

NORTH CAROLINA REGISTER

VOLUME 31 • ISSUE 04 • Pages 267 - 315

August 15, 2016

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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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NORTH CAROLINA REGISTER
 Publication Schedule for January 2016 – December 2016

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 th day from publication in the Register
30:13	01/04/16	12/08/15	01/19/16	03/04/16	03/21/16	05/01/16	01/2017	09/30/16
30:14	01/15/16	12/21/15	01/30/16	03/15/16	03/21/16	05/01/16	01/2017	10/11/16
30:15	02/01/16	01/08/16	02/16/16	04/01/16	04/20/16	06/01/16	01/2017	10/28/16
30:16	02/15/16	01/25/16	03/01/16	04/15/16	04/20/16	06/01/16	01/2017	11/11/16
30:17	03/01/16	02/09/16	03/16/16	05/02/16	05/20/16	07/01/16	01/2017	11/26/16
30:18	03/15/16	02/23/16	03/30/16	05/16/16	05/20/16	07/01/16	01/2017	12/10/16
30:19	04/01/16	03/10/16	04/16/16	05/31/16	06/20/16	08/01/16	01/2017	12/27/16
30:20	04/15/16	03/24/16	04/30/16	06/14/16	06/20/16	08/01/16	01/2017	01/10/17
30:21	05/02/16	04/11/16	05/17/16	07/01/16	07/20/16	09/01/16	01/2017	01/27/17
30:22	05/16/16	04/25/16	05/31/16	07/15/16	07/20/16	09/01/16	01/2017	02/10/17
30:23	06/01/16	05/10/16	06/16/16	08/01/16	08/22/16	10/01/16	01/2017	02/26/17
30:24	06/15/16	05/24/16	06/30/16	08/15/16	08/22/16	10/01/16	01/2017	03/12/17
31:01	07/01/16	06/10/16	07/16/16	08/30/16	09/20/16	11/01/16	01/2017	03/28/17
31:02	07/15/16	06/23/16	07/30/16	09/13/16	09/20/16	11/01/16	01/2017	04/11/17
31:03	08/01/16	07/11/16	08/16/16	09/30/16	10/20/16	12/01/16	01/2017	04/28/17
31:04	08/15/16	07/25/16	08/30/16	10/14/16	10/20/16	12/01/16	01/2017	05/12/17
31:05	09/01/16	08/11/16	09/16/16	10/31/16	11/21/16	01/01/17	01/2017	05/29/17
31:06	09/15/16	08/24/16	09/30/16	11/14/16	11/21/16	01/01/17	01/2017	06/12/17
31:07	10/03/16	09/12/16	10/18/16	12/02/16	12/20/16	02/01/17	05/2018	06/30/17
31:08	10/17/16	09/26/16	11/01/16	12/16/16	12/20/16	02/01/17	05/2018	07/14/17
31:09	11/01/16	10/11/16	11/16/16	01/03/17	01/20/17	03/01/17	05/2018	07/29/17
31:10	11/15/16	10/24/16	11/30/16	01/17/17	01/20/17	03/01/17	05/2018	08/12/17
31:11	12/01/16	11/07/16	12/16/16	01/30/17	02/20/17	04/01/17	05/2018	08/28/17
31:12	12/15/16	11/22/16	12/30/16	02/13/17	02/20/17	04/01/17	05/2018	09/11/17

This publication is printed on permanent, acid-free paper in compliance with G.S. 125-11.13

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

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

NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

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

Citation to Existing Rule Affected by this Rule-Making: *North Carolina Building, Electrical, Energy Conservation, Existing Building, Fire, Mechanical, Plumbing, and Residential Codes.*

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

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

Public Hearing: *Tuesday, September 13, 2016, 9:00AM, NCSU McKimmon Center, 1101 Gorman Street, Raleigh, NC 27606. Comments on both the proposed rule and any fiscal impact will be accepted.*

Comment Procedures: *Written comments may be sent to Barry Gupton, Secretary, NC Building Code Council, NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603. Comments on both the proposed rule and any fiscal impact will be accepted. Comment period expires on October 14, 2016.*

Statement of Subject Matter:

1. Request by Dan Hartley, representing BHM Architects, to amend the 2012 NC Building Code, Section 509.2 as follows:

509.2 Horizontal building separation allowance. A building shall be considered as separate and distinct buildings for the purpose of determining area limitations, continuity of *fire walls*, limitation of number of *stories* and type of construction where all of the following conditions are met:

1. The buildings are separated with a *horizontal assembly* having a minimum 3-hour *fire-resistance rating*.
2. ~~The building below the *horizontal assembly* is no more than one story above grade plane.~~ Deleted.
3. The building below the *horizontal assembly* is of Type IA construction.

4. Shaft, *stairway*, ramp and escalator enclosures through the *horizontal assembly* shall have not less than a 2-hour *fire-resistance rating* with opening protectives in accordance with Section 715.4.

Exception: Where the enclosure walls below the *horizontal assembly* have not less than a 3-hour *fire resistance rating* with opening protectives in accordance with Section 715.4, the enclosure walls extending above the *horizontal assembly* shall be permitted to have a 1-hour *fire-resistance rating*, provided:

1. The building above the *horizontal assembly* is not required to be of Type I construction;
2. The enclosure connects less than four *stories*; and

3. The enclosure opening protectives above the *horizontal assembly* have a minimum 1-hour *fire protection rating*.

5. The building or buildings above the *horizontal assembly* shall be permitted to have multiple Group A occupancy uses, each with an *occupant load* of less than 300, or Group B, M, R or S occupancies.

6. The building below the *horizontal assembly* shall be protected throughout by an *approved automatic sprinkler system* in accordance with Section 903.3.1.1, and shall be permitted to be any of the following occupancies:
 - 6.1. Group S-2 parking garage used for the parking and storage of private motor vehicles;
 - 6.2. Multiple Group A, each with an *occupant load* of less than 300;
 - 6.3. Group B;
 - 6.4. Group M;
 - 6.5. Group R; and
 - 6.6. Uses incidental to the operation of the building (including entry lobbies, mechanical rooms, storage areas and similar uses).

7. The maximum *building height* in feet (mm) shall not exceed the limits set forth in Section 503 for the building having the smaller allowable height as measured from the *grade plane*.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is March 1, 2017 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2018).

Reason Given – This purpose of this amendment is to allow more than one story below the horizontal separation. This change has been made in the 2015 IBC.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

2. Request by Ralph Euchner, representing NC Building Code Council, to amend the 2012 NC Plumbing Code, Section 306.2.4 as follows:

306.2.4 Tracer wire. For plastic sewer and drain *pipng*, an insulated copper tracer wire or other *approved* conductor shall be installed adjacent to and over the full length of the *pipng*. Access shall be provided to the tracer wire or the tracer wire shall terminate at the cleanout between the building drain and building sewer. The tracer wire size shall be not less than 14 AWG and the insulation type shall be listed for direct burial.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is March 1, 2017 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2018).

Reason Given – This purpose of this amendment is to provide a tracer wire to locate non-metallic pipe and avoid repairs due to trenching damage.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with a minimal increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

3. Request by Robert Privott, representing NC Home Builders Association, to amend the 2012 NC Residential Code, Section AG105.2 as follows:

AG105.2 Outdoor swimming pool. An outdoor swimming pool, including an in-ground, above-ground or on-ground pool, hot tub or spa shall be surrounded by a barrier which shall comply with the following:

1. The top of the barrier shall be at least 48 inches (1219 mm) above *grade* measured on the side of the barrier which faces away from the swimming pool. The maximum vertical clearance between grade and the bottom of the barrier shall be 2 inches (51 mm) or 4 inches (102 mm) where concrete or fixed solid material is used measured on the side of the barrier which faces away from the swimming pool. Where the top of the pool structure is above grade, such as an above-ground pool, the barrier may be at ground level, such as the pool structure, or mounted on top of the pool structure. Where the barrier is mounted on top of the pool structure, the maximum vertical clearance between the top of the pool structure and the bottom of the barrier shall be 4 inches (102 mm).

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is March 1, 2017 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2018).

Reason Given – This purpose of this amendment is to increase the clearance to the bottom of the barrier to facilitate deck cleaning.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

4. Request by Terry Cromer, representing NC Association of Electrical Contractors, to amend the 2014 NC Electrical Code, Article 680.25(A) Exception as follows:

680.25 Feeders. These provisions shall apply to any feeder on the supply side of panelboards supplying branch circuits for pool equipment covered in Part II of this article and on the load side of the service equipment or the source of a separately derived system.

(A) Wiring Methods.

(1) Feeders. Feeders shall be installed in rigid metal conduit or intermediate metal conduit. The following wiring methods shall be permitted if not subject to physical damage:

- (1) Liquidtight flexible nonmetallic conduit
- (2) Rigid polyvinyl chloride conduit
- (3) Reinforced thermosetting resin conduit
- (4) Electrical metallic tubing where installed on or within a building
- (5) Electrical nonmetallic tubing where installed within a building
- (6) Type MC cable where installed within a building and if not subject to corrosive environment

Exception: A An existing feeder within a one-family dwelling unit or two-family dwelling unit between an existing remote panelboard and service equipment shall be permitted to run in flexible metal conduit or an approved cable assembly that includes an ~~insulated~~ equipment grounding conductor within its outer sheath. The equipment grounding conductor shall comply with 250.24(A)(5).

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is March 1, 2017 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2018).

Reason Given – This purpose of this amendment is to allow a cable assembly with an uninsulated grounding conductor to be used. Type SER cable is generally used for this wiring method.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with a minimal decrease in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

5. Request by Michael Rettie, representing Orange County Inspection Department, to amend the 2012 NC Residential Code, Section N1102.4.3 and the 2012 NC Energy Conservation Code, Section 402.4.3 as follows:

N1102.4.3 Fireplaces. Site-built masonry fireplaces shall ~~have doors and~~ comply with Section R1006 of the *North Carolina Residential Code* for combustion air.

402.4.3 Fireplaces. Site-built masonry fireplaces shall ~~have doors and~~ comply with Section R1006 of the *North Carolina Residential Code* for combustion air.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is March 1, 2017 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2018).

Reason Given – This purpose of this proposal is to eliminate the fireplace door requirement. The required damper effectively closes off any significant draft that could impact energy usage.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with a minimal decrease in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

6. Request by Patrick Keal, representing Big Ass Solutions, to amend the 2012 NC Mechanical Code, Section 202 as follows:

202 General Definitions.

High Volume Low Speed Fan. A ceiling fan that circulates high volumes of air at low rotational speeds. Such fans are greater than 7 feet in diameter.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is March 1, 2017 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2018).

Reason Given – This purpose of this proposal is to provide a definition for large diameter fans.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

7. Request by Patrick Keal, representing Big Ass Solutions, to amend the 2012 NC Mechanical Code, Chapter 15 as follows:

Chapter 15

Referenced Standards.

AMCA

Air Movement and Control Association International
30 West University Drive
Arlington Heights, IL 60004

Standard Reference Number	Title	Referenced in Code Section Number
<u>540-08</u>	<u>Test Methods for Louvers Impacted by Wind Borne Debris</u>	<u>1609.1.2.1</u>
<u>230-15</u>	<u>Laboratory Methods of Testing Air Circulating Fans for Rating and Certification</u>	<u>2801.5</u>

UL

Underwriters Laboratories, Inc.
333 Pfingsten Road
Northbrook, IL 60062-2096

Standard Reference Number	Title	Referenced in Code Section Number
<u>507-99 9th Edition</u>	<u>Standard for Electric Fans</u>	<u>2801.5</u>

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is March 1, 2017 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2018).

Reason Given – This purpose of this proposal is to provide standard references for large diameter fans.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

8. Request by Patrick Keal, representing Big Ass Solutions, to amend the 2012 NC Mechanical Code, Section 929 as follows:

929 High Volume Low Speed Fans.

929.1 General. Where provided, high volume low speed fans shall be tested and labeled in accordance with AMCA 230, listed and labeled in accordance with UL 507, and installed in accordance with the manufacturer’s instructions.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is March 1, 2017 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2018).

Reason Given – This purpose of this proposal is to require large diameter fans to meet standard specifications.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

9. Request by Ed Johnson, representing Campus Safety Products, LLC, to amend the 2012 NC Building Code and Fire Code, Section 1008; and the Existing Building Code, Sections 403 and 704 as follows:

2012 NC Building Code

1008.1.4.6 Locking arrangements in educational occupancies. In Group E and Group B educational occupancies, egress doors from classrooms, offices and other occupied rooms shall be permitted to be provided with locking arrangements designed to keep intruders from entering the room where all of the following conditions are met:

1. The door shall be capable of being unlocked from outside the room with a key or other approved means.
2. The door shall be openable from within the room in accordance with Section 1008.1.9.
3. Modifications shall not be made to listed panic hardware, fire door hardware or door closers.
4. Modifications to fire door assemblies shall be in accordance with NFPA 80.

1008.1.4.6.1 Remote operation of locks. Remote operation of locks complying with Section 1008.1.4.6 shall be permitted.

2012 NC Fire Code

1008.1.4.6 Locking arrangements in educational occupancies. In Group E and Group B educational occupancies, egress doors from classrooms, offices and other occupied rooms shall be permitted to be provided with locking arrangements designed to keep intruders from entering the room where all of the following conditions are met:

1. The door shall be capable of being unlocked from outside the room with a key or other approved means.
2. The door shall be openable from within the room in accordance with Section 1008.1.9 of the *North Carolina Building Code*.
3. Modifications shall not be made to listed panic hardware, fire door hardware or door closers.
4. Modifications to fire door assemblies shall be in accordance with NFPA 80.

2015 NC Existing Building Code

403.7 Locking arrangements in educational occupancies. In Group E and Group B educational occupancies, egress doors from classrooms, offices and other occupied rooms shall be permitted to be provided with locking arrangements designed to keep intruders from entering the room where all of the following conditions are met:

1. The door shall be capable of being unlocked from outside the room with a key or other approved means.
2. The door shall be openable from within the room in accordance with Section 1008.1.9 of the *North Carolina Building Code*.
3. Modifications shall not be made to listed panic hardware, fire door hardware or door closers.
4. Modifications to fire door assemblies shall be in accordance with NFPA 80.

704.2 Locking arrangements in educational occupancies. In Group E and Group B educational occupancies, egress doors from classrooms, offices and other occupied rooms shall be permitted to be provided with locking arrangements designed to keep intruders from entering the room where all of the following conditions are met:

1. The door shall be capable of being unlocked from outside the room with a key or other approved means.
2. The door shall be openable from within the room in accordance with Section 1008.1.9 of the *North Carolina Building Code*.
3. Modifications shall not be made to listed panic hardware, fire door hardware or door closers.
4. Modifications to fire door assemblies shall be in accordance with NFPA 80.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is March 1, 2017 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2018).

Reason Given – This purpose of this amendment is to specify a means to lockdown a building during an active shooter event, while allowing authorized entry and exit after the event.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

NOTICE:

Appeals and Interpretations of the *North Carolina State Building Codes* are published online at the following link.

http://www.ncdoi.com/OSFM/Engineering_and_Codes/Default.aspx?field1=Code_Interpretations&user=Code_Enforcement_Resources

NOTICE:

Objections and Legislative Review requests may be made to the NC Office of Administrative Hearings in accordance with G.S. 150B-21.3(b2) after Rules are adopted by the Building Code Council.

<http://www.ncoah.com/rules/>

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

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Health and Human Services/Director, DHSR intends to repeal the rules cited as 10A NCAC 14C .1801, .1802, .1804, .3101, .3102, and .3104.

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

Proposed Effective Date: December 1, 2016

Public Hearing:

Date: October 06, 2016

Time: 10:00 a.m.

Location: Dorothea Dix Campus, Edgerton Building, Room 026, 809 Ruggles Drive, Raleigh, NC 27603

Reason for Proposed Action: *The CON application forms authorized by G.S. 131E-182(b) request information from the applicants which is designed to address the review criteria found in G.S. 131E-183(a). It has been determined that the rules for establishing diagnostic centers in 10A NCAC 14C .1801, .1802 and .1804 place an impossible burden on applicants as they require applicants to demonstrate that every other provider of the same service has and will continue to operate at 80% of capacity. Capacity is not defined in rule and the data needed to show that the other providers are operating at 80% of capacity is not publicly available. Therefore the rules are proposed to be repealed. The rules for acquiring major medical equipment found in 10A NCAC 14C .3101, .3102 and .3104 are non-specific to the type of equipment the applicant is seeking and provide no guidance to the applicant as to what is required. Therefore, these rules are unnecessary and are proposed to be repealed. The six rules proposed to be repealed increase the complexity of litigation which has a cost to the Department and the applicants.*

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

Comment period ends: October 14, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the

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

Fiscal impact (check all that apply).

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

CHAPTER 14 - DIRECTOR, DIVISION OF HEALTH SERVICE REGULATION

SUBCHAPTER 14C – CERTIFICATE OF NEED REGULATION

SECTION .1800 - CRITERIA AND STANDARDS FOR DIAGNOSTIC CENTERS

10A NCAC 14C .1801 PURPOSE AND SCOPE

~~The rules set forth in this Section shall apply to applications for diagnostic centers for which specific criteria and standards have not otherwise been promulgated in 10A NCAC 14C.~~

Authority G.S. 131E-177(1); 131E-183(b).

10A NCAC 14C .1802 DEFINITIONS

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

- ~~(1) "Approved diagnostic center" means a diagnostic center that was not operational prior to the beginning of the review period but that had been issued a certificate of need or had been developed prior to March 18, 1993 in accordance with 1993 N.C. Sess. Laws c. 7, s. 12.~~
- ~~(2) "Diagnostic center" shall have the same meaning as defined in G.S. 131E-176(7a).~~
- ~~(3) "Diagnostic center service area" means the geographic area, as defined by the applicant, for which the proposed diagnostic center will provide services.~~

- (4) ~~"Diagnostic procedure" means a discrete diagnostic procedure with a distinct CPT code or ICD-9-CM procedure code performed on one patient during one visit to a diagnostic suite.~~
- (5) ~~"Diagnostic suite" means a single room or group of rooms in a diagnostic center which is used for the purpose of conducting diagnostic procedures.~~
- (6) ~~"Essential" means those items which are indispensable, the absence of which renders the equipment useless.~~
- (7) ~~"Existing diagnostic center" means a diagnostic center in operation prior to the beginning of the review period.~~
- (8) ~~"Freestanding diagnostic center" means a diagnostic center that is not operated as a part of another health service facility but rather as a discrete business entity. A freestanding diagnostic center may be owned by another health service facility and may be located on the campus of another health service facility.~~
- (9) ~~"Medical diagnostic equipment" means a single piece of diagnostic equipment or a single component of a multi component diagnostic system which costs ten thousand dollars (\$10,000) or more, or whose fair market value is ten thousand dollars (\$10,000) or more.~~
- (10) ~~"Mobile medical diagnostic equipment" means medical diagnostic equipment and transporting equipment which is moved to provide services at two or more host facilities.~~
- (11) ~~"Mobile diagnostic program" means the provision of diagnostic services using mobile medical diagnostic equipment and transporting equipment at two or more host facilities.~~
- (12) ~~"Radiologic technologist or X Ray technician" means a person who, under the supervision of a physician radiologist, operates radiologic equipment and assists radiologists and other health professionals, and whose competence has been tested and approved by the American Registry of Radiologic Technologists.~~

Authority G.S. 131E-177(1); 131E-183(b).

