in claim service operated by the insurer. The claimant's voluntary utilization of a drive-in claim service or preferred repair shop shall not prejudice the right of either party to obtain independent appraisals and negotiate settlement on the basis of such appraisals.

Authority G.S. 58-2-40; 58-63-65.

11 NCAC 04 .0430 PROOF OF MAILING; AUTOMOBILE INSURANCE

As used in G.S. 58-36-85, "proof of mailing" means a certificate issued by and bearing the date stamp of the United States Postal ~~Service.~~ Service or an official United States Postal Service tracking number or similar proof of mailing.

Authority G.S. 58-2-40; 58-36-85.

11 NCAC 04 .0432 REFUND OF EXCESS PREMIUM ON SCHEDULED ITEMS

Authority G.S. 58-2-40; 58-3-150; 58-51-1; 58-51-130; 58-63-15; 58-63-65; 58-65-1; 58-65-40; 58-65-95; 58-67-65; 58-67-150.

11 NCAC 04 .0319 CLAIMS PRACTICES; LIFE; ACCIDENT AND HEALTH INSURANCE

The Commissioner shall consider as prima facie violative of G.S. 58-63-15(11) the failure by an insurer to adhere to the following procedures concerning settlement of life, accident, health and disability claims when such failure is so frequent as to indicate a general business practice:

- (1) Examining Physician's Opinion. When the patient's health is in question, an insurer should give greater weight to the opinion of a physician who has examined the patient than to the opinion of a physician who has not examined the patient and whose opinion is based solely on a review of the examining physician's notes or reports. As used in this Section, "examination of the patient" shall include the interpretation by a specialist of the results of diagnostic tests performed on the patient by others.

If an insured has any scheduled item covered by a homeowner's or personal inland marine insurance policy, and that item is replaced for less than the scheduled amount of coverage, the insurer shall refund the insured the difference in premium charged between the scheduled amount of coverage and the actual amount of the loss paid by the insurer, if the refund per policy term is greater than five dollars (\$5.00). Any refund shall be computed from the date of issuance of the policy or ~~three~~ five years, whichever is less.

Authority G.S. 58-2-40; 58-43-10; 58-63-65.

CHAPTER 06 - AGENT SERVICES DIVISION

SUBCHAPTER 06A - AGENT SERVICES DIVISION

SECTION .0800 - CONTINUING EDUCATION

11 NCAC 06A .0806 ATTENDANCE

- (a) ~~If six or fewer ICECs are assigned to a course, the licensee shall attend 100 percent of the course to receive any ICECs.~~
- (b) ~~If more than six ICECs are assigned to a course, and the licensee passes the exam and attends at least 80 percent of the course, the licensee shall receive 100 percent of the ICECs assigned to the course.~~
- (c) ~~If more than six ICECs are assigned to a course, and the licensee does not pass the exam but attends at least 80 percent of the course, the licensee shall receive 80 percent of the ICECs assigned to the course.~~
- (d) ~~An instructor may conduct a class with up to 30 students with no additional assistance. For classes with attendance exceeding 30 students, one assistant to the instructor is required for each additional 50 students or any portion thereof. Each assistant shall be physically present in the classroom during the instructor's presentation.~~

Authority G.S. 58-2-40; 58-33-130.

CHAPTER 10 - PROPERTY AND CASUALTY DIVISION

SECTION .0700 - INSURANCE IN UNLICENSED FOREIGN AND ALIEN COMPANIES

11 NCAC 10 .0714 FORM: INSTRUCTIONS/REQUIREMENTS/SURPLUS LINES COMPANY

~~The "Instructions and Requirements for Obtaining a License to Represent a Surplus Lines Company and the Procedure to be Used for Placing Business" form is an information sheet setting forth requirements for obtaining an agent's license and obtaining approval for placing insurance in surplus lines insurers; which is sent by this department to applicants upon request and includes a description of the procedures for placing insurance in surplus lines companies and other information.~~

Authority G.S. 58-2-40; 58-21-65.

CHAPTER 12 - LIFE AND HEALTH DIVISION

SECTION .0300 - GENERAL PROVISIONS

11 NCAC 12 .0325 OCCUPATIONAL INJURIES OR DISEASES

~~Health insurance policies may not exclude coverage for work-related injuries or sickness unless benefits are paid or payable for such injuries or sickness under Chapter 97 of the General Statutes of North Carolina.~~

Authority G.S. 58-2-40; 58-3-150; 58-51-1; 58-51-85; 58-51-95.

SECTION .0500 - ACCIDENT AND HEALTH: GENERAL NATURE

11 NCAC 12 .0545 OFFSET OF INCREASED SOCIAL SECURITY: GROUP DISABILITY

~~No policy of group disability income insurance which integrates benefits shall provide that the amount of any disability benefit actually paid to the disabled person shall be reduced by changes in the level of social security benefits resulting either from changes in the social security law or in cost of living adjustments which become effective after the first day for which the disability benefits become payable.~~

Authority G.S. 58-2-40; 58-51-1; 58-65-1; 58-65-40.

11 NCAC 12 .0560 UNIFORM CLAIM FORMS

- (a) ~~As used in this Rule, "health benefit plan" has the same meaning as in G.S. 58-3-171(c).~~
- (b) ~~On and after January 1, 1994, all claims submitted by institutional health care providers to health benefit plans shall be submitted on the HCFA 1450 (UB 92), or a substantively similar, claim form. On and after January 1, 1994, all claims submitted by noninstitutional health care providers to health benefit plans shall be submitted on the HCFA 1500, or a substantively similar, claim form.~~

Authority G.S. 58-2-40; 58-3-171.

SECTION .1300 - SMALL EMPLOYER GROUP HEALTH COVERAGE

11 NCAC 12 .1306 REINSURANCE POOL

- (a) ~~Reinsurance is available for coverage of eligible employees, their dependents, or the entire small employer group under any health benefit plan issued as new business by a reinsuring carrier to an eligible small employer on and after August 14, 1992. Reinsurance is also available to eligible small employers who were refused coverage between January 1, 1992 and August 13, 1992, and were subsequently issued a statutory plan.~~
- (b) ~~Subject to any other restrictions of this Section, a reinsuring carrier may reinsure an eligible employee, an eligible employee's dependent, or a small employer group who has insurance coverage under any health benefit plan subject to the Act.~~
- (c) ~~No carrier or producer shall disclose to insureds that their coverage is reinsured by the Pool.~~
- (d) ~~A reinsuring carrier shall apply for reinsurance within 60 days after the effective date of coverage. A reinsuring carrier's decision to reinsure a risk shall be based on the review of~~

underwriting taken at the time of application. The decision may not be based on the small employer group's claims that have accrued since the effective date of coverage.

(e) Reinsurance coverage may remain in effect, in the reinsuring carrier's and the Pool's discretion, as long as the reinsured coverage remains in effect. When the reinsured coverage terminates, reinsurance will be terminated.

(f) A reinsuring carrier may terminate reinsurance on an individual or a group without terminating the reinsured coverage; and that reinsuring carrier shall not thereafter apply for reinsurance for the person or persons covered.

(g) A reinsuring carrier may reinsure a previously declined individual upon enrollment in a health benefit plan or within 60 days after that enrollment, subject to any restrictions of this Section.

(h) Any reinsuring carrier whose health benefit plan also covers extra eligibles may not reinsure the coverage of those extra eligibles.

(i) Any new entrant in a health benefit plan may be reinsured on the effective date of his or her coverage but no later than 60 days after that date, subject to any other restrictions of this Section.

Authority G.S. 58-2-40(1); 58-50-130(b)(4); 58-50-150(a); 58-50-150(f)(5); 58-50-150(g).

CHAPTER 14 - ADMISSION REQUIREMENTS

SECTION .0400 - DESCRIPTION OF FORMS

11 NCAC 14 .0413 ADMISSION DATA GUIDELINES

The Admission Data Guidelines is a packet of information provided to insurance companies proposing to make an application for an initial license to transact insurance business in North Carolina. The form contains basic admission requirements and procedures for initiating an application for admission.

Authority G.S. 58-16-5.

11 NCAC 14 .0414 CHECK SHEET AND ANALYSIS OF APPLICATION FOR ADMISSION

The Check Sheet and Analysis of Application for Admission is a form used in the application process for listing the items to be submitted by an applicant insurance company for review. The form includes the applicant company name and address, all items to be submitted and other pertinent information.

Authority G.S. 58-6-5; 58-7-45; 58-7-75; 58-7-80.

11 NCAC 14 .0418 STANDARD QUESTIONS FOR APPLICANT INSURANCE CO.

The Standard Questions for Applicant Insurance Companies is a form used to obtain basic information on the current operations of an applicant insurance company by asking a series of general questions.

Authority G.S. 58-16-5.

11 NCAC 14 .0419 MARKETING QUESTIONS FOR APPLICANT LIFE INSURANCE CO.

The Marketing Questions for Applicant Life Insurance Companies is a form used to obtain specific information on the marketing aspects of an applicant life insurance company by asking a series of questions pertaining to its proposed operations in North Carolina.

Authority G.S. 58-16-5.

11 NCAC 14 .0420 MARKETING QUESTIONS FOR APPLICANT FIRE/CASUALTY INSURANCE CO.

The Marketing Questions for Applicant Fire and Casualty Insurance Companies is a form used to obtain specific information on the marketing aspects of an applicant fire and casualty insurance company by asking a series of questions pertaining to its proposed operations in North Carolina.

Authority G.S. 58-16-5.

11 NCAC 14 .0421 UNCONDITIONAL GUARANTY

The Unconditional Guaranty is a form used by an applicant insurance company, that does not satisfy the successful operations admission requirement, to request a waiver of that requirement by having a qualified affiliate guarantee to maintain the capital and surplus of the applicant company at or above the admission requirements of North Carolina for at least three years. This form is a legal document committing the affiliate to carry out such a guarantee.

Authority G.S. 58-16-5(2).

11 NCAC 14 .0422 CORPORATE RESOLUTION OF GUARANTOR

The Corporate Resolution of Guarantor is a form used by an applicant insurance company setting forth the required resolution by the board of directors of a qualified affiliate to guarantee to maintain the capital and surplus of the applicant company at or above the admission requirements of North Carolina when a waiver of the successful operations admission requirement is requested.

Authority G.S. 58-16-5(2).

11 NCAC 14 .0423 ELIGIBILITY REQUIREMENTS FOR SURPLUS LINES INSURANCE CO.

The Eligibility Requirements for Surplus Lines Insurance Companies is a form provided to insurance companies proposing to become eligible for the writing of surplus lines insurance in North Carolina. The form contains the basic requirements for such eligibility.

Authority G.S. 58-21-20.

11 NCAC 14 .0424 FILING REQUIREMENTS FOR SURPLUS LINES INSURANCE CO.

The Filing Requirements for Surplus Lines Insurance Companies is a form provided to insurance companies proposing to become eligible for the writing of surplus lines insurance in North

~~Carolina. The form contains the materials to be filed for review to determine eligibility.~~

~~Authority G.S. 58-21-20.~~

11 NCAC 14 .0425 BULLETIN 87-L-7

~~Bulletin 87-L-7 contains general requirements for purchasing groups seeking to operate in North Carolina under the federal (15 U.S.C. § 3901 et seq.) and North Carolina (G.S. 58-22-1 et seq.) risk retention laws.~~

~~Authority G.S. 58-22-45(a).~~

11 NCAC 14 .0426 BULLETIN 87-L-6

~~Bulletin 87-L-6 contains policy form and rate filing requirements for purchasing groups procuring insurance under the federal and North Carolina risk retention laws from property and casualty companies licensed in North Carolina.~~

~~Authority G.S. 58-40-30; 58-41-50.~~

11 NCAC 14 .0432 APPLICATION FOR LICENSE: INSURANCE COMPANY

~~The application for license is a form used by an insurance company to request authority to transact specific lines of insurance business in North Carolina. This form is used for initial authority by each applicant insurance company and for an annual renewal license by each licensed insurance company. The form includes the company's name, company's address, president and secretary of the company, a schedule of license fees, and the lines of authority being requested.~~

~~Authority G.S. 58-2-40; 58-7-40; 58-16-5.~~

SECTION .0500 - ADMISSION OF A FOREIGN OR ALIEN INSURANCE COMPANY

11 NCAC 14 .0501 APPLICATION FORMS

~~In addition to any information required pursuant to G.S. 58-16-5, a foreign insurance company applying for admission to do business in North Carolina shall execute and submit to the Commissioner as appropriate the forms described in 11 NCAC 14 .0409 through .0422. The Commissioner shall accept applications for admission that are filed pursuant to the uniform certificate of authority application process designed and made available by the National Association of Insurance Commissioners.~~

~~Authority G.S. 58-2-40; 58-16-5.~~

TITLE 15A- DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Environment and Natural Resources intends to repeal the rules cited as 15 NCAC 01A .0101-.0103; 01B .0101, .0201-.0204, .0301-.0303, .0401-.0402; 01G .0201-.0207,

.0301-.0305; 01J .1201, .1301-.1303, .1401-.1402, .1501, .1601-.1602, .1701, .1801, .1901-.1902, .2001-.2003, .2101, .2201; 01K .0101-.0103, .0201-.0202, .0301-.0305, .0401-.0404.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://portal.ncdenr.org/web/guest/rules>

Proposed Effective Date: July 1, 2012

Public Hearing:

Date: April 3, 2012

Time: 6:00 p.m.

