

NORTH CAROLINA REGISTER

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April 3, 2017

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Contact List for Rulemaking Questions or Concerns

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

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

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Raleigh, North Carolina 27603-8005 (919) 733-0640 FAX

Contact: Anca Grozav, Economic Analyst osbmruleanalysis@osbm.nc.gov (919) 807-4740
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215 North Dawson Street (919) 715-2893
Raleigh, North Carolina 27603

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Raleigh, North Carolina 27603

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Legislative Process Concerning Rule-making

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

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NORTH CAROLINA REGISTER
Publication Schedule for January 2017 – December 2017

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
31:13	01/03/17	12/07/16	01/18/17	03/06/17	03/20/17	05/01/17	05/2018	09/30/17
31:14	01/17/17	12/20/16	02/01/17	03/20/17	04/20/17	06/01/17	05/2018	10/14/17
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31:21	05/01/17	04/07/17	05/16/17	06/30/17	07/20/17	09/01/17	05/2018	01/26/18
31:22	05/15/17	04/24/17	05/30/17	07/14/17	07/20/17	09/01/17	05/2018	02/09/18
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32:03	08/01/17	07/11/17	08/16/17	10/02/17	10/20/17	12/01/17	05/2018	04/28/18
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32:05	09/01/17	08/11/17	09/16/17	10/31/17	11/20/17	01/01/18	05/2018	05/29/18
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32:08	10/16/17	09/25/17	10/31/17	12/15/17	12/20/17	02/01/18	05/2018	07/13/18
32:09	11/01/17	10/11/17	11/16/17	01/02/18	01/22/18	03/01/18	05/2018	07/29/18
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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.

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

TITLE 04 – DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Credit Union Division intends to adopt the rule cited as 04 NCAC 06C .0407.

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

Proposed Effective Date: August 1, 2017

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): A public hearing may be demanded by written request to Tony Knox, Deputy Administrator of the North Carolina Department of Commerce, Credit Union Division within 15 days of the publication of the Notice of Text. The address is 205 West Millbrook Road, Suite 105, Raleigh, NC 27609.*

Reason for Proposed Action: *04 NCAC 06C .0407 Commercial Lending and Member Business Loans was approved as a Temporary Rule due to a recent federal regulation that became effective January 1, 2017. State chartered credit unions would have been disadvantaged if not given the opportunity to follow the same rule, with a slight modification that required credit unions \$250 million and smaller to get policies reviewed by the Administrator of Credit Unions prior to initiating a loan program. This action is to make the Temporary Rule a Permanent Rule.*

Comments may be submitted to: Antonio (Tony) Knox, Deputy Administrator, 205 West Millbrook Road, Suite 105, Raleigh, NC 27609, phone (919) 571-4888, fax (919)420-7919, email tknox@nccud.org.

Comment period ends: June 2, 2017

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 06 - CREDIT UNION DIVISION

SUBCHAPTER 06C - CREDIT UNIONS

SECTION .0400 - LOANS

04 NCAC 06C .0407 COMMERCIAL LENDING AND MEMBER BUSINESS LOANS

(a) Commercial lending and member business loans. State chartered federally insured credit unions shall adhere to the federal regulations prescribed by the National Credit Union Administration relating to commercial lending and member business loan program pursuant to 12 C.F.R. Part 723, and this Rule.

(b) Written loan policies. The Board of Directors shall give notification to the Administrator of Credit Unions prior to initiating a commercial lending and member business loan program and adopt specific commercial lending and member business loan policies and review them at least annually. The Board of Directors shall review its commercial lending and member business loan policies prior to any material change in the credit union's commercial lending and member business loan program or related organizational structure, and in response to any material change in portfolio performance or change in economic conditions. Credit unions with an asset size of two hundred fifty million dollars (\$250,000,000) or below shall have commercial lending and member business loan policies submitted to the Administrator of Credit Unions 30 days prior to initiating a commercial lending and member business loan program.

Authority G.S. 54-109.12; 54-109.21(25); 54-109.78; 12 C.F.R. Part 741.3; 12 C.F.R. Part 723; 12 C.F.R. Part 741.203.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Radiation Protection Commission intends to adopt the rule cited as 10A NCAC 15 .0611.

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

- ☒ Substantial economic impact (≥\$1,000,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required by G.S. 150B-21.4

Proposed Effective Date: October 1, 2017

Public Hearing:

Date: May 23, 2017

Time: 10:00 a.m.

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

Reason for Proposed Action: *Computed Tomography (CT) delivers high quality imaging that is of significant benefit to patients; therefore, it represents one of the most important tools for diagnostic medical imaging. This proposed rule seeks to ensure high quality CT imaging that is appropriate with respect to professional bodies such as the American College of Radiology's (ACR) recommendations, and it is compatible with the Food and Drug Administration's Code of Federal Regulations found in 21 CFR. Currently the applicable provisions in the rules at 10A NCAC 15, Radiation Protection, are not specific to the use of CT equipment. Determining which rules apply to the use of CT is difficult for registrants and regulators. Problems that have been observed with CT scans in the past several years reflect a lack of quality assurance (QA) and/or a lack of administrative controls. The proposed rule will implement QA and training requirements that are already being employed by many facilities in North Carolina as well as simplify compliance with regulations, and reduce the hazards associated with the use of CT x-ray machines whether the facility is accredited or not.*

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

Comment period ends: June 2, 2017

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

CHAPTER 15 - RADIATION PROTECTION

SECTION .0600 - X-RAYS IN THE HEALING ARTS

10A NCAC 15 .0611 COMPUTED TOMOGRAPHY (CT) X-RAY SYSTEMS

(a) This Rule provides special requirements for human diagnostic use of computed tomography (CT) x-ray equipment. The uses of Cone Beam CT, Veterinary CT, CT Simulation, and CT attenuation correction shall be exempt from this Rule. The provisions of this Rule are in addition to, and not in substitution for, the rules in Sections .0100, .0200, .0600, .0900, .1000, and .1600 of this Chapter.

(b) The following definitions shall apply to this Rule:

- (1) "CT qualified expert (CT QE)" means an individual who is registered or is providing service for a registered facility where they are employed, as required by Section .0200 of this Chapter. The individual shall have the following education and experience:
 - (A) a master's or doctoral degree in physics, medical physics, biophysics, radiological physics, medical health physics, or equivalent disciplines from an accredited college or university; and
 - (B) three years work experience in a clinical CT environment. The work experience shall be supervised and documented by a board certified medical physicist; or
 - (C) certification in the specific subfield(s) of medical physics with its associated medical health physics aspect by an appropriate national certifying body and shall abide by the certifying body's requirements for continuing education.
- (2) "general supervision" means the activity is performed under the qualified supervisor's overall direction and control but the qualified supervisor's physical presence is not required during the activity.
- (3) "personal supervision" means overall direction, control and training of an individual by a qualified supervisor who must be physically present during the activities performed by the supervised individual.

(c) Equipment and Installation Requirements

- (1) CT x-ray systems shall meet the requirements of 21 CFR 1020.33 as incorporated by reference in Rule .0117(a)(3) of this Chapter.
- (2) The operator of a CT scanner shall be able to maintain aural communication with the patient from a shielded position at the control panel.