10A NCAC 14C .1804 PERFORMANCE STANDARDS

An applicant proposing to establish a new diagnostic center or to expand an existing diagnostic center shall provide:

- (1) ~~documentation that all existing health service facilities providing similar medical diagnostic equipment and services as proposed in the CON application in the defined diagnostic center service area were operating at 80% of the maximum number of procedures that the equipment is capable of performing for the twelve month period immediately preceding the submittal of the application;~~
- (2) ~~documentation that all existing and approved medical diagnostic equipment and services of~~

~~the type proposed in the CON application are projected to be utilized at 80% of the maximum number of procedures that the equipment is capable of performing by the fourth quarter of the third year of operation following initiation of diagnostic services;~~

- (3) ~~documentation that the applicant's utilization projections are based on the experience of the provider and on epidemiological studies; and~~
- (4) ~~all the assumptions and data supporting the methodologies used for the projections in this Rule.~~

Authority G.S. 131E-177(1); 131E-183.

SECTION .3100 - CRITERIA AND STANDARDS FOR MAJOR MEDICAL EQUIPMENT

10A NCAC 14C .3101 PURPOSE AND SCOPE

The rules set forth in this Section shall apply to applications for major medical equipment, including new major medical technology, for which specific criteria and standards have not otherwise been promulgated in 10A NCAC 14C.

Authority G.S. 131E-177(1); 131E-183(b).

10A NCAC 14C .3102 DEFINITIONS

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

- (1) ~~"Essential" means those items which are indispensable, the absence of which renders the equipment useless.~~
- (2) ~~"Major Medical Equipment" is defined in G.S. 131E-176(14f).~~
- (3) ~~"Mobile Major Medical Equipment" means major medical equipment and transporting equipment which is moved to provide services at two or more host facilities.~~
- (4) ~~"New Major Medical Technology" means major medical equipment that:~~
 - (a) ~~has been approved for clinical use by the U.S. Food and Drug Administration or shall be operated in accordance with protocols approved by an institutional review board whose membership is consistent with the U.S. Department of Health and Human Services' regulations;~~
 - (b) ~~is intended for use in the diagnosis or treatment of medical conditions;~~
 - (c) ~~meets the definition of major medical equipment in G.S. 131E-176(14f); and~~
 - (d) ~~is so new that no state or national utilization data is readily available to the Agency for the development of specific criteria and standards.~~

Authority G.S. 131E-177(1); 131E-183(b).

10A NCAC 14C .3104 NEED FOR SERVICES

(a) ~~An applicant proposing to acquire major medical equipment shall provide the following information:~~

- ~~(1) the number of patients who will use the service, classified by diagnosis;~~
- ~~(2) the number of patients who will use the service, classified by county of residence;~~
- ~~(3) documentation of the maximum number of procedures that existing equipment that is used for similar procedures in the facility is capable of performing;~~
- ~~(4) quarterly projected utilization of the applicant's existing and proposed equipment three years after the completion of the project; and~~
- ~~(5) all the assumptions and data supporting the methodology used for the projections in this Rule.~~

(b) ~~An applicant proposing to acquire new major medical technology shall provide the following information:~~

- ~~(1) the number of patients who will use the service, classified by diagnosis;~~
- ~~(2) the number of patients who will use the service, classified by county of residence;~~
- ~~(3) quarterly projected utilization of the applicant's proposed new major medical technology three years after the completion of the project;~~
- ~~(4) documentation that the applicant's utilization projections are based on the experience of the provider and on epidemiological studies;~~
- ~~(5) documentation of the effect the new major medical technology may have on existing major medical technology and procedures offered at its facility and other facilities in the proposed service area; and~~
- ~~(6) all the assumptions and data supporting the methodology used for the projections in this Rule.~~

Authority G.S. 131E-177(1); 131E-183(b).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to adopt the rules cited as 10A NCAC 70P .0101-.0105 and amend the rules cited as 10A NCAC 70A .0103; 70B .0102; 70M .0402 and .0603.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://www2.ncdhhs.gov/dss/sscommission/contact.htm>

Proposed Effective Date: December 1, 2016

Public Hearing:

Date: October 12, 2016

Time: 10:00 a.m.

Location: NC DSS McBryde Building, 1st floor, room 151, 820 S. Boylan Ave., Raleigh, NC

Reason for Proposed Action:

10A NCAC 70B .0102; 70M .0402, .0603; 70P .0101-.0105 - Public Law 110-351, Fostering Connections to Success and Increasing Adoptions Act of 2008, provides states with the option to continue providing Title IV-E reimbursable foster care, adoption, or guardianship assistance payments to children up to the age of 21. If a state opts in expanding IV-E foster care to age 21, then they must extend adoption assistance and guardianship assistance to age 21 for youth adopted from foster care at 16 and 17 years of age and continue to meet the educational or employment requirements.

The North Carolina Session Law 2015-241 2015 Appropriations Act rewrites G.S. 131D-10.10 to charge the Social Services Commission with the power and duty to "adopt any rules necessary for the expansion of foster care for individuals who attained the age of 18 years and chosen to continue receiving foster care services to 21 years of age in accordance with G.S. 131D-10.10." Additionally, state law requires the Department of Health and Human Services, Division of Social Services (Division), to develop a plan for the expansion of foster care services for individuals who have attained the age of 18 years old and opt to continue receiving foster care services until reaching 21 years of age to be implemented by January 1, 2017. Per federal law, this plan must also include the expansion of adoption assistance. Research has consistently shown that youth who remain in care beyond age 18 receive additional independent living services, progress further in their education, experience less economic hardship, and experience less involvement with the criminal justice system than those who exit care at 18. Expanded foster care provides for positive outcomes for youth in care and has demonstrated cost savings for states by decreasing welfare, Medicaid, and criminal justice expenses over time.

Session Law 2015-241, Section 12C.4 provides instructions to county child welfare agencies on how to implement Guardianship Assistance Programs in their counties. Guardianship assistance provides an alternative route to permanence when reunification and adoption has been ruled out as appropriate plans for youth. Guardianship assistance is also sensitive to potential guardians' and children's concerns about adoption and provides permanence for youth who would otherwise remain in foster care for the same period of time during which guardianship assistance benefits are provided.

Guardianship assistance benefits will increase the number of youth exiting care to permanence by providing continued funds to assist in the cost of care for the youth. Some guardians currently receive WFFA child-only benefits when assuming guardianship of a youth while others may qualify for no benefits, resulting in a significant loss of financial support. Licensed caretakers often refuse to assume guardianship of the youth recognizing that remaining in care provides additional benefits and support for the youth. The Guardianship Assistance Program will address this disincentive to obtaining permanence.

10A NCAC 70A .0103 - G.S. 7B-302 creates the justification for county departments of social services to provide protective services to juveniles and their families of origin. Section 12C.1.(a) of Session Law 2014-100 also sought to reduce the appearance of conflicts of interest in child protective services cases. The North Carolina Child Welfare Services Manual addresses all the potential conflicts of interest a county child

welfare agency may have in any given case. This rule change is being proposed to bring North Carolina Administrative Code into alignment with the policy manual.

The North Carolina Association of County Directors of Social Services (NCACDSS) prioritized defining conflicts of interest and specifically what the case management practices should be in these types of cases. NCACDSS are supportive of these proposed changes and agree to assume responsibility for the management for these cases.

70A .0103(b) is amended to change "may" to "shall."

Comments may be submitted to: Carlotta Dixon, 820 South Boylan Ave, MSC 2402, Raleigh, NC 27603, phone (919) 527-6421, fax (919) 334-1198, email Carlotta.dixon@dhhs.nc.gov

Comment period ends: October 14, 2016

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

Fiscal impact (check all that apply).

- State funds affected
Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
Local funds affected
Substantial economic impact (>=\$1,000,000)
Approved by OSBM
No fiscal note required by G.S. 150B-21.4 - 10A NCAC 70A .0103

CHAPTER 70 - CHILDREN'S SERVICES

SUBCHAPTER 70A - PROTECTIVE SERVICES

SECTION .0100 - GENERAL

10A NCAC 70A .0103 REPORTS OF NEGLECT, ABUSE OR DEPENDENCY

(a) Reports of neglect, abuse, or dependency shall be referred to another county department of social services-child welfare agency for investigation when the alleged perpetrator is an employee of the county department of social services, child welfare agency, a foster parent supervised by that county department of social services, child welfare agency, a member of the Board of Social Services for that county, a member of the Board of County

Commissioners, the County manager, a member of the governance structure for the county child welfare agency, or a caretaker in a sole-source contract group home or agency operated day care facility, home, or a child's parent/caretaker who is an incompetent adult and who is a ward of that county child welfare agency, or a minor in foster care who is also a parent/caretaker.

(b) When in the professional judgment of the county director the agency would be perceived as having a conflict of interest in the conduct of other child protective service investigations, the director may shall request that another county conduct the investigations.

Authority G.S. 143B-153.

SUBCHAPTER 70B - FOSTER CARE SERVICES

SECTION .0100 - FOSTER CARE SERVICES - GENERAL

10A NCAC 70B .0102 ELIGIBILITY

(a) A county department of social services may determine a child eligible for foster care assistance payments if the following factors are established:

- (1) The child has been removed for any reason from his or her own home or from the home of a specified relative by a judicial determination and placed in foster care as a result of that determination;
(2) The placement of the child in foster care has occurred pursuant to a voluntary placement agreement entered into by the parents or guardians of the child and such placement has not been in excess of 90 consecutive days unless there has been a judicial determination by a court of competent jurisdiction (within the first 90 days of such placement) to the effect that such placement is in the best interest of the child. If the voluntary placement agreement is continued for the second 90 day period, a new voluntary placement agreement must be completed and signed by all parties. The agency must file a juvenile petition and a hearing must be held before the end of the second 90 day period, or the child must be returned home;
(3) Responsibility for care and placement of the child is designated to the county department of social services by either the court order removing him or her from his or her home or by the voluntary placement agreement signed by the parent or guardian;
(4) The child lives in:
(A) a foster care facility under the supervision of a county department of social services and licensed by the Department of Health and Human Services;
(B) a private child caring institution which is licensed or approved by the

- (C) Department of Health and Human Services and which is in compliance with Title VI of the Civil Rights Act; a private group home which is licensed or approved by the Department of Health and Human Services and which is in compliance with Title VI of the Civil Rights Act;
- (D) a foster care facility which is under the auspices of a licensed or approved private child caring institution, provided such foster care services program has been licensed by the Department of Health and Human Services and is in compliance with Title VI of the Civil Rights Act;
- (E) a foster care facility under the supervision of a private child placing agency (including those providing adoption services) and licensed by the Department of Health and Human Services;
- (F) a foster care facility located in another state, provided such facility is in compliance with Title VI of the Civil Rights Act and is licensed or approved in the other state, and provided such placement has been approved under the appropriate interstate placement procedure; and
- (G) an allowable independent supervised living setting for youth 18 or older;
- (5) The child is in need of care which is not available in his or her own home or the home of a relative;
- (6) ~~The child is less than 18 years of age and is a full time student in a secondary school, or in the equivalent level of vocational or technical training, and may reasonably be expected to complete the program before reaching age 19; or The child is less than 21 years of age and meets any of the following conditions:~~
 - (A) Completing secondary education or a program leading to an equivalent credential;
 - (B) Enrolled in an institution which provides post-secondary or vocational education;
 - (C) Participating in a program or activity designed to promote, or remove barriers to employment;
 - (D) Employed for at least 80 hours per month; or
 - (E) Is incapable of doing any of the previously described educational or employment activities due to a medical condition.
- (7) ~~The child is less than 21 years of age and is a full time student or has been accepted for~~

~~enrollment as a full time student for the next school term pursuing a high school diploma or its equivalent, a course of study at the college level; or a course of vocational or technical training designed to fit him for gainful employment.~~

- (b) Court action terminating parental rights shall not render a child ineligible for foster care assistance benefits if that child is otherwise eligible. A child may be eligible for foster care assistance benefits until the final decree of adoption is issued.

Authority G.S. 108A-24; 108A-48; 108A-49; 131D-10.5; 143B-153.

SUBCHAPTER 70M – ADOPTION STANDARDS

SECTION .0400 – ADOPTION ASSISTANCE: GENERAL

10A NCAC 70M .0402 ELIGIBILITY REQUIREMENTS FOR REGULAR MONTHLY CASH ASSISTANCE PAYMENTS OR VENDOR PAYMENTS

- (a) The child shall meet the following eligibility criteria:
 - (1) The child is legally clear for adoption, or must have been legally adopted;
 - (2) The child is, or was, the placement responsibility of a North Carolina agency authorized to place children for adoption at the time of adoptive placement;
 - (3) The child has special needs that create a financial barrier to adoption; or the child has been legally adopted and the child's special needs, though pre-existing, are detected after the adoption has been finalized and if known would have created a financial barrier to adoption;
 - (4) Reasonable but unsuccessful efforts have been made to place the child for adoption without the benefits of adoption assistance;
 - (5) ~~The child's special needs, though pre-existing, are detected only after his placement into an adoptive home;~~
 - (6)(5) ~~The child is under eighteen years of age; or the youth is under age 21, part of an adoption assistance agreement that is in effect that the youth had obtained 16 years before the agreement became effective;~~
 - (7)(6) ~~North Carolina residency of the child and adoptive parents is not a requirement for the child to be eligible to receive regular monthly cash assistance payments or vendor payments;~~ and
 - (7) ~~The child may continue to receive Adoption Assistance Payments after their eighteenth birthday until their twenty-first birthday if an Adoption Assistance Agreement was entered into on or after their sixteenth birthday and meets any of the following conditions:~~

- (A) Completing secondary education or a program leading to an equivalent credential;
- (B) Enrolled in an institution which provides post-secondary or vocational education;
- (C) Participating in a program or activity designed to promote, or remove barriers to employment;
- (D) Employed for at least 80 hours per month; or
- (E) Is incapable of doing any of the previously described educational or employment activities due to a medical condition.

~~(b) The child's eligibility for Regular Monthly Cash Assistance Payments shall further be based on one or more of the following factors:~~

- ~~(1) The child is a member of a sibling group being placed together.~~
- ~~(2) The child could be placed for adoption with a known and approved family, but the circumstances of the family preclude assumption of full financial responsibility for the child.~~
- ~~(3) The child has special needs due to a handicapping condition.~~
- ~~(4) The child at the time adoption proceedings were initiated was eligible to receive regular monthly cash assistance payments under Title IV E of the Social Security Act as:~~
 - ~~(A) a dependent child who meets the requirements for Temporary Assistance for Needy Families (TANF) but for his removal from the home of a specified relative for placement in a foster care facility; or~~
 - ~~(B) meeting the requirements of Title XVI of the Social Security Act with respect to eligibility for supplemental security income benefits.~~

~~(b) For the child to receive regular monthly cash assistance payments, the adoptive parents must have entered into an agreement with the child's agency prior to entry of the Decree of Adoption. The agreement shall have set forth the respective responsibilities of the agency and the adoptive parents during the time of the child's eligibility for this assistance.~~

~~(c) A child's eligibility for vendor payments shall further be determined on the basis of documentation of:~~

- ~~(1) a known and diagnosed medical, mental, or emotional condition that will require periodic treatment or therapy of a medical or remedial nature; or nature.~~
- ~~(2) a potential handicap due to hereditary tendency, congenital problem, birth injury, or other documented high risk factor leading to substantial risk of future disability.~~

~~A child's eligibility for vendor payments may be determined at any time during the child's minority if the medical, mental, or~~

emotional condition, congenital problem, birth injury, or other documented problem is determined to have been pre-existing at the time of his or her placement into an adoptive home. Prior to the child's receipt of vendor payments, the adoptive parents must enter into an agreement with the child's agency to indicate the extent to which they desire the child to participate in this component of the program.

Authority G.S. 143B-153.

10A NCAC 70M .0603 REQUIREMENTS

The non-recurring expenses of a person who adopts a child with special needs will be reimbursed up to the maximum allowable amount based on the following criteria:

- (1) The child cannot or should not be returned to the home of his or her parents.
- (2) The child has been determined by a county department of social services to have special needs due to one or more of the following:
 - (a) a physical, mental, or emotional disability, or high risk factor for such due to background history; or
 - (b) is a member of a sibling group being placed together.
- (3) Reasonable but unsuccessful efforts have been made to place the child into an adoptive home without providing adoption assistance, except when it would be against the best interests of the child to seek a family other than the one with which he or she has been living as a foster child and with whom he or she has established significant emotional ties.
- (4) On or before entry of the final order of adoption a written agreement concerning reimbursement of non-recurring costs is entered into between a county department of social services and a person who adopts a child with special needs. Exceptions to this requirement include:
 - ~~(a) those whose adoptions were completed prior to January 1, 1987 but the non-recurring adoption expenses were paid after January 1, 1987; and~~
 - ~~(b) those whose adoptions were completed between January 1, 1987 and on or before June 14, 1988.~~

Authority G.S. 108A-49; 108A-50; 143B-15.

SUBCHAPTER 70P – GUARDIANSHIP ASSISTANCE PROGRAM

SECTION .0100 - GENERAL

10A NCAC 70P .0101 SCOPE

This Subchapter contains guardianship assistance standards for county departments of social services, the public agencies in North Carolina mandated to provide guardianship services. Included are requirements which shall be met by county departments of social services in carrying out their responsibilities

under Chapter 7B of the General Statutes and in administration of the Guardianship Assistance Program.

Authority G.S. 143B-153.

10A NCAC 70P .0102 PURPOSE

The Guardianship Assistance Program (GAP) provides financial assistance to caregivers who assume legal guardianship of a child in foster care as a means to achieve permanence for youth who are not being adopted or reunified.

Authority G.S. 143B-153.

10A NCAC 70P .0103 DEFINITIONS

The following definitions apply to this Chapter:

- (1) "Guardianship Assistance" means a monthly cash assistance payment no greater than the graduated amount set by the General Assembly from the Guardianship Assistance Program.
- (2) "Legal Guardian" means an individual as defined in G.S. 7B-600 who is appointed by the court to serve as the guardian of the person for a juvenile. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court. The guardian may consent to certain actions on the part of the juvenile in place of the parent including marriage, enlisting in the armed forces and enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile.
- (3) "Legal Guardianship" is a legal relationship created when a person or persons are assigned by the court to take care of the minor child. This relationship is terminated only in the following circumstances:
 - (a) the court finds that the relationship between the guardian and the juvenile is no longer in the juvenile's best interest,
 - (b) the guardian is unfit,
 - (c) the guardian has neglected a guardian's duties, or
 - (d) the guardian is unwilling or unable to continue assuming a guardian's duties.
- (4) "Licensed Home" means the private residence of one or more individuals who permanently reside as members of the household who have met all requirements for family foster home licensing in their state of residence and have been issued a license number in the state of North Carolina that remains active at the time of legal guardianship.
- (5) "Agency" means a child placing agency as defined in G.S. 131D-10.2(4) that is authorized by law to receive children for purposes of placement in foster homes or adoptive homes.

- (6) "Guardianship Assistance Agreement" is a binding agreement between the county DSS and legal guardian that establishes responsibilities of the agency and of the legal guardian during the time of the child's eligibility for guardianship assistance, specifies the monthly amount of guardianship assistance and the manner in which the payment may be provided to the legal guardian, and the circumstances guardianship assistance may be terminated.
- (7) "Placement responsibility" is authority granted to the county DSS by the court to place a child in DSS custody in a licensed home or facility or any unlicensed home or facility approved by the court.
- (8) "County DSS" means a county department of social services.

Authority G.S. 143B-153.

10A NCAC 70P .0104 GUARDIANSHIP ASSISTANCE PROGRAM ELIGIBILITY

The following eligibility criteria shall exist:

- (1) Determination by the Court that reunification and adoption are not appropriate permanency options for the child;
- (2) The child shall have been placed in the licensed home for a minimum of 6 months;
- (3) The child is the placement responsibility of a North Carolina county department of social services at the time of entry into the Guardianship Assistance Program;
- (4) The child is at least age 14 years but not older than age 18 years and demonstrates a strong attachment to the prospective guardian and has been consulted regarding the guardianship arrangement;
- (5) The prospective legal guardian has a strong commitment to caring permanently for the child and; The prospective legal guardian shall have entered into a guardianship assistance agreement with the county department of social services who holds custody of the child prior to the order granting legal guardianship; and
- (6) If the child was placed in a legal guardianship arrangement at the age of 16 years or 17 years, they remain eligible to receive Guardianship Assistance until 21 years of age if, upon turning 18 years of age, they meet any of the following conditions:
 - (a) Completing secondary education or a program leading to an equivalent credential;
 - (b) Enrolled in an institution which provides post-secondary or vocational education;
 - (c) Participating in a program or activity designed to promote, or remove barriers to employment;

- (d) Employed for at least 80 hours per month; or
- (e) Is incapable of doing any of the previously described educational or employment activities due to a medical condition.