Location: NC DENR, Green Square Building, Training Room #1210, 217 West Jones Street, Raleigh, NC 27603

Reason for Proposed Action:

15A NCAC 01A- Contact information is located in other directories and websites

15A NCAC 01B .0100 & .0200 – Duplicative of Administrative Procedures Act

15A NCAC 01B .0300 – Duplicative of North Carolina Department of Administration requirements

15A NCAC 01B .0400 – Duplicative of statutory requirements

15A NCAC 01G .0200 & .0300 – Program concluded

15A NCAC 01J – Establish consistency within the Water Infrastructure Fund accounts

15A NCAC 01K – Program concluded

Procedure by which a person can object to the agency on a proposed rule: *If you have any objections to the proposed rules, please mail a letter with your specific reasons to: Mary Penny Thompson, General Counsel & Assistant Secretary, Secretary's Office, 1601 Mail Service Center, Raleigh, NC 27699-1601*

Comments may be submitted to: *Mary Penny Thompson, 1601 Mail Service Center, Raleigh, NC 27699-1601*

Comment period ends: May 14, 2012

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
- Date submitted to OSBM:
- Substantial economic impact (≥\$500,000)
- Approved by OSBM
- No fiscal note required

15A NCAC 01B .0401 DEFINITIONS
 15A NCAC 01B .0402 PUBLIC ACCESS

Authority G.S. 132-1; 132-1.1; 132-2; 132-6; 132-9; 143B-10(j); 150B-11.

SUBCHAPTER 01G - RESOLUTION OF SUBMERGED LANDS CLAIMS

SECTION .0200 - RESOLUTION PROCEDURES

15A NCAC 01G .0201 APPLICATION OF RESOLUTION PROCEDURE
 15A NCAC 01G .0202 INITIAL REVIEW OF CLAIM
 15A NCAC 01G .0203 LETTER OF NOTIFICATION
 15A NCAC 01G .0204 RESPONSE TO LETTER OF NOTIFICATION
 15A NCAC 01G .0205 FOLLOW-UP TO UNSERVED NOTIFICATION
 15A NCAC 01G .0206 CLAIMS DEEMED COMPLETE
 15A NCAC 01G .0207 CLAIM DETERMINATION

Authority G.S. 113-205; 113-206(f); 143B-10(a).

SECTION .0300 - STATE POLICIES

15A NCAC 01G .0301 INTRODUCTION
 15A NCAC 01G .0302 FILLED LANDS
 15A NCAC 01G .0303 PRIVATELY OWNED BEDS
 15A NCAC 01G .0304 MARSHLANDS AND SWAMPLANDS
 15A NCAC 01G .0305 LIMITED RIGHTS

Authority G.S. 1-35; 113-205; 113-206(f); 143B-10(a); 146-6; 146-20.1.

SUBCHAPTER 01J - STATE CLEAN WATER REVOLVING LOAN AND GRANT PROGRAM

SECTION .1200 - SEVERABILITY

15A NCAC 01J .1201 SEVERABILITY

Authority G.S. 159G-15.

SECTION .1300 - FAILED LOW-PRESSURE PIPE SYSTEMS

15A NCAC 01J .1301 REVIEW PERIOD
 15A NCAC 01J .1302 GRANT ELIGIBILITY
 15A NCAC 01J .1303 DISTRIBUTION OF FUNDS

Authority G.S. 159G-10(a1).

SECTION .1400 - GENERAL PROVISIONS

15A NCAC 01J .1401 PURPOSE
 15A NCAC 01J .1402 DEFINITIONS

Note: The Codifier of Rules has determined that publication of the complete text of these rules proposed to be repealed is impractical (G.S. 150B-17(b)).

CHAPTER 01 - DEPARTMENTAL RULES

SUBCHAPTER 01A - GENERAL ORGANIZATION

SECTION .0100 - GENERAL

15A NCAC 01A .0101 DEPARTMENT HEAD
 15A NCAC 01A .0102 HOW TO CONTACT THE DEPARTMENT
 15A NCAC 01A .0103 COUNCILS AND COMMITTEES

Authority G.S. 143A-11; 143B-279.1.

SUBCHAPTER 01B - GENERAL ADMINISTRATION

SECTION .0100 - RULEMAKING

15A NCAC 01B .0101 MODEL RULES

Authority G.S. 143B-10(j); 150B-11; 150B-14(c).

SECTION .0200 - CONTESTED CASE HEARING PROCEDURES

15A NCAC 01B .0201 DEFINITIONS
 15A NCAC 01B .0202 AVAILABILITY OF CONTESTED CASE HEARING
 15A NCAC 01B .0203 REQUEST FOR CONTESTED CASE HEARING
 15A NCAC 01B .0204 FINAL AGENCY DECISION IN CONTESTED CASE PROCEEDINGS

Authority G.S. 143B-10; 150B-2(2); 150B-11; 150B-23(a); 150B-36.

SECTION .0300 - PURCHASING AND CONTRACTING

15A NCAC 01B .0301 SCOPE OF SECTION
 15A NCAC 01B .0302 DEFINITIONS

Authority G.S. 143B-10.

15A NCAC 01B .0303 CONCESSION CONTRACTS

Authority G.S. 143B-10; 143-49(2),(3),(4); 143-53; 143B-276.

SECTION .0400 - PUBLIC RECORDS

Authority G.S. 159G-44.

SECTION .1500 - ELIGIBILITY REQUIREMENTS

15A NCAC 01J .1501 ELIGIBLE PROJECT COSTS

Authority G.S. 159G-44.

SECTION .1600 - APPLICATIONS

15A NCAC 01J .1601 APPLICATION FILING DEADLINES

15A NCAC 01J .1602 GENERAL PROVISIONS

Authority G.S. 159G-44.

SECTION .1700 – COMMON CRITERIA FOR EVALUATION OF ELIGIBLE APPLICATIONS

15A NCAC 01J .1701 COMMON CRITERIA

Authority G.S. 159G-44.

SECTION .1800 - ASSIGNMENT OF CATEGORY TO WASTEWATER SYSTEM APPLICATIONS

15A NCAC 01J .1801 ASSIGNMENT OF CATEGORY TO WASTEWATER SYSTEM APPLICATIONS

Authority G.S. 159G-44.

SECTION .1900 – CRITERIA FOR EVALUATION OF WASTEWATER SYSTEM APPLICATIONS

15A NCAC 01J .1901 EXISTING CONDITIONS
15A NCAC 01J .1902 WATER QUALITY IMPROVEMENT CRITERIA

Authority G.S. 159G-44.

SECTION .2000 - PRIORITY CRITERIA FOR PUBLIC WATER SYSTEM PROJECTS

15A NCAC 01J .2001 PUBLIC NECESSITY: HEALTH: SAFETY AND WELFARE

15A NCAC 01J .2002 PROJECT PLANNING

15A NCAC 01J .2003 SOURCE WATER PROTECTION

Authority G.S. 159G-44.

SECTION .2100 – LOAN AND GRANT AWARD AND COMMITMENT: DISBURSEMENT OF LOANS AND GRANTS

15A NCAC 01J .2101 CRITERIA FOR LOAN ADJUSTMENTS

Authority G.S. 159G-44.

SECTION .2200 – LOAN REPAYMENTS

15A NCAC 01J .2201 REPAYMENT OF PRINCIPAL AND INTEREST ON LOANS

Authority G.S. 159G-44.

SUBCHAPTER 01K - GROUNDWATER PROTECTION LOAN FUND

SECTION .0100 - PROGRAM SCOPE

15A NCAC 01K .0101 GENERAL

15A NCAC 01K .0102 APPLICABILITY

15A NCAC 01K .0103 DEFINITIONS

Authority G.S. 143-215.94A; 143-215.94P; 143-215.94T; 143B-279.2.

SECTION .0200 – APPLICATION

15A NCAC 01K .0201 ELIGIBILITY

15A NCAC 01K .0202 APPLICATION PROCEDURES

Authority G.S. 143-215.94C; 143-215.94P; 143-215.94T.

SECTION .0300 - LOAN ADMINISTRATION

15A NCAC 01K .0301 BANK ELIGIBILITY

15A NCAC 01K .0302 LOAN PROCESSING BY BANKS

15A NCAC 01K .0303 DUTIES OF THE LOAN FUND COORDINATOR

15A NCAC 01K .0304 LOAN APPROVAL CRITERIA

15A NCAC 01K .0305 DELINQUENT ACCOUNTS

Authority G.S. 143-215.940(g); 143-215.94P.

SECTION .0400 - LOAN CONDITIONS

15A NCAC 01K .0401 LOAN ADMINISTRATION FEES AND COSTS

15A NCAC 01K .0402 INTEREST AND TERM

15A NCAC 01K .0403 ADDITIONAL CONDITIONS

15A NCAC 01K .0404 FUNDING OF LOAN

Authority G.S. 143-215.94P; 143-215.94T.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to adopt the rules cited as 15A NCAC 18A .2650-.2676 and repeal the rules cited as .2601-.2645.

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

Proposed Effective Date: September 1, 2012

Public Hearing:

Date: April 12, 2012

Time: 2:00 p.m.

Location: Cardinal Room, 5605 Six Forks Road, Raleigh, NC

Reason for Proposed Action: These Rules are proposed for repeal to enable the adoption of the USFDA food code for NC, as described below:

The Food Protection Program (FPP) of the Environmental Health Section, DPH/NCDHHS, oversees the food protection rules governing food establishments—including restaurants, food stands, school cafeterias, and food service facilities in hospitals and nursing homes. The current rules, 15A NCAC 18A .2600, were adopted in 1976 and have been periodically amended to address specific needs. However, changes in consumer consumption patterns, recent emphasis on increased government efficiency, as well as shifts in the national food safety focus necessitate a more fundamental change to North Carolina's retail food protection rules. As a result, the FPP proposes to adopt the U.S. Food and Drug Administration's 2009 Food Code.

The purpose of adopting the Food Code is to replace what has proven to be a labor-intensive and ineffective process of updating North Carolina's food protection rules with a more efficient and effective method. The legislature recognized that need and passed a law (S.L. 2011-394, Section 15(a)) in 2011 that provides the Department with the authority to adopt the 2009 Food Code by reference. As opposed to proposing new rules (and/or amendments to existing rules) each year, the FPP will have the option of adopting the latest version or adopting new provisions of the Food Code once every four years. Thus, the rulemaking process will be greatly shortened and unnecessary expenditures of staff resources will be prevented. Most importantly, North Carolina's food protection rules will remain consistent with the national standard.

The FPP's adoption of the Food Code has a variety of advantages and has gained support from all stakeholders within the food safety spectrum; industry, consumer groups, academia, regulators, and local, state, and federal agencies. For members of the food service industry, many of which are associated with the national chains, the Food Code brings needed uniformity and consistency with the food safety rules of other states. The Food Code also provides effective means of reducing the risks of foodborne illnesses within food service facilities, thus protecting consumers and industry from potentially devastating health consequences and financial losses. In addition, the Food Code offers proven scientific reasons behind each rule and actively seeks input from the scientific and academic community as their understanding of foodborne pathogens increases. Local, state, and federal agencies and regulators support the adoption of the Food Code because it provides a comprehensive approach to food safety management, superior supporting documents and training, and is consistent with the national integrated food safety management system.

Procedure by which a person can object to the agency on a proposed rule: Objections may be submitted in writing to Chris G. Hoke, JD, the Rule-Making Coordinator, during the public comment period. Additionally, objections may be made verbally and/or in writing at the public hearing for these rules.

Comments may be submitted to: Chris Hoke, 1931 Mail Service Center, Raleigh, NC 27699-1931, phone (919)707-5006, email chris.hoke@dhhs.nc.gov

Comment period ends: May 14, 2012

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
Date submitted to OSBM: January 3, 2012
 Substantial economic impact (≥\$500,000)
 Approved by OSBM
 No fiscal note required

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .2600 – FOOD PROTECTION AND SANITATION OF FOOD ESTABLISHMENTS

Note: The Codifier of Rules has determined that publication of the complete text of these rules proposed to be repealed is impractical (G.S. 150B-17(b)).