(d) Personnel Requirements. Individuals who operate CT x-ray systems shall:

- (1) hold (CT) registration with the American Registry of Radiologic Technologists (ARRT); or
- (2) be a Registered Technologist (R.T.) by the ARRT with registration in radiography (R) or a Certified Nuclear Medicine Technologist by the Nuclear Medicine Technology Certification Board; these individuals shall document training and experience that is equivalent to that required to attain (CT) registration with the ARRT; or
- (3) be in training under the personal supervision of an individual that meets the requirements of Paragraph (d) of this Rule; and
- (4) be specifically trained on the operational features of the unit.

(e) System Performance Evaluations

- (1) Performance evaluations of the CT x-ray system shall be performed by, or under the general supervision of, a CT QE who assumes the responsibility for the evaluation.
- (2) The performance evaluation of a CT x-ray system shall be performed within 30 days of installation and at least every 14 months.
- (3) Performance evaluation standards and tolerances shall meet manufacturer's specifications or standards and tolerances for the CT x-ray system from the American College of Radiology (ACR) and the American Association of Physicists in Medicine (AAPM). These standards and tolerances may be found at no charge on the ACR and AAPM websites.
- (4) The performance evaluation shall include the following as applicable to the design of the scanner:
 - (A) geometric factors and alignment including alignment light accuracy, and table increment accuracy;
 - (B) image localization from a scanned projection radiograph (localization image);
 - (C) radiation beam width;
 - (D) image quality including high-contrast (spatial) resolution, low-contrast resolution, image uniformity, noise, and artifact evaluation;
 - (E) CT number accuracy;
 - (F) image quality for acquisition workstation display devices;
 - (G) a review of the results of the routine QC, as set forth in Paragraph (f) of this Rule; and
- (5) The performance evaluation shall also include the evaluation of radiation output and patient dose indices for the following clinical protocols if performed:
 - (A) pediatric head;

- (B) pediatric abdomen;
- (C) adult head;
- (D) adult abdomen; and
- (E) brain perfusion.

(6) Evaluation of radiation output shall be performed with a dosimetry system that is calibrated. The dosimetry system shall have been calibrated within the preceding two years by persons registered to provide such services pursuant to Rule .0205 of this Chapter.

(7) The performance evaluation shall be documented and maintained for inspection by the Agency. The documentation shall include the name of the CT QE performing or supervising the evaluation, as well as any other individual(s) participating in the evaluation under the general supervision of the CT QE. The documentation shall be retained for 14 months.

(f) Routine Quality Control (QC)

(1) A routine QC program for the CT system shall be developed by or have written approval by a CT QE and include:

- (A) instructions for the routine QC;
- (B) intervals for QC testing;
- (C) acceptable tolerances for the QC tests;
- (D) use of a water equivalent phantom to evaluate each day of clinical use; noise, CT number accuracy, and artifacts; and

(E) routine QC tests that may be performed in place of system performance evaluations after equipment repairs or maintenance. This shall include the process for obtaining approval from the CT QE prior to conducting testing.

(2) The duties in the routine QC program, as described in Subparagraph (f)(1) of this Rule, shall be conducted by individuals that meet the requirements of Part (d) of this Rule or individuals approved by the CT QE.

(3) The routine QC shall be documented and maintained for inspection by the Agency. The records shall be retained for 14 months.

(g) Operating Requirements. The following information shall be accessible to the CT operator during use of the machine and while performing routine QC:

- (1) instructions on performing routine QC;
- (2) a schedule of routine QC;
- (3) any allowable variations set by the CT QE for the indicated parameters;
- (4) the results of the most recent routine QC completed on the system; and
- (5) established scanning protocols.

Authority G.S. 104E-7; 104E-11; 104E-12.

TITLE 15A– DEPARTMENT OF ENVIRONMENTAL QUALITY

☒ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0500 - EMISSION CONTROL STANDARDS

15A NCAC 02D .0530 PREVENTION OF SIGNIFICANT DETERIORATION

(a) The purpose of the Rule is to implement a program for the prevention of significant deterioration of air quality as required by 40 CFR 51.166.

(b) For the purposes of this Rule, the definitions contained in 40 CFR 51.166(b) and 40 CFR 51.301 apply, except the definition of "baseline actual emissions." For the purposes of this Rule:

(1) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review (NSR) pollutant, as determined in accordance with Parts (A) through (C) of this Subparagraph:

(A) For an existing emissions unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five year period immediately preceding the date that a complete permit application is received by the Division for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years immediately preceding the date that a complete permit application is received by the Division, if the owner or operator demonstrates that it is more representative of normal source operation. For the purpose of determining baseline actual emissions, the following apply:

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;

(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period;

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 .0530.

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

Proposed Effective Date: September 1, 2017

Public Hearing:

Date: May 18, 2017

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: To amend 15A NCAC 02D .0530, Prevention of Significant Deterioration, to incorporate by reference the revisions to §51.166 of the Clean Air Act as of July 1, 2014. Those revisions include the PM2.5 increments in the October 20, 2010 final rule, the clarification that condensable particulate matter by included in the measurements of PM2.5 and PM10 in the October 25, 2012 final rule, and the removal of the vacated SIL and SMC provisions in the December 9, 2013 final rule.

Comments may be submitted to: Joelle Burleson, 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919) 707-8720, fax (919) 707-8720, email joelle.burleson@ncdenr.gov

Comment period ends: June 2, 2017

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

- (iii) For an existing emission unit (other than an electric utility steam generating unit), the average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply. However, if the State has taken credit in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) for an emission limitation that is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under Part 63 in Title 40 of the Code of Federal Regulations, the baseline actual emissions shall be adjusted to account for such emission reductions;
 - (iv) For an electric utility steam generating unit, the average rate shall be adjusted downward to reflect any emissions reductions under G.S. 143-215.107D and for which cost recovery is sought pursuant to G.S. 62-133.6;
 - (v) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period for each regulated NSR pollutant can be used for each regulated NSR pollutant; and
 - (vi) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparts (ii) and (iii) of this Part;
- (B) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit; and
- (C) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual emissions shall be calculated for existing emissions units in accordance with the procedures contained in Part (A) of this Subparagraph, and for a new emissions unit in accordance with the procedures contained in Part (B) of this Subparagraph;
- (2) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.166(b)(3)(ii) is seven years;
 - (3) The limitation specified in 40 CFR 51.166(b)(15)(ii) does not apply; and
 - (4) Particulate matter PM_{2.5} significant levels in 40 CFR 51.166(b)(23)(i) are incorporated by reference except as otherwise provided in this Rule. Sulfur dioxide (SO₂) and nitrogen oxides (NO_x) are precursors to PM_{2.5} in all attainment and unclassifiable areas. Volatile organic compounds and ammonia are not significant precursors to PM_{2.5}.
- (c) All areas of the State are classified as Class II, except the following areas, which are designated as Class I:
- (1) Great Smoky Mountains National Park;
 - (2) Joyce Kilmer Slickrock National Wilderness Area;
 - (3) Linville Gorge National Wilderness Area;
 - (4) Shining Rock National Wilderness Area; and
 - (5) Swanquarter National Wilderness Area.
- (d) Redesignations of areas to Class I or II may be submitted as state proposals to the Administrator of the Environmental Protection Agency (EPA), if the requirements of 40 CFR 51.166(g)(2) are met. Areas may be proposed to be redesignated as Class III if the requirements of 40 CFR 51.166(g)(3) are met. Redesignations may not, however, be proposed which would violate the restrictions of 40 CFR 51.166(e). Lands within the boundaries of Indian Reservations may be redesignated only by the appropriate Indian Governing Body.
- (e) In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the values set forth in 40 CFR ~~51.166(e) and Paragraph (v) of this Rule.~~ 51.166(c). However, concentration of the pollutant shall not exceed standards set forth in 40 CFR 51.166(d).
- (f) Concentrations attributable to the conditions described in 40 CFR 51.166(f)(1) shall be excluded in determining compliance with a maximum allowable increase. However, the exclusions referred to in 40 CFR 51.166(f)(1)(i) or (ii) shall be limited to five years as described in 40 CFR 51.166(f)(2).
- (g) Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR 51.166 (a)(7) and (i) and by extension in 40 CFR 51.166(j) through (o) and (w).