Authority G.S. 143B-153.

10A NCAC 70P .0105 GUARDIANSHIP ASSISTANCE PROGRAM REQUIREMENTS

- (a) Guardianship Assistance benefits for a child shall become effective the first month following the month in which legal guardianship is approved by the court.
- (b) Claims for monthly GAP assistance shall be reimbursed in accordance with the Department of Health and Human Services county department of social services reimbursement process.

Authority G.S. 143B-153.

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Insurance intends to amend the rules cited as 11 NCAC 05A .0101, .0105, .0201, .0202, .0301 - .0303, .0501, .0503 - .0508, .0510 - .0512, .0601 - .0604, .0701 - .0705.

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

Proposed Effective Date: December 1, 2016

Public Hearing:

Date: September 12, 2016

Time: 10:00 A.M.

Location: Jim Long Hearing Room (Room 3099) on the third floor of the Dobbs Building located at 430 N. Salisbury Street, Raleigh, NC 27603

Reason for Proposed Action: *The rules are being amended to reflect changes made in the legislation and for clarification.*

Comments may be submitted to: Loretta Peace-Bunch, NC Department of Insurance, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone (919) 807-6004

Comment period ends: October 14, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

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

CHAPTER 05 – OFFICE OF STATE FIRE MARSHAL

SUBCHAPTER 05A - FIRE AND RESCUE SECTION

SECTION .0100 - GENERAL PROVISIONS

11 NCAC 05A .0101 DEFINITIONS

As used in this Subchapter:

- (1) "ISO" means the Insurance Services Office, Inc., or any successor organization.
- (2) "North Carolina Fire Suppression Rating Schedule" or "NCFSRS" means the ISO Fire Suppression Rating Schedule. The NCFSRS is incorporated into this Subchapter by reference, including subsequent amendments or editions. The NCFSRS may be obtained from the ISO at <http://www.iso.com/> for ~~fifty five dollars (\$55.00)~~ a fee, subject to change, of one hundred dollars (\$100.00). Fire chiefs and local government chief administrative officials may request a single copy of the FSRS, ~~or on-line access to the FSRS and commentaries, free of charge.~~ charge at www.iso.com.
- (3) "NFIRS" means the National Fire Incident Reporting System administered by the United States Fire Administration (USFA) and coordinated and collected in North Carolina by the Office of the State Fire Marshal. ~~The NFIRS can be accessed electronically and free software and copies of the program may be obtained by contacting the NC Office of the State Fire Marshal at:~~
Office of the State Fire Marshal
P.O. Box 1202 Mail Service Center
Raleigh, NC 27699-1202
~~or by contacting the USFA at~~ <http://www.usfa.dhs.gov>. State fire incident reporting instructions are provided by OSFM at [http://www.ncdoi.com/OSFM/Fore_Rescue_C](http://www.ncdoi.com/OSFM/Fore_Rescue_Commission/Default.aspx?field1=Incident_Reporting_-_Information&user=Incident_Reporting_for_no)
[ommission/Default.aspx?field1=Incident_Rep](http://www.ncdoi.com/OSFM/Fore_Rescue_Commission/Default.aspx?field1=Incident_Reporting_-_Information&user=Incident_Reporting_for_no)
[orting -](http://www.ncdoi.com/OSFM/Fore_Rescue_Commission/Default.aspx?field1=Incident_Reporting_-_Information&user=Incident_Reporting_for_no)
[Information&user=Incident_Reporting_for no](http://www.ncdoi.com/OSFM/Fore_Rescue_Commission/Default.aspx?field1=Incident_Reporting_-_Information&user=Incident_Reporting_for_no)

charge and satisfy NFIRS reporting requirements.

- (4) "Office of State Fire Marshal" or "OSFM" means the Office of State Fire Marshal of the North Carolina Department of Insurance

Authority G.S. 58-2-40; 58-79-45.

11 NCAC 05A .0105 TRAINING OPERATIONS

~~The Field Training Staff of the Fire and Rescue Division of the Department of Insurance shall serve as staff to the State Fire Commission.~~ OSFM staff duties shall include but not be limited to the following:

- (1) Research and development of new techniques, tools, and procedures in order to develop specialized training for firefighters as well as instructor training.
- (2) Provide input to the State Fire and Rescue Commission regarding changes in standards based on research.
- (3) Provide technical support to the ~~State Fire Commission.~~
- (4) Evaluate and audit delivery programs ~~when authorized by the State Fire Commission~~ State Fire and Rescue Commission requests and approves such evaluations.
- (5) Plan, develop and deliver training programs for fire departments, rescue squads, colleges, universities and other governmental agencies.

Authority G.S. 58-2-40; 58-78-10.

SECTION .0200 - STATE VOLUNTEER FIRE DEPARTMENT

11 NCAC 05A .0201 ADMINISTRATION OF STATE VOLUNTEER FIRE DEPARTMENT

~~The Fire and Rescue Services Division OSFM~~ shall be prepared to administer the State Volunteer Fire Department in case of emergencies caused by fire, floods, ~~war,~~ tornadoes or otherwise in the manner and subject to the conditions provided in G.S. 58, Article 80. As used in this Article and elsewhere in the General Statutes, "State Fire Marshal" means the Commissioner of Insurance of the State of North Carolina.

Authority G.S. 58-2-40; 58-80-1 thru 58-80-60.

11 NCAC 05A .0202 COMPREHENSIVE EMERGENCY MANAGEMENT PLAN

The Commissioner of Insurance acts as an advisor to the Governor for Structural Fire Suppressions and Rescue Services under the North Carolina ~~Comprehensive Emergency Management Operations Plan~~ and assists other state and local agencies through the ~~Fire and Rescue Services Division OSFM~~ in the following areas:

- (1) Planning in the fire and rescue services;
- (2) Training in the various fields of emergency structural fire suppression, rescue services,

search and rescue, fire prevention and education;

- (3) ~~The Fire and Rescue Services Division serves~~ Serving as the lead agency for Structural Fire Suppressions and Rescue Services during these declared emergencies;
- (4) ~~The Fire and Rescue Services Division serves~~ Serving as a support agency for search and rescue functions during these declared emergencies.

Authority G.S. 58-2-40; 58-80-1 thru 58-80-60.

SECTION .0300 - FIREFIGHTERS' RELIEF FUND

11 NCAC 05A .0301 ELIGIBLE MEMBERS

The certification provided by the North Carolina State Firemen's Association to the Department of Insurance, Office of State Fire Marshal under G.S. 58-84-40(b) shall contain the balance in each local fund, and a verification that a financial statement and status of fire department membership was ~~submitted.~~ submitted, in addition to other information required by statute or process.

Authority G.S. 58-2-40(1); 58-84-40.

11 NCAC 05A .0302 CERTIFICATION OF ELIGIBILITY

The certification form required by G.S. 58-84-46 shall be entitled "Local Relief Fund Board of Trustees Report" (previously entitled "Report of Fire Conditions-Conditions") and shall, in addition to the information required by G.S. 58-84-46, include the following:

- (1) The name of the city, fire district, or sanitary district;
- (2) ~~Names~~ Names, home addresses, email addresses, and phone numbers of the "board of trustees of the local Firefighters' Relief Fund"; ~~and~~
- (3) Identity of the treasurer and board chair of the local Firefighters' Relief ~~Fund.~~ Fund; and
- (4) The date each person was (re)elected or (re)appointed to the board.

Authority G.S. 58-2-40(1); 58-84-46.

11 NCAC 05A .0303 ADMINISTRATION OF FIREFIGHTERS' RELIEF FUND

(a) ~~The Fire and Rescue Services Division OSFM~~ shall compile and maintain ~~accurate records utilizing computer or paper records,~~ including the following information:

- (1) Certifications of the ~~"Report of Fire Conditions"~~ "Local Relief Fund Board of Trustees Report" filed by the local ~~clerks~~ clerks, or finance officers; officers, or fire chiefs if delegated by the local clerks or finance officers;
- (2) Certifications of the member fire departments, the fund balance of each fund, and the bond amount covering each fund, filed by the North Carolina State Firemen's Association each year;

- (3) Amount of Firefighters' Relief Fund tax assigned by the North Carolina Department of Revenue; and
 - (4) Amount of property tax values for each rated fire district as filed by each County.
- (b) If a fire department dissolves, the following procedures apply:
- (1) If a neighboring fire department elects to expand its boundaries to include the area served by the dissolved fire department, the Firefighters' Relief Fund account shall be transferred to the expanding fire department.
 - (2) If no neighboring fire department elects to include the dissolved fire department's territory into its own, the dissolved fire department shall not be certified and shall forfeit its right to future annual payments from the funds mentioned in Article 84 of Chapter 58.
- (c) If a rated fire department that is serving two or more rated districts divides into separate fire departments, the original rated fire department shall retain the relief fund for each rated district. Any new fire department resulting from the division shall be entitled to receive relief fund money when it has been rated.
- (d) Fire department checks shall be disbursed by the ~~Department of Insurance to the finance officer of the local government entity.~~ Department of Insurance Controllers office to the fire departments in that county through Electronic Funds Transfer unless a fire department's account cannot accept electronic funds transfers, in which case the Commissioner shall distribute the department's allocation by paper check.

Authority G.S. 58-2-40(1); 58-84-25; 58-84-40; 58-84-50; 58-85-1; 58-86-25.

SECTION .0500 - INITIAL CERTIFICATION AND RESPONSE RATINGS FOR FIRE DEPARTMENTS

11 NCAC 05A .0501 PURPOSE

The purpose of this Section is to set forth the ~~minimum~~ requirements that a fire department ~~must~~ shall meet in order to qualify for eligibility for death benefits under Article 12A of Chapter 143 of the North Carolina General Statutes, and the North Carolina Firemen's Pension Fund under G.S. 58-86-25; for initial recognition in insurance premiums for a responding fire department; and for response rating to designate insurance premiums. Upon meeting the initial requirements for certification, a fire district shall be given a rating of "9S". A fire district may get a rating from "1 through 8" upon improving its response capabilities with "1" being the best rating. For ratings of 1 through 8, the fire department shall be evaluated using the current NCFRS. If at any time a department is determined by OSFM to be unable to meet the requirements set forth in these standards for a given period of time, they may be designated a "Class 10" (non-certified).

Authority G.S. 58-2-40; 58-86-25.

11 NCAC 05A .0503 ESTABLISHMENT OF FIRE DEPARTMENT

To become a certified fire department, a fire department shall apply and meet the following criteria:

- (1) The fire department shall be incorporated under Chapter 55A of the General Statutes or be operated by a city, county, or sanitary district as a division of that governmental unit.
- (2) If the fire department is incorporated, it shall operate under a contract with either a city, county, or sanitary district or any combination thereof.
- (3) Boundaries defining the area of responsibility shall be established by a County Board of Commissioners for areas outside municipalities pursuant to G.S. 153A-233.
- (4) The fire department shall provide ~~the~~ OSFM with a hand drawn map and with a written description or a GIS computer generated map of its initial or revised fire insurance district. district with the documentation of the approval by the County Commissioners.

Authority G.S. 58-2-40; 58-86-25.

11 NCAC 05A .0504 PRIMARY PERSONNEL

Upon initial or re-inspection for certification as a Class "9S" fire department, the fire department shall have ~~a minimum of 20 primary personnel.~~ with at least two designated as traffic control and at least 18 designated as firefighters. No member may be counted as a primary member of two, on call, volunteer departments. At the time of re-inspection, a fire department shall maintain 20 primary personnel on their certified state roster. ~~or show, through documentation, that an average of 12 personnel have responded on each of the last 20 structure fires.~~ At least one engine with four personnel must respond to each reported structure fire which includes fire alarm. alarm activations where fire or damage has occurred. A roster of personnel containing names and attendance of business meetings and training meetings shall be kept. For the purpose of this Section "primary personnel" means a member that is associated with the fire department for the purpose of satisfying certification inspection requirements.

Authority G.S. 58-2-40; 58-86-25.

11 NCAC 05A .0505 TRAINING REQUIREMENTS

(a) All members of fire departments shall comply with the ~~drills and meetings~~ training requirements of G.S. 58-86-25.

- (1) Fire departments shall provide at least four hours of training per month, with each firefighter obtaining a minimum of 36 hours of training per year. A signed or verified roster of personnel containing the names and hours of training attendance shall be kept for each training session.

(b) The chief officer of each fire department shall:

- (1) within one year of appointment, complete a class on basic management of fire department operations ~~and records~~ approved by the North

Carolina Fire and Rescue Commission for chief officer based upon National Fire Protection Association (NFPA) standards for chief officer. NFPA Standard 1021 is incorporated into this Subchapter by reference, including but not limited to subsequent amendments or editions. NFPA Standard 1021 is available from the National Fire Protection Association at <http://www.nfpa.org/> for a fee subject to change, of ~~thirty seven dollars (\$37.00); forty-four dollars and fifty cents (\$44.50);~~

- (2) complete the course as described in Subparagraph (1) of this Paragraph, which shall be titled "Chief 101" ~~a minimum of every five years.~~

Authority G.S. 58-2-40; 58-78-5; 58-86-25.

11 NCAC 05A .0506 ALARM AND COMMUNICATIONS

Communications facilities shall be provided for the receipt of ~~reported~~ reporting emergencies, dispatching and documentation of responding fire apparatus, and notification of firefighters. The system shall provide ~~one telephone listing facilities for dispatching assistance to fire emergencies that reaches a location that receives calls and responds 24 hours a day seven days a week.~~ The communications facility location shall have the capability of activating sirens or pagers all types of systems utilized in order to dispatch the fire apparatus and notify firefighters of an emergency. department. Communications facilities shall have the means to alert all firefighters in the event of an emergency call. This may be done by pagers, portable radios with alerting capabilities, siren activation from the communications center, or station alerting devices with on duty (paid) personnel. Text paging or phone paging shall not be a creditable means of notification.

Authority G.S. 58-2-40; 58-86-25.

11 NCAC 05A .0507 RECORDS AND DOCUMENTS

(a) In addition to personnel records, the city or county manager or fire department chief or county fire marshal shall keep records on dates, times and locations of emergencies on the current version of the National Fire Incident Reporting System (NFIRS) as prescribed in ~~Rule .0101 of this Subchapter;~~ 11 NCAC 05A .0101(3), inventory of equipment, and maintenance of apparatus; and shall submit the following documents to the Department of Insurance: certified state roster, charter, contract(s) with city(ies) and/or county(ies), service test report, weight tickets, current map and written description of the map, an inventory of protective clothing, and verification of workers compensation coverage, from the county approving the fire district boundaries.

(b) Whenever a fire department ~~responds to a fire~~ is dispatched to a call, ~~a~~ the chief of that department shall complete or cause to be completed ~~a fire an incident report on the current version of the National Fire Incident Reporting System (NFIRS) in accordance with the State Fire Incident reporting instructions~~ 11 NCAC 05A .0101(3) and otherwise comply with G.S. 58-79-45. OSFM provides State fire incident reporting instructions, that satisfy the

NFIRS reporting requirements, for no charge at the following link: http://www.ncdoi.com/OSFM/Fire_Rescue_Commission/Default.aspx?field1=Incident_Reporting_-_Information&user=Incident_Reporting All reports shall be submitted within 120 days of incident occurrence. Failure to report shall be an inspection deficiency.

Authority G.S. 58-2-40; 58-79-45; 58-86-25.

11 NCAC 05A .0508 APPARATUS

To qualify for ~~initial~~ inspection certification and receive or maintain a minimum rating of Class "9S", the fire department shall have the following apparatus, ~~and equipment+equipment,~~ and documentation:

- (1) ~~Pumper-Engine.~~
- (a) The fire department shall have an approved ~~pumper engine~~ (automotive fire apparatus equipped with a fire pump and tank). To be approved, the fire department ~~pumper engine must~~ shall be certified by Underwriters Laboratories, Inc., and constructed in accordance with the National Fire Protection Association Standard 1901 - Standard for Automotive Fire Apparatus. The apparatus shall not be loaded beyond limits certified by the "Gross Vehicle Weight" label attached to the vehicle; nor shall the vehicle be modified in a manner that would invalidate this certification. NFPA Standard 1901 is incorporated into this Subchapter by reference, but not including subsequent amendments or editions. NFPA Standard 1901 is available from the National Fire Protection Association at <http://www.nfpa.org/> for a fee, subject to change, of ~~fifty dollars (\$50.00); forty-four dollars and fifty cents (\$44.50).~~
- (b) The pump shall have a rated capacity of not less than 750 gallons per minute at 150 pounds per square inch net pump pressure.
- (c) The ~~pumper engine~~ shall be equipped with at least a ~~500~~ 300 gallon water tank.
- (d) A service test ~~must~~ shall have been performed on the "first responding" ~~pumper engine~~ during the 12-month period before the inspection. If the ~~pumper engine~~ has had been purchased as new within the 12-month period before the "9S" inspection, the U.L. Certificate meets this requirement.
- (e) The fire departments shall maintain documentation of all equipment and

- apparatus including engines, tankers, service trucks and aerial apparatus through an inventory list. Monthly inventory checks shall be recorded for 12 consecutive months.
- (f) The fire departments shall maintain documentation of maintenance checklists for all apparatus including engines, tankers, service trucks and aerial apparatus and records verifying that all apparatus is checked monthly for 12 consecutive months.
- (2) Tanker-Tanker (or mobile water supply capacity).
- (a) The fire department shall have a motorized tank truck of at least 1000 gallons water capacity or enough to equal at least ~~1500~~ 1300 gallons of water total for ~~pumper-engine and tanker-tanker.~~
- (b) The tanker shall be equipped with the necessary hose for filling or refilling the tank with ~~and hose hoses or equipment~~ for transferring water to the ~~pumper-engine or other devices.~~
- (c) The tanker, when fully loaded, shall not exceed the Gross Vehicle Weight limits as certified on the label attached to the vehicle; nor shall the vehicle be modified in a manner that would invalidate this certification. All tankers shall be baffled in accordance with the National Fire Protection Association Standard 1901 – Standard for Automotive Fire Apparatus which is available from the National Fire Protection Association.
- (3) The following equipment shall be carried on responding fire department pumpers:
- (a) The ~~pumper-engine~~ shall be equipped with 2-~~450~~ 200 foot 1-1/2 inch or 1-3/4 inch pre-connected hose lines with fog nozzles attached;
- (b) One booster reel or a ~~third three-200~~ 200 foot pre-connected hose lines; line of 1-1/2 inch or larger with a nozzle attached;
- (c) Suction hose - size necessary to flow the capacity of pumper on the engine - 2 - 10 foot sections; sections (If the insurance district is 85% or more covered by useable hydrants the engine may have a 15 foot section of soft suction hose size necessary to flow the capacity of the pump on the engine);
- (d) Four OSHA approved self-contained breathing apparatus in proper working condition;
- (e) OSHA approved protective clothing for all firefighters including helmets, hoods, coats, pants, boots, and gloves or issued to all firefighters; and reflective clothing and helmet for traffic control personnel;
- (f) One 12 foot or 14 foot roof ladder;
- (g) One ~~24 foot~~ 24 foot, 28 foot, or 35 foot extension ladder;
- (h) One axe;
- (i) One claw tool (~~Halligan~~ One Halligan Tool may replace claw tool ~~and or crowbar~~; crowbar but not both);
- (j) One crowbar (~~Halligan~~ One Halligan Tool may replace crowbar ~~and or claw tool~~; claw tool but not both);
- (k) One pike pole, minimum 8 foot;
- (l) Two mounted rechargeable type portable hand lights suitable for hazardous conditions; (~~"4V" wet or "6V" dry~~);
- (m) 100 feet of utility rope, minimum 1/2 inch; 1/2 inch diameter;
- ~~(n) Two shovels;~~
- ~~(o)(n) Two 20 pound. Class B-C portable extinguishers;~~
- ~~(p)(o) One First Aid kit; and~~
- ~~(q)(p) One bolt cutter, with 14 inches or longer- longer handles.~~

Authority G.S. 58-2-40; 58-36-10(3); 58-86-25.