- 15A NCAC 18A .2601 DEFINITIONS
15A NCAC 18A .2602 PERMITS
15A NCAC 18A .2603 PUBLIC DISPLAY OF GRADE CARD
15A NCAC 18A .2604 INSPECTIONS AND REINSPECTIONS
15A NCAC 18A .2605 INSPECTION FORMS

15A NCAC 18A .2607 STANDARDS AND APPROVAL OF PLANS
 15A NCAC 18A .2608 SOURCES OF FOOD
 15A NCAC 18A .2609 REFRIGERATION: THAWING: AND PREPARATION OF FOOD
 15A NCAC 18A .2610 STORAGE: HANDLING: AND DISPLAY OF FOOD
 15A NCAC 18A .2611 RE-SERVING OF FOOD
 15A NCAC 18A .2612 SHELLFISH
 15A NCAC 18A .2613 BARBECUE PLACES
 15A NCAC 18A .2614 OUTDOOR DINING
 15A NCAC 18A .2615 MILK AND MILK PRODUCTS
 15A NCAC 18A .2616 REQUIREMENTS FOR EMPLOYEES
 15A NCAC 18A .2617 UTENSILS AND EQUIPMENT
 15A NCAC 18A .2618 CLEANING OF EQUIPMENT AND UTENSILS
 15A NCAC 18A .2619 METHODS OF BACTERICIDAL TREATMENT
 15A NCAC 18A .2620 STORAGE AND HANDLING OF UTENSILS AND EQUIPMENT
 15A NCAC 18A .2621 DRINKING WATER FOUNTAINS
 15A NCAC 18A .2622 STORAGE: HANDLING: AND USE OF ICE
 15A NCAC 18A .2623 WATER SUPPLY
 15A NCAC 18A .2624 TOILET FACILITIES
 15A NCAC 18A .2625 LAVATORY FACILITIES
 15A NCAC 18A .2626 DISPOSAL OF WASTES AND BY-PRODUCTS
 15A NCAC 18A .2627 FLOORS
 15A NCAC 18A .2628 WALLS AND CEILINGS
 15A NCAC 18A .2629 DOORS AND WINDOWS
 15A NCAC 18A .2630 LIGHTING
 15A NCAC 18A .2631 VENTILATION
 15A NCAC 18A .2632 STORAGE SPACES
 15A NCAC 18A .2633 PREMISES: MISCELLANEOUS: VERMIN CONTROL
 15A NCAC 18A .2634 REQUIREMENTS FOR FOOD STANDS
 15A NCAC 18A .2635 REQUIREMENTS FOR TEMPORARY FOOD ESTABLISHMENTS
 15A NCAC 18A .2636 REQUIREMENTS FOR TEMPORARY RESTAURANTS
 15A NCAC 18A .2637 EMPLOYEES' COOK TENTS
 15A NCAC 18A .2638 GENERAL REQUIREMENTS FOR PUSHCARTS AND MOBILE FOOD UNITS
 15A NCAC 18A .2639 SPECIFIC REQUIREMENTS FOR PUSHCARTS
 15A NCAC 18A .2640 SPECIFIC REQUIREMENTS FOR MOBILE FOOD UNITS
 15A NCAC 18A .2641 PROCEDURE WHEN INFECTION SUSPECTED
 15A NCAC 18A .2642 SEVERABILITY
 15A NCAC 18A .2643 INFORMAL REVIEW PROCESS AND APPEALS PROCEDURE

Authority G.S. 130A-248.

15A NCAC 18A .2644 REQUIREMENTS FOR CATERED ELDERLY NUTRITION SITES

Authority G.S. 130A-248.

15A NCAC 18A .2645 REQUIREMENTS FOR LIMITED FOOD SERVICE ESTABLISHMENTS

Authority G.S. 130A-248.

15A NCAC 18A .2650 GENERAL – ADOPTION BY REFERENCE

The 2009 Food Code, not including subsequent amendments and editions, established by the U.S. Department of Health and Human Services, Food and Drug Administration (hereinafter referred to as the "Food Code") is incorporated by reference. The Food Code may be accessed from the internet at www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/default.htm, or a copy can be obtained by contacting the U.S. Department of Commerce, National Technical Information Service, at (703) 605-6040, and is also available for inspection at the Division of Public Health, N.C. Department of Health and Human Services.

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2651 DEFINITIONS

The provisions of this Rule make amendments, additions, and deletions to the Food Code incorporated by reference in Rule .2650 of this Section. In Chapter 1, the following apply:

- (1) In Paragraph 1-201.10(B), add: "Commissary' means a food establishment that services a mobile food unit or a pushcart."
- (2) In Paragraph 1-201.10(B), add: "Congregate nutrition sites' means a food establishment where food preparation is limited to same day service, reheating of potentially hazardous food (time/temperature control for safety food), and operated under the rules of the Division of Aging, N.C. Department of Health and Human Services."
- (3) In Paragraph 1-201.10(B), add: "Department' means the N.C. Department of Health and Human Services."
- (4) In Paragraph 1-201.10(B), amend "Food establishment (2)(b)" to read: "An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location and where consumption is on or off the premises."
- (5) In Paragraph 1-201.10(B), amend "Food establishment (3)" to read: "Food establishment' does not include entities exempted as described in G.S. 130A-250."
- (6) In Paragraph 1-201.10(B), add: "Food stand' means a food establishment which prepares or serves food and which does not provide

- seating facilities for customers to use while eating or drinking."
- (7) In Paragraph 1-201.10(B), add: "Good repair' means equipment and utensils shall be maintained in a state of repair and condition that meets the requirements specified under Parts 4-1 and 4-2 of the Food Code as amended by Rule .2654."
- (8) In Paragraph 1-201.10(B), amend "Imminent health hazard" to: "Imminent hazard' means an imminent hazard as defined in G.S. 130A-2(3)."
- (9) In Paragraph 1-201.10(B), add: "Limited food establishment' means a food establishment as defined in G.S. 130A-247(7)."
- (10) In Paragraph 1-201.10(B), add: "Local health director' means a local health director as defined in G.S. 130A-2(6)."
- (11) In Paragraph 1-201.10(B), amend "Meat" to read: "Meat' means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goat, other edible animals, and as defined in G.S. 106-549.15(14), except fish, poultry, and wild game animals as specified under Subparagraphs 3-201.17(A)(3) and (4)."
- (12) In Paragraph 1-201.10(B), add: "Mobile food unit' means a food establishment or pushcart designed to be readily moved and vend food."
- (13) In Paragraph 1-201.10(B), amend "Person" to: "Person' means person as defined in G.S. 130A-2(7)."
- (14) In Paragraph 1-201.10(B), amend "Poultry (1)" to read: "Any domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites, or squabs), whether live or dead, as defined in 9 CFR 381.1 Poultry Products Inspection Regulations Definitions, Poultry, and G.S. 106-549.51(26); and"
- (15) In Paragraph 1-201.10(B), add: "Pushcart' means a mobile piece of equipment or vehicle used to vend food."
- (16) In Paragraph 1-201.10(B), add: "Registered Environmental Health Specialist' means a Registered Environmental Health Specialist as defined in G.S. 90A-51(2b) and 90A-51(4) and authorized agent of the Department."
- (17) In Paragraph 1-201.10(B), add: "Regulatory Authority' means the Department or authorized agent of the Department."
- (18) In Paragraph 1-201.10(B), add: "Restaurant' means a food establishment which prepares or serves food and provides seating."
- (19) In Paragraph 1-201.10(B), add: "Supplemental cooking room' means a separate attached or detached structure in which food is cooked on grills, pits, or fireplaces and no other processing occurs."
- (20) In Paragraph 1-201.10(B), amend "Temporary food establishment" to: "Temporary food establishment' means a food establishment which operates for a period of time not to exceed 21 days in one location, affiliated with and endorsed by a transitory fair, carnival, circus, festival, or public exhibition. Food establishments that operate in the same event location for more than 21 days per calendar year are not eligible for a temporary food establishment permit. Domestic yard sales and businesses such as auctions, flea markets, or farmers' markets are not eligible for a temporary food establishment permit."
- (21) In Paragraph 1-201.10(B), add: "Temporary food establishment commissary' means a food establishment affiliated with a temporary food establishment which prepares food in advance or off-site. The temporary food establishment commissary permit shall be valid for no more than 21 consecutive days and shall be permitted no more than 7 days prior to commencement of the event. Food Establishments that operate in the same location for more than 21 days per calendar year are not eligible for a temporary food establishment commissary permit. Food shall not be sold from the temporary food establishment commissary. The temporary food establishment commissary shall comply with all temporary food establishment requirements."
- (22) In Paragraph 1-201.10(B), add: "Transitional Permit' means a permit issued by the regulatory authority upon the transfer of ownership or lease of an existing food establishment to allow the correction of construction and equipment problems that do not represent an immediate threat to public health. The transitional permit shall expire 180 days after the date of issuance."
- (23) In Paragraph 1-201.10(B), delete "Vending machine."
- (24) In Paragraph 1-201.10(B), delete "Vending machine location."

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2652 MANAGEMENT AND PERSONNEL

The provisions of this Rule make amendments, additions, and deletions to the Food Code incorporated by reference in Rule .2650 of this Section. In Chapter 2, the following apply:

- (1) In Paragraph 2-101.11(B), amend to read: "In a food establishment with two or more separately permitted departments that are the legal responsibility of the same permit holder and that are located on the same premises, the permit holder may designate a single person in

charge who is present on the premises during all hours of operation, and who is responsible for each separately permitted food establishment on the premises."

- (2) In Section 2-102.11, amend the last sentence in the first paragraph to: "The person in charge shall demonstrate this knowledge by being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program."
- (3) In Section 2-102.11, delete (A), (B), and (C).
- (4) In Subpart 2-102, add Section 2-102.12, Certified Food Protection Manager, to read:

"2-102.12 Certified Food Protection Manager.

(A) At least one employee that has supervisory and management responsibility and the authority to direct and control food preparation and service shall be a certified food protection manager who has shown proficiency of required information through passing a test that is part of an American National Standards Institute (ANSI)-accredited program, which is the accrediting organization for the Conference for Food Protection Standards for accreditation of food protection manager certification programs.

(B) This section does not apply to Risk Category I food establishments as defined in 10A NCAC 46 .0213."

- (5) In Section 2-102.20, replace "Paragraph 2-102.11(B)" with "Section 2-102.11."

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2653 FOOD

The provisions of this Rule make amendments, additions, and deletions to the Food Code incorporated by reference in Rule .2650 of this Section. In Chapter 3, the following apply:

- (1) In Paragraph 3-201.11(A), add at the end: "Food from food establishments in states adjacent to North Carolina may be sold within North Carolina if the food establishments are under jurisdiction of the local or state enforcement body in that state and approved by the regulatory authority in North Carolina. To determine the extent of compliance with this Code, the regulatory authority may accept reports regarding compliance and compliance history from responsible authorities in other jurisdictions where the food establishments are located."
- (2) In Paragraph 3-301.11(B), amend to read: "Except when washing fruits and vegetables as specified under Section 3-302.15 or as specified in Paragraphs (D) and (E) of this section, food employees may not contact

exposed ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment."

- (3) In Paragraph 3-301.11(D), amend to read: "Paragraph (B) of this section does not apply to a food employee who contacts exposed, ready-to-eat food with bare hands at the time the ready-to-eat food is being added as an ingredient to a food that is to be cooked in the food establishment to heat all parts of the food to a temperature of at least 74°C (165°F)."
- (4) In Section 3-301.11, redesignate existing Paragraph (D) as new Paragraph (E).
- (5) In Subparagraph 3-301.11(D)(7), replace "(D)(1)-(6)" with "(E)(1)-(6)."
- (6) Delete Section 3-305.13.
- (7) In Section 3-306.12, delete (B).
- (8) In Paragraph 3-403.11(D), amend to read: "Reheating for hot holding as specified under Paragraphs (A) through (C) of this section shall be completed within 2 hours and the time the food is between 5°C (41°F) or 7°C (45°F) and the temperatures specified under Paragraphs (A) through (C) of this section may not exceed 2 hours."
- (9) In Paragraph 3-501.12(A), amend to read: "Under refrigeration that maintains the food temperature at 5°C (41°F) or less, or at 7°C (45°F) or less as specified under Subparagraph 3-501.16(A)(2)(b); or"
- (10) In Paragraph 3-501.13(A), amend to read: "Under refrigeration that maintains the food temperature at 5°C (41°F) or less, or at 7°C (45°F) or less as specified under Subparagraph 3-501.16(A)(2)(b); or"
- (11) In Paragraph 3-501.13(B), amend to read:

"Completely submerged under running water:

- (1) At a water temperature of 21°C (70°F) or below,
- (2) With sufficient water velocity to agitate and float off loose particles in an overflow, and
- (3) For a period of time that does not allow thawed portions of ready-to-eat food to rise above 5°C (41°F), or 7°C (45°F) as specified under Subparagraph 3-501.16(A)(2)(b), or
- (4) For a period of time that does not allow thawed portions of a raw animal food requiring cooking as specified under Paragraph 3-401.11(A) or (B) to be above 5°C (41°F), or 7°C (45°F) as specified under Subparagraph 3-

501.16(A)(2)(b), for more than 4 hours including:

- (a) The time the food is exposed to the running water and the time needed for preparation for cooking, or
- (b) The time it takes under refrigeration to lower the food temperature to 5°C (41°F), or 7°C (45°F) as specified under Subparagraph 3-501.16(A)(2)(b);"

(12) In Subparagraph 3-501.14(A)(2), amend to read: "Within a total of 6 hours from 57°C (135°F) to 5°C (41°F) or less, or to 7°C (45°F) or less as specified under Subparagraph 3-501.16(A)(2)(b)."