The transition provisions allowed by 40 CFR 52.21(i)(11)(i) and (ii) and (m)(1)(vii) and (viii) are hereby adopted under this Rule. The minimum requirements described in the portions of 40 CFR 51.166 referenced in this Paragraph are hereby adopted as the requirements to be used under this Rule, except as otherwise provided in this Rule. Wherever the language of the portions of 40 CFR 51.166 referenced in this Paragraph speaks of the "plan," the requirements described therein shall apply to the source to which they pertain, except as otherwise provided in this Rule. Whenever the portions of 40 CFR 51.166 referenced in this Paragraph provide that the State plan may exempt or not apply certain requirements in certain circumstances, those exemptions and provisions of nonapplicability are also hereby adopted under this Rule. However, this provision shall not be interpreted so as to limit information that may be requested from the owner or operator by the Director as specified in 40 CFR 51.166(n)(2).

(h) New natural gas-fired electrical utility generating units for which cost recovery is sought pursuant to G.S. 62-133.6 shall install best available control technology for NO_x and SO₂, regardless of applicability of the rest of this Rule.

(i) For the purposes of this Rule, 40 CFR 51.166(w)(10)(iv)(a) reads: "If the emissions level calculated in accordance with Paragraph (w)(6) of this Section is equal to or greater than 80 percent of the PAL level, the Director shall renew the PAL at the same level." 40 CFR 51.166(w)(10)(iv)(b) is not incorporated by reference.

(j) 15A NCAC 02Q .0102 ~~and .0302~~ is not applicable to any source to which this Rule applies. The owner or operator of the sources to which this Rule applies shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

(k) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(l) For the purposes of this Rule, the provisions of 40 CFR 52.21(r)(2) regarding the period of validity of approval to construct are incorporated by reference except that the term "Administrator" is replaced with "Director".

(m) Volatile organic compounds exempted from coverage in 40 CFR 51.100(s) shall be exempted when calculating source applicability and control requirements under this Rule.

(n) The degree of emission limitation required for control of any air pollutant under this Rule shall not be affected by:

- (1) that amount of a stack height, not in existence before December 31, 1970, that exceeds good engineering practice; or
- (2) any other dispersion technique not implemented before December 31, 1970.

(o) A substitution or modification of a model as provided for in 40 CFR 51.166(l) is subject to public comment procedures in accordance with the requirements of 40 CFR 51.102.

(p) Permits may be issued on the basis of innovative control technology as set forth in 40 CFR 51.166(s)(1) if the requirements of 40 CFR 51.166(s)(2) have been met, subject to the condition of

40 CFR 51.166(s)(3), and with the allowance set forth in 40 CFR 51.166(s)(4).

(q) If a source to which this Rule applies impacts an area designated Class I by requirements of 40 CFR 51.166(e), notice to EPA shall be provided as set forth in 40 CFR 51.166(p)(1). If the Federal Land Manager presents a demonstration described in 40 CFR 51.166(p)(3) during the public comment period or public hearing to the Director and if the Director concurs with this demonstration, the permit application shall be denied. Permits may be issued on the basis that the requirements for variances as set forth in 40 CFR 51.166(p)(4), (p)(5) and (p)(7), or (p)(6) and (p)(7) have been satisfied. ~~Pursuant to 40 CFR 51.166(p)(4), Class I Variances, and this Paragraph, the maximum allowable increases in micrograms per cubic meter over minor source baseline concentration for particulate matter are as follows:~~

Class I variances Particulate Matter		
Indicator	Averaging Period	micrograms per cubic meter
PM2.5	Annual arithmetic mean	4
PM2.5	24 hour maximum	9
PM10	Annual arithmetic mean	17
PM10	24 hour maximum	30

(r) A permit application subject to this Rule shall be processed in accordance with the procedures and requirements of 40 CFR 51.166(q). Within 30 days of receipt of the application, applicants shall be notified if the application is complete as to initial information submitted. Commencement of construction before full prevention of significant deterioration approval is obtained constitutes a violation of this Rule.

(s) Approval of an application with regard to the requirements of this Rule does not relieve the owner or operator of the responsibility to comply with applicable provisions of other rules of this Subchapter or Subchapter 02Q of this Title and any other requirements under local, state, or federal law.

(t) When a source or modification is subject to this Rule the following procedures apply:

- (1) Notwithstanding any other provisions of this Paragraph, the Director shall, no later than 60 days after receipt of an application, notify the Federal Land Manager with the U.S. Department of Interior and U.S. Department of Agriculture of an application from a source or modification subject to this Rule;
- (2) When a source or modification may affect visibility of a Class I area, the Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be given at least 30 days prior to the publication of notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application, including an analysis provided by the source of

the potential impact of the proposed source on visibility;

- (3) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to the Director's satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall follow the public hearing process described in 40 CFR 51.307(a)(3) on the application and include an explanation of the Director's decision or notice as to where the explanation can be obtained; and

- (4) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

(u) If the owner or operator of a source is using projected actual emissions to avoid applicability of prevention of significant deterioration requirements, the owner or operator shall notify the Director of the modification before beginning actual construction. The notification shall include:

- (1) a description of the project;
- (2) identification of sources whose emissions could be affected by the project;
- (3) the calculated projected actual emissions and an explanation of how the projected actual emissions were calculated, including identification of emissions excluded by 40 CFR 51.166(b)(40)(ii)(c);
- (4) the calculated baseline actual emissions and an explanation of how the baseline actual emissions were calculated; and
- (5) any netting calculations, if applicable.

If upon reviewing the notification, the Director finds that the project will cause a prevention of significant deterioration evaluation, the Director shall notify the owner or operator of his or her findings. The owner or operator shall not make the modification until a permit has been issued pursuant to this Rule. If a permit revision is not required pursuant to this Rule, the owner or operator shall maintain records of annual emissions in tons per year, on a calendar year basis related to the modifications, for 10 years following resumption of regular operations after the change if the project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; otherwise, these records shall be maintained for five years following resumption of regular operations after the change. The owner or operator shall submit a report to the Director within 60 days after the end of each year during which these records must be generated. The report shall contain the items listed in 40 CFR 51.166(r)(6)(v)(a) through (c). The owner or operator shall make the information documented and maintained under this Paragraph available to the Director or the general public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii).