11 NCAC 05A .0510 INSPECTION

Any persons or fire departments needing information on obtaining certification under this Section may contact the OSFM. See 11 NCAC 05A. 0103 for contact information.

Authority G.S. 58-2-40; 58-36-10(3); 58-86-25.

11 NCAC 05A .0511 SIX MILE INSURANCE DISTRICT

To extend its insurance district to six miles, each fire department shall apply and meet the following criteria:

- (1) The fire department shall provide ~~the~~ OSFM with a hand drawn map and written description or a GIS computer generated map of its fire district.
- (2) The map and written ~~description~~ description, or GIS maps shall be presented to the County Commissioners for their approval, as set forth in G.S. 153A-233.
- (3) The department applying to extend its insurance district to six miles shall enter into a written automatic aid contract with the adjoining districts to the area being extended specifying that "an apparatus capable of transporting" a minimum of 1000 gallons of water shall be dispatched simultaneously with the department whose district the incident is occurring within.

- (4) The County shall establish automatic aid response protocols. These protocols shall be maintained at the county communication center and shall be used on all alarms involving reported structure fires.

Authority G.S. 58-2-40; 58-86-25; 58-40-25(4).

11 NCAC 05A .0512 STANDARDS AND POLICIES

(a) The NCFRS shall be used by ~~the~~ OSFM when ~~the~~ OSFM inspects fire departments for the purpose of determining Fire Insurance District Ratings Classifications. Each fire department shall assure the response of at least four members and one engine to all fires and fire alarms where fire or damage occurred in structures. The chief may be one of the four responding members. Response of a fire department, as primary first alarm department, to a fire or fire alarm in a structure within its established fire insurance district with less than the minimum required engine or manpower shall be considered by ~~the~~ OSFM to be a ~~Non-Response~~ an inadequate response. Fire alarms where no fire or damage has occurred as determined by a fire official on-scene will not be considered by the inspector. Any department determined by ~~the~~ OSFM to have two or more "Non-Response" records inadequate responses shall be placed by ~~the~~ OSFM on probation by OSFM for a period of 12 consecutive months. A fire department on probation shall submit quarterly records to the OSFM inspector copies of response records for all firefires and fire alarm-alarms reported in structure-structures for the next 12 consecutive calendar months that show-showing there have been no additional "~~non-responses~~" "inadequate responses" within that 12-month-the period. If the fire department fails to submit the quarterly report, the insurance district for the fire department shall be designated a-as "Class 10" (non-certified) by ~~the~~ OSFM. In addition, any department found to have any deficiencies during an Inspection shall be placed on probation until the deficiency has been corrected, or up to 12 months at which time the department shall be designated a "Class 10" insurance district by OSFM.

(b) After evaluation of data collected during an NCFRS inspection, if the results of the inspection indicate that a fire department's ratings classification must be reduced, OSFM shall notify the city or county manager or fire department chief or county fire marshal in writing of the reduction in ratings classification. ~~The~~ For the purpose of survey grading inspections notification shall include:

- (1) ~~Hydrant~~ hydrant flow tests and hauled water evaluations.evaluations;
- (2) ~~Ratings~~ ratings classification details.details;
- (3) ~~Recommendations~~ for improvement community report of conditions found.

(c) If the city or county manager or fire department chief or county fire marshal fails to acknowledge receipt ~~with~~ within 30 days after receipt of the notification, ~~the~~ OSFM shall reduce the ratings classification of the fire department.

(d) If the city or county manager or fire department chief or county fire marshal acknowledges receipt of the notification to ~~the~~ OSFM within 30 days after receipt of the notification and advises ~~the~~ OSFM that the fire department wants to retain its ratings classification, the city or county manager or fire department chief

or county fire marshal shall consult with the individual Inspector who conducted the NCFRS inspection and develop a plan of action to correct the deficiencies ~~that~~ which caused the reduction in ratings classification.

(e) Within 90 days after the consultation, the city or county manager or fire department chief or county fire marshal shall submit the plan to ~~the~~ OSFM which shall determine whether the plan is satisfactory to cover the deficiencies. ~~The~~ OSFM shall notify the city manager,or county manager, ~~or~~ fire department chief, ~~or~~ and county fire marshal in writing when ~~the~~ OSFM approves the plan.

(f) The fire department shall have one year after the receipt of the approval to complete the plan of action to correct the deficiencies ~~that~~ which caused the reduction in ratings classification.

(g) The sharing or borrowing of equipment between or among fire departments or between or among stations within a fire department, the falsifying of documents, or engaging in any other act of misrepresentation, for the purpose of falsely satisfying the apparatus/equipment grading score of a NCFRS survey grading or NC 9S inspection is prohibited-prohibited, and shall result in the department being placed on probation.

Authority G.S. 58-2-40; 58-36-10(3); 58-86-25.

SECTION .0600 - VOLUNTEER FIRE DEPARTMENT FUND

11 NCAC 05A .0601 DEFINITIONS

As used in this section:

- (1) "Department" means a certified volunteer fire department situatedbased in the State of North Carolina.
- (2) "Division" means ~~the Fire and Rescue Services Division of the North Carolina Department of Insurance.~~ "Office of State Fire Marshal" or "OSFM" means the Office of State Fire Marshal of the North Carolina Department of Insurance
- (3) "Fund" means the Volunteer Fire Department Fund created in G.S. 58-87-1.

Authority G.S. 58-2-40(1); 58-87-1.

11 NCAC 05A .0602 FIRE DISTRICT RATING CERTIFICATION

If a department is ~~actively~~ working with ~~the Division~~ OSFM to obtain its fire district rating certification as of March 1, it may apply for a grant. In order to receive a grant, the department ~~must~~ shall obtain its fire district rating certification within 60 days after ~~the Division~~ OSFM has determined that the department has otherwise satisfied the requirements of G.S. 58-87-1 and the rules in this Section.

Authority G.S. 58-2-40(1); 58-36-10(3); 58-87-1.

11 NCAC 05A .0603 REQUIREMENTS

(a) The Volunteer Fire Department Fund online application forms for requesting grants for equipment purchases and capital expenditures, shall be made available by ~~the Division~~ OSFM to

all departments registered with the ~~Division OSFM~~ and approved by the ~~Division OSFM~~ by the first business day of January of each year. This application will be on a form as prescribed by the Commissioner and will contain information to determine grant eligibility and score.

(b) ~~Online Applications~~ applications shall be submitted to the ~~Division OSFM~~ and be ~~postmarked or~~ electronic date stamped no later than March 1. Applications bearing ~~postmarks or~~ electronic date stamps later than March 1 are disqualified. The names of grant recipients shall be announced on May 15. If May 15 falls on a weekend, the announcement shall be made on the following Monday.

(c) Any application received by the ~~Division OSFM~~ that is incorrect or incomplete shall be returned to the department with a request that the correct or complete information be sent to the ~~Division OSFM~~ within 10 business days after receipt by the department. The failure of the department to return the requested correct or complete information shall result in the forfeiture by the department of its eligibility for a grant during that grant cycle.

(d) Any department that is on the North Carolina Department of Insurance Noncompliance list or Office of State Budget and Management Suspension of Funding List for Non State Entities at <http://www.osbm.state.nc.us/> shall be ineligible to participate in the Volunteer Fire Department Fund grant program. If a department is awarded a grant and becomes ineligible to receive funding due to being noncompliant with the requirements in this section, the grant shall be forfeited 10 business days after notification of noncompliance by OSFM. A department that provides false application information shall be ineligible for the following two grant cycles and shall forfeit any grant award already awarded during the current cycle.

~~(d)~~(e) If the application includes a request for a motor vehicle, the vehicle specifications shall accompany the application, ~~and, if used, If a used vehicle is requested, then~~ the previous year's maintenance records shall accompany the application.

~~(e)~~(f) The following documents shall accompany a grant application:

- (1) A contract verification form showing an agreement between the department and a county for the department to provide fire protection to a district;
- (2) A current roster comprising a list of eligible firemen - "eligible firemen" as defined in G.S. 58-86-25;
- (3) A statement verifying the population that the department serves;
- (4) A financial statement of the department; and
- (5) A statement verifying that the department is financially able to match the grant.

~~(f)~~(g) Statements that there are no overdue taxes, conflict of interest statements as defined in G.S. 143C-6-23(b), payment agreements, and equipment invoices shall be received by the ~~Division OSFM~~ no later than September 30 following the announcement of grant recipients. Departments submitting incorrect invoices, such as sales orders, acknowledgements, and packing slips, on or before September 30 shall be contacted by the ~~Division OSFM~~ and given 10 business days to submit correct documents. The failure of any department to comply shall result in the department forfeiting its eligibility for a grant from the

Fund. Equipment or capital improvements that are ordered by a department before May 15 or equipment that is back-ordered by a vendor for a department or equipment not received by a department on or before September 30 shall not be funded by grants from the Fund.

(h) OSFM may extend the September 30 deadline for invoice submission for the following:

- (1) new fire apparatus;
- (2) self contained breathing apparatus;
- (3) firefighter turnout gear;
- (4) capital improvements; or
- (5) specialized equipment.

~~(h)~~(i) Equipment purchased with grants is subject to inspection by ~~Division OSFM~~ personnel.

Authority G.S. 58-2-40(1); 58-36-10(3); 58-87-1; 143C-6-23(b).

11 NCAC 05A .0604 OTHER GRANT CRITERIA

In addition to criteria in G.S. 58-87-1, in awarding grants the ~~Division OSFM~~ shall consider the following criteria in relation to each department:

- (1) number of paid personnel;
- ~~(1)~~(2) number and age of vehicles;
- ~~(2)~~(3) population served; county population density;
- ~~(3)~~(4) county per capita income;
- ~~(4)~~(5) source of department funding; funding, including the following funding sources for the last fiscal year:
 - (a) city or county funding;
 - (b) fire tax;
 - (c) sales tax;
 - (d) contracted services;
 - (e) revenue from EMS billing;
 - (f) fund raising
 - (g) donations; and
 - (h) revenue from non OSFM grants;
- ~~(5)~~(6) money on hand; cash balance as of the beginning of current fiscal year;
- ~~(6)~~(7) protective equipment requested;
- ~~(7)~~(8) miscellaneous equipment requested;
- ~~(8)~~(9) vehicles requested;
- ~~(9)~~(10) capital improvements requested; and
- ~~(10)~~(11) current fire insurance rating.

Authority G.S. 58-2-40(1); 58-87-1.

SECTION .0700 - VOLUNTEER RESCUE/EMS FUND

11 NCAC 05A .0701 DEFINITIONS

As used in this Section:

- (1) "Division" means the Fire and Rescue Services Division of the North Carolina Department of Insurance. "Office of State Fire Marshal" or "OSFM" means the Office of State Fire Marshal of the North Carolina Department of Insurance.
- (2) "Fund" means the Volunteer Rescue/EMS Fund created in G.S. 58-87-5.

- (3) "Unit" means a volunteer rescue or rescue/EMS unit that has been recognized by OSFM as a rescue unit, a rescue/EMS unit, or an EMS unit and is based/situated in the State of North Carolina.

Authority G.S.58-2-40(1); 58-87-5.

11 NCAC 05A .0702 ALS CERTIFICATION

If a unit is ~~actively~~ working with the Office of Emergency Medical Services (OEMS) to obtain its Advanced Life Support (ALS) certification as of October 1, that unit may apply for a grant. In order to receive a grant, the unit ~~must~~ shall obtain its ALS certification from OEMS within 60 days after ~~the Division~~ OSFM has determined that the unit has otherwise satisfied the requirements in G.S. 58-87-5 and this Section.

Authority G.S. 58-2-40(1); 58-87-5.

11 NCAC 05A .0703 REQUIREMENTS FOR UNITS REQUIRED TO MATCH GRANTS

(a) The Volunteer Rescue/EMS Fund online application forms for requesting grants for equipment purchases and capital expenditures, shall be made available by ~~the Division~~ OSFM to all departments registered ~~with Division~~ and approved by ~~the Division~~ OSFM by the first business day of August of each year. This application will be on a form as prescribed by the Commissioner and will contain information to determine grant eligibility and score.

(b) ~~Online Applications~~ applications shall be submitted to ~~the Division~~ OSFM and be ~~postmarked or~~ electronic date stamped no later than October 1. Applications bearing ~~postmarks or~~ electronic date stamps later than October 1 are disqualified. The names of the grant recipients shall be announced on December 15. If December 15 falls on a weekend, the announcement shall be made on the following Monday.

(c) Any application received by ~~the Division~~ OSFM that is incorrect or incomplete shall be returned to the unit with a request that the correct or complete information be sent to ~~the Division~~ OSFM within 10 business days after receipt by the unit. The failure by the unit to return the requested correct or complete information shall result in the forfeiture by the unit of its eligibility for a grant during that grant cycle.

(d) Any department that is currently on the North Carolina Department of Insurance Noncompliance list or Office of State Budget and Management Suspension of Funding List for Non State Entities at <http://www.osbm.state.nc.us/> shall be ineligible to participate in the Volunteer Rescue/EMS fund grant program. If a department is awarded a grant and becomes ineligible to receive funding due to being noncompliant with the requirements in this section, the grant shall be forfeited after 10 business days of notification of noncompliance from OSFM. A department that provides false application information shall be ineligible for the following two grant cycles and shall forfeit any grant award already awarded during the current cycle.

~~(d)(e)~~ (e) If the application includes a request for a motor vehicle, the vehicle specifications shall accompany the application, and, if used, If a used vehicle is requested, then the previous year's maintenance records shall accompany the application

~~(e)(f)~~ (f) The following documents shall accompany a grant application;

- (1) A Rescue Provider Statement showing that a county recognizes the unit as providing rescue or rescue/EMS services to a specified district. As used in this Subparagraph, "rescue provider statement" means a statement, signed by representatives of a unit and the county in which the rescue or rescue/EMS services are provided, that the unit provides rescue or rescue/EMS services within the county;
- (2) A current roster of unit members;
- (3) A statement verifying that the unit is financially able to match the amount of the grant; and
- (4) A financial statement of the unit.

~~(f)(g)~~ (g) Statements that there are no overdue taxes, conflict of interest statements as defined in G.S. 143C-6-23(b), payment agreements, and equipment invoices shall be received by ~~the Division~~ OSFM no later than April 30. Units submitting incorrect invoices, such as sales orders, acknowledgements, and packing slips, before April 30 shall be contacted by ~~the Division~~ OSFM and given 10 business days to submit the correct documents. The failure of any unit to comply shall result in the unit forfeiting its eligibility for a grant from the Fund. Equipment or capital improvements that are ordered by a unit before December 15 or equipment that is back-ordered by a vendor for a unit or equipment not received by a unit on or before April 30 shall not be funded by grants from the Fund.

(h) OSFM may extend the April 30 deadline for invoice submission for the following:

- (1) new vehicles;
- (2) self-contained breathing apparatus;
- (3) firefighter turnout gear;
- (4) capital improvements; and
- (5) specialized equipment.

~~(h)(i)~~ (i) Equipment purchased with grants is subject to inspection by ~~Division~~ OSFM personnel

Authority G.S. 58-2-40(1); 58-87-5; 143C-6-23(b).

11 NCAC 05A .0704 REQUIREMENTS FOR UNITS NOT REQUIRED TO MATCH GRANTS

Units that are not required to match funds ~~must~~ shall comply with 11 NCAC 05A .0703 except for Subparagraph ~~(f)(4)~~ (f)(3) of that Rule, which requires the filing of a statement verifying that a unit is financially able to match a grant.

Authority G.S. 58-2-40(1); 58-87-5.

11 NCAC 05A .0705 OTHER GRANT CRITERIA

In addition to criteria in G.S. 58-87-5 and other Rules in this Section, in awarding grants ~~the Division~~ OSFM shall consider the following criteria in relation to each unit:

- (1) number of paid personnel;
- (2) personnel salary paid by the unit or the city or county;
- (3) number and age of vehicles;
- (4) county per capita income;

- (5) ~~unit funding sources; sources including the following funding sources for the last fiscal year:~~
 - ~~(a) city or county funding;~~
 - ~~(b) fire tax;~~
 - ~~(c) sales tax;~~
 - ~~(d) contracted services;~~
 - ~~(e) revenue from EMS billing;~~
 - ~~(f) fund raising;~~
 - ~~(g) donations;~~
 - ~~(h) revenue from non OSFM grants;~~
- (6) ~~money on hand; cash balance as of the beginning of current fiscal year;~~
- (7) protective equipment requested;
- (8) miscellaneous equipment requested;
- (9) capital improvements requested; and
- (10) vehicles requested.

Authority G.S. 58-2-40(1); 58-87-5.

Comments may be submitted to: Ms. Joelle Burleson, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919) 707-8720, fax (919) 707-8720, email daq.publiccomments@ncdenr.gov (Please type "02D .0539 Comments" in subject line)

Comment period ends: October 14, 2016

Rule is automatically subject to legislative review: See S.L. 2015-263 Section 18.(d)

Fiscal impact (check all that apply).

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

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02D .0539.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearings-process>

Proposed Effective Date: Pending Legislative Review

Public Hearing:

Date: September 22, 2016

Time: 3:00 p.m.

Location: Training Room (#1210), DEQ Green Square Office, Building, 217 West Jones Street, Raleigh, NC 27603

Reason for Proposed Action: Section 18.(d) of the Session Law 2015-263 requires the Environmental Management Commission to adopt amendments to the Rule 15A NCAC 02D .0539, Odor Control of Feed Ingredient Manufacturing Plants, that are substantively identical to the Session Law provisions. The statutory amendments adjust the timeframe after which raw material has been unloaded at a facility or located at the facility from 24 to 36 hours. The amendments also add timeframes by which a vehicle or container holding raw material that has not been unloaded inside or parked inside an odor controlled area within the facility shall be unloaded for processing. For feathers with trace amounts of blood, the timeframe is no later than 48 hours after being weighed upon arrival at the facility. The amendments are to become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received and this would become effective following opportunity for legislative review.

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0500 - EMISSION CONTROL STANDARDS

15A NCAC 02D .0539 ODOR CONTROL OF FEED INGREDIENT MANUFACTURING PLANTS

(a) Applicability. The requirements of this Rule apply to any facility that produces feed-grade animal proteins or feed-grade animal fats and oils, but do not apply to any portions of such facilities that are engaged exclusively in the processing of food for human consumption.

(b) This Rule does not apply to those facilities solely engaged in the processing of marine byproducts. Those facilities, however, shall continue to control their odorous emissions in accordance with Rule .1806 of this Subchapter.

(c) A person shall not allow, cause, or permit the operation or use of any device, machine, equipment, or other contrivance to process material to be used in the production of feed-grade animal proteins or feed-grade animal fats and oils unless all gases, vapors, and gas-entrained effluents from these processes are passed through condensers to remove all steam and other condensable materials. All noncondensibles passing through the condensers shall then be incinerated at 1200 degrees Fahrenheit for a period of not less than 0.3 seconds, or treated in an equally effective manner.