(13) In Paragraph 3-501.14(B), amend to read: "Potentially hazardous food (time/temperature control for safety food) shall be cooled within 4 hours to 5°C (41°F) or less, or to 7°C (45°F) or less as specified under Subparagraph 3-501.16(A)(2)(b), if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna."

(14) In Subparagraph 3-501-16(A)(2), amend to read:

"At a temperature specified in the following:

- (a) 5°C (41°F) or less; or
- (b) 7°C (45°F) or between 5°C (41°F) and 7°C (45°F) in existing refrigeration equipment that is not capable of maintaining the food at 5°C (41°F) or less if:

(i) The equipment is in place and in use in the food establishment; and

(ii) On or before January 1, 2016, the equipment is upgraded or replaced to maintain food at a temperature of 5°C (41°F) or less."

(15) In Paragraph 3-501.17(A), amend to read:

"(A) Except when packaging food using a reduced oxygen packaging method as specified under Section 3-502.12, and except as specified in Paragraphs (D) and (E) of this section, refrigerated, ready-to eat, potentially hazardous food (time/temperature control for safety food) prepared and held in a food establishment for more than 24 hours shall be clearly marked to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the

temperature and time combinations specified below. The day of preparation shall be counted as Day 1.

(1) 5°C (41°F) or less for a maximum of 7 days; or

(2) 7°C (45°F) or between 5°C (41°F) and 7°C (45°F) for a maximum of 4 days in existing refrigeration equipment that is not capable of maintaining the food at 5°C (41°F) or less if:

(a) The equipment is in place and in use in the food establishment, and

(b) On or before January 1, 2016, the equipment is upgraded or replaced to maintain food at a temperature of 5°C (41°F) or less."

(16) In Paragraph 3-501.19(B), amend to read: "If time without temperature control is used as the public health control up to a maximum of 4 hours:"

(17) In Subparagraph 3-501.19(B)(1), amend to read: "The food shall have an initial temperature of 5°C (41°F) or less, or 7°C (45°F) or less when removed from cold holding temperature control, or 57°C (135°F) or greater when removed from hot holding temperature control;"

(18) In Paragraph 3-801.11(D), amend to read: "Food employees may not contact ready-to-eat food as specified under Paragraphs 3-301.11(B) and (E)."

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2654 EQUIPMENT, UTENSILS, AND LINENS

The provisions of this Rule make amendments, additions, and deletions to the Food Code incorporated by reference in Rule .2650 of this Section. In Chapter 4, the following apply:

(1) Delete Sections 4-204.14, 4-204.19, 4-204.111, 4-204.121, and 4-204.123.

(2) In Section 4-205.10, amend to read: "Except for toasters, mixers, microwave ovens, water heaters, and hoods, food equipment shall be certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program. If the equipment is not certified or classified for sanitation, the equipment shall meet Parts 4-1 and 4-2 of the Food Code as amended by Rule 2655. Nonabsorbent wooden shelves which are in good repair may be used in dry storage areas."

- (3) In Section 4-301.14, amend to read: "Ventilation hood systems and devices shall prevent grease or condensation from collecting on equipment, walls, and ceilings."

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2655 WATER, PLUMBING, AND WASTE

The provisions of this Rule make amendments, additions, and deletions to the Food Code incorporated by reference in Rule .2650 of this Section. In Chapter 5, the following applies: Delete Paragraph 5-203.11(C) and Section 5-501.14.

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2656 PHYSICAL FACILITIES

The provisions of this Rule make amendments, additions, and deletions to the Food Code incorporated by reference in Rule .2650 of this Section. In Chapter 6, the following apply:

- (1) Delete Section 6-202.17.
- (2) Delete Section 6-202.18.
- (3) In Paragraph 6-501.115(B), amend to read:

"Live animals are allowed in the following situations if the owner or operator does not permit animals to physically contact food, serving dishes, utensils, tableware, linens, unwrapped single-service and single-use articles or other food service items that may result in contamination of food or food-contact surfaces and does not permit animals to physically contact employees engaged in the preparation or handling of food:

- (1) Fish or crustacea in aquariums or display tanks;
- (2) Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas; and sentry dogs in outside fenced areas;
- (3) Service animals accompanying persons with disabilities in areas that are not used for food preparation; and
- (4) Dogs (*Canis lupus familiaris*) and cats (*Felis catus*) in outdoor dining areas; provided that dogs and cats are physically restrained, and do not pass through any indoor areas of the food establishment. Except for service animals described in Subparagraph (3) of this Paragraph, nothing in this Rule prohibits a food

establishment from prohibiting dogs and cats in outdoor dining areas.

- (5) In areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly confined, such as in a variety store that sells pets or a tourist park that displays animals."

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2657 POISONOUS OR TOXIC MATERIALS

The provisions of this Rule make amendments, additions, and deletions to the Food Code incorporated by reference in Rule .2650 of this Section. In Chapter 7, the following apply:

- (1) In Section 7-101.11, add at the end: "Only those pesticides which have been registered with the EPA and with the N.C. Department of Agriculture and Consumer Services shall be used. If the manufacturer's label is missing from a pesticide container, the container shall be identified with the manufacturer's product brand name, percentage of each active ingredient, and EPA registration number."
- (2) In Section 7-203.11, add at the end: "Sanitizing solutions shall not be stored in or dispensed from containers previously containing other poisonous or toxic materials."

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2658 COMPLIANCE AND ENFORCEMENT

The provisions of this Rule make amendments, additions, and deletions to the Food Code incorporated by reference in Rule .2650 of this Section. In Chapter 8, the following apply:

- (1) In Section 8-103.10, add the following to the end: "Variance requests shall be submitted to a committee including a food scientist and representatives from industry and state and local public health agencies, appointed by the Department."
- (2) In Section 8-201.11, add the following to the beginning: "Plans drawn to scale for franchised or chain food establishments shall be submitted for review and approval to the Environmental Health Services Branch, N.C. Division of Public Health. Plans drawn to scale for independent food establishments shall be submitted for review and approval to the local health department."
- (3) In Paragraph 8-201.12(A), amend to read: "Intended menu and plan review application;"

- (4) In Paragraph 8-302.14(G), amend to read: "A statement signed by the applicant that attests to the accuracy of the information provided in the application."
- (5) In Paragraph 8-302.14(G), delete (1) and (2).
- (6) In Section 8-303.20, delete "Permit Renewal" from the heading.
- (7) In Section 8-303.20, amend to read: "As applicable, the regulatory authority may issue a permit in accordance with 15A NCAC 18A .2659, to a new owner of an existing food establishment after a properly completed application is submitted, reviewed, and approved, and an inspection shows that the establishment is in compliance with this Code. If the establishment is not in compliance with the Code, a transitional permit may be issued in accordance with G.S. 130A-248 (b) and (c) and Rule .2659(b)."
- (8) Delete Section 8-304.10.
- (9) Delete Paragraph 8-304.11(A).
- (10) Delete Section 8-304.20.
- (11) In Section 8-401.10, delete (A) and replace with: "The regulatory authority shall inspect a food establishment in accordance with 10A NCAC 46 .0213."
- (12) In Section 8-401.10, delete (B) and (C).
- (13) Delete Section 8-401.20.
- (14) Delete Section 8-402.10.
- (15) In Subparagraph 8-402.20(A)(1), amend to read: "The permit holder shall allow access to the regulatory authority as specified under Section 8-402.11 of the Code and G.S. 130A-17 and 130A-249."
- (16) In Subparagraph 8-402.20(A)(3), amend to read: "If access is denied, an administrative warrant may be obtained according to G.S. 15-27.2; and"
- (17) In Section 8-402.40, amend heading to read: "Administrative Warrant to Gain Access."
- (18) In Section 8-402.40, amend to read: "If denied access to a food establishment for an authorized purpose and after complying with Section 8-402.20 of the Food Code as amended by Rule .2658, the regulatory authority may issue, or apply for the issuance of, an administrative warrant to gain access as provided by G.S. 15-27.2."
- (19) In Section 8-403.20, delete the reference to Section 8-406.11.
- (20) Delete Section 8-406.11.
- (21) Delete Subpart 8-501.

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2659 PERMITS

(a) No permit to operate shall be issued to a person until an evaluation by the regulatory authority shows that the establishment complies with this Section. However, the

regulatory authority shall allow a period of 210 days after the date of issuance to comply with the certified food protection manager requirements in Sections 2-102.11 and 2-102.12 of the Food Code as amended by Rule .2652.

(b) Upon transfer of ownership of an existing food establishment, the regulatory authority shall complete an evaluation. If the establishment satisfies all the requirements of the rules, a permit shall be issued. If the establishment does not satisfy all the requirements of the rules, a permit shall not be issued. A transitional permit may be issued if the regulatory authority determines that the noncompliant items are construction or equipment problems that do not represent a threat to public health, or no certified food protection manager is on the premises. The transitional permit shall expire 180 days after the date of issuance, unless suspended or revoked before that date, and shall not be renewed. Upon expiration of the transitional permit, the permit holder shall have corrected the noncompliant items and obtained a permit, or the food establishment shall not continue to operate.

(c) The regulatory authority may impose conditions on the issuance of a permit or transitional permit. Conditions shall be specified for one or more of the following areas:

- (1) The number of seats or consumers served.
- (2) The categories of food served.
- (3) Time schedules in completing minor construction items.
- (4) Modification or maintenance of water supplies.
- (5) Use of facilities for more than one purpose.
- (6) Continuation of contractual arrangements upon which basis the permit was issued.
- (7) Submission and approval of plans for renovation.
- (8) Any other conditions necessary for a food establishment to remain in compliance with this Section.

(d) If a permit or transitional permit has been suspended, the suspension shall be lifted if the regulatory authority has evaluated the food establishment and found that the violations causing the suspension have been corrected. If a permit or transitional permit has been revoked, a new permit shall be issued only after the regulatory authority has evaluated the food establishment and found it to comply with all applicable rules. The evaluations shall be conducted within 15 days after the request is made by the permit holder.

Authority G.S. 130A; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2660 PUBLIC DISPLAY OF GRADE CARDS

(a) Upon initial inspection of a food establishment or if a renovation or other change in the establishment makes the grade card inconspicuous, the regulatory authority shall designate the location for posting the grade card. The grade card shall be located in a conspicuous place where it may be readily observed by the public upon entering the food establishment. If the person in charge of the food establishment objects to the location designated by the regulatory authority then the person in charge

may suggest an alternative location which meets the criteria of this Rule.

(b) When an inspection of a food establishment is made, the regulatory authority shall remove the existing grade card, issue a new grade card, and post the new grade card in the same location where the grade card was previously posted as long as that location remains conspicuous. The person in charge of the food establishment shall keep the grade card posted at the designated location at all times. The grade card may be posted in another location which meets the criteria of this Rule if agreed upon by the person in charge and the regulatory authority.

(c) On a mobile food unit and pushcart, the grade card shall be located where it is visible to the public when purchasing food. The grade card shall be maintained on the mobile food unit and pushcart and may be removed during transport to operating locations and the person in charge shall repost the grade card in the original location prior to commencing operation.

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2661 INSPECTIONS AND REINSPECTIONS

(a) Upon entry into a food establishment, the regulatory authority shall provide identification and the purpose in visiting that establishment. The regulatory authority shall inquire as to the identity of the person in charge and invite the person in charge to accompany the regulatory authority during the inspection. If no employee is identified as the person in charge, the regulatory authority shall invite an employee to accompany them on the inspection. Following the inspection, the regulatory authority shall offer to review the results of the inspection with the person in charge or employee, as applicable.

(b) The grading of food establishments shall be conducted using an inspection form furnished by the regulatory authority. The form shall provide for the following information:

- (1) The name and mailing address of the food establishment;
- (2) The name of the permit holder;
- (3) The permit status and score given;
- (4) Standards of construction and operation as listed in .2651 through .2677 of this Section;
- (5) An explanation for all points deducted;
- (6) The signature of the regulatory authority; and
- (7) The date.

(c) The grading of food establishments shall be based on the standards of operation and construction as set forth in Rules .2650 through .2676 of this Section.

(d) The Food Establishment Inspection form shall be used to document points assessed for violation of the rules of this Section as follows:

- (1) Violation of Chapter 2 of the Food Code as amended by Rule .2652 of this Section related to person in charge present, certification by accredited program or performs duties shall equal no more than 2 points.
- (2) Violation of Chapter 2 of the Food Code as amended by Rule .2652 of this Section related to management awareness, policy present, and

allergy awareness shall equal no more than 3 points.