~~(v) Increments. For particulate matter, the maximum allowable increases in micrograms per cubic meter over the baseline~~

~~concentration for areas classified as Class I, Class II and Class III shall be as follows:~~

Increments – Particulate Matter				
Indicator	Averaging Period	Class I	Class II	Class III
PM _{2.5}	Annual arithmetic mean	1	4	8
PM _{2.5}	24 hour maximum	2	9	18
PM ₁₀	Annual arithmetic mean	4	17	34
PM ₁₀	24 hour maximum	8	30	60

~~(w)(v)~~ The references to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a specific reference states otherwise. The version of the CFR incorporated in this Rule, with respect to 40 CFR 51.166, is that as of May 16, 2008 July 1, 2014 at <http://www.gpo.gov/fdsys/pkg/FR-2008-05-16/pdf/E8-10768.pdf> <https://www.gpo.gov/fdsys/pkg/CFR-2014-title40-vol2/pdf/CFR-2014-title40-vol2-sec51-166.pdf> and does not include any subsequent amendments or editions to the referenced material. The publication may be accessed free of charge.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(5); 143-215.107(a)(7); 143-215.108(b).

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 18 – BOARD OF ELECTRICAL CONTRACTORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Electrical Contractors intends to adopt the rule cited as 21 NCAC 18B .0110 and amend the rules cited as 21 NCAC 18B .0201, .0202, .0204, .0404, .0501, .0504 and .0505.

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

Proposed Effective Date: October 1, 2017

Public Hearing:

Date: June 15, 2017

Time: 8:30 a.m.

Location: State Board of Examiners of Electrical Contractors,
3101 Industrial Drive, Suite 206, Raleigh, NC

Reason for Proposed Action: *The Board seeks to hold a public hearing to consider adjustment of the experience required to take the exam, to change the passing score from 75 to 70 and to adjust the fees within limits set by the General Assembly.*

Comments may be submitted to: *Tim Norman, 3101 Industrial Drive, Suite 206, Raleigh, NC 27619, phone (919) 733-9042, fax (919) 733-6105*

Comment period ends: *June 15, 2017 at 8:30 a.m.*

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

Fiscal impact (check all that apply).

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

SUBCHAPTER 18B - BOARD'S RULES FOR THE IMPLEMENTATION OF THE ELECTRICAL

SECTION .0100 – GENERAL PROVISIONS

21 NCAC 18B .0110 PRODUCTION OF PUBLIC RECORDS

(a) Records of current license status are available without charge on the Board website, www.ncbeec.org.

(b) Production of license history or verification of license of licensees or qualified individuals is available at a cost of twenty five dollars (\$25.00) for each report.

Authority G.S. 87-42; 87-44; 93B-3; 150B-19.

SECTION .0200 - EXAMINATIONS

21 NCAC 18B .0201 REQUIREMENTS FOR ALL EXAMINATION APPLICANTS

(a) To take an examination in any electrical contracting license classification, the applicant must:

- (1) be at least 18 years of age;
- (2) submit the required duly filed application as defined in Rule .0210;
- (3) submit with the application written statements from at least two persons attesting to the applicant's good character; and

- (4) meet any other requirements set out in Paragraph (b) of this Rule.
- (b) Examination applicants must meet the following requirements for the specified license classifications:
 - (1) Limited classification. An applicant must have at least ~~four~~two years of experience, as defined in Rule .0202 of this Section, of which at least ~~two years~~one year shall be primary experience. The balance of experience may be primary, secondary or both.
 - (2) Intermediate classification. An applicant must have at least ~~six~~four years of experience, as defined in Rule .0202 of this Section, of which at least ~~four years~~two and one half years shall be primary experience. The balance of experience may be primary, secondary or both.
 - (3) Unlimited classification. An applicant must:
 - (A) have at least ~~seven~~five years of experience, as defined in Rule .0202 of this Section, of which at least ~~five~~four years shall be primary experience. The balance of experience may be primary, secondary or both, and
 - (B) submit with the application written statements from at least two persons, who are knowledgeable of the applicant's electrical experience, attesting to the applicant's ability to supervise and direct all electrical wiring or electrical installation work done by an electrical contracting business in the unlimited classification.
 - (4) Single family detached residential dwelling (SP-SFD) classification. An applicant must have at least ~~four~~two years of experience, as defined in Rule .0202 of this Section, of which at least ~~two~~one years shall be primary experience. The balance of experience may be primary, secondary or both.
 - (5) Special restricted fire alarm/low voltage (SP-FA/LV) classification. An applicant must have at least ~~three~~two years of experience, as defined in Rule .0202 of this Section, of which at least ~~two years~~one year shall be primary experience. The balance of experience may be primary, secondary or both. An applicant in this classification may also receive creditable experience for service in any of the capacities listed in Rule .0202 that the applicant gained in the low voltage field.
 - (6) Special restricted elevator (SP-EL) classification. An applicant must:
 - (A) have at least four years of experience, as defined in Rule .0202 of this Section, of which at least two and one-half years shall be primary experience. The balance of experience may be primary, secondary or both. An

- applicant in this classification may also receive creditable experience for service in any of the capacities listed in Rule .0202 that the applicant gained in the elevator field, and
- (B) include on the application information verifying that the applicant is primarily engaged in, or is regularly employed by and will be the listed qualified individual for a firm that is primarily engaged in, a lawful elevator business in this State.
- (7) Special restricted plumbing and heating (SP-PH) classification. An applicant must:
- (A) have at least ~~three~~ two years of experience, as defined in Rule .0202 of this Section, of which at least ~~two~~ years ~~one year~~ shall be primary experience. The balance of experience may be primary, secondary or both. An applicant in this classification may also receive creditable experience for service in any of the capacities listed in Rule .0202 that the applicant gained in the plumbing, heating or air conditioning field, and
- (B) include on the application information verifying that the applicant is primarily engaged in, or is regularly employed by and will be the listed qualified individual for a firm that is primarily engaged in, a lawful plumbing, heating or air conditioning business in this State.
- (8) Special restricted ground water pump (SP-WP) classification. An applicant must:
- (A) have at least two years of experience, as defined in Rule .0202 of this Section, of which at least one year shall be primary experience. The balance of experience may be primary, secondary or both. An applicant in this classification may also receive creditable experience for service in any of the capacities listed in Rule .0202 that the applicant gained in the ground water pump field, and
- (B) include on the application information verifying that the applicant is primarily engaged in, or is regularly employed by and will be the listed qualified individual for a firm that is primarily engaged in, a lawful ground water pump business in this State.
- (9) Special restricted electric sign (SP-ES) classification. An applicant must:
- (A) have at least two years of experience, as defined in Rule .0202 of this Section, of which at least one year shall be primary experience. The balance of experience may be primary, secondary or both. An applicant in this classification may also receive creditable experience for service in any of the capacities listed in Rule .0202 that the applicant gained in the electric sign field, and
- (B) include on the application information verifying that the applicant is primarily engaged in, or is regularly employed by and will be the listed qualified individual for a firm that is primarily engaged in, a lawful electric sign business in this State.
- (10) Special restricted swimming pool (SP-SP) classification. An applicant must:
- (A) have at least two years of experience, as defined in Rule .0202 of this Section, of which at least one year shall be primary experience. The balance of experience may be primary, secondary or both. An applicant in this classification may also receive creditable experience for service in any of the capacities listed in Rule .0202 that the applicant gained in the swimming pool field, and
- (B) include on the application information verifying that the applicant is primarily engaged in, or is regularly employed by and will be the listed qualified individual for a firm that is primarily engaged in, a lawful swimming pool business in this State.