(d) Measurement and Recording Requirements. Any person processing or incinerating gases, vapors, or gas-entrained matter as required by Paragraph (c) of this Rule shall install, operate, and maintain in good working order and calibration continuous measuring and recording devices for equipment operational parameters to document equipment operation in accordance with this Rule. In addition, the owner or operator of the facility shall:

- (1) demonstrate that the measuring and recording devices are capable of verifying the compliance status of the equipment on a continuous basis;

- (2) describe the parameters to be used to determine the compliance status and how these parameters:
 - (A) are to be measured;
 - (B) are to be used to determine compliance status; and
- (3) provide a quality assurance program approved by the Director for all monitoring devices and systems that includes:
 - (A) procedures and frequencies for calibration;
 - (B) standards traceability;
 - (C) operational checks,
 - (D) maintenance schedules and procedures;
 - (E) auditing schedules and procedures;
 - (F) data validation; and
 - (G) schedule for implementing the quality assurance program.

These data shall be available to the Director upon request.

(e) A person shall not allow, cause, or permit the installation or operation of expeller units unless they are properly hooded and all exhaust gases are collected or ducted to odor control equipment.

(f) A person subject to this Rule shall not cause or permit any raw material to be handled, transported, or stored, or to undertake the preparation of any raw material without taking reasonable precautions to prevent odors from being discharged. For the purpose of this Rule, such raw material is in "storage" after it has been unloaded at a facility or after it has been located at the facility for at least ~~24~~ 36 hours. Reasonable precautions shall include the following:

- (1) storage of all raw material before or in the process of preparation, in properly enclosed and vented equipment or areas, together with the use of effective devices and methods to prevent the discharge of odor bearing gases;
- (2) use of covered vehicles or containers of watertight construction for the handling and transporting of any raw material; and
- (3) use of hoods and fans to enclose and vent the storage, handling, preparation, and conveying of any odorous materials together with effective devices or methods, or both, to prevent emissions of odors or odor bearing gases.

(g) A vehicle or container holding raw material, which has not been unloaded inside or parked inside an odor controlled area within the facility, shall be unloaded for processing of the raw material prior to the expiration of the following time limits:

- (1) for feathers with only trace amounts of blood, such as those obtained from slaughtering houses that separate blood from offal and feathers, no later than 48 hours after being weighed upon arrival at the facility.
- (2) for used cooking oil in sealed tankers, no later than 96 hours after being weighed upon arrival at the facility.

~~(g)(h)~~ The owner or operator shall notify the regional supervisor of the appropriate regional office within two business days after

conditions are encountered that cause or may cause release of excessive and malodorous gases or vapors.

~~(h)(i)~~ Compliance Schedule. The owner or operator of a facility subject to this Rule that begins construction or is in operation before July 1, 1996, shall adhere to the following increments of progress and schedules:

- (1) documentation that the facility complies with this Rule or an air permit application containing plans to bring the facility into compliance and a schedule shall be submitted by January 1, 1997;
- (2) the compliance schedule shall contain the following increments of progress:
 - (A) a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;
 - (B) a date by which on-site construction or installation of the emission control and process equipment shall begin;
 - (C) a date by which on-site construction or installation of the emission control and process equipment shall be completed; and
 - (D) a date by which final compliance shall be achieved.
- (3) The final compliance date under Subparagraph (2)(D) of this Paragraph shall be no later than July 1, 2001.

The owner or operator shall certify to the Director within five days after the deadline, for each increment of progress, whether the required increment of progress has been met.

~~(i)(j)~~ The owner or operator of a facility that begins construction after June 30, 1996, shall be in compliance with this Rule before beginning operation.

Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.107(a)(5).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rule cited as 15A NCAC 07H .0306.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://deq.nc.gov/permits-regulations/rules-regulations/proposed-rules>

Proposed Effective Date: February 1, 2017

Public Hearing:

Date: September 14, 2016

Time: 1:15 p.m.

Location: New Hanover County Government Center, 230 Government Center Drive, Wilmington, NC 28403

Reason for Proposed Action: Passage of House Bill 819 and subsequent law (SL 2012-202), required the CRC to adopt permanent rules allowing for the replacement of single-family or

duplex residential structures that cannot meet the setback criteria of 15A NCAC 7H .0306(a)(5)(A)-(L). The CRC is seeking to expand the allowed structures covered by this rule to include commercial and multi-family residential structures. 7H .0306 defines specific development requirements in Ocean Hazard Areas. The proposed rule change amends language in section 7H .0306(a)(5)(L) pertaining to setbacks for oceanfront development, creating an exemption for the replacement of commercial and multi-family residential structures between 5,000 and 10,000 sq. ft. that cannot meet the setback criteria contained within 15A NCAC 7H .0306(a)(5)(A)-(K).

Comments may be submitted to: *Braxton Davis, 400 Commerce Avenue, Morehead City, NC 28557, phone (252) 808-2808, email Braxton.Davis@ncdenr.gov*

Comment period ends: *October 14, 2016*

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

Fiscal impact (check all that apply).

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

CHAPTER 07 - COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0300 - OCEAN HAZARD AREAS

15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission's rules shall be located according to whichever of the following is applicable:

- (1) The ocean hazard setback for development is measured in a landward direction from the

vegetation line, the static vegetation line, or the measurement line, whichever is applicable.

- (2) In areas with a development line, the ocean hazard setback line shall be set at a distance in accordance with Subparagraphs (a)(3) through (9) of this Rule. In no case shall new development be sited seaward of the development line.
- (3) In no case shall a development line be created or established below the mean high water line.
- (4) The setback distance shall be determined by both the size of development and the shoreline long term erosion rate as defined in Rule .0304 of this Section. "Development size" is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:
 - (A) The total square footage of heated or air-conditioned living space;
 - (B) The total square footage of parking elevated above ground level; and
 - (C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing. Decks, roof-covered porches, and walkways are not included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.
- (5) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback distance. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback is established based on the following criteria:
 - (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
 - (B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
 - (C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65

- times the shoreline erosion rate, whichever is greater;
- (D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;
- (E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;
- (F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;
- (G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;
- (H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
- (I) Infrastructure that is linear in nature such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water, and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
- (J) Parking lots greater than or equal to 5,000 square feet require a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
- (K) Notwithstanding any other setback requirement of this Subparagraph, a building or other structure greater than or equal to 5,000 square feet in a community with a static line exception in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either the static vegetation line, the vegetation line, or measurement line, whichever is farthest landward; and
- (L) Notwithstanding any other setback requirement of this Subparagraph, replacement of single-family or duplex residential structures with a total floor area greater than 5,000 square ~~feet~~ feet, and commercial and multi-family residential structures with a total floor area no greater than 10,000 square feet, shall be allowed provided that the structure meets the following criteria:
- (i) the structure was originally constructed prior to August 11, 2009;
 - (ii) the structure as replaced does not exceed the original footprint or square footage;
 - (iii) it is not possible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under Subparagraph (a)(5) of this Rule;
 - (iv) the structure as replaced meets the minimum setback required under Part (a)(5)(A) of this Rule; and
 - (v) the structure is rebuilt as far landward on the lot as feasible.
- (6) If a primary dune exists in the AEC on or landward of the lot where the development is proposed the development shall be landward of the crest of the primary dune, the ocean hazard setback, or development line, whichever is farthest from vegetation line, static vegetation line, or measurement line, whichever is applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback but shall not be located on or oceanward of a frontal dune or the development line. The words "existing lots" in this Rule shall mean a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.
- (7) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot where the development is proposed, the development shall be set landward of the frontal dune, ocean hazard setback, or development

- line, whichever is farthest from the vegetation line, static vegetation line, or measurement line, whichever is applicable.
- (8) If neither a primary nor frontal dune exists in the AEC on or landward of the lot where development is proposed, the structure shall be landward of the ocean hazard setback or development line, whichever is more restrictive.
 - (9) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.
 - (10) Established common law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.
 - (11) Beach fill as defined in Rule .0305(a)(7) of this Section, represents a temporary response to coastal erosion, and compatible beach fill as defined in 15A NCAC 07H .0312 can be expected to erode at least as fast as, if not faster than, the pre-project beach. Furthermore, there is no assurance of future funding or beach-compatible sediment for continued beach fill projects and project maintenance. A vegetation line that becomes established oceanward of the pre-project vegetation line in an area that has received beach fill may be more vulnerable to natural hazards along the oceanfront if the beach fill project is not maintained. A development setback measured from the vegetation line may provide less protection from ocean hazards. Therefore, development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the static vegetation line as defined in this Section, unless a development line has been approved by the Coastal Resources Commission in accordance with 15A NCAC 07J .1300.
 - (12) In order to allow for development landward of the large-scale beach fill project that cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Subparagraphs (a)(1) and (a)(5) of this Rule, a local government, group of local governments involved in a regional beach fill project, or qualified owner's association defined in G.S. 47F-1-103(3) that

has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association, and has jurisdiction over at least one mile of ocean shoreline, may petition the Coastal Resources Commission for a "static line exception" in accordance with 15A NCAC 07J .1200. The static line exception applies to development of property that lies both within the jurisdictional boundary of the petitioner and the boundaries of the large-scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to use the setback provisions defined in Part (a)(5)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner, as well as the boundaries of the large-scale beach fill project. The procedures for a static line exception request are defined in 15A NCAC 07J .1200. If the request is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static vegetation line under the following conditions:

- (A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(5) of this Rule;
- (B) Development setbacks are calculated from the shoreline erosion rate in place at the time of permit issuance;
- (C) No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure. When the configuration of a lot precludes the placement of a building or structure in line with the landward-most adjacent building or structure, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;
- (D) With the exception of swimming pools, the development defined in Rule .0309(a) of this Section is allowed oceanward of the static vegetation line; and
- (E) Development is not eligible for the exception defined in Rule .0309(b) of this Section.

(b) In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon that would adversely affect the integrity of the dune. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these other dunes is allowed only to the extent permitted by 15A NCAC 07H .0308(b).

(c) Development shall not cause irreversible damage to historic architectural or archaeological resources as documented by the local historic commission, the North Carolina Department of Natural and Cultural Resources, or the National Historical Registry.

(d) Development shall comply with minimum lot size and set back requirements established by local regulations.

(e) Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks existing as of June 1, 1979.

(f) Development shall comply with the general management objective for ocean hazard areas set forth in 15A NCAC 07H .0303.

(g) Development shall not interfere with legal access to, or use of, public resources, nor shall such development increase the risk of damage to public trust areas.

(h) Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense and may include actions that:

- (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
- (2) restore the affected environment; or
- (3) compensate for the adverse impacts by replacing or providing substitute resources.

(i) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written acknowledgment from the applicant to the Division of Coastal Management that the applicant is aware of the risks associated with development in this hazardous area and the limited suitability of this area for permanent structures. By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

(j) All relocation of structures requires permit approval. Structures relocated with public funds shall comply with the applicable setback line as well as other applicable AEC rules. Structures including septic tanks and other essential accessories relocated entirely with non-public funds shall be relocated the maximum feasible distance landward of the present location. Septic tanks may not be located oceanward of the primary structure. All relocation of structures shall meet all other applicable local and state rules.

(k) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). Any such structure shall be relocated or dismantled within two years of the time when it becomes imminently threatened, and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach fill takes place within two years of the time the structure becomes

imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This permit condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under 15A NCAC 07H .0308(a)(2).

Authority G.S. 113A-107; 113A-113(b)(6); 113A-124.

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10B .0106.

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

Proposed Effective Date: December 1, 2016

Public Hearing:

Date: September 8, 2016

Time: 7:00 p.m.

Location: Haywood Community College, 185 Freeland Drive, Clyde, NC 28721

Reason for Proposed Action: *The proposed amendment will require anyone who takes a depredated elk without permit to report that take to the commission within 24 hours and anyone who takes an elk with a permit to report it on a form provided with the permit. Reports of elk taken in depredation situations will aid staff in monitoring the size and composition of North Carolina's elk herd. The elk population in North Carolina is small, consequently it is important for the Commission to document each depredation-related mortality to ensure the Commission has the most complete data possible to use when making management decisions.*

Comments may be submitted to: Kate Pipkin, 1701 Mail Service Center, Raleigh, N.C. 27699-1701

Comment period ends: October 14, 2016

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

Fiscal impact (check all that apply).

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

wildlife resources present a danger to human safety. Cities as defined in G.S. 160A-1(2) seeking such a depredation permit shall apply to the Executive Director using a form supplied by the Commission requesting the following information:

- (A) the name and location of the city;
- (B) the acreage of the affected property;
- (C) a map of the affected property;
- (D) the signature of an authorized city representative;
- (E) the nature of the overabundance or the threat to public safety; and
- (F) a description of previous actions taken by the city to ameliorate the problem.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0100 - GENERAL REGULATIONS

15A NCAC 10B .0106 WILDLIFE TAKEN FOR DEPREDACTIONS

(a) Depredation permits allow the taking of undesirable or excess wildlife resources as described in Subparagraphs (1) and (2) of this Paragraph. Only employees of the Wildlife Resources Commission and Wildlife Damage Control Agents may issue depredation permits. Each permit shall be written on a form supplied by the Commission. No permit is needed for the owner or lessee of a property to take wildlife while committing depredations on the property; however, the manner of taking, disposition of dead wildlife, and reporting requirements as described in this Rule still apply.

No permit shall be issued to take any endangered or threatened species of wildlife listed under 15A NCAC 10I, except alligators, by reason of depredations to property. Only the Executive Director may issue depredation permits for Special Concern species listed in 15A NCAC 10I .0105 and for alligators. An individual may take an endangered or threatened species in immediate defense of his own life or of the lives of others without a permit. Any endangered or threatened species that may constitute a demonstrable but non-immediate threat to human safety shall be reported to a federal or state wildlife enforcement officer, who, upon verification of the report, may take or remove the specimen as provided by 15A NCAC 10I .0102. Depredation permits for other species shall be issued under the following conditions:

- (1) for taking wildlife that is or has been damaging or destroying property provided there is evidence of property damage. No permit may be issued for the taking of any migratory birds and other federally-protected animals unless a corresponding valid U.S. Fish and Wildlife Service depredation permit, if required, has been issued. The permit shall name the species allowed to be taken and may contain limitations as to age, sex, or any other condition within the species so named. The permit shall be issued to a landholder or an authorized representative of a unit of local government for depredations on public property; and the permit shall be used only by individuals named on the permit.
- (2) for taking of wildlife resources in circumstances of overabundance or when the

(b) Wildlife Damage Control Agents: Upon completion of a training course designed for the purpose of reviewing and updating information on wildlife laws and safe, humane wildlife handling techniques, and demonstration of a knowledge of wildlife laws and safe, humane wildlife handling techniques, an individual with no record of wildlife law violations may apply to the Wildlife Resources Commission (Commission) to become a Wildlife Damage Control Agent (WDCA). Those persons who demonstrate knowledge of wildlife laws and safe, humane wildlife handling techniques by a passing score of 85 percent or better on a written examination provided by a representative of the Wildlife Resources Commission, in cooperation with the training course provider, shall be approved. Those persons failing to obtain a passing score shall be given one chance for re-testing without re-taking the course. Those persons approved as agents by the Commission may then issue depredation permits for depredation as defined in Subparagraph (a)(1) of this Rule to landholders and be listed as a second party to provide the control service. WDCAs may not issue depredation permits for coyotes in the counties of Beaufort, Dare, Hyde, Tyrrell, Washington; big game animals; bats; or species listed as endangered, threatened, or special concern under 15A NCAC 10I .0103, .0104 and .0105 of this Chapter. WDCAs shall report to the Wildlife Resources Commission the number and disposition of animals taken, by county, annually. Records shall be available for inspection by a Wildlife Enforcement officer at any time during normal business hours. These business hours are the posted business hours of the Commission at ncwildlife.org. WDCA status shall be revoked at any time by the Executive Director when there is evidence of violations of wildlife laws, failure to report, or inhumane treatment of animals by the WDCA. A WDCA may not charge for the permit, but may charge for his or her investigations and control services. In order to maintain a knowledge of current laws, rules, and techniques, each WDCA shall renew his or her agent status every three years by showing proof of having attended at least one training course provided for the purpose of reviewing and updating information on wildlife laws, and safe, humane wildlife handling techniques within the previous 12 months or agency approved continuing education credits.

(c) Each depredation permit shall have an expiration date or time after which the depredation permit is no longer valid. The depredation permit authorizes possession of any wildlife resources taken under the permit and shall be retained as long as the wildlife resource is in the permittee's possession. All

individuals taking wildlife resources under the authority of a depredation permit are obligated to the conditions written on the permit and the requirements specified in this Rule.

(d) Manner of Taking:

- (1) Taking Without a Permit. Wildlife taken without a permit while committing depredations to property may, during the open season on the species, be taken by the landholder by any lawful method. During the closed season, such depredating wildlife may be taken without a permit only by the use of firearms or archery equipment as defined in 15A NCAC 10B .0116.
- (2) Taking With a Permit. Wildlife taken under a depredation permit may be taken only by the method or methods authorized by the permit. When trapping is authorized, in order to limit the taking to the intended purpose, the permit may specify a reasonable distance from the property sought to be protected, according to the particular circumstances, within which the traps shall be set. The Executive Director or agent may also state in a permit authorizing trapping whether or not bait may be used and the type of bait, if any, that is authorized. In addition to any trapping restrictions that may be contained in the permit, the method of trapping shall be in accordance with the requirements and restrictions imposed by G.S. 113-291.6 and other local laws passed by the General Assembly. No depredation permit shall authorize the use of poisons or pesticides in taking wildlife except in accordance with the provisions of the North Carolina Pesticide Law of 1971, G.S. 143, Article 52, the Structural Pest Control Act of 1955, G.S. 106, Article 4C, and G.S. 113, Article 22A. No depredation permit shall authorize the taking of wildlife by any method by any landholder upon the lands of another except when the individual is listed as a second party on a depredation permit.
- (3) Intentional Wounding. It is unlawful for any landholder, with or without a depredation permit, intentionally to wound a wild animal in a manner so as not to cause its immediate death as suddenly and humanely as the circumstances permit.

(e) Disposition of Wildlife Taken:

- (1) Generally. Except as provided by Subparagraphs (e)(2) through (5) of this Paragraph, any wildlife killed without a permit while committing depredations shall be buried or otherwise disposed of in a safe and sanitary manner on the property. Wildlife killed under a depredation permit may be transported to an alternate disposal site if desired. Anyone in possession of carcasses of animals being transported under a depredation permit shall have the depredation permit in his or her

possession. Except as provided by Subparagraphs (e)(2) through (5) of this Rule, all wildlife killed under a depredation permit shall be buried or otherwise disposed of as stated on the permit.

- (2) Deer and feral swine. The edible portions of feral swine and deer may be retained by the landholder for consumption but shall not be transported from the property where the depredations took place without a valid depredation permit. The landholder may give a second party the edible portions of the feral swine and deer taken under the depredation permit. The receiver of the edible portions shall hold a copy of the depredation permit. The nonedible portions of any deer carcass, including head, hide, feet, and antlers, shall be disposed of as specified in Subparagraph (1) of this Paragraph or turned over to a wildlife enforcement officer for disposition.
- (3) Fox. Any fox killed under a depredation permit may be disposed of as described in Subparagraph (1) of this Paragraph or, upon compliance with the fur tagging requirements of 15A NCAC 10B .0400, the carcass or pelt thereof may be sold to a licensed fur dealer.
- (4) Furbearing Animals. The carcass or pelt of any furbearing animal killed during the open season for taking such furbearing animal for control of depredations to property, whether with or without a permit, may be sold to a licensed fur dealer provided that the person offering such carcass or pelt for sale has a valid hunting or trapping license; provided further that, bobcats and otters may only be sold upon compliance with any required fur tagging requirement set forth in 15A NCAC 10B .0400.
- (5) Animals Taken Alive. Wild animals in the order Carnivora, armadillos, groundhogs, nutria, and beaver shall be humanely euthanized either at the site of capture or at a facility designed to humanely handle the euthanasia or released on the property where captured. Feral swine shall be euthanized while still in the trap in accordance with G.S. 113-291.12. For all other animals taken alive, the animal shall be euthanized or released on property with permission of the landowner. When the relocation site is public property, written permission shall be obtained from an appropriate local, state, or federal official before any animal may be released. Animals transported or held for euthanasia shall be euthanized within 12 hours of capture. Anyone in possession of live animals being transported for relocation or euthanasia under a depredation permit shall have the depredation permit in his or her possession.