- (3) Violation of Chapter 2 of the Food Code as amended by Rule .2652 of this Section related to proper use of reporting, restriction, and exclusion shall equal no more than 3 points.
- (4) Violation of Chapters 2 and 3 of the Food Code as amended by Rules .2652 and .2653 of this Section related to proper eating, tasting, drinking, or tobacco use shall equal no more than 2 points.
- (5) Violation of Chapter 2 of the Food Code as amended by Rule .2652 of this Section related to no discharge from eyes, nose, and mouth shall equal no more than 1 point.
- (6) Violation of Chapter 2 of the Food Code as amended by Rule .2652 of this Section related to hands clean and properly washed shall equal no more than 4 points.
- (7) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to no bare hand contact with ready-to-eat food or approved alternate method properly followed shall equal no more than 3 points.
- (8) Violation of Chapters 5 and 6 of the Food Code as amended by Rules .2655 and .2656 of this Section related to handwashing facilities supplied and accessible shall equal no more than 2 points.
- (9) Violation of Chapters 3 and 5 of the Food Code as amended by Rules .2653 and .2655 of this Section related to food obtained from an approved source shall equal no more than 2 points.
- (10) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to food received at proper temperature shall equal no more than 2 points.
- (11) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to food in good condition, safe, and unadulterated shall equal no more than 2 points.
- (12) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to required records available, shellstock tags, and parasite destruction shall equal no more than 2 points.
- (13) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to food separated and protected shall equal no more than 3 points.
- (14) Violation of Chapter 4 of the Food Code as amended by Rule .2654 of this Section related to food-contact surfaces cleaned and sanitized shall equal no more than 3 points.
- (15) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to disposition of returned, previously served,

- reconditioned, and unsafe food shall equal no more than 2 points.
- (16) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to cooking time and temperatures shall equal no more than 3 points.
- (17) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to reheating for hot holding shall equal no more than 3 points.
- (18) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to cooling time and temperatures shall equal no more than 3 points.
- (19) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to hot holding temperatures shall equal no more than 3 points.
- (20) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to cold holding temperatures shall equal no more than 3 points.
- (21) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to date marking and disposition shall equal no more than 3 points.
- (22) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to time as a public health control procedures and records shall equal no more than 2 points.
- (23) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to consumer advisory provided for raw or undercooked foods shall equal no more than 1 point.
- (24) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to pasteurized foods used and prohibited foods not offered shall equal no more than 3 points.
- (25) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to food additives approved and properly used shall equal no more than 1 point.
- (26) Violation of Chapter 7 of the Food Code as amended by Rule .2657 of this Section related to toxic substances properly identified, stored, and used shall equal no more than 2 points.
- (27) Violation of Chapters 3, 4 and 8 of the Food Code as amended by Rules .2653, .2654, and .2658 of this Section related to compliance with variance, specialized process, and HACCP plan shall equal no more than 2 points.
- (28) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to pasteurized eggs used where required shall equal no more than 1 point.
- (29) Violation of Chapters 3 and 5 of the Food Code as amended by Rules .2653 and .2655 of this Section related to water from an approved source shall equal no more than 2 points.
- (30) Violation of Chapter 8 of the Food Code as amended by Rule .2658 of this Section related to variance obtained for specialized processing methods shall equal no more than 1 point.
- (31) Violation of Chapters 3 and 4 of the Food Code as amended by Rules .2653 and .2654 of this Section related to proper cooling methods used or adequate equipment for temperature control shall equal no more than 1 point.
- (32) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to plant food properly cooked for hot holding shall equal no more than 1 point.
- (33) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to approved thawing methods used shall equal no more than 1 point.
- (34) Violation of Chapter 4 of the Food Code as amended by Rule .2654 of this Section related to thermometers provided and accurate shall equal no more than 1 point.
- (35) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to food properly labeled or original container shall equal no more than 2 points.
- (36) Violation of Chapters 2 and 6 of the Food Code as amended by Rules .2652 and .2656 of this Section related to insects and rodents not present or no unauthorized animals or persons shall equal no more than 2 points.
- (37) Violation of Chapters 3 and 6 of the Food Code as amended by Rules .2653 and .2656 of this Section related to contamination prevented during food preparation, storage, and display shall equal no more than 2 points.
- (38) Violation of Chapter 2 of the Food Code as amended by Rule .2652 of this Section related to personal cleanliness shall equal no more than 1 point.
- (39) Violation of Chapters 3 and 4 of the Food Code as amended by Rules .2653 and .2654 of this Section related to wiping cloths properly used and stored shall equal no more than 1 point.
- (40) Violation of Chapters 3 and 7 of the Food Code as amended by Rules .2653 and .2657 of this Section related to washing fruits and vegetables shall equal no more than 1 point.
- (41) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to in-use utensils properly stored shall equal no more than 1 point.
- (42) Violation of Chapter 4 of the Food Code as amended by Rule .2654 of this Section related to utensils, equipment, and linens properly stored, dried and handled shall equal no more than 1 point.

- (43) Violation of Chapter 4 of the Food Code as amended by Rule .2654 of this Section related to single-use and single-service articles properly stored and used shall equal no more than 1 point.
- (44) Violation of Chapter 3 of the Food Code as amended by Rule .2653 of this Section related to gloves used properly shall equal no more than 1 point.
- (45) Violation of Chapters 3 and 4 of the Food Code as amended by Rules .2653 and .2654 of this Section related to equipment, food and non-food contact surfaces approved, cleanable, properly designed, constructed and used shall equal no more than 2 points.
- (46) Violation of Chapter 4 of the Food Code as amended by Rule .2654 of this Section related to warewashing facilities installed, maintained, used, and test strips shall equal no more than 1 point.
- (47) Violation of Chapter 4 of the Food Code as amended by Rule .2654 of this Section related to non-food contact surfaces clean shall equal no more than 1 point.
- (48) Violation of Chapter 5 of the Food Code as amended by Rule .2655 of this Section related to hot and cold water available and adequate pressure shall equal no more than 2 points.
- (49) Violation of Chapter 5 of the Food Code as amended by Rule .2655 of this Section related to plumbing installed and proper backflow devices shall equal no more than 2 points.
- (50) Violation of Chapter 5 of the Food Code as amended by Rule .2655 of this Section related to sewage and wastewater properly disposed shall equal no more than 2 points.
- (51) Violation of Chapters 5 and 6 of the Food Code as amended by Rules .2655 and .2656 of this Section related to toilet facilities properly constructed, supplied, and cleaned shall equal no more than 1 point.
- (52) Violation of Chapters 5 and 6 of the Food Code as amended by Rules .2655 and .2656 of this Section related to garbage and refuse properly disposed and facilities maintained shall equal no more than 1 point.
- (53) Violation of Chapters 4 and 6 of the Food Code as amended by Rules .2654 and .2656 of this Section related to physical facilities installed, maintained, and clean shall equal no more than 1 point.
- (54) Violation of Chapters 4 and 6 of the Food Code as amended by Rules .2654 and .2656 of this Section related to meets ventilation and lighting requirements and designated areas used shall equal no more than 1 point.

(e) In filling out the inspection form, points may be deducted only once for a single occurrence or condition existing within or

outside of the food establishment. Deductions shall be based on actual violations of the rules of this Section observed during the inspection. The regulatory authority shall take zero, one-half, or a full deduction of points depending upon the severity or the recurring nature of the core item violations. Priority items or priority foundation items may be corrected during the inspection and no more than one-half of the total point value shall be deducted when the violation meets the following criteria:

- (1) The priority item or priority foundation item violation was not documented on the previous inspection; and
- (2) Correction of the item is documented on the inspection form.

(f) At the time of inspection, if a priority item or priority foundation item violation is observed and not corrected, the regulatory authority shall take one-half or a full deduction of points depending upon the severity or the recurring nature of the violation. The regulatory authority shall specify a time frame of no more than 10 calendar days to correct the priority items or priority foundation items.

(g) In determining whether items or areas of a food establishment are clean for purposes of enforcing the rules set forth in this Section and grading a food establishment, the regulatory authority shall consider, among other things:

- (1) The age of the accumulated material;
- (2) The relative percentage of items which are clean and not clean;
- (3) The cleaning practices of the food establishment; and
- (4) The health risk posed by the circumstances.

(h) Upon request of the permit holder or his or her representative a reinspection shall be made. In the case of a food establishment which requests an inspection for the purpose of raising the alphabetical grade, and which holds an unrevoked permit, the regulatory authority shall make an unannounced inspection within 15 days from the date of the request.

(i) In the case of food establishments that have been closed for failure to comply with the rules of this Section, a reinspection to consider the issuance or reissuance of a permit shall be made at the earliest convenience of the regulatory authority.

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2662 GRADING

(a) The grading of food establishments is based on a system of scoring. A food establishment that earns a score of at least:

- (1) 90 percent shall receive a grade A;
- (2) 80 percent and less than 90 percent shall receive a grade B;
- (3) 70 percent and less than 80 percent shall receive a grade C.

Permits shall be immediately revoked in accordance with G.S. 130A-23(d) for food establishments receiving a score of less than 70 percent.

(b) The posted grade card shall be black on a white background. All graphics, letters, and numbers for the grade card shall be approved by the State. The alphabetical and numerical rating shall be 1.5 inches in height. No other public displays representing sanitation level of the establishment may be posted

by the regulatory authority, except for sanitation awards issued by the local health department. Sanitation awards shall be in a different color and size from the grade card and must be labeled as an award.

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2663 OUTDOOR DINING AND BEVERAGE FACILITIES

- (a) A Food establishment may provide outdoor dining and beverage service.
- (b) Beverages may be prepared outdoors if all equipment and utensils are provided with overhead protection.
- (c) Portable cooking, food, and beverage serving facilities shall be allowed for food service provided to a club, organization, or private individual as a planned event and from which the public is excluded. All open food and utensils shall be provided with overhead protection or otherwise equipped with individual covers such as domes, chafing lids, or cookers with hinged lids.
- (d) Food and beverage equipment and supplies shall be located in enclosed areas and protected from environmental contamination when not in operation.

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2664 SUPPLEMENTAL COOKING ROOMS

The following construction standards apply to food establishments cooking on grills, pits, or fireplaces in supplemental cooking rooms:

- (1) Grills, pits, and fireplaces shall be kept clean, maintained in good repair, and located in an enclosed room as specified in Sections 6-202.15 and 6-202.16 of the Food Code as amended by Rule .2656 and shall comply with Parts 4-1 and 4-2 of the Food Code as amended by Rule .2654.
- (2) Walls and ceilings shall be kept clean and in good repair.
- (3) Floors shall be constructed of easily cleanable concrete or equal and graded to drain.
- (4) Water under pressure shall be provided for floor cleaning.
- (5) Ventilation systems and devices shall prevent grease or condensation from collecting on walls and ceilings.
- (6) A handwashing sink shall be provided as specified in Section 5-202.12 of the Food Code as amended by Rule .2655.
- (7) Lighting shall comply with Sections 6-202.11 and 6-303.11 of the Food Code as amended by Rule .2656.
- (8) All food shall be processed in an area meeting the requirements for operation and construction as set forth in Rules .2650 through .2657.

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2665 TEMPORARY FOOD ESTABLISHMENT AND TEMPORARY FOOD ESTABLISHMENT COMMISSARY PERMIT REQUIREMENTS

(a) A permit shall be issued by the regulatory authority to each temporary food establishment and temporary food establishment commissary that complies with Rules .2665 through .2669 of this Section. Temporary food establishments and temporary food establishment commissaries are not eligible for transitional permits. A single permit shall be issued for a temporary food establishment that does not operate consecutive days as long as the total number of days does not exceed 21. The permit shall be posted in a conspicuous place designated by the regulatory authority. The permit shall include:

- (1) Name and location of the temporary food establishment and temporary food establishment commissary;
- (2) Permit holder;
- (3) Name and location of the event;
- (4) Dates of operation; and
- (5) Any other conditions necessary to remain in compliance with this Section.

(b) No food preparation shall occur prior to a permit being issued by the regulatory authority.

(c) When affiliated with a temporary food establishment for an event where the food will be served, a temporary food establishment commissary permit for prior food preparation may be issued for advance or off-site preparation. A temporary food establishment commissary may commence operation no more than 7 days prior to the event and operate for the length of the event up to a time period not to exceed 21 consecutive days.

(d) Temporary food establishments and temporary food establishment commissaries shall make application to the regulatory authority no less than 15 calendar days prior to commencing operation. This 15-day requirement does not prohibit the submission of applications for substitute vendors provided that these applications are submitted no less than 3 business days prior to the event. Applications shall be submitted to the regulatory authority and shall include the following:

- (1) Name, mailing address, and telephone number of the permit holder of the temporary food establishment or temporary food establishment commissary;
- (2) Name and location of the event at which the temporary food establishment operated immediately prior to the current event for which applying, if applicable;
- (3) Name, mailing address, and telephone number of the event organizer;
- (4) Event name, location, dates, and hours of operation;
- (5) Proposed menu, food handling procedures, including anticipated food volume and sources;
- (6) Food equipment list;
- (7) Proposed water supply;
- (8) Provisions for sewage and other waste disposal; and

(9) Any information necessary to ensure compliance.

(e) The regulatory authority shall require documentation to verify any provision of Rules .2665 through .2669 of this Section.

(f) The regulatory authority may condition the permit to ensure compliance with Rules .2665 through .2669 of this Section.

(g) Evaluations of temporary food establishments and temporary food establishment commissaries shall be made as often as necessary to ensure compliance. The regulatory authority shall immediately suspend the permit for repeated violations of priority items or priority foundation items.

(h) The permit shall be suspended or revoked immediately pursuant to G.S. 130A-23(d).