Authority G.S. 87-42; 87-43.3; 87-43.4; 87-44.

21 NCAC 18B .0202 EXPERIENCE

(a) Primary. As used in this Chapter, primary experience means working experience gained by the applicant while engaged directly in the installation of electrical wiring and equipment governed by the National Electrical Code or work activities directly related thereto. Examples of the capacity in which a person may work in gaining primary experience and the percentages for creditable primary experience are as follows:

Percentage

- | | | |
|-----|---|-----|
| (1) | journeyman electrician or electrician mechanic, both meaning the same; | 100 |
| (2) | electrical foreman; | 100 |
| (3) | electrical general foreman; | 100 |
| (4) | electrical superintendent; | 100 |
| (5) | electrical general superintendent; | 100 |
| (6) | estimator for licensed electrical contractor; | 100 |
| (7) | electrical inspector recognized as such by the State Department of Insurance; | 100 |
| (8) | time spent by a professional engineer who is responsible for follow-up | |

- project supervision, beyond the point of delivery, in electrical engineering design, or consulting; 100
- (9) full-time instructor teaching National Electrical Code, NFPA 72 and related electrical courses at a college, university, community college, technical institute, high school or vocational school; ~~50~~80
- (10) maintenance journeyman electrician or electrician mechanic employed in a full-time electrical maintenance department; 100
- (11) time actually spent in electrical maintenance by a maintenance journeyman electrician or electrician mechanic regularly employed in other than a full-time electrical maintenance department; 100
- (12) military person holding an electrician rating or rank of at least E-4 who is engaged in land based electrical installations similar or equivalent to work performed by an electrical contractor; 100
- (13) electrical installations similar or equivalent to work performed by an electrical contractor; 100
- ~~(13)~~(14) time actually spent in part-time or incidental work in any primary experience category; 100
- ~~(14)~~(15) time actually spent installing or maintaining fire alarm/low voltage systems; 100
- ~~(15)~~(16) time as a holder of NICET certification on NFPA 72 Level I, ~~II or III or IV~~ II; applicable to Fire Alarm-Low Voltage only. ~~50~~100
- ~~(16) time as a holder of NICET certification on NFPA 72 Level IV.~~ 400

In calculating accumulative primary experience, a total of 2,000 hours shall equal one creditable year. The total number of creditable years shall be calculated by dividing the total hours of primary experience by 2,000. Example: Applicant has worked in primary capacity for a total of 7,200 hours of primary experience. 7,200÷ 2,000= 3.6 years creditable primary work experience

(b) Secondary. As used in this Chapter, secondary experience means working experience gained while engaged in work or training that is related to the installation of electrical wiring and equipment governed by the National Electrical Code. Examples of the type of work or training in which a person may engage to gain creditable secondary experience and the percentages for creditable secondary experience are as follows:

Percentage

- (1) apprentice electrician training in an apprentice program approved by the North Carolina Department of Labor; 100
- (2) time spent as an apprentice electrician or helper other than as described in Subparagraph (1) and (3) of this Paragraph; 80
- (3) time actually spent in electrical maintenance by a maintenance apprentice or electrician helper regularly employed in other than a full-time electrical maintenance department; 80

- (4) student satisfactorily completing National Electrical Code and related electrical courses at a college, university, community college, technical institute, high school or vocational school; 50
- (5) time spent by a professional engineer who is not responsible for follow-up project supervision, beyond the point of delivery, in electrical engineering, design, or consulting; 50
- (6) electrical construction design under the supervision of a professional engineer; 50
- (7) sales representative for an electrical wholesaler, distributor, or manufacturer; 20
- (8) appliance service and repair; 20
- (9) electric utility lineman; and 10
- (10) electric utility serviceman. 20

In calculating cumulative secondary experience, a total of 2,000 hours shall equal one creditable year. The total number of creditable years shall be calculated by applying the percentage for creditable secondary experience and dividing the remainder hours by 2,000. Example: Applicant has 1,000 hours of work experience as a helper or regular apprentice and 2,200 hours of experience while enrolled in an approved apprentice training program: 1,000 hours at 80 percent = 800 hours secondary experience; 2,200 hours at 100 percent = 2,200 hours secondary experience; 800 + 2,200 = 1.5 years creditable secondary experience. 2,000

(c) Other Experience. The Board shall approve other experience that it finds to be equivalent or similar to the primary or secondary experience defined in this Rule.

Authority G.S. 87-42; 87-43.3; 87-43.4.

21 NCAC 18B .0204 EXAMINATIONS

(a) All qualifying examinations administered by the Board for each license classification shall be written or computer-based examinations and must be taken personally by the applicant after the applicant has met the requirement for examination contained in the rules in this Subchapter.

(b) Upon approval of an application pursuant to these Rules, the Board shall provide the applicant a notice of examination eligibility that is valid for a period of three months and for a single administration of the qualifying examination. Upon receipt of a notice of examination eligibility from the Board, the applicant shall schedule the examination by contacting the Board or the authorized testing service. The applicant shall be scheduled for the examination, by the Board and the Board or authorized testing service will confirm the date, time and place.

(c) A minimum grade of ~~75-70~~ out of a possible score of 100 is required in order to pass any qualifying examination administered by the Board.

Authority GS 87-42; 87-43.3; 87-43.4; 93B-8.

SECTION .0400 - LICENSING REQUIREMENTS

21 NCAC 18B .0404 ANNUAL LICENSE FEES

(a) The ~~annual license fees and license renewal fees fee~~ for issuance of license, reissuance of license or license renewal in the various license classifications are as follows:

LICENSE FEE SCHEDULE	
CLASSIFICATION	LICENSE FEE
Limited	\$ 85.00
Intermediate	\$130.00
Unlimited	\$180.00
SP-SFD	\$ 85.00
Special Restricted	\$ 85.00

(b) License fees shall be made payable to the Board. Payment shall accompany any license or license renewal application filed with the Board.

Authority G.S. 87-42; 87-44.

SECTION .0500 - LICENSING OPTIONS

21 NCAC 18B .0501 RECLASSIFICATION OF CURRENT LICENSE

(a) A licensee may have the license classification lowered from unlimited to intermediate or limited, or from intermediate to limited, by:

- (1) filing with the Board, in writing, a request for the lowering of the license classification; and
- (2) surrendering the current license certificate to the Board for replacement as requested.