(f) Reporting Requirements. Any landholder who kills an alligator; a coyote in the counties of Beaufort, Dare, Hyde, Tyrrell, or Washington; deer; Canada goose; bear; elk; or wild turkey under a valid depredation permit shall report such kill on the form provided with the permit and mail the form upon the expiration date to the Wildlife Resources Commission. Any landowner who kills a coyote in the counties of Beaufort, Dare, Hyde, Tyrrell, and Washington shall report such kill as directed on the form provided with the depredation permit. The killing and method of disposition of every alligator; alligator and bear, or coyote in the counties of Beaufort, Dare, Hyde, Tyrrell, and Washington; bear; or elk taken without a permit shall be reported to the Wildlife Resources Commission within 24 hours following the time of such killing.

Authority G.S. 113-134; 113-273; 113-274; 113-291.4; 113-291.6; 113-300.1; 113-300.2; 113-307; 113-331; 113-333; 113-334(a); 113-337.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Cosmetic Examiners intends to adopt the rule cited as 21 NCAC 14B .0608, amend the rules cited as 21 NCAC 14P .0105, .0107, .0111, .0113, 14T .0102, .0502, .0701, .0705, .0901, and repeal the rules cited as 21 NCAC 14P .0114, .0203, .0204, .0205.

Link to agency website pursuant to G.S. 150B-19.1(c): www.nccosmeticarts.com/uploads/board/july2016.pdf

Proposed Effective Date: December 1, 2016

Public Hearing:

Date: August 30, 2016

Time: 9:00 a.m.

Location: 1207 Front Street, Suite 110, Raleigh, NC 27609

Reason for Proposed Action: These rule changes address reducing regulatory restrictions and put in place a specific procedure for complaints.

Comments may be submitted to: Stefanie Kuzdrall, 1207 Front Street, Suite 110, Raleigh, NC 27609

Comment period ends: October 14, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the

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

Fiscal impact (check all that apply).

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

SUBCHAPTER 14B - RULE-MAKING PROCEDURES

SECTION .0600 - FEES

21 NCAC 14B .0608 COMPLAINTS

(a) Any person may file a complaint alleging violation of the Cosmetic Art Act and or 21 NCAC 14 with the Board for investigation and appropriate disciplinary action.

(b) The complaint shall be filed in writing with the Board. Complaints can be accepted by fax, mail, email, through the Board's online complaint form at www.nccosmeticarts.com or delivered in office. Upon receipt of a complaint, Board staff shall review the content for jurisdiction and when finding authority under G.S. 88B or 21 NCAC 14 assign the complaint for investigation. Complaints received alleging violation outside the jurisdictional authority of the Board shall be forwarded to the appropriate agency and the complainant notified, if possible.

(c) The Board shall notify the complainant and the respondent in any complaint filed with the Board of the disposition of the case and may publish or announce the disciplinary action in such manner and for such period as it deems appropriate.

Authority G.S. 88B-2; 88B-4.

SUBCHAPTER 14B - RULE-MAKING PROCEDURES

SECTION .0100 - PETITIONS FOR RULE-MAKING

21 NCAC 14P .0105 RENEWALS; EXPIRED LICENSES; LICENSES REQUIRED

(a) The presumptive civil penalty for operating a cosmetic art shop/school with an expired license is:

- 1st offense \$100.00
2nd offense \$250.00
3rd offense \$500.00

(b) The presumptive civil penalty for practicing cosmetology, manicuring, or esthetics-esthetics, or natural hair care with an expired license is:

- 1st offense \$50.00
2nd offense \$100.00

(3) 3rd offense \$250.00
 (c) The presumptive civil penalty for allowing an apprentice or someone with a temporary permit to practice cosmetic art without direct supervision is:

- (1) 1st offense \$100.00
- (2) 2nd offense \$300.00
- (3) 3rd offense \$500.00

(d) The presumptive civil penalty for practicing in a cosmetic art shop with an apprentice license or a temporary permit without direct supervision is:

- (1) 1st offense \$100.00
- (2) 2nd offense \$300.00
- (3) 3rd offense \$500.00

(e) The presumptive civil penalty for an improperly licensed cosmetic art shop (incorrect number of chairs licensed) is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(f) The presumptive civil penalty for teaching with an expired license is:

- (1) 1st offense \$100.00
- (2) 2nd offense \$250.00
- (3) 3rd offense \$500.00

Authority G.S. 88B-4; 88B-11; 88B-21; 88B-22; 88B-23(a); 88B-24; 88B-29.

21 NCAC 14P .0107 LICENSES TO BE POSTED

(a) The presumptive civil penalty for failure to display a current cosmetic art shop/school license is:

- (1) 1st offense \$50.00
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(b) The presumptive civil penalty for failure to display a current individual license is:

- (1) 1st offense \$50.00
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(c) The presumptive civil penalty for a school/shop for allowing ~~an employee to practice~~ or instruction of cosmetic art without displaying a current license is:

- (1) 1st offense \$50.00
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(d) The presumptive civil penalty for displaying a copied license is:

- (1) 1st offense \$50.00
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

Authority G.S. 88B-4; 88B-29.

21 NCAC 14P .0111 ESTABLISHMENT OF COSMETIC ART SCHOOLS

(a) The presumptive civil penalty for failure to provide minimum floor space or equipment and supplies as required by Subchapters 14G, ~~14I, 14J, 14K, 14O, 14S~~ and 14T is:

- (1) 1st offense \$200.00
- (2) 2nd offense \$350.00

(3) 3rd offense \$500.00
 (b) The presumptive civil penalty for failure to provide instruction at a ratio required is:

- (1) 1st offense warning (\$100.00)
- (2) 2nd offense \$250.00
- (3) 3rd offense \$500.00

(c) The presumptive civil penalty for failure to report a change in the teaching staff is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(d) The presumptive civil penalty for failure to submit an application for the approval of a school in the case of a change of location or ownership is:

- (1) 1st offense \$100.00
- (2) 2nd offense \$200.00
- (3) 3rd offense \$500.00

Authority G.S. 88B-4(2); 88B-16; 88B-29.

21 NCAC 14P .0113 OPERATIONS OF SCHOOLS OF COSMETIC ART

(a) The presumptive civil penalty for failure to record student's hours of daily attendance is:

- (1) 1st offense warning (\$100.00)
- (2) 2nd offense \$200.00
- (3) 3rd offense \$300.00

(b) The presumptive civil penalty for failure to report withdrawal or graduation of a student per 21 NCAC 14T .0502 is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(c) The presumptive civil penalty for failure to submit student enrollments per 21 NCAC 14T .0502 is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(d) The presumptive civil penalty for failure to display a copy of the sanitation rules is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(e) The presumptive civil penalty for failure to post consumer sign "Cosmetic Art School - Work Done Exclusively by Students" is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(f) The presumptive civil penalty for allowing a cosmetic art shop to operate within a cosmetic art school is:

- (1) 1st offense \$200.00
- (2) 2nd offense \$400.00
- (3) 3rd offense \$600.00

(g) The presumptive civil penalty for a cosmetic art school that is not separated from a cosmetic art shop or other business by a solid wall, floor to ceiling, with an separate entrance and a door that stays closed at all times is:

- (1) 1st offense \$200.00
- (2) 2nd offense \$400.00

(3) 3rd offense \$600.00
 (h) The presumptive civil penalty for failure to have any student wear a ~~clean washable~~ the required school uniform or identification is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(i) The presumptive civil penalty for failure to renew or file school bond or bond alternative is:

- (1) 1st offense \$200.00
- (2) 2nd offense \$400.00
- (3) 3rd offense \$600.00

(j) The presumptive civil penalty for failure to maintain student permanent file with required documents is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(k) The presumptive civil penalty for failure to maintain records of daily hours of attendance is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(l) The presumptive civil penalty for failure to maintain records of performances is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(m) The presumptive civil penalty for allowing an unlicensed individual to instruct cosmetic art is

- (1) 1st offense \$500.00
- (2) 2nd offense \$750.00
- (3) 3rd offense \$1000.00

Authority G.S. 88B-4; 88B-16; 88B-29.

21 NCAC 14P .0114 COSMETOLOGY CURRICULUM

~~(a) The presumptive civil penalty for a school allowing cosmetology or apprentice cosmetology students with less than 300 hours credit to work on the public. (Shampoo and scalp manipulations are exempt) is:~~

- ~~(1) 1st offense \$100.00~~
- ~~(2) 2nd offense \$200.00~~
- ~~(3) 3rd offense \$300.00~~

~~(b) The presumptive civil penalty for a school for manicurist students with less than 60 hours credit working on the public is:~~

- ~~(1) 1st offense \$100.00~~
- ~~(2) 2nd offense \$200.00~~
- ~~(3) 3rd offense \$300.00~~

~~(c) The presumptive civil penalty for a school for esthetician students with less than 75 hours credit working on the public is:~~

- ~~(1) 1st offense \$100.00~~
- ~~(2) 2nd offense \$200.00~~
- ~~(3) 3rd offense \$300.00~~

~~(d) The presumptive civil penalty for a school for natural hair care students with less than 60 hours credit working on the public is:~~

- ~~(1) 1st offense \$100.00~~
- ~~(2) 2nd offense \$200.00~~
- ~~(3) 3rd offense \$300.00~~

Authority G.S. 88B-4; 88B-29.

SUBCHAPTER 14T – COSMETIC ART SCHOOLS

SECTION .0100 - SCOPE AND SCHOOL APPLICATIONS

21 NCAC 14T .0102 NEW SCHOOL APPLICATIONS

(a) Persons desiring to operate a cosmetic art school in the state of North Carolina must make application for licensure and a letter of approval by submitting to the Board the Board's School Application. School applications must be submitted complete with:

- (1) Proof of bond as required by G.S. 88B-17;
- (2) Diagram with location of equipment placement and marking square footage of all areas including classrooms, dispensary, water supplies, stations, locker room/dressing room, office areas, reception areas and restroom facilities;
- (3) Course curriculum for each cosmetic art discipline and teacher trainee program to be taught in the school;
- (4) Plans for record keeping of student hours, minimum course requirement qualifications, and student performances;
- (5) Evaluation plans for the assignment of performance services, the qualifications for passing a performance requirement and techniques for grading of performances;
- (6) Handbook for students containing student policies on attendance, leave of absence policy, performance assignment, and a plan to assist students to achieve the required minimum hours and performances;
- (7) A raised seal identifying the school name and physical location to be used on all Board forms, reports, and other official papers;
- (8) Documentation of local municipality fire, occupancy, electrical and plumbing approval; and
- (9) School operation schedule including days, hours and observed holidays.

(b) The Board shall not approve an application for a license until all plans, furniture, supplies and equipment as prescribed by the rules in this Subchapter have been installed.

(c) The Board shall issue a license to any cosmetic art school that meets the requirements of this Subchapter.

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

SECTION .0200 - PHYSICAL REQUIREMENTS FOR COSMETIC ART SCHOOLS

21 NCAC 14T .0203 ESTHETICS SCHOOLS

~~Esthetics Schools must have the following physical departments: Advanced Department a minimum clinic floor of 900 square feet which shall accommodate a maximum of 20 enrolled advanced~~

~~students. Schools must provide an additional 7.5 square feet on the clinic floor for each enrolled advanced student over 20.~~

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

21 NCAC 14T .0204 MANICURING SCHOOLS

~~Manicuring Schools must have the following physical departments: Advanced Department a minimum clinic floor of 600 square feet which shall accommodate a maximum of 20 enrolled advanced students. Schools must provide an additional 5 square feet on the clinic floor for each enrolled advanced student over 20.~~

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

21 NCAC 14T .0205 NATURAL HAIR CARE SCHOOLS

~~Natural Hair Care Styling Schools shall have a Clinic Department with a minimum clinic floor of 600 square feet for a maximum of 16 enrolled students. Schools shall provide an additional 7.5 square feet of clinic floor for each enrolled student over 16.~~

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

SECTION .0500 – RECORD KEEPING

21 NCAC 14T .0502 PERMANENT RECORDS, FORMS AND DOCUMENTATION

(a) Cosmetic art schools must maintain a secure and locked permanent file of matriculations for all enrolled students and students who have withdrawn or graduated within the last six months together in one room within the approved square footage of the cosmetic art school. Withdrawal and graduation forms reviewed by the Board or an agent of the Board may be removed from this room. The permanent file shall include a copy of:

- (1) Board Enrollment Form;
- (2) Documentation of student receipt of school policies, school and student contract and the Board felony policy;
- (3) All applicable Board Withdrawal Forms;
- (4) Social security card for any individual who has a social security number or tax ID card or student visa information;
- (5) Government issued ID and proof of date of birth;
- (6) Grades for all examinations and documentation for ~~pass/fail~~ pass performances;
- (7) Documentation for any leave of absence over 30 days;
- (8) Transfer of hours form documenting hours earned in other schools and hours accepted by current school; and
- (9) Graduation Form.

(b) The school shall keep records of hours earned daily including field trip hours and documentation of field trip hours updated with a running grand total:

- (1) A daily record shall be kept of the performances for each student, showing the actual date of the performance and the teacher who approved;

- (2) A daily record shall be kept of the actual number of hours of attendance; and
- (3) An updated Performance Record.

(c) When a student enrolled in a cosmetic art school withdraws from such school, the cosmetic art school shall report to the Board its administrative decision to withdraw the student.

(d) If a student withdraws from a cosmetic art program within the first five days, the school need not submit the enrollment to the Board.

(e) The graduation form documentation must be signed by on site school staff or on site school administrators and must have the seal of the school affixed. The original graduation form documentation must be prepared on the Board form. The cosmetic art school shall mail the graduation form to the Board at the Board's address set forth in Rule 14A .0104 or submit the graduation form via the Board's school documents portal at www.nccosmeticarts.com within 30 days of the student's graduation date with the school seal affixed.

(f) All forms submitted to the Board must be sealed originals or a digital scan of sealed originals and a copy shall be maintained in the school file. All forms submitted to the Board must be completed, except for student signatures as necessary, by on site school staff or on site school administrators. Board forms shall be used for the sole purpose of documenting to the Board student records and shall not be used to notify students of enrollment, transfer of hours, withdrawal or graduation.

(g) Changes or corrections made by the school to any Board form must be submitted to the Board with supporting documentation.

(h) All cosmetic art schools must maintain on file at the school an original daily record of enrolled students' hour and performances. This record must be kept in a secured location under lock and key but made available for review by the Board or its agent at any time.

(i) All records kept by a cosmetic art school on a student who has withdrawn or graduated must be kept in the school's locked files for future reference until the date the student is accepted for the Board examination or five years after the date the student first enrolled in the school, whichever occurs earlier. Forms reviewed by the Board or an agent of the Board may be removed from this room.

(j) The record of all hours and performances must be documented in writing. Credit issued to students that cannot be verified may be eliminated from the student record by an agent of the Board.

(k) Access to student records must be limited to agents of the Board, teachers and administrators of the school. Records cannot be altered offsite. Records altered onsite must have documentation supporting the change attached.

(l) All individuals in a cosmetic art school receiving cosmetic art education, earning hours, performing or practicing cosmetic art services must be enrolled in the school.

(m) Only teachers reported to the Board as employees of a cosmetic art school may grade practical student examinations and evaluate pass/fail of student performances. Only on site teachers, on site school administrators or on site school staff shall record student hours and performances, grade examinations and determine completion and record credit of live model and mannequin performances.

(n) Minimum scores required for examinations and the successful completion of live model/mannequin performances as determined

through the school's evaluation plan that is approved by the Board at the time of application shall be disclosed to students at the time of enrollment. Passing grades and performances cannot be credited to students who fail to meet the requirements of the evaluation plan.

(o) Cosmetic art schools must provide to each student a copy of school policies, the Board felony policies and shall retain for the permanent file a copy of the student's acknowledgement of receipt of these policies.

(p) The names of students with unsatisfied academic obligations shall not be submitted to the Board as graduates but may be submitted as withdrawn.

(q) Cosmetic art schools shall not report to the Board the unsatisfied financial obligations of any cosmetic art student. Cosmetic art schools shall not prevent the graduation of students who have met the Board minimum requirements and passed all school academic requirements.

(r) Records of hours must be rounded to no more than the nearest quarter hour. Cosmetic art schools shall not give or deduct hours or performances as a rewards or penalties.

(s) An applicant may receive credit for instruction taken in another state if the conditions set forth in this Rule are met. In order to determine if the conditions have been met the applicant's record shall be certified by the state agency or department that issues licenses to practice in the cosmetic arts. If this agency or department does not maintain any student records or if the state does not give license to practice in the cosmetic arts, then the records may be certified by any state department or state agency that does maintain such records and is willing to certify their accuracy. If no state department or board will certify the accuracy of the student's records, then the Board shall review the student's records on a case-by-case basis.

(t) Hours transferred between open North Carolina schools must be obtained by the submission of the Board transfer form mailed directly from the school in which the hours are earned with the school seal affixed, with grades for examinations and performances to the new school in which a student enrolls. Such original documentation shall be submitted to the Board with enrollment.

(u) A student must pass an entrance examination given by the school to which the student is transferring for the hours to be transferred from one cosmetic art school to another.

Authority G.S. 88B-4; 88B-1.

SECTION .0700 - SCHOOL LICENSURE, OPERATIONS, CLOSING AND RELOCATING SCHOOLS

21 NCAC 14T .0701 SCHOOL OPERATIONS/LICENSURE MAINTENANCE

(a) No individual shall be given credit for any hours earned in a cosmetic art school before the date the school is granted a license, before the student is enrolled, or after graduation or withdrawal of the student without a new enrollment.

(b) All Cosmetic Art schools shall submit hours of operation per cosmetic art discipline to the Board. Any changes to the hours of operation shall be submitted to the Board. A school will be considered open by the Board when cosmetic art instruction, services, or performances are provided.

(c) Students may be required to clean and disinfect work areas, reception areas, implements, and the dispensary. Students shall not be required to perform regular maintenance.

(d) All cosmetic art schools shall adhere to all Board sanitation regulations located in 21 NCAC 14H Sanitation.

(e) Cosmetic art schools may permit students to leave the cosmetic art school during instructional time to visit on campus libraries and other educational resource rooms such as computer labs for research and study under the supervision of a cosmetic art instructor.

(f) Cosmetic art schools shall use the following grading scale as a minimum for passing grades:

Grade A	100-90
Grade B	80-89
Grade C	70-79
Grade F (Fail)	0-69

(g) Cosmetic art schools shall not graduate any student who has not met the minimum school and Board requirements for graduation as prescribed by Rules .0602-.0610 of this Subchapter.

(h) Examinations shall be administered in all subjects of the cosmetic art curriculum.

(i) Students present at school shall be supervised by a cosmetic art teacher at all times. If a guest lecturer is leading a class, at least one cosmetic art teacher must be present in the lecture.

- (j) All cosmetic art schools shall provide:
 - (1) One teacher for every 25 students enrolled in the practice department;
 - (2) One teacher for every 20 students during practical work on live models in the clinic department; and
 - (3) Cosmetic art teachers at a ratio of 1:25 teacher to teacher trainees; or
 - (A) one teacher and up to 25 practice cosmetic art students and 5 teacher trainees; or
 - (B) one teacher and up to 20 cosmetic art students in practice on the clinic floor and 5 teacher trainees.

(k) In theory classes, the teacher-student ratio may exceed the ratios established in this Rule.

(l) The teacher student ratios established in this Rule shall be adhered to when schools are in operation.