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2666 TEMPORARY FOOD ESTABLISHMENT FOOD HANDLING REQUIREMENTS

(a) All sources of food shall comply with Chapter 3 of the Food Code as amended by Rule .2653.

(b) Raw meat, poultry, and fish shall be purchased in ready-to-cook portions, except that cutting and skewering shall be allowed where evaluation by the regulatory authority determines sufficient preparation areas and food equipment are provided.

(c) Salads containing ingredients that are cooked and cooled shall not be prepared in the temporary food establishment or temporary food establishment commissary, but may be served.

(d) Shellstock and shucked shellfish shall comply with Chapter 3 of the Food Code as amended by Rule .2653.

(e) All food shall be protected in accordance with Chapter 3 of the Food Code as amended by Rule .2653 and the following also apply:

(1) The regulatory authority may approve food preparation and storage for a temporary food establishment at a permitted temporary food establishment commissary or other permitted food establishment;

(2) Temporary food establishment or temporary food establishment commissary operations shall not be conducted in any room or area used for purposes not related to the temporary food establishment or other permitted food establishment;

(3) Food shall be secured in a manner to prevent tampering and contamination at all times;

(4) Ready-to-eat food shall not be stored in direct contact with ice; non-mechanical coolers must be provided with a drainage port;

(5) All food shall be stored above the ground or floor and arranged to prevent contamination of foods;

(6) Potentially hazardous food (time/temperature control for safety food) that has been heated at the temporary food establishment or temporary food establishment commissary shall not be sold or held for use on subsequent days. Approval may be granted to allow cooling and reheating of potentially hazardous food

(time/temperature control for safety food) if the food can be handled in accordance with the rules of this Section; and

(7) The regulatory authority shall further limit the food to be prepared or served, based on methods of preparation and the adequacy of facilities, equipment, utensils, and available utilities.

(f) Food prepared at a previous event or potentially hazardous food (time/temperature control for safety food) removed from original packaging shall not be served at a subsequent event.

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2667 TEMPORARY FOOD ESTABLISHMENT EMPLOYEE REQUIREMENTS

(a) Food employees shall wear effective hair restraints, clean outer clothing, and maintain good hygienic practices as specified in Part 2-4 of the Food Code as amended by Rule .2652.

(b) Employees shall wash their hands in a handwashing sink before starting work, after each visit to the toilet, and as often as necessary to remove soil and contamination.

(c) Employees shall not use tobacco in any form or consume food in food preparation, storage or serving areas, utensil washing, or utensil storage areas.

(d) Employees may consume beverages in the food establishment only if covered and consumed in a manner to prevent contamination of food and food-contact surfaces.

(e) Employees shall comply with the requirements in Subpart 2-201 of the Food Code as amended by Rule .2652.

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2668 TEMPORARY FOOD ESTABLISHMENT EQUIPMENT AND UTENSIL REQUIREMENTS

(a) Equipment and utensils shall be kept clean and maintained in good repair. Those surfaces which come in contact with food, drink, or utensils shall comply with Parts 4-1 and 4-2 of the Food Code as amended by Rule .2664.

(b) Equipment and utensils shall be cleaned, sanitized, stored, and handled in accordance with Parts 4-6 and 4-7 of the Food Code as amended by Rule .2654.

(c) When multi-use utensils other than eating and drinking utensils are used, 3 basins of sufficient size to submerge, wash, rinse, and sanitize utensils shall be provided. Other equivalent products and procedures may be used in accordance with Part 4-7 of the Food Code as amended by Rule .2654. At least 1 drainboard, table, or counter space shall be provided for air-drying.

(d) When multi-use eating and drinking utensils are used, a 3-compartment sink of sufficient size to submerge, wash, rinse, and sanitize utensils must be provided. Drainboards shall be provided as specified in Section 4-301.13 of the Food Code as amended by Rule .2654.

(e) Wash, rinse, and sanitizing solutions shall be maintained as specified in Section 4-501.18 of the Food Code as amended by Rule .2654.

(f) A food preparation sink must be provided for washing produce.

(g) Food shields or other effective barriers shall be installed in a manner to protect food and food contact surfaces from contamination.

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2669 TEMPORARY FOOD ESTABLISHMENT PHYSICAL REQUIREMENTS

(a) The temporary food establishment shall be located in an area kept in a clean and sanitary condition. The arrangement of temporary food establishments shall restrict public access to all areas of the food establishment, except dining areas.

(b) For outdoor cooking, overhead protection shall be provided such that all food, utensils, and equipment are protected. When bulk foods such as roasts, shoulders, and briskets are cooked, cooking equipment with attached lids, such as smokers, roasters, and other cooking devices, provide sufficient cover for the food being cooked. Food in individual servings such as hot dogs, hamburgers, and meat kabobs shall have additional overhead cover.

(c) Effective measures such as fans, screens, walls, or a combination thereof, shall be provided to keep dust, insects, rodents, animals, and other sources of potential contamination out of the food establishment and shall comply with Paragraph 6-501.15(B) of the Food Code as amended by Rule .2656 regarding live animals.

(d) Indoor/outdoor carpeting, matting, tarps, or similar nonabsorbent material is required as ground covering in the absence of asphalt, concrete, grass, or other surfaces that control dust or mud.

(e) The temporary food establishment and temporary food establishment commissary shall be equipped with a handwashing sink used only for employee handwashing. This facility shall consist of at least a 2 gallon container with an unassisted free flowing faucet such as a stopcock or turn spout, soap, single-use towels, and a wastewater receptacle. Warm water shall be used for handwashing.

(f) Water under pressure shall be provided as follows:

- (1) The water supply used shall be in accordance with 15A NCAC 18A .1700, 15A NCAC 18C, or 02 NCAC 09C .0703;
- (2) All potable water holding tanks, containers, and hoses used to transport or store water at the temporary food establishment shall be drained, washed, rinsed, and sanitized;
- (3) Containers and hoses used to store, haul, or convey potable water shall be approved for potable water use, shall not be used for any other purpose, and shall be protected from contamination. Potable water hoses and containers shall be labeled; and
- (4) Warm water shall be available and used for cleaning.

(g) Wastewater shall be disposed in accordance with 15A NCAC 18A .1900 or 15A NCAC 02H .0200. Portable wastewater containers may be used when the volume of potable water can be determined by the dimensions of sinks, basins, and interim

storage containers and the portable wastewater containers are sized to contain the wastewater volume generated. Wastewater containers and hoses shall be labeled and not used for any other purpose. Wastewater containers shall not be emptied into waterways, storm drains, or on the ground.

(h) Employees must have access to toilet facilities that are kept clean and in good repair.

(i) Garbage and refuse shall be collected and stored in garbage containers with properly fitted lids. Nothing in this Rule shall prohibit uncovered garbage containers in the food establishment during periods of operation. Garbage and refuse shall be removed as needed and disposed in a manner to prevent vermin breeding and harborage. The premises shall be kept clean.

(j) Lighting shall comply with Section 6-202.11 of the Food Code as amended by Rule .2656. Lighting is required for nighttime operations.

(k) Temporary food establishments and temporary food establishment commissaries shall remain connected to necessary utilities at all times food is prepared, served, or stored in the food establishment.

(l) Toxic materials shall be labeled, used, and stored to prevent the contamination of food, equipment, utensils, linens, and single-service articles and meet the provisions of Sections 7-101.11 and 7-203.11 of the Food Code as amended by Rule .2657.

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2670 GENERAL REQUIREMENTS FOR PUSHCARTS AND MOBILE FOOD UNITS

(a) A permit shall be issued by the regulatory authority which inspects the commissary from which the pushcart or mobile food unit is to operate, if the regulatory authority determines that the pushcart or mobile food unit complies with the rules of this Section. The permit shall be maintained on the pushcart or mobile food unit and made available to the regulatory authority upon request.

(b) The regulatory authority which issues the permit shall be provided by the permit holder a list of counties and locations where each pushcart or mobile food unit will operate.

(c) The pushcart or mobile food unit permit holder shall provide the regulatory authority in each county in which food service operations are proposed a list of locations where they will operate. Such lists must be kept current.

(d) Prior to initiating food service operations in a particular county, the operator of the pushcart or mobile food unit shall submit to that particular county such carts or units for inspection or reinspection to determine compliance with this Section.

(e) Pushcarts or mobile food units shall operate in conjunction with a permitted commissary and shall report at least daily to the commissary for supplies, cleaning, and servicing. Facilities, in compliance with this Section, shall be provided at the commissary for storage of all supplies. The pushcart shall also be stored in an area that protects it from dirt, debris, vermin, and other contamination. Water faucets used to supply water for pushcarts or mobile food units shall be protected to prevent contact with chemicals, splash, and other sources of contamination. Solid waste storage and liquid waste disposal facilities must also be provided on the commissary premises.

- (f) All food shall be obtained from sources that comply with Chapter 3 of the Food Code as amended by Rule .2653.
- (g) All potentially hazardous food (time/temperature control for safety food) shall be maintained at temperatures as required in Chapter 3 of the Food Code as amended by Rule .2653. A metal stem-type thermometer accurate to 1°C (2°F) shall be available to check food temperatures.
- (h) Only single-service articles shall be used for serving customers. Single-service articles shall be purchased only in sanitary containers, shall be stored therein in a clean, dry place until used, and shall be handled in a manner to prevent contamination.
- (i) All garbage and other solid waste shall be stored and disposed in an approved manner.
- (j) Employees shall wear effective hair restraints, clean outer clothing, and maintain good hygienic practices as specified in Part 2-4 of the Food Code as amended by Rule .2652.
- (k) Employees shall comply with the requirements in Subpart 2-201 of the Food Code as amended by Rule .2652.
- (l) Equipment and utensils shall meet the requirements in Parts 4-1 and 4-2 of the Food Code as amended by Rule .2654.
- (m) The pushcart or mobile food unit shall be kept clean and free of flies, roaches, rodents, and other vermin.

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2671 SPECIFIC REQUIREMENTS FOR PUSHCARTS

- (a) Only hot dogs shall be prepared, handled, or served from a pushcart; however, food which has been prepared, pre-portioned, and individually pre-wrapped at a food establishment or commissary may be served from a pushcart.
- (b) Food and utensils on the pushcart exposed to the public or to dust or insects shall be protected by glass, or otherwise, on the front, top, and ends, and exposed only as much as may be necessary to permit the handling and serving of food.
- (c) Toilet facilities, handwashing sinks, and running water are not required. Single-service towels are required.
- (d) All pre-wrapped potentially hazardous food (time/temperature control for safety food) shall be maintained at temperatures as required in Chapter 3 of the Food Code as amended by Rule .2653 or as labeled on the food item. Each pre-wrapped food item shall contain the name of the food establishment at which it was prepared, the name of the food item, and the time and date of expiration. The wrapper shall enclose the food at all times but sealing is not required.
- (e) Pre-portioned, individually pre-wrapped food that remains after the specified time period has elapsed shall not be sold for human consumption.
- (f) Pushcarts shall not be provided with seating facilities.
- (g) Pushcarts shall not be used for consumer self-service.

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2672 SPECIFIC REQUIREMENTS FOR MOBILE FOOD UNITS

- (a) A mobile food unit shall be constructed and arranged so that food, drink, utensils, and equipment will not be exposed to insects, dust, and other contamination. Protection against flies

and other insects shall be provided by screening or by effective use of fans. Where food or griddles are exposed to the public or to dust or insects, they shall be protected by glass, or otherwise, on the front, top, and ends, and exposed only as much as may be necessary to permit the handling and serving of food.

(b) A mobile food unit shall have a potable water system under pressure. The system shall furnish hot and cold water for all food preparation, utensil cleaning, and handwashing. The water inlet shall be located so that it will not be contaminated by waste discharge, road dust, oil, or grease and it shall be kept capped unless being filled.

(c) Water heating facilities shall be provided.

(d) A handwashing sink with hot and cold water, combination supply faucet, soap, and single-service towels shall be provided.

(e) At least a 1-compartment sink shall be provided. The sink shall be of sufficient size to submerge, wash, rinse, and sanitize utensils and shall have splashback protection. Drainboards shall be provided as specified in Section 4-301.13 of the Food Code as amended by Rule .2654 to accommodate the drying of washed utensils. However, in cases where no food is prepared on the mobile food unit and all utensils are effectively cleaned at the commissary, the equipment sink is not required.

(f) Sewage disposal must be provided either by means of an approved sewage disposal system or approved sewage storage tanks. Sewage storage tanks must be maintained in a manner so as not to create a health hazard or nuisance and to prevent contamination of food or water supply. Toilets are not required on the unit. Liquid waste that results from the operation of a mobile food unit shall be disposed in an approved sewage disposal system or stored in a permanently installed sewage storage tank that is of at least 15 percent larger capacity than the water supply tank. Liquid waste shall not be discharged from the sewage storage tank when the mobile food unit is in motion. All connections on the vehicle for servicing mobile food unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the mobile food unit. The waste connection shall be located lower than the water inlet connection to preclude contamination of the potable water system.