(b) A licensee may have a license that was lowered pursuant to Paragraph (a) of this Rule raised to a classification up to and including that classification from which it was lowered by:

- (1) filing with the Board, in writing, a request for the raising of the license classification;
- (2) surrendering the current license certificate to the Board for replacement as requested; and
- (3) paying the applicable license fee. ~~If a change is made prior to the expiration of a current license, the fee shall be the difference between the annual license fee for the existing license and the annual license fee for the new class license requested. If the change is made at the expiration date, the fee shall be the annual license fee for the class license requested.~~

(c) A limited or intermediate licensee whose license has not been lowered pursuant to Paragraph (a) of this Rule may have the license classification raised to intermediate or unlimited by:

- (1) submitting an application on a form furnished by the Board indicating the classification of the license desired;
- (2) meeting all the requirements for the classification in effect when the application is made, including taking and passing the examination; and
- (3) paying the applicable license fee. ~~If a change is made prior to the expiration of a current license, the fee shall be the difference between the annual license fee for the existing license and the annual license fee for the new class license requested. If the change is made at the~~

~~expiration date, the fee shall be the annual license fee for the class license requested.~~

(d) Licenses in the single family detached residential dwelling classification and in any special restricted classification are not subject to reclassification. A change in these classifications can be effected only on the basis of a new application subject to all of the normal processing and examination requirements.

Authority G.S. 87-42; 87-43.3; 87-43.4.

21 NCAC 18B .0504 QUALIFIED INDIVIDUAL – LISTING OPTIONS AFTER EXPIRATION

(a) A qualified individual who was formerly but is not now listed on any license may apply for and obtain a license upon meeting all current licensing requirements not previously met and by submitting to the Board:

- (1) a license application on a form furnished by the Board;
- (2) payment of the appropriate license fee; and
- (3) if more than 12 months has elapsed since the qualified individual was listed on an active license, information verifying that, during the 12 month period immediately preceding the date the application is filed with the Board, the qualified individual has obtained engaged for at least 5004,000 hours in an occupation of primary experience as defined in Rule .0202 of this Subchapter or completed 16 contact hours of approved continuing education within the most recent 12 months, is current on the fee requirements set forth in 21 NCAC 18B .0404, pays the late fee set forth in 21 NCAC 18B .0404 and meets the continuing education requirements set forth in 21 NCAC 18B .1101.

(b) A qualified individual who was formerly but is not now listed on any license may be listed on a current active license in the same or a lower classification as the classification of examination passed by submitting to the Board:

- (1) a written request from the licensee, co-signed by the qualified individual, requesting the Board to list the qualified individual on the license;
- (2) the licensee's current license certificate; and
- (3) if more than 12 months has elapsed since the qualified individual was listed on an active license, information verifying that, during the 12 month period immediately preceding the date the application is filed with the Board, the qualified individual has obtained engaged for at least 500 4,000 hours in an occupation of primary experience as defined in Rule .0202 of this Subchapter or completed 16 contact hours of approved continuing education within the most recent 12 months, is current on the fee requirements set forth in 21 NCAC 18B .0404, pays the late fee set forth in 21 NCAC 18B .0404 and meets the continuing education requirements set forth in 21 NCAC 18B .1101.

Authority G.S. 87-42; 87-43.

21 NCAC 18B .0505 QUALIFIED INDIVIDUAL – INITIAL LISTING OPTIONS

A qualified individual who has passed the qualifying examination for a license but has never obtained a license nor been a listed qualified individual on any license shall:

- (1) be eligible to obtain a license in the same or lower classification as the classification of examination passed upon meeting all current licensing requirements not previously met and by submitting to the Board:
 - (a) a license application on a form furnished by the Board;
 - (b) payment of the appropriate license fee; and
 - (c) if more than 12 months has elapsed since the qualified individual passed the qualifying examination for a license, information verifying that, during the 12 month period immediately preceding the date the application is filed with the Board, the qualified individual has obtained engaged for at least 5001,000 hours in an occupation of primary experience as defined in Rule .0202 of this Chapter or completed 16 contact hours of approved continuing education within the most recent 12 months, is current on the fee requirements set forth in 21 NCAC 18B .0404, pays the late fee set forth in 21 NCAC 18B .0404 and meets the continuing education requirements set forth in 21 NCAC 18B .1101.
- (2) be eligible to be included as a listed qualified individual on a current active license in the same or a lower classification as the classification of examination passed upon submitting to the Board:
 - (a) a written request from the licensee, co-signed by the qualified individual, requesting the Board to list the qualified individual on the license;
 - (b) the licensee's current license certificate; and
 - (c) if more than 12 months has elapsed since the individual passed the qualifying examination for a license, information verifying that, during the 12 month period immediately preceding the date the application is filed with the Board, the qualified individual has engaged for at least 5001,000 hours in an occupation of primary experience as defined in Rule .0202 of this Chapter or completed 16 contact hours of approved continuing

education within the most recent 12 months, is current on the fee requirements set forth in 21 NCAC 18B .0404, pays the late fee set forth in 21 NCAC 18B .0404 and meets the continuing education requirements set forth in 21 NCAC 18B .1101.

Authority G.S. 87-42; 87-43.

CHAPTER 34 – BOARD OF FUNERAL SERVICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Funeral Service intends to adopt the rule cited as 21 NCAC 34B .0617 and .0618.

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

Proposed Effective Date: September 1, 2017

Public Hearing:

Date: May 10, 2017

Time: 10:00 a.m.

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

Reason for Proposed Action: Hurricane Matthew caused significant flooding, destruction, and damage in North Carolina. The North Carolina Board of Funeral Service (hereinafter the "Board") is aware of at least two funeral establishments licensed by the Board that sustained damage resulting in non-compliance with the requirements for maintaining an active funeral establishment permit, as specified in G.S. 90-210.27A and 21 NCAC 34B .0702-.0706. The Board believes that promulgation of these permanent rules are necessary for protecting public health, safety and welfare in such a way that does not penalize funeral establishment licensees that sustain flooding or other damage during natural disasters or other emergencies resulting in temporary non-compliance with the laws and rules enforced by the Board.

Comments may be submitted to: Christina D. Cress, 1033 Wade Avenue, Suite 108, Raleigh, NC 27605, phone (919) 715-0905, fax (919) 733-8271, email ccress@ncbfs.org

Comment period ends: June 2, 2017

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

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

Fiscal impact (check all that apply).

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

SUBCHAPTER 34B - FUNERAL SERVICE

SECTION .0600 - FUNERAL ESTABLISHMENTS

21 NCAC 34B .0617 PRACTICING DURING DISASTERS

(a) Upon the declaration of a state of emergency, as provided in G.S. 166A-19.20, the Board may waive, for a period not to exceed 120 days following the rescission of the declaration of a state of emergency, any requirement of G.S. 90-210.27A and 21 NCAC 34B .0702-.0706. Only those funeral establishments impacted by and located in a county in which the state of emergency has been declared shall be eligible for a waiver.

(b) Any funeral establishment seeking a waiver pursuant to this Rule shall request the same on a form prescribed by the Board, to include the following:

- (1) name and permit number of the funeral establishment making the waiver request;
- (2) a description of the circumstances giving rise to the request;
- (3) a plan for correcting any violations of G.S. 90-210.27A and 21 NCAC 34B .0702-.0706 caused by the emergency; and
- (4) the anticipated time frame that the funeral establishment will return to full compliance with G.S. 90-210.27A and 21 NCAC 34B .0702-.0706.

(c) A funeral establishment seeking to extend a waiver in excess of 120 days shall provide a written request and explanation to the Board for its consideration. It shall be within the discretion of the Board to grant or deny an extension request, based on the following criteria:

- (1) the degree of risk of harm, if any, that the continued non-compliance poses to the general public;

- (2) the efforts undertaken by the funeral establishment towards compliance with the plan submitted to the Board at the time of its initial waiver request; and
- (3) the circumstances surrounding the funeral establishment's request for additional time.