(m) A teacher may administer instruction to up to 10 students enrolled in practice and clinic departments at the same time. A teacher shall not administer instruction to more than 10 students enrolled in practice and clinic departments at the same time.

(n) At no time can any one teacher be simultaneously responsible for students in a theory class and students in practice on the clinic floor.

(o) In cases of change in teaching staff, the school shall notify the Board of the change in writing prior to beginning instruction. A change in teaching staff includes any substitution for the regularly scheduled teacher and any change, scheduled or otherwise, in the list of teachers last given to the Board.

- (1) All courses in a cosmetic art school shall be taught by a licensed cosmetology teacher, except as follows:

- (A) manicuring courses may be taught by either a licensed cosmetology teacher or a licensed manicurist teacher;
- (B) natural hair care courses may be taught by either a licensed cosmetology teacher or a licensed natural hair care teacher;
- (C) esthetics courses may be taught by either a licensed cosmetology teacher or a licensed esthetician teacher.

(2) A licensed cosmetologist not licensed as a cosmetology teacher may substitute for a cosmetology, esthetician, natural hair care or manicurist teacher; a licensed manicurist not licensed as a manicurist teacher may substitute for a manicurist teacher; a licensed natural hair care specialist not licensed as a natural hair care teacher may substitute for a natural hair care teacher; and a licensed esthetician not licensed as an esthetician teacher may substitute for an esthetician teacher.

(p) In no event may any cosmetic art licensee substitution last for more than 15 consecutive working days per year per teacher. If any teacher substitution is 16 consecutive days or longer, the school shall provide a new cosmetic art teacher.

(q) Enrolled students may earn a maximum of 10 hours per day per discipline of cosmetic art and a maximum of 48 hours per week per discipline. A student enrolled in more than one cosmetic art discipline may not earn hours or complete performances concurrently.

~~(r) A cosmetic art student must complete at least 1/3 of the minimum required hours in the cosmetic art school certifying his or her application for the state board examination.~~

~~(s) Upon written petition by the student and the school, the Board shall make an exception to the requirements set forth in Paragraph (r) of this Rule if the student shows that circumstances beyond the student's control prohibited him or her from completing a minimum of 1/3 hours at the school certifying his or her application.~~

~~(t)(r)~~ The Board shall certify student hours for any North Carolina cosmetic art school that is closed. The Board shall not certify student hours between any North Carolina open cosmetic art schools. The Board shall certify student hours earned at North Carolina cosmetic art schools to other state boards and schools open outside of the state of North Carolina as set forth in Rule .0502 of this Subchapter.

Authority G.S. 88B-2; 88B-4; 88B-16.

21 NCAC 14T .0705 SCHOOL PERFORMANCE REQUIREMENTS

(a) Each cosmetic art school shall meet or exceed a program completion rate of at least 50 percent during any five year period and shall meet or exceed a student pass rate on state licensure examinations of at least 70 percent during any two year period.

(b) The school shall allow the teachers to have the opportunity to prepare for class, evaluate students' progress in the course, counsel students individually, and participate in activities of continuing education.

(c) Cosmetic art schools shall provide to substitutes copies of lesson plans and the performance evaluation plan for the successful grading of clinical performances.

(d) School attendance policies shall give appropriate performances attendance credit for all hours attended.

(e) If a graduate meets all the school financial and academic requirements and the Board hours and performance requirements, the school shall approve the student for Board examination.

(f) Cosmetic art schools shall maintain current bond according to G.S. 88B-17 and shall submit certification of renewal or new bond prior to expiration of the bond approved by the Board.

(g) At the time of renewal, each school shall submit to the Board financial records of prepaid tuition and a letter signed by an authorized representative of the school documenting the calculations made and the method of computing the amount of the bond for the preceding year. If the school did not collect prepaid tuition, the school shall submit a letter signed by an authorized representative of the school documenting that no prepaid tuition was collected. Each school shall maintain and submit to the Board proof of bond in an amount of ten thousand dollars (\$10,000), or equivalent to prepaid tuition received during the previous year, whichever is greater.

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

SECTION .0900 – DISCIPLINARY ACTIONS

21 NCAC 14T .0901 SCHOOL PROBATION

(a) After notice and opportunity for a hearing, the Board shall put the school on probation if the Board finds that the program fails to comply with General Statutes or these Rules. The decision shall identify all deficiencies required to be corrected for the program to come into compliance.

(b) No later than one calendar year after notification, the school shall either:

- (1) Correct the deficiencies identified above and come into compliance with Board requirements; or
- (2) Request an extension of time in which it shall:
 - (A) Explain the basis for its failure to correct the deficiencies within the allotted time;
 - (B) Provide a summary of the program's good faith efforts to come into compliance within the allotted time; and
 - (C) Present a plan of action to come into compliance within the extension.

(c) The Board shall extend the time by a single six-month period if:

- (1) The explanation provided above is complete and contains all material facts;
- (2) The efforts made to come into compliance demonstrate good faith; and
- (3) The plan of action to come into compliance is realistic and complete.

(d) The Board shall make site visits or require the school to submit progress reports, syllabi, evaluative tools and student records when necessary to verify the accuracy of the report.

(e) When a program previously placed on probation fails to demonstrate compliance with General Statutes or these Rules as set forth in the Board's order, the Board shall order the school's official and the director to appear at a hearing at which time the school shall present evidence why the school's license and letter of approval should not be withdrawn.

(f) If the Board determines to withdraw or revoke the school license and letter of approval the school shall work with Board inspectors and personnel for the collection of student records.

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Dental Examiners intends to adopt the rule cited as 21 NCAC 16H .0207.

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

Proposed Effective Date: December 1, 2016

Public Hearing:

Date: September 8, 2016

Time: 6:30 p.m.

Location: 2000 Perimeter Park Dr., Suite 160, Morrisville, NC 27560

Reason for Proposed Action: 21 NCAC 16H .0207 is proposed for adoption to allow a limited exception whereby dental assistants may assist dental hygienist in specific situations.

Comments may be submitted to: Bobby D. White, Esq., 2000 Perimeter Park Dr., Suite 160, Morrisville, NC 27560

Comment period ends: October 14, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the

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

Fiscal impact (check all that apply).

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

SUBCHAPTER 16H - DENTAL ASSISTANTS

SECTION .0200 – PERMITTED FUNCTIONS OF DENTAL ASSISTANT

21 NCAC 16H .0207 LIMITED EXCEPTION FOR ASSISTING HYGIENISTS

A Dental Assistant II may assist a Limited Supervision Hygienist, who is qualified and practicing pursuant to 21 NCAC 16Z .0101-.0103, in providing oral hygiene instruction, performing prophylaxis, applying sealants, applying topical fluorides, or applying fluoride varnishes, provided:

- (1) The treatment is provided to children in school-based programs under the NC Children's Dental Home/School Based Sealant Initiative and the related pilot project developed by the North Carolina Dental Society and funded by Duke Endowment Grant No. 6564-SP; and
(2) Prior to any treatment being provided, a licensed North Carolina dentist has:
(a) examined the patient;
(b) ordered the treatment provided to the patient; and
(c) agreed to provide the patient with any necessary additional treatment, resulting from the treatment rendered.

Authority G.S. 90-29(c)(9); 90-48; 90-233.

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Rule-making Agency: *Wildlife Resources Commission*

Rule Citation: *15A NCAC 10F .0330*

Effective Date: *September 1, 2016*

Date Approved by the Rules Review Commission: *July 21, 2016*

Reason for Action: *The Wildlife Resources Commission has identified a need to correct the description of the No Wake Zone in the waters of Taylor's Creek at the town of Beaufort in Carteret County, in order to clear confusion among boaters as to the eastern end of the no wake zone, which is at the tip of Carrot Island. Temporary rulemaking will provide for legal enforcement of Taylor's Creek during the busy summer boating season and will mitigate hazards to boater safety there.*

CHAPTER 10 – WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F – MOTORBOAT REGISTRATION

SECTION .0300 – WATER SAFETY REGULATIONS

15A NCAC 10F .0330 CARTERET COUNTY

(a) Regulated Areas. This Rule applies to the following waters in Carteret County:

- (1) the waters of Money Island ~~Slough~~ Slough, beginning at the east end of Money Island near the Anchorage Marina Basin and ending at the west end of Money Island where Brooks Avenue ~~deadends~~ dead ends at the slough;
- (2) the waters of ~~Taylor Creek located within the territorial limits of the Town of Beaufort;~~ Taylor's Creek in Beaufort, shore to shore from where it-Taylor's Creek meets the Newport River at the western end to a line at the eastern end between a point on the north shore at 34.70762 N, 76.61784 W, south-southwest to the eastern tip of Carrot Island;
- (3) the waters of Pelletier ~~Creek~~ Creek, beginning at the entrance to Pelletier Creek at the Intracoastal Waterway and ending at U.S. Highway 70;
- (4) the waters of Bogue Sound Harbor Channel in Morehead ~~City~~ City, between Sugar Loaf Island and the seawall on the south side of Evans,

~~Shepard~~ Shepard, and Shackelford ~~Streets~~ Streets, and bounded on the east by the State Ports Authority and on the west by the eastern right-of-way margin of South 13th Street extended;

- (5) the waters of Gallant's ~~Channel~~ Channel, from the US 70 crossing over the Grayden Paul bridge to Taylor's Creek;
- (6) the waters of Cedar Island Bay and ~~Harbor~~ Harbor, from N.C. Highway 12 to Cedar Island Bay Channel Light 8;
- (7) the waters of the small cove on the west side of Radio Island south of Old Causeway Road;
- (8) the waters of the Newport ~~River~~ River, beginning at the north side of the Beaufort Drawbridge and ending at marker #6;
- (9) the waters of Spooners Creek within the territorial limits of the Town of Morehead City as delineated by appropriate markers;
- ~~(10) the waters of Taylor's Creek from the eastern end of the current no wake zone eastward to Channel Marker #1A;~~
- ~~(11)~~(10) the waters of the Newport River at Bogue ~~Sound~~ Sound, including all waters surrounding the Port of Morehead City to Brandt Island as delineated by appropriate markers;
- ~~(12)~~(11) the waters of Morgans Creek as delineated by appropriate markers;
- ~~(13)~~(12) the waters of Cannonsgate Marina and the Cannonsgate Marina Channel, beginning at its intersection with Bogue Sound at 34.70163 N, 76.98157 W as delineated by appropriate markers;
- ~~(14)~~(13) the waters of the Newport River within 200 yards of the Newport River Beach Access Boat Ramp, beginning at the shore north of the U.S. 70 bridge at a point at 34.72141 N, 76.68707 W, west to a point at 34.72128 N, 76.68893 W, north to a point at 34.72376 N, 76.68911 N, then east to the shore at 34.72371 N, 76.68631 W; and
- ~~(15)~~(14) the waters of Palmetto Drive canal, a tributary to the White Oak River, beginning at a point on the western shore at 34.67903N, 77.10142W to a point on the eastern shore at 34.67899 N, 77.10098 W and extending the entire length of the canal.

(b) Speed Limit. It is unlawful to operate a motorboat or vessel at a speed greater than no-wake speed while on the waters of the regulated areas designated in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The following agencies shall be designated as suitable agencies for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers:

- (1) the Board of Commissioners of Carteret County, with respect to the regulated areas designated in Subparagraphs (1), (3), (5), (6), (7), (8), ~~(10), (12) and (13)~~ (11) and (12) of Paragraph (a) of this Rule;
- (2) the Board of Commissioners of the Town of Beaufort, with respect to the regulated area designated in Subparagraph (2) of Paragraph (a) of this Rule;
- (3) the Board of Commissioners of Morehead City, with respect to Subparagraph (4), (9), and ~~(14)~~ (13) of Paragraph (a) of this Rule;
- (4) the North Carolina State Ports Authority, with respect to the regulated area designated in Subparagraph ~~(11)~~(10) of Paragraph (a) of this Rule; and

(5) the Board of Commissioners of the Town of Cedar Point with respect to the regulated area designated in Subparagraph ~~(15)~~ (14) of Paragraph (a) of this ~~Rule~~Rule, ~~shall be designated as suitable agencies for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.~~

*History Note: Authority G.S. 75A-3; 75A-15;
Eff. March 4, 1979;
Amended Eff. October 1, 1997; May 1, 1995; June 1, 1994;
February 1, 1994; July 1, 1993;
Temporary Amendment Eff. February 1, 1998;
Amended Eff. July 1, 1998;
Temporary Amendment Eff. March 1, 1999; November 1, 1998;
Amended Eff. May 1, 2016; July 1, 2012; September 1, 2010; July 1, 2000;
Temporary Amendment Eff. September 1, 2016.*

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission July 21, 2016 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jeff Hyde (1st Vice Chair)
Robert A. Bryan, Jr.
Margaret Currin
Jay Hemphill
Jeffrey A. Poley

Appointed by House

Garth Dunklin (Chair)
Stephanie Simpson (2nd Vice Chair)
Paul Powell
Jeanette Doran
Danny Earl Britt, Jr.

COMMISSION COUNSEL

Abigail Hammond	(919)431-3076
Amber Cronk May	(919)431-3074
Amanda Reeder	(919)431-3079
Jason Thomas	(919)431-3081

RULES REVIEW COMMISSION MEETING DATES

August 18, 2016	September 15, 2016
October 20, 2016	November 17, 2016

**RULES REVIEW COMMISSION MEETING
MINUTES
July 21, 2016**

The Rules Review Commission met on Thursday, July 21, 2016, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Danny Earl Britt, Jr., Bobby Bryan, Margaret Currin, Jeanette Doran, Garth Dunklin, Jay Hemphill, Jeff Hyde, Jeff Poley, and Paul Powell.

Staff members present were Commission Counsels Amber Cronk May, Abigail Hammond, Amanda Reeder, and Jason Thomas; and Julie Brincefield and Alex Burgos.

The meeting was called to order at 10:01 a.m. with Chairman Dunklin presiding.

Chairman Dunklin recognized outgoing Commissioner Choi for her service.

Commissioner Choi addressed the Commission.

Chairman Dunklin administered the oath of office to new Commissioner Paul Powell.

Chairman Dunklin read into the record the following statement of economic interest for:

Paul Powell, which stated there was no actual conflict of interest. However, there is the potential for a conflict of interest because he is Vice President and General Manager for R.H. Barringer Distributing Company, a distributor of beverages; including beer. He also serves as a Board Advisor to the North Carolina Beer and Wine Wholesalers Association. The Alcoholic Beverage Control Commission could present rules for approval by the Commission; therefore, Mr. Powell has a potential for a conflict of interest. Mr. Powell should exercise appropriate caution in the performance of his public duties. This could include recusing himself to the extent that those interests would influence or could reasonably appear to influence his actions.

Chairman Dunklin read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

APPROVAL OF MINUTES

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the June 16, 2016 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS

Property Tax Commission

17 NCAC 11 .0216 and .0217 - The agency is addressing the objections from the October meeting by publishing a Notice of Text in the North Carolina Register. No action was required by the Commission.

Board of Barber Examiners

21 NCAC 06B .0101, .0103, .0301, .0302, .0305, .0308; 06C .0501, .0909; 06H .0102 and 06N .0110 were unanimously approved. These rules were submitted earlier than the deadline set forth in G.S. 150B-21.12(b) for the Commission's review.

21 NCAC 06B .0105, .0503, .0505; 06C .0202, .0203; 06F .0110, .0116; 06G .0106; 06I .0101, .0105; 06J .0101; 06K .0104; 06L .0118, .0119; 06N .0103, .0104, .0106, .0108; 06O .0120; 06Q .0101, .0103, and .0104 will be reviewed at a later meeting pursuant to G.S. 150B-21.12(b), following the Board's next regularly scheduled meeting.

LOG OF FILINGS (PERMANENT RULES)

Sheriffs Education and Training Standards Commission

12 NCAC 10B .0601 was unanimously approved.

Environmental Management Commission

15A NCAC 02B .0311 was unanimously approved.

The Commission received over 10 letters of objection requesting a delayed effective date and legislative review of the approved rule in accordance with G.S. 150B-21.3(b2).

Parks and Recreation Authority

15A NCAC 12K .0103 was unanimously approved.

Department of Revenue

17 NCAC 06C .0117 was unanimously approved.

Board of Dental Examiners

All rules were unanimously approved.

LOG OF RULES (TEMPORARY RULES)

Wildlife Resources Commission

15A NCAC 10F .0330 was unanimously approved.

EXISTING RULES REVIEW

Department of Commerce

04 NCAC 01 – The Commission unanimously approved the report as submitted by the agency.

Prior to the review of the report from the Department of Commerce, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the report because she is employed at the Department of Commerce, Division of Employment Security.

Department of Transportation

19A NCAC 02 – The Commission unanimously approved the report as submitted by the agency.

Credit Union Division

The agency requested a waiver of 26 NCAC 05 .0211 for the report for 04 NCAC 06.

The waiver request was approved. The Commission rescheduled the date of review for the report, and amended 26 NCAC 05 .0211. The Commission will review the agency's report at its August 18, 2016 meeting.

Prior to the review of the report from the Credit Union Division, Commissioner Hemphill recused himself and did not participate in any discussion or vote concerning the report because of a potential conflict of interest.

Social Services Commission/Division of Aging

The agency requested a waiver of 26 NCAC 05 .0203(c) pursuant to 26 NCAC 05 .0204 for the report for 10A NCAC 06.

The waiver request was approved, with Commissioners Doran and Hemphill voting against.

The Commission will review the report at its August 18, 2016 meeting.

Lynne Berry, with the Division of Aging, addressed the Commission.

Hearing Aid Dealers and Fitters Board

The agency requested a waiver of 26 NCAC 05 .0211 for the report for 21 NCAC 22.

The waiver request was approved. The Commission rescheduled the date of review for the report, and amended 26 NCAC 05 .0211. The Commission will review the agency's report at its August 18, 2016 meeting.

COMMISSION BUSINESS

The Commission unanimously voted to publish proposed amendments to 26 NCAC 05 .0205, to address requests from agencies to have existing rule reports reviewed earlier.

Staff gave the Commission a brief legislative update.

Commissioner Dunklin informed the Commission that oral arguments at the Court of Appeals are scheduled for August 9, 2016 in the lawsuit by the State Board of Education against the Rules Review Commission.

The meeting adjourned at 10:55 a.m.

The next regularly scheduled meeting of the Commission is Thursday, August 18th at 10:00 a.m.

There is a digital recording of the entire meeting available from the Office of Administrative Hearings /Rules Division.