(g) A servicing area shall be established at a commissary for the mobile food unit. Potable water servicing equipment shall be installed, stored, and handled to protect the water and equipment from contamination. The mobile food unit's sewage storage tank shall be flushed and drained during servicing operation. All sewage shall be discharged to an approved sewage disposal system in accordance with 15A NCAC 18A .1900 or 15A NCAC 02H .0200.

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2673 CONGREGATE NUTRITION SITES

Congregate nutrition sites shall comply with all requirements in Rules .2650-.2662 of this Section with the following exceptions:

- (1) Food preparation in a congregate nutrition site shall be limited to reheating food prepared in a food establishment or in a food processing plant or preparation of food that does not require cooking.

- (2) Congregate nutrition sites shall not prepare any potentially hazardous food (time/temperature control for safety food) prior to the day of service.
- (3) Potentially hazardous food (time/temperature control for safety food) which has been heated or reheated at the congregate nutrition site and remains at the end of the day shall not be served or placed in refrigeration to be used another day.
- (4) Food prepared in a private home may not be used or offered for human consumption in a congregate nutrition site.
- (5) All food prepared or served in a congregate nutrition site shall be consumed only on the premises.
- (6) Only single-service articles shall be used.
- (7) Consumer self-service is prohibited except for condiments in individual packages or in pour-type or squeeze-type containers.
- (8) Equipment in the congregate nutrition site which is not certified or classified for sanitation by an ANSI-accredited certification program which is in good repair and operating properly may be used. At least a 2-compartment sink shall be provided. The sink shall be of sufficient size to submerge, wash, rinse, and sanitize utensils. At least 1 drainboard, table, or counter space shall be provided for air-drying.
- (9) Garbage can liners are required for all garbage receptacles unless the site has receptacle cleaning facilities as specified in Section 5-501.18 of the Food Code as amended by Rule .2655.
- (10) Water used for mop or receptacle cleaning shall not be disposed in the utensil sink. Wastewater from mopping, receptacle cleaning, and other cleaning operations shall be disposed in a service sink or another approved manner in accordance with 15A NCAC 18A .1900 or 15A NCAC 02H .0200.

- obtained before the limited food establishment shall be allowed to operate each year. Transitional permits shall not be issued.
- (2) The permit application shall be submitted to the local health department at least 30 days prior to construction or commencing operation. The permit application shall include a proposal for review and approval which includes a menu, plans, and specifications for the proposed limited food establishment, and location and dates of operation.
- (3) Limited food establishments shall not prepare any potentially hazardous food (time/temperature control for safety food) prior to the day of sale.
- (4) Potentially hazardous food (time/temperature control for safety food) which has been heated at the limited food establishment and remains at the end of the day shall not be served or placed in refrigeration to be used another day.
- (5) Food prepared in a private home may not be used or offered for human consumption in a limited food establishment.
- (6) All meats, poultry, and fish shall be purchased in a pre-portioned and ready-to-cook form.
- (7) Equipment in the limited food establishment which is not certified or classified for sanitation by an ANSI-accredited certificate program which is in good repair and operating properly may be used. At least a 2-compartment sink shall be provided. The sink shall be of sufficient size to submerge, wash, rinse, and sanitize utensils and shall have splashback protection. At least 1 drainboard, table, or counter space shall be provided for air-drying.
- (8) Only single-service articles shall be used.
- (9) Consumer self-service is prohibited except for condiments in individual packages or in pour-type or squeeze-type containers.
- (10) Limited food establishments may prepare food in accordance with Rule .2669(b) of this Section.
- (11) Floors, walls, and ceilings of limited food establishments shall meet the requirements of this Section, except those limited food establishments preparing food in accordance with Rule .2669(b). Limited food establishments shall use dustless methods of floor cleaning and all, except emergency floor cleaning, shall be done during those periods when the least amount of food and drink is exposed, such as after closing, or between meals.
- (12) All areas in which food is handled, prepared, or in which utensils are washed, shall be provided with artificial lighting that complies with Section 6-202.11 of the Food Code as amended by Rule .2656.

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2674 LIMITED FOOD ESTABLISHMENTS

Limited food establishments shall comply with all the requirements in Rules .2650-.2662 of this Section, except that the following provisions apply in lieu of Rules .2654(2) and .2659(a) and (b); Section 5-204.11(b) of the Food Code as amended by Rule .2655, and Sections 8-201.11 and 8-201.12 of the Food Code as amended by Rule .2658:

- (1) The permit for a limited food establishment shall be posted in a conspicuous place where it can be readily seen by the public at all times. Permits for limited food establishments shall expire on December 31 of each year. A new permit from the regulatory authority shall be

- (13) A handwashing sink shall be provided in food service areas for use by employees only.
- (14) Toilet facilities shall be provided for use by employees. Public toilet facilities provided on the grounds of the facility where the associated amateur athletic event is taking place are acceptable. Toilet facilities for the public are not required.

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2675 PROCEDURE WHEN INFECTION SUSPECTED

When the regulatory authority has reason to suspect the possibility of exposure to, or transmission of, infection within a food establishment from any person or from any food or drink, the local health director shall act in accordance with the Communicable Disease Laws and Rules (G.S. 130A-134 through 148, 15A NCAC 19A).

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

15A NCAC 18A .2676 INFORMAL REVIEW PROCESS AND APPEALS PROCEDURE

(a) If a permit holder disagrees with a decision of the local health department on the interpretation, application, or enforcement of the rules of this Section the permit holder may:

- (1) Request an informal review pursuant to Paragraphs (d) and (e) of this Rule; or
- (2) Initiate an appeal in accordance with G.S. 150B.

(b) The permit holder is not required to complete the alternative dispute resolution prior to initiating an appeal in accordance with G.S. 150B.

(c) When a petition for a contested case is filed, the informal review process shall terminate.

(d) If the permit holder requests an informal review, the request shall be in writing and shall be postmarked or hand-delivered to the local health department within seven days of notice of the decision giving rise to the review. The request shall state the issues in dispute. If the inspection giving rise to the informal review was conducted by the Environmental Health Supervisor in the county or area where the food establishment is located, or when the county or area has only one registered environmental health specialist assigned to inspect food establishments, the Environmental Health Regional Specialist assigned to that county or area shall conduct the local informal review. As soon as possible, but at least within 30 days of receipt of the request, the person conducting the review shall contact the permit holder, provide that permit holder an opportunity to be heard on the issues in dispute and issue a written decision addressing the issues raised in the appeal. Copies of the decision shall be mailed to the permit holder and to the State Health Director. That decision shall be binding for the purposes of future inspections of the establishment in question unless modified pursuant to Paragraph (e) of this Rule or by the State Health Director.

(e) Following receipt of the written decision of the Environmental Health Supervisor or his or her representative

issued pursuant to Paragraph (d) of this Rule, the permit holder who initiated the informal review may appeal the resulting decision to an Informal Review Officer designated by the Department to be responsible for final decisions on appeals from throughout the state. Notice of such appeal shall be in writing, shall include a copy of the Environmental Health Supervisor's or his or her representative's decision, and shall be postmarked or hand-delivered to the local health department and to the Department within seven days of receipt of the written decision issued pursuant to Paragraph (a) of this Rule. Within 35 days of receipt of this appeal, the designated Informal Review Officer shall hold a conference in Wake County. Notice of the time and place of this conference shall be provided to the permit holder and the Environmental Health Supervisor for the county or area where the issue arose. Within 10 days following the date of the conference, the Informal Review Officer shall issue a written decision addressing the issues raised in the appeal and that decision shall be binding for purposes of future inspections of the establishment in question unless modified pursuant to Paragraph (g) of this Rule or by the State Health Director.

(f) If the decision on appeal at the local or state level results in a change in the score resulting from an inspection of an establishment, the regulatory authority shall post a new grade card reflecting that new score.

(g) Appeals of the decision of the designated Informal Review Officer shall be in accordance with G.S. 150B.

(h) Nothing in this Rule shall impact the right of a permit holder to a reinspection pursuant to Rule .2661 of this Section.

Authority G.S. 130A-248; S.L. 2011-394, Section 15(a).

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 32 – NC MEDICAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Medical Board intends to amend the rules cited as 21 NCAC 32B .1001, .1402; 32R .0101-.0104; 32S .0212; and repeal the rule cited as 21 NCAC 32R .0105.

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

Proposed Effective Date: July 1, 2012

Public Hearing:

Date: May 14, 2012

Time: 10:00 a.m.

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

Reason for Proposed Action:

21 NCAC 32B .1001; 32S .0212 – The impetus for this rule change came from a Task Force convened in June, 2011, which included representatives from organized medicine, medical specialty boards, MDs, DOs, NPs, PAs, and physicians from

diverse backgrounds, including urban/ rural practitioners, and family practice /specialty practice physicians. The broad issue was whether, and under what circumstances, should a physician (or mid-level practitioner) treat his/her own family. While opinions differ on that topic, consensus developed that it is inappropriate for a prescriber to write a prescription for himself or his family for controlled substances. The potential for inappropriate prescription, drug abuse or diversion outweigh the convenience of not going to another physician. This topic was the subject of an article in The Forum, the board's quarterly publication which is distributed to about 40,000 licensees. A survey of licensees was also included, to which over 1,000 licensees responded. Again, while there is a range of opinion about physicians treating themselves of their families, there is a widespread agreement that it is not appropriate for anyone to write themselves a prescription for controlled substances. This rule will have negligible fiscal impact. While it may cost something for a physician to go to another doctor for treatment and to receive a prescription, there may be savings from the prevention of drug abuse, investigation and prosecution for inappropriate prescribing.

21 NCAC 32B .1402 – To be consistent with rules for application for a full medical license.

21 NCAC 32R .0101-.0105 – This amendment will have no negative fiscal impact on licensees. If anything, it will have a beneficial fiscal impact on licensees. Physicians automatically will get credit for obtaining initial certification by a specialty board, or for engaging in maintenance of certification activities or obtaining recertification by a specialty board. Maintenance of certification and maintenance of licensure are emerging topics in medicine today, and the Board is trying to encourage physicians to adopt best practices in line with this trend. Increasingly, hospitals are requiring physicians to be board certified to obtain practice privileges, so this dovetails with what physicians already are doing. It will also decrease the record keeping burden on physicians, as these are objective standards which are easy to track and report. Another way that this rule decreases the burden on licensees is that it drops the "Category 2 CME" requirement entirely. By statute, the Board can require physicians to obtain up to 150 hours of CME during a three year cycle. N.C. Gen. Stat. §90-14(a)(15). Existing rule 21 NCAC 32R .0101 required that at least 60 hours must be Category 1, so a maximum of 90 hours could be Category 2. This consisted of self-directed learning, like reading medical journals, discussing cases with colleagues, etc. While this is worthwhile, it is challenging for physicians to record, and impossible for the Board to verify. Also, the Board believes that physicians are professionals who will continue to educate themselves without a rule telling them to do so.

Procedure by which a person can object to the agency on a proposed rule: Any person may object to the proposed amendments and repeal by attending the public hearing on May 14, 2012 and/or by submitting a written objection by May 14, 2012, to Rules Coordinator, NC Medical Board, 1203 Front Street, Raleigh, NC 27609, fax (919) 326-1131, or email rules@ncmedboard.org. The NC Medical Board is interested in all comments pertaining to the proposed rules. All persons interested and potentially affected by the proposal are strongly

encouraged to read this entire notice and make comments on the proposed rules.

Comments may be submitted to: Wanda Long, NC Medical Board, P.O. Box 20007, Raleigh, NC 27619; phone (919) 326-1100 ext. 212; fax (919) 326-1131; email rules@ncmedboard.org

Comment period ends: May 14, 2012

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
- Date submitted to OSBM:
- Substantial economic impact (≥\$500,000)
- Approved by OSBM
- No fiscal note required

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

SECTION .1000 - PRESCRIBING

21 NCAC 32B .1001 AUTHORITY TO PRESCRIBE

(a) A license to practice medicine issued under this Subchapter allows the physician to prescribe medications, including controlled substances, so long as the physician complies with all state and federal laws and regulations governing the writing and issuance of prescriptions.

(b) A physician must possess a valid United States Drug Enforcement Administration ("DEA") registration in order for the physician to supervise any other health professional (physician assistant, nurse practitioner, clinical pharmacist practitioner) with prescriptive authority for controlled substances. The DEA registration of the supervising physician must include the same schedule(s) of controlled substances as the supervised health professional's DEA registration.

(c) A physician shall not prescribe controlled substances, as defined by the state and federal Controlled Substance Acts, for the physician's own use or that of a member of the physician's

immediate family, which shall mean a spouse, parent, child, sibling, parent-in-law, son-in-law or daughter-in-law, brother-in-law or sister-in-law, step-parent, step-child, step-sibling, or any other person living in the same residence as the licensee, or anyone with whom the physician is having a sexual relationship.

Authority G.S. 90-2(a).