Authority G.S. 90-210.23(d), (e); 90-210.25(d); 90-210.27A.

21 NCAC 34B .0618 PRACTICING DURING EMERGENCIES

(a) When a funeral establishment experiences an emergency occurrence or imminent threat of damage, injury, or loss of property resulting from a natural or man-made incident, the Board may waive, for a period not to exceed 120 days, any requirement of G.S. 90-210.27A and 21 NCAC 34B .0702-.0706. The funeral establishment may continue to operate if it has provided evidence that the emergency does not pose an immediate threat to human life, an immediate threat of serious physical injury, or an immediate threat of serious adverse health effects.

(b) Any funeral establishment seeking a waiver pursuant to this Rule shall request the same on a form prescribed by the Board, to include the following:

- (1) name and permit number of the funeral establishment making the waiver request;
- (2) a description of the circumstances giving rise to the request;
- (3) a plan for correcting any violations of G.S. 90-210.27A and 21 NCAC 34B .0702-.0706 caused by the emergency; and
- (4) the anticipated time frame that the funeral establishment will return to full compliance with G.S. 90-210.27A and 21 NCAC 34B .0702-.0706.

(c) A funeral establishment seeking to extend a waiver in excess of 120 days must provide a written request and explanation to the Board for its consideration. It shall be within the discretion of the Board to grant or deny an extension request, based on the following criteria:

- (1) the degree of risk of harm, if any, that the continued non-compliance poses to the general public;
- (2) the efforts undertaken by the funeral establishment towards compliance with the plan submitted to the Board at the time of its waiver request; and
- (3) the circumstances surrounding the funeral establishment's request for additional time.

Authority G.S. 90-210.23(d), (e); 90-210.25(d); 90-210.27A.

APPROVED RULES

*This Section includes a listing of rules approved by the Rules Review Commission followed by the full text of those rules. The rules that have been approved by the RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

Rules approved by the Rules Review Commission at its meeting on February 16, 2017.

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

<u>General: Current Good Manufacturing Practices</u>	02 NCAC 09C .0501*	31:05 NCR
<u>Definitions</u>	02 NCAC 09C .0502*	31:05 NCR
<u>Plants and Grounds</u>	02 NCAC 09C .0503*	31:05 NCR
<u>Sanitary Facilities</u>	02 NCAC 09C .0504*	31:05 NCR
<u>Sanitary Operations</u>	02 NCAC 09C .0505*	31:05 NCR
<u>Equipment and Procedures</u>	02 NCAC 09C .0506*	31:05 NCR
<u>Commingling of Shell and Egg Prohibited</u>	02 NCAC 09C .0601*	31:05 NCR
<u>Scope</u>	02 NCAC 09C .0701*	31:05 NCR
<u>Definitions</u>	02 NCAC 09C .0702*	31:05 NCR
<u>Terms Used In Reference to Commercial Feeds</u>	02 NCAC 09E .0102*	31:05 NCR
<u>Commodities Declared Exempt</u>	02 NCAC 09E .0103*	31:05 NCR
<u>Adoption by Reference</u>	02 NCAC 09G .0101*	31:05 NCR
<u>General - Adoption by Reference</u>	02 NCAC 09G .2001*	31:05 NCR
<u>Modifications of the Adoption by Reference</u>	02 NCAC 09G .2002	31:05 NCR
<u>Definitions</u>	02 NCAC 09G .2003*	31:05 NCR
<u>Permits Required</u>	02 NCAC 09G .2004*	31:05 NCR
<u>Permit Suspension and Revocation</u>	02 NCAC 09G .2006	31:05 NCR
<u>Enforcement and Penalties</u>	02 NCAC 09G .2007	31:05 NCR
<u>Unavoidable Defect Levels for Cornmeal and Flour Samples</u>	02 NCAC 09H .0109*	31:05 NCR
<u>General Sampling Procedures</u>	02 NCAC 09K .0102*	31:05 NCR
<u>Place of Testing</u>	02 NCAC 09K .0104	31:05 NCR
<u>Sampling Cream</u>	02 NCAC 09K .0112*	31:05 NCR
<u>Specific Requirements</u>	02 NCAC 09K .0201*	31:05 NCR
<u>Definitions</u>	02 NCAC 09K .0202*	31:05 NCR
<u>Loose Egg Displays</u>	02 NCAC 09O .0102*	31:05 NCR
<u>Standards for Shell Eggs</u>	02 NCAC 09O .0103*	31:05 NCR
<u>Sanitation and Materials</u>	02 NCAC 09O .0104*	31:05 NCR
<u>Sale of Inedible or Loss Eggs to Consumer Prohibited</u>	02 NCAC 09O .0105	31:05 NCR
<u>Determining Grades</u>	02 NCAC 09O .0106*	31:05 NCR
<u>Adoption by Reference</u>	02 NCAC 38 .0201*	31:05 NCR
<u>Weighing and Measuring Devices</u>	02 NCAC 38 .0202*	31:05 NCR
<u>Adoption by Reference</u>	02 NCAC 38 .0301*	31:05 NCR
<u>Adoption by Reference</u>	02 NCAC 38 .0401*	31:05 NCR
<u>Retail Motor Fuel Dispensers/Half-Pricing</u>	02 NCAC 38 .0601*	31:05 NCR
<u>Price Posting/Cash Discounts for Retail Motor Fuel Sales</u>	02 NCAC 38 .0604*	31:05 NCR
<u>Adoption by Reference</u>	02 NCAC 38 .0701*	31:05 NCR