Respectfully Submitted,

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:

Garth Dunklin, Chair

July 21, 2016

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
ERICA GARNER	NC WRC
Dennis Seavers	BBE
Shawn Middlebrois	DNERZ
Ashley Snyder	DWCR
Brittany Johnson	NC DOR
Lyndal	NC DOR
Bell Orgerette	NC DOR
Paul Powell	
Jennifer Everett	DEQ
Tim Johnson	DNER / DPR
Dan Schliin	CCM
Emlyn Hawthorn	CCM
John Hamari	NC DOC-DES
Elizabeth Kantis	DEP
Nancy Danna	NC DOJ
Tom Kref	NC CHS
Lynne Berry	DAAS

LIST OF APPROVED PERMANENT RULES
July 21, 2016 Meeting

SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION

Detention Officer Certification Course 12 NCAC 10B .0601

ENVIRONMENTAL MANAGEMENT COMMISSION

Cape Fear River Basin 15A NCAC 02B .0311

PARKS AND RECREATION AUTHORITY

Funding Cycle 15A NCAC 12K .0103

REVENUE, DEPARTMENT OF

Supplemental Wage Payments 17 NCAC 06C .0117

BARBER EXAMINERS, BOARD OF

Petition for Adoption of New Rule 21 NCAC 06B .0101

Petition for Amendment or Repeal of Rule 21 NCAC 06B .0103

Locations of Hearings 21 NCAC 06B .0301

Oral Presentations 21 NCAC 06B .0302

Written Statement 21 NCAC 06B .0305

Request for Statement on Final Decision 21 NCAC 06B .0308

Reasonable Notice 21 NCAC 06C .0501

Disqualification of Majority of Board 21 NCAC 06C .0909

Student-Instructor Ratio 21 NCAC 06H .0102

Farm Bar-9 21 NCAC 06N .0110

DENTAL EXAMINERS, BOARD OF

Functions Which May Be Delegated 21 NCAC 16G .0101

Procedures Prohibited 21 NCAC 16G .0103

Dental Assistant I 21 NCAC 16H .0102

Approved Education and Training Programs 21 NCAC 16H .0104

Permitted Functions of Dental Assistant II 21 NCAC 16H .0203

Certificate Displayed 21 NCAC 16I .0109

Renewal Certificate Must Be Displayed 21 NCAC 16R .0110

Continuing Education Required 21 NCAC 16R .0201

Definition: Unprofessional Conduct by a Dentist 21 NCAC 16V .0101

Definition: Unprofessional Conduct by a Dental Hygienist 21 NCAC 16V .0102

**LIST OF APPROVED TEMPORARY RULES
July 21, 2016 Meeting**

WILDLIFE RESOURCES COMMISSION

Carteret County

15A NCAC 10F .0330

**RRC DETERMINATION
PERIODIC RULE REVIEW
July 21, 2016
Necessary With Substantive Public Interest**

Transportation, Department of	19A NCAC 02D .0607	19A NCAC 02E .0402
19A NCAC 02B .0143	19A NCAC 02D .0612	19A NCAC 02E .0403
19A NCAC 02B .0145	19A NCAC 02D .0633	19A NCAC 02E .0404
19A NCAC 02B .0150	19A NCAC 02D .0643	19A NCAC 02E .0405
19A NCAC 02B .0152	19A NCAC 02D .0644	19A NCAC 02E .0406
19A NCAC 02B .0153	19A NCAC 02D .1101	19A NCAC 02E .0407
19A NCAC 02B .0154	19A NCAC 02D .1102	19A NCAC 02E .0408
19A NCAC 02B .0155	19A NCAC 02D .1103	19A NCAC 02E .0409
19A NCAC 02B .0156	19A NCAC 02D .1104	19A NCAC 02E .0410
19A NCAC 02B .0157	19A NCAC 02D .1105	19A NCAC 02E .0411
19A NCAC 02B .0158	19A NCAC 02D .1106	19A NCAC 02E .0412
19A NCAC 02B .0202	19A NCAC 02D .1107	19A NCAC 02E .0413
19A NCAC 02B .0208	19A NCAC 02D .1108	19A NCAC 02E .0414
19A NCAC 02B .0240	19A NCAC 02D .1109	19A NCAC 02E .0415
19A NCAC 02B .0315	19A NCAC 02D .1110	19A NCAC 02E .0416
19A NCAC 02B .0316	19A NCAC 02D .1111	19A NCAC 02E .0417
19A NCAC 02B .0432	19A NCAC 02D .1112	19A NCAC 02E .0418
19A NCAC 02B .0433	19A NCAC 02E .0201	19A NCAC 02E .0419
19A NCAC 02B .0507	19A NCAC 02E .0202	19A NCAC 02E .0420
19A NCAC 02D .0102	19A NCAC 02E .0203	19A NCAC 02E .0421
19A NCAC 02D .0104	19A NCAC 02E .0204	19A NCAC 02E .0422
19A NCAC 02D .0402	19A NCAC 02E .0206	19A NCAC 02E .0423
19A NCAC 02D .0403	19A NCAC 02E .0207	19A NCAC 02E .0426
19A NCAC 02D .0404	19A NCAC 02E .0208	19A NCAC 02E .0427
19A NCAC 02D .0405	19A NCAC 02E .0209	19A NCAC 02E .0601
19A NCAC 02D .0406	19A NCAC 02E .0210	19A NCAC 02E .0602
19A NCAC 02D .0408	19A NCAC 02E .0212	19A NCAC 02E .0603
19A NCAC 02D .0410	19A NCAC 02E .0213	19A NCAC 02E .0604
19A NCAC 02D .0414	19A NCAC 02E .0214	19A NCAC 02E .0608
19A NCAC 02D .0415	19A NCAC 02E .0215	19A NCAC 02E .0609
19A NCAC 02D .0421	19A NCAC 02E .0221	19A NCAC 02E .0610
19A NCAC 02D .0425	19A NCAC 02E .0224	19A NCAC 02E .0611
19A NCAC 02D .0535	19A NCAC 02E .0225	19A NCAC 02E .1006
19A NCAC 02D .0538	19A NCAC 02E .0226	19A NCAC 02E .1103
19A NCAC 02D .0539	19A NCAC 02E .0301	19A NCAC 02E .1105
19A NCAC 02D .0602	19A NCAC 02E .0303	19A NCAC 02E .1106

**RRC DETERMINATION
PERIODIC RULE REVIEW
July 21, 2016
Necessary Without Substantive Public Interest**

Commerce, Department of	04 NCAC 01B .0102	04 NCAC 01B .0104
04 NCAC 01B .0101	04 NCAC 01B .0103	04 NCAC 01B .0105

04 NCAC 01B .0106
04 NCAC 01B .0107
04 NCAC 01B .0108
04 NCAC 01B .0201
04 NCAC 01B .0202
04 NCAC 01B .0203
04 NCAC 01B .0204
04 NCAC 01C .0101
04 NCAC 01E .0101
04 NCAC 01E .0104
04 NCAC 01E .0106
04 NCAC 01E .0107
04 NCAC 01E .0108
04 NCAC 01E .0201
04 NCAC 01E .0202
04 NCAC 01E .0203
04 NCAC 01E .0204
04 NCAC 01E .0205
04 NCAC 01E .0206
04 NCAC 01E .0207
04 NCAC 01E .0208
04 NCAC 01E .0209
04 NCAC 01E .0210
04 NCAC 01E .0301
04 NCAC 01E .0302
04 NCAC 01E .0306
04 NCAC 01E .0307
04 NCAC 01E .0308
04 NCAC 01E .0309
04 NCAC 01H .0101
04 NCAC 01H .0102
04 NCAC 01H .0103
04 NCAC 01H .0201
04 NCAC 01H .0202
04 NCAC 01H .0203
04 NCAC 01H .0204
04 NCAC 01H .0301
04 NCAC 01H .0302
04 NCAC 01H .0303
04 NCAC 01H .0501
04 NCAC 01I .0101
04 NCAC 01I .0102
04 NCAC 01I .0201
04 NCAC 01I .0202
04 NCAC 01I .0301
04 NCAC 01I .0302
04 NCAC 01I .0402
04 NCAC 01I .0403
04 NCAC 01I .0404
04 NCAC 01I .0501
04 NCAC 01I .0502
04 NCAC 01I .0503
04 NCAC 01I .0801
04 NCAC 01K .0101
04 NCAC 01K .0102
04 NCAC 01K .0103
04 NCAC 01K .0104
04 NCAC 01K .0105
04 NCAC 01K .0201

04 NCAC 01K .0203
04 NCAC 01K .0205
04 NCAC 01K .0206
04 NCAC 01K .0301
04 NCAC 01K .0302
04 NCAC 01K .0401
04 NCAC 01K .0402
04 NCAC 01K .0403
04 NCAC 01K .0404
04 NCAC 01K .0405

Transportation, Department of

19A NCAC 02A .0102
19A NCAC 02B .0114
19A NCAC 02B .0131
19A NCAC 02B .0132
19A NCAC 02B .0133
19A NCAC 02B .0138
19A NCAC 02B .0139
19A NCAC 02B .0141
19A NCAC 02B .0142
19A NCAC 02B .0164
19A NCAC 02B .0165
19A NCAC 02B .0212
19A NCAC 02B .0213
19A NCAC 02B .0216
19A NCAC 02B .0229
19A NCAC 02B .0231
19A NCAC 02B .0232
19A NCAC 02B .0233
19A NCAC 02B .0242
19A NCAC 02B .0243
19A NCAC 02B .0304
19A NCAC 02B .0305
19A NCAC 02B .0306
19A NCAC 02B .0309
19A NCAC 02B .0310
19A NCAC 02B .0311
19A NCAC 02B .0312
19A NCAC 02B .0313
19A NCAC 02B .0314
19A NCAC 02B .0317
19A NCAC 02B .0501
19A NCAC 02B .0502
19A NCAC 02B .0503
19A NCAC 02B .0504
19A NCAC 02B .0506
19A NCAC 02B .0508
19A NCAC 02B .0509
19A NCAC 02B .0510
19A NCAC 02B .0511
19A NCAC 02B .0512
19A NCAC 02B .0513
19A NCAC 02B .0515
19A NCAC 02B .0601
19A NCAC 02B .0602
19A NCAC 02B .0603
19A NCAC 02B .0604
19A NCAC 02B .0605

19A NCAC 02C .0101
19A NCAC 02C .0102
19A NCAC 02C .0103
19A NCAC 02C .0104
19A NCAC 02C .0105
19A NCAC 02C .0106
19A NCAC 02C .0108
19A NCAC 02C .0109
19A NCAC 02C .0110
19A NCAC 02C .0111
19A NCAC 02C .0114
19A NCAC 02C .0115
19A NCAC 02C .0201
19A NCAC 02C .0202
19A NCAC 02C .0203
19A NCAC 02C .0204
19A NCAC 02C .0205
19A NCAC 02C .0212
19A NCAC 02C .0213
19A NCAC 02D .0201
19A NCAC 02D .0202
19A NCAC 02D .0203
19A NCAC 02D .0423
19A NCAC 02D .0424
19A NCAC 02D .0501
19A NCAC 02D .0502
19A NCAC 02D .0503
19A NCAC 02D .0504
19A NCAC 02D .0505
19A NCAC 02D .0506
19A NCAC 02D .0507
19A NCAC 02D .0508
19A NCAC 02D .0509
19A NCAC 02D .0510
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19A NCAC 02D .0514
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19A NCAC 02D .0518
19A NCAC 02D .0519
19A NCAC 02D .0520
19A NCAC 02D .0521
19A NCAC 02D .0522
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19A NCAC 02D .0526
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19A NCAC 02D .0528
19A NCAC 02D .0529
19A NCAC 02D .0530
19A NCAC 02D .0533
19A NCAC 02D .0534
19A NCAC 02D .0536
19A NCAC 02D .0537
19A NCAC 02D .0601

19A NCAC 02D .0702
19A NCAC 02D .0704
19A NCAC 02D .0705
19A NCAC 02D .0707
19A NCAC 02D .0708
19A NCAC 02D .0709
19A NCAC 02D .0801
19A NCAC 02D .0803
19A NCAC 02D .0805
19A NCAC 02D .0806
19A NCAC 02D .0807
19A NCAC 02D .0810
19A NCAC 02D .0812
19A NCAC 02D .0818
19A NCAC 02D .0820
19A NCAC 02D .0825
19A NCAC 02D .0827
19A NCAC 02D .0830
19A NCAC 02D .1001
19A NCAC 02D .1002

19A NCAC 02D .1003
19A NCAC 02D .1004
19A NCAC 02D .1005
19A NCAC 02D .1006
19A NCAC 02D .1007
19A NCAC 02E .0101
19A NCAC 02E .0102
19A NCAC 02E .0216
19A NCAC 02E .0701
19A NCAC 02E .0702
19A NCAC 02E .0703
19A NCAC 02E .0801
19A NCAC 02E .0802
19A NCAC 02E .0803
19A NCAC 02E .0804
19A NCAC 02E .0901
19A NCAC 02E .0902
19A NCAC 02E .0903
19A NCAC 02E .0904
19A NCAC 02E .0905

19A NCAC 02E .0906
19A NCAC 02E .1001
19A NCAC 02E .1002
19A NCAC 02E .1003
19A NCAC 02E .1004
19A NCAC 02E .1005
19A NCAC 02E .1007
19A NCAC 02E .1008
19A NCAC 02E .1009
19A NCAC 02E .1101
19A NCAC 02E .1201
19A NCAC 02E .1202
19A NCAC 02E .1203
19A NCAC 02E .1204
19A NCAC 02E .1205
19A NCAC 02F .0101
19A NCAC 02F .0102
19A NCAC 02F .0103

**RRC DETERMINATION
PERIODIC RULE REVIEW
July 21, 2016
Unnecessary**

Commerce, Department of

04 NCAC 01A .0101
04 NCAC 01C .0201
04 NCAC 01C .0202
04 NCAC 01C .0203
04 NCAC 01C .0204
04 NCAC 01C .0205
04 NCAC 01C .0206
04 NCAC 01C .0207
04 NCAC 01F .0101
04 NCAC 01F .0102
04 NCAC 01F .0201
04 NCAC 01F .0202
04 NCAC 01F .0203
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04 NCAC 01F .0207
04 NCAC 01F .0208
04 NCAC 01F .0209
04 NCAC 01F .0301
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04 NCAC 01F .0409
04 NCAC 01F .0410
04 NCAC 01F .0411
04 NCAC 01F .0412
04 NCAC 01F .0413
04 NCAC 01G .0101
04 NCAC 01G .0102
04 NCAC 01G .0103
04 NCAC 01G .0201
04 NCAC 01G .0202
04 NCAC 01G .0203
04 NCAC 01G .0301
04 NCAC 01G .0302
04 NCAC 01L .0101
04 NCAC 01L .0102
04 NCAC 01L .0103
04 NCAC 01L .0104
04 NCAC 01L .0105
04 NCAC 01L .0106
04 NCAC 01N .0101
04 NCAC 01N .0102

04 NCAC 01N .0103
04 NCAC 01N .0104
04 NCAC 01N .0105
04 NCAC 01N .0106
04 NCAC 01N .0107

Transportation, Department of

19A NCAC 02B .0129
19A NCAC 02B .0144
19A NCAC 02B .0203
19A NCAC 02B .0215
19A NCAC 02B .0217
19A NCAC 02B .0218
19A NCAC 02B .0220
19A NCAC 02B .0221
19A NCAC 02B .0224
19A NCAC 02B .0225
19A NCAC 02B .0227
19A NCAC 02B .0241
19A NCAC 02C .0112
19A NCAC 02D .0531
19A NCAC 02D .0532
19A NCAC 02E .0219
19A NCAC 02E .0220
19A NCAC 02E .0223
19A NCAC 02E .1102
19A NCAC 02E .1104
19A NCAC 02E .1107
19A NCAC 02E .1108

CONTESTED CASE DECISIONS

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

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter	A. B. Elkins II
Don Overby	Selina Brooks
J. Randall May	Phil Berger, Jr.
J. Randolph Ward	David Sutton

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>			
NC Alcoholic Beverage Control Commission v. Dasab LLC T/A D and S Kwik Stop	16 ABC 01759	05/25/16	
NC Alcoholic Beverage Control Commission v. Cristina Miron Bello and Victor Giles Bello T/A La Poblanita	16 ABC 02166	05/25/16	
<u>DEPARTMENT OF PUBLIC SAFETY</u>			
Thomas Anthony Tyger v. Victim Services Janice Carmichael	15 CPS 08771	05/17/16	
George Dudley v. NC Department of Public Safety, Victim Services	16 CPS 01651	05/05/16	
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>			
Agape Homes Inc. v. Department of Health and Human Services	12 DHR 11808	05/26/16	
Agape Homes Inc. v. Department of Health and Human Services	13 DHR 12398	05/26/16	
Harrold Associates II DDS Nickie Rogerson v. DHHS, DMA	15 DHR 01234	04/29/16	
Jessie Buie, George Buie v. DHHS, DMA	15 DHR 07341	05/10/16	
Sandra McKinney Page v. DHHS, Division of Health Service Regulation	15 DHR 09286	05/25/16	
Jeannie Ann Kine v. Department of Health and Human Services	16 DHR 00795	05/05/16	
A Brighter Day Group Home Shannon Hairston v. Department of Health and Human Services	16 DHR 01857	05/05/16	
A Brighter Day Group Home Shannon Hairston v. Department of Health and Human Services	16 DHR 01859	05/05/16	
Sagia Grocery Inc d/b/a Red Sea Grocery III v. DHHS, Division of Public Health	16 DHR 02701	05/17/16	
Kathleen B. McGuire v. Department of Health Service Regulation MH Licensure Section	16 DHR 03014	05/13/16	
Kathleen B. McGuire v. Department of Health Service Regulation MH Licensure Section	16 DHR 03015	05/13/16	
<u>DEPARTMENT OF JUSTICE</u>			
Lisa Mae Parsons v. Sheriffs' Education and Training Standards Commission	15 DOJ 1540	04/06/16	
Crystal Sparks King v. Criminal Justice Education and Training Standards Commission	15 DOJ 02533	10/08/15	
Robert Lee Benton v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 07342	04/22/16	
James Philip Davenport v. Sheriffs' Education and Training Standards Commission	15 DOJ 07442	04/19/16	31:01 NCR 67
John James Klaver Jr. v. Criminal Justice Education and Training Standards Commission	15 DOJ 07775	04/06/16	
Kevin Michael Weber v. Sheriffs' Education and Training Standards Commission	15 DOJ 08610	04/22/16	31:01 NCR 71
Tyree Shawn Stafford v. NC Private Protective Services Board	15 DOJ 00234	05/17/16	
<u>DEPARTMENT OF TRANSPORTATION</u>			

CONTESTED CASE DECISIONS

Thomas R. Baggett v. Department of Transportation	15 DOT 09852	05/20/16	
<u>DEPARTMENT OF STATE TREASURER</u>			
In the Matter of the Board of Trustees of Craven Community College v. Department of the State Treasurer and The Board of Trustees of the Teachers and State Employees Retirement System	16 DST 00053	05/11/16	
Gayle Johnson McLean v. Department of State Treasurer Retirement Systems Division	16 DST 01106	05/16/16	
<u>STATE BOARD OF EDUCATION</u>			
Crystal A. Kelly v. Department of Public Instruction	15 EDC 01828	05/11/16	31:03 NCR 206
Laura Kerrigan v. Department of Public Instruction	15 EDC 03061	09/21/15	31:01 NCR 76
Charlotte Classical School Inc v. NC State Board of Education	15 EDC 05755	05/24/16	31:03 NCR 215
TPS Publishing Inc. v. State Board of Education	15 EDC 06344	04/29/16	31:01 NCR 89
<u>DEPARTMENT OF ENVIRONMENTAL QUALITY</u>			
Environmentalee, Chatham Citizens Against Coal Ash Dump, and Blue Ridge Environmental Defense League Inc v. Department of Environment and Natural Resources, Division of Waste Management, and Division of Energy, Mineral, and Land Resources and Green Meadow LLC and Charah Inc.	15 EHR 04772	05/05/16	31:03 NCR 223
<u>DEPARTMENT OF INSURANCE</u>			
Department of Insurance v. Andre Day	15 INS 07291	04/26/16	31:01 NCR 104
Lynda F. Hodge v. NC State Health Plan	16 INS 03204	05/20/16	
<u>OFFICE OF STATE HUMAN RESOURCES (formerly OFFICE OF STATE PERSONNEL)</u>			
Jacqueline Renee Crocker v. Transylvania County Department of Social Services Director Tracy Jones	15 OSP 08687	05/16/16	31:03 NCR 256
Emily Williams v. Anson County Board of Social Services Ross Streater Chairman	16 OSP 01283	05/19/16	
Cithara Patra v. NCDOR	16 OSP 01808	05/13/16	
<u>DEPARTMENT OF REVENUE</u>			
Olethia Davis v. Department of Revenue	16 REV 02286	05/10/16	
Jim Vang v. Department of Revenue	16 REV 03114	05/26/16	
Janna Marie Stanley v. Department of Revenue	16 REV 03318	05/27/16	
<u>OFFICE OF THE SECRETARY OF STATE</u>			
Angel L. Simpson v. Department of the Secretary of State	15 SOS .07239	04/21/16	