SECTION .1400 – RESIDENT'S TRAINING LICENSE

21 NCAC 32B .1402 APPLICATION FOR RESIDENT'S TRAINING LICENSE

(a) In order to obtain a Resident's Training License, an applicant shall:

- (1) submit a completed application, attesting under oath 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) submit a photograph, at least two inches by two inches, affixed to the oath, and attested by a notary public;
- (4) submit proof on the Board's Medical Education Certification form that the applicant has completed at least 130 weeks of medical education. The applicant's date of graduation from medical school shall be written in the designated space, and the school seal shall be stamped on the form; the dean or other official of the applicant's medical school shall sign the form verifying the information;
- (5) If the 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;
- (6) submit an appointment letter from the program director of the GME program or his appointed agent verifying the applicant's appointment and commencement date;
- (7) ~~provide two original references from persons with no family or martial relationship to the applicant. These references must be:~~
 - (A) ~~from physicians who have observed the applicant's work in a clinical setting;~~

- ~~(B) on forms supplied by the Board;~~
 - ~~(C) dated within six months of the application;~~
 - ~~and~~
 - ~~(D) bearing the original signature of the writer;~~
 - ~~(8)(7)~~ submit two completed fingerprint record cards supplied by the Board;
 - ~~(9)(8)~~ submit a signed consent form allowing a search of local, state, and national files for any criminal record;
 - ~~(10)(9)~~ pay a non-refundable fee pursuant to G.S. 90-13.1(b), plus the cost of a criminal background check;
 - ~~(11)(10)~~ provide proof that the applicant has taken and passed:
 - (A) the COMLEX Level 1 within three attempts and ~~both components each component~~ of COMLEX Level 2 (cognitive evaluation and performance ~~evaluation~~); evaluation within three attempts; or
 - (B) the USMLE Step 1 within three attempts and ~~both components each component~~ of the USMLE Step 2 (Clinical Knowledge and Clinical ~~Skills~~); Skills) within three attempts; and
 - ~~(12)(11)~~ upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.
- (b) 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.

Authority G.S. 90-8.1; 90-12.01; 90-13.1.

SUBCHAPTER 32R - CONTINUING MEDICAL EDUCATION (CME) REQUIREMENTS

SECTION .0100 - CONTINUING MEDICAL EDUCATION (CME) REQUIREMENTS

21 NCAC 32R .0101 CONTINUING MEDICAL EDUCATION (CME) REQUIRED

- (a) Continuing Medical Education (CME) is defined as education, training and activities to increase knowledge and skills generally recognized and accepted by the profession as within the basic medical sciences, the discipline of clinical medicine, and the provision of healthcare to the public. ~~The purpose of CME should is to~~ maintain, develop, or improve the physician's knowledge, skills, professional performance and relationships which physicians use to provide services for their patients, their practice, the public, or the profession.
- (b) Each person licensed to practice medicine in the State of North Carolina shall complete ~~no less than 150 hours at least 60 hours of Category 1 of practice relevant CME relevant to the physician's current or intended specialty or area of practice every three years. years in order to enhance current medical~~

competence, performance or patient care outcome. At least 60 hours shall be in the educational provider initiated category as defined in Rule .0102 of this Section. The remaining hours, if any, shall be in the physician initiated category as defined in Rule .0102 of this Section.

(c) The three year period described in Paragraph (b) of this Rule begins on the physician's first birthday following initial licensure, shall run from the physician's birthday beginning in the year 2001 or the first birthday following initial licensure, whichever occurs later.

Authority G.S. 90-14(a)(15).

21 NCAC 32R .0102 APPROVED CATEGORIES OF CME

The following are the approved categories of CME:

- (1) ~~Educational Provider Initiated CME: All education offered by institutions or organizations accredited by the Accreditation Council on Continuing Medical Education (ACCME) and reciprocating organizations or American Osteopathic Association (AOA) including:~~
 - (a) ~~Formal courses~~
 - (b) ~~Scientific/clinical presentations, or publications~~
 - (c) ~~Enduring Material (printed or electronic materials)~~
 - (d) ~~Skill development~~
 - (e) ~~Performance improvement activities~~
- (2) ~~Physician Initiated CME:~~
 - (a) ~~Practice based self study~~
 - (b) ~~Colleague Consultations~~
 - (c) ~~Study initiated by patient inquiries~~
 - (d) ~~Study of community health problems~~
 - (e) ~~Successful Specialty Board Exam for certification or recertification~~
 - (f) ~~Teaching (professional, patient/public health)~~
 - (g) ~~Mentoring~~
 - (h) ~~Morbidity and Mortality (M&M) conference~~
 - (i) ~~Journal clubs~~
 - (j) ~~Creation of generic patient care pathways and guidelines~~
 - (k) ~~Competency Assessment~~

(a) Category 1 CME providers are:

- (1) Institutions or organizations accredited by the Accreditation Council on Continuing Medical Education (ACCME) and reciprocating organizations;
- (2) The American Osteopathic Association (AOA);
- (3) A state medical society or association;
- (4) The American Medical Association (AMA); and
- (5) Specialty boards accredited by the American Board of Medical Specialties (ABMS), the

AOA or Royal College of Physicians and Surgeons of Canada (RCPSC).

(b) Category 1 CME education shall be presented, offered, or accredited by a Category 1 provider as defined above and shall include:

- (1) Educational courses;
- (2) Scientific or clinical presentations or publications;
- (3) Printed, recorded, audio, video, online or electronic educational materials for which CME credits are awarded by the publisher;
- (4) Skill development;
- (5) Performance improvement activities; or
- (6) Journal-based CME activities within a peer-reviewed, professional journal.

Authority G.S. 90-14(a)(15).

21 NCAC 32R .0103 EXCEPTIONS

A licensee currently enrolled in an AOA or Graduate Medical Education (ACGME) accredited graduate medical education program is exempt from the requirements of Rule .0101 of this Section:

(a) A licensee is exempt from the requirements of Rule .0101 of this Section if the licensee is:

- (1) Currently enrolled in an AOA or Accreditation of Council of Graduate Medical Education (ACGME) accredited graduate medical education program;
- (2) In good standing with the Board, serving in the armed forces of the United States or serving in support of such armed forces, and serving in a combat zone, or serving with respect to a military contingency operation as defined by 10 U.S.C. 101(a)(13); or
- (3) Serving as a member of the General Assembly's House or Senate Health Committee.

(b) A physician who obtains initial certification from an ABMS, AOA or RCPSC specialty board shall be deemed to have satisfied his or her entire CME requirement for the three year cycle in which the physician obtains board certification.

(c) A physician who attests that he or she was continuously engaged in a program of recertification, or maintenance of certification, from an ABMS, AOA or RCPSC specialty board shall be deemed to have satisfied his/her entire CME requirement for that three year cycle.

Authority G.S. 90-14(a)(15).

21 NCAC 32R .0104 REPORTING

At the time of annual registration immediately following the CME reporting period, renewal, each Licensee shall report on the Board's annual registration renewal form the number of hours of practice relevant CME obtained in compliance with with, or exemption from, Rule .0101 of this Section. Records documenting CME hours compliance or exemption must be documented by categories maintained for six consecutive years and may be inspected by the Board or its agents.

Authority G.S. 90-14(a)(15).

21 NCAC 32R .0105 WAIVER FOR LICENSEES SERVING ON ACTIVE DUTY IN THE ARMED SERVICES OF THE US

The Board shall waive continuing education, payment of renewal and other fees, and any other requirements or conditions relating to the maintenance of licensure by an individual who is:

- (1) currently licensed by and in good standing with the Board;
(2) serving in the armed forces of the United States or serving in support of such armed forces; and
(3) serving in a combat zone, or serving with respect to a military contingency operation as defined by 10 U.S.C. 101(a)(13).

Authority G.S. 105-249.2; S.L. 2009-458; Section 7508 of the Internal Revenue Code; 10 U.S.C. 101.

SUBCHAPTER 32S - PHYSICIAN ASSISTANT REGULATIONS

SECTION .0200 - PHYSICIAN ASSISTANT REGISTRATION

21 NCAC 32S .0212 PRESCRIPTIVE AUTHORITY

A physician assistant may prescribe, order, procure, dispense and administer drugs and medical devices subject to the following conditions:

- (1) the physician assistant complies with all state and federal laws regarding prescribing including G.S. 90-18.1(b);
(2) each supervising physician and physician assistant incorporates within their written supervisory arrangements, as defined in Rule .0201(8) of this Subchapter, instructions for prescribing, ordering, and administering drugs and medical devices and a policy for periodic review by the physician of these instructions and policy;
(3) In order to compound and dispense drugs, the physician assistant complies with G.S. 90-18.1(c);
(4) in order to prescribe controlled substances,
(a) the physician assistant must have a valid Drug Enforcement Administration (DEA) registration and prescribe in accordance with DEA rules;
(b) All prescriptions for substances falling within schedules II, IIN, III, and IIIN, as defined in the federal Controlled Substances Act, shall not exceed a legitimate 30 day supply;
(c) the supervising physician must possess the same schedule(s) of

- controlled substances as the physician assistant's DEA registration;
(5) each prescription issued by the physician assistant contains, in addition to other information required by law, the following:
(a) the physician assistant's name, practice address and telephone number;
(b) the physician assistant's license number and, if applicable, the physician assistant's DEA number for controlled substances prescriptions; and
(c) the responsible supervising physician's (primary or back-up) name and telephone number;
(6) the physician assistant documents prescriptions in writing on the patient's record, including the medication name and dosage, amount prescribed, directions for use, and number of refills; and
(7) a physician assistant who requests, receives, and dispenses medication samples to patients complies with all applicable state and federal regulations; and
(8) a physician assistant shall not prescribe controlled substances, as defined by the state and federal Controlled Substances Acts, for the physician assistant's own use or that of a member of the physician assistant's immediate family, which shall mean a spouse, parent, child, sibling, parent-in-law, son-in-law or daughter-in-law, brother-in-law or sister-in-law, step-parent, step-child, step-sibling, or any other person living in the same residence as the physician assistant, or anyone with whom the physician assistant is having a sexual relationship.

Authority G.S. 90-18(c)(13); 90-18.1; 90-18.2A; 90-171.23(14); 21 C.F.R. 301.

CHAPTER 34 - BOARD OF FUNERAL SERVICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Funeral Service intends to repeal the rules cited as 21 NCAC 34A .0102 and .0105.

Link to agency website pursuant to G.S. 150B-19.1(c): http://www.ncbfs.org

Proposed Effective Date: August 1, 2012

Public Hearing:
Date: April 11, 2012
Time: 9:00 a.m.

Location: NC Board of Funeral Service, 1033 Wade Avenue, Suite 108, Raleigh, NC 27605

Reason for Proposed Action: To comply with Executive Order 70, Rules Modification and Improvement Report.

Procedure by which a person can object to the agency on a proposed rule: Interested parties may file written comments or attend the public hearing.

Comments may be submitted to: Paul Harris, Rulemaking Coordinator, 1033 Wade Avenue, Suite 108, Raleigh, NC 27605; phone (919) 733-9380; fax (919) 733-8271; email wpharris@ncbfs.org

Comment period ends: May 14, 2012

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
- Date submitted to OSBM:
- Substantial economic impact (≥\$500,000)
- Approved by OSBM
- No fiscal note required

SUBCHAPTER 34A - BOARD FUNCTIONS

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 34A .0102 PURPOSE OF BOARD

~~The purpose and function of the Board are to examine, license and regulate the practice of funeral service, the operation of crematories, the sale of preneed funeral contracts in North Carolina, and the operation of Mutual Burial Associations, pursuant to the authority granted by Articles 13A, 13D, 13E, and 13F, Chapter 90, General Statutes of North Carolina.~~

Authority G.S. 90-210.23(a); 90-210.69(a); 90-210.134(a).

21 NCAC 34A .0105 PUBLIC INSPECTION OF MATERIALS

~~All rules and all other written statements of policy or interpretations formulated, adopted or used by the Board in the discharge of its functions and all final orders, decisions and opinions, together with all materials which were before the Board at the time the final order, decision or opinion was made, are available for public inspection at the office of the Board during regular office hours.~~

Authority G.S. 90-210.23(a),(i); 150B-11(1),(2).

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray
Selina Brooks
Melissa Owens Lassiter
Don Overby

Randall May
A. B. Elkins II
Joe Webster

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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ABC Commission v. Universal Entertainment, LLC T/A Zoo City Saloon	11 ABC 2294	07/05/11	
ABC Commission v. Quick Quality Inc., T/A Quick Quality	11 ABC 2543	07/19/11	
ABC Commission v. Lead C. Corp v. T/A Burger King/Shell Convenience Store	11 ABC 5066	10/19/11	
ABC Commission v. GK Mart Inc., T/A GK Mart	11 ABC 02647	07/22/11	
ABC Commission v. Universal Entertainment, LLC T/A Zoo City Saloon (name changed to El Patron Night Club and Bar)	11 ABC 06892	11/04/11	
ABC Commission v. Triangle Food and Fun LLC, T/A Six Forks Pub	11 ABC 07107	09/16/11	
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ABC Commission v. MBM of NC Inc, T/A Super Mart 3	11 ABC 10549	11/15/11	
ABC Commission v. Octobers, Inc., T/A Toxaway House Restaurant	11 ABC 10955	12/20/11	
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Larry Overby v. Department of Crime Control Victim Compensation Division	10 CPS 06106	10/14/11	
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