HISTORICAL COMMISSION

<u>Statement of Purpose</u>	07 NCAC 04R .0101	31:07 NCR
<u>Purpose</u>	07 NCAC 04R .0201*	31:07 NCR
<u>Definitions</u>	07 NCAC 04R .0202*	31:07 NCR
<u>Submissions for Review</u>	07 NCAC 04R .0203*	31:07 NCR
<u>Underwater Archaeological Review</u>	07 NCAC 04R .0204	31:07 NCR
<u>Architectural Review</u>	07 NCAC 04R .0205	31:07 NCR
<u>Procedures for State Undertakings Affecting a National Re...</u>	07 NCAC 04R .0206*	31:07 NCR
<u>National Register Advisory Committee</u>	07 NCAC 04R .0301*	31:07 NCR
<u>Public Suggestions for National Register</u>	07 NCAC 04R .0302	31:07 NCR
<u>Nomination Procedures</u>	07 NCAC 04R .0303*	31:07 NCR
<u>Review and Processing</u>	07 NCAC 04R .0304*	31:07 NCR
<u>National Register Nomination Priorities</u>	07 NCAC 04R .0305	31:07 NCR
<u>Review of Commission Reports</u>	07 NCAC 04R .0501*	31:07 NCR
<u>Review of Appeals</u>	07 NCAC 04R .0502*	31:07 NCR
<u>Certificates of Appropriateness</u>	07 NCAC 04R .0503*	31:07 NCR
<u>Adequate Information</u>	07 NCAC 04R .0504	31:07 NCR
<u>Statement of Purpose</u>	07 NCAC 04R .0601	31:07 NCR
<u>General Application Process; Criteria for Designation</u>	07 NCAC 04R .0602*	31:07 NCR
<u>Criteria for Designation</u>	07 NCAC 04R .0603	31:07 NCR
<u>Designating Buildings as Historic for Building Code Purposes</u>	07 NCAC 04R .0604	31:07 NCR
<u>Documentation Required</u>	07 NCAC 04R .0605*	31:07 NCR
<u>Appeals Procedure</u>	07 NCAC 04R .0606	31:07 NCR
<u>Operating Hours</u>	07 NCAC 04R .0801	31:07 NCR
<u>Disposition of Artifacts; Loans</u>	07 NCAC 04R .0802*	31:07 NCR
<u>Curation of Archaeological Collections</u>	07 NCAC 04R .0803*	31:07 NCR
<u>Deaccessions</u>	07 NCAC 04R .0804	31:07 NCR
<u>Access to Archaeological Collections</u>	07 NCAC 04R .0805	31:07 NCR
<u>Archaeological Site Files</u>	07 NCAC 04R .0806	31:07 NCR
<u>Public Access to Excavations</u>	07 NCAC 04R .0807	31:07 NCR
<u>Archaeological Survey and Evaluation Report Guidelines</u>	07 NCAC 04R .0808	31:07 NCR
<u>Definitions</u>	07 NCAC 04R .1002	31:07 NCR
<u>Department Authorized to Grant Permits and Licenses</u>	07 NCAC 04R .1003	31:07 NCR
<u>Exceptions</u>	07 NCAC 04R .1004	31:07 NCR
<u>Permit for Exploration: Recovery or Salvage</u>	07 NCAC 04R .1005	31:07 NCR
<u>Terms and Conditions of Permits</u>	07 NCAC 04R .1006	31:07 NCR
<u>Appeals Relating to Permits</u>	07 NCAC 04R .1007	31:07 NCR
<u>Ownership and Division of Recovered Items</u>	07 NCAC 04R .1008	31:07 NCR
<u>Protected Areas</u>	07 NCAC 04R .1009	31:07 NCR
<u>Special Areas for Sport and Hobby Operations</u>	07 NCAC 04R .1010	31:07 NCR
<u>Reporting Requirements</u>	07 NCAC 04R .1011	31:07 NCR
<u>Report Review</u>	07 NCAC 04R .1012	31:07 NCR
<u>Termination of Permit</u>	07 NCAC 04R .1013	31:07 NCR
<u>Operating Hours</u>	07 NCAC 04R .1501	31:07 NCR
<u>Historic Structure Site Files and Maps</u>	07 NCAC 04R .1502	31:07 NCR
<u>Visitation Policy</u>	07 NCAC 04R .1503*	31:07 NCR
<u>Definitions</u>	07 NCAC 04R .1601*	31:07 NCR
<u>Archaeological Investigations on State Lands</u>	07 NCAC 04R .1602*	31:07 NCR

<u>Applications for Archaeological Permits</u>	07 NCAC 04R .1603*	31:07 NCR
<u>Requirements for Issuance of Permits</u>	07 NCAC 04R .1604*	31:07 NCR
<u>Duration, Extension, and Renewal of Permits</u>	07 NCAC 04R .1605*	31:07 NCR
<u>Terms and Conditions of Permits</u>	07 NCAC 04R .1606*	31:07 NCR
<u>Permit Denial, Suspension, Revocation</u>	07 NCAC 04R .1607*	31:07 NCR
<u>Emergency Archaeological Investigations</u>	07 NCAC 04R .1609*	31:07 NCR
<u>Reporting Requirements for General Permits; Review</u>	07 NCAC 04R .1611*	31:07 NCR
<u>Reporting Requirements for Specific Reports; Review</u>	07 NCAC 04R .1612*	31:07 NCR
<u>Custody of Resources Under Terms of Permits</u>	07 NCAC 04R .1613*	31:07 NCR
<u>Criteria</u>	07 NCAC 04T .0104*	31:07 NCR

RADIATION PROTECTION COMMISSION

<u>Exemptions for Source Material</u>	10A NCAC 15 .0302	31:07 NCR
<u>Exempt Quantities: Other than Source Material</u>	10A NCAC 15 .0304	31:07 NCR
<u>Exempt Item Containing Other than Source Material</u>	10A NCAC 15 .0305	31:07 NCR
<u>General Licenses: Source Material</u>	10A NCAC 15 .0307	31:07 NCR
<u>General Licenses: Other than Source Material</u>	10A NCAC 15 .0308	31:07 NCR
<u>General Licenses: Measuring Gauging: Controlling Devices</u>	10A NCAC 15 .0309	31:07 NCR
<u>General Licenses: Manufacture, Transfer, Install, General...</u>	10A NCAC 15 .0310*	31:07 NCR
<u>General Licenses: Transportation</u>	10A NCAC 15 .0316*	31:07 NCR
<u>Specific Licenses: Filing Application and General Require...</u>	10A NCAC 15 .0317*	31:07 NCR
<u>Specific Licenses: Exempt Gas and Aerosol Detectors</u>	10A NCAC 15 .0327*	31:07 NCR
<u>Specific Licenses: Manufacture Devices to Persons Licensed</u>	10A NCAC 15 .0328*	31:07 NCR
<u>Specific Licenses: Luminous Safety Devices in Aircraft</u>	10A NCAC 15 .0329*	31:07 NCR
<u>Specific Licenses: Manufacture of Calibration Sources</u>	10A NCAC 15 .0330	31:07 NCR
<u>Specific Licenses - Manufacture of In Vitro Test Kits</u>	10A NCAC 15 .0331*	31:07 NCR
<u>Specific Licenses: Manufacture of Ice Detection Devices</u>	10A NCAC 15 .0332*	31:07 NCR
<u>Specific Licenses: Products Containing Depleted Uranium</u>	10A NCAC 15 .0335*	31:07 NCR
<u>Issuance of Specific Licenses and Sealed Source and Devic...</u>	10A NCAC 15 .0337*	31:07 NCR
<u>Specific Terms and Conditions of Licenses</u>	10A NCAC 15 .0338*	31:07 NCR
<u>Transfer of Material</u>	10A NCAC 15 .0343*	31:07 NCR
<u>Modification Revocation: and Termination of Licenses and ...</u>	10A NCAC 15 .0344*	31:07 NCR
<u>Financial Assurance and Record-Keeping for Decommissioning</u>	10A NCAC 15 .0353	31:07 NCR
<u>Methods of Financial Assurance for Decommissioning</u>	10A NCAC 15 .0354*	31:07 NCR
<u>Financial Tests: Self-And Parent Co. Guarantees: Decommis...</u>	10A NCAC 15 .0355*	31:07 NCR
<u>Reporting Requirements</u>	10A NCAC 15 .0357*	31:07 NCR
<u>Measurements/Dosages of Unsealed Radioactive Material for...</u>	10A NCAC 15 .0359	31:07 NCR
<u>Performance Requiriements for Radiography Equipment</u>	10A NCAC 15 .0521	31:07 NCR
<u>Notifications and Reports to Individuals</u>	10A NCAC 15 .1004	31:07 NCR
<u>Surveys</u>	10A NCAC 15 .1613	31:07 NCR
<u>Reports of Theft or Loss of Licensed Radioactive Material</u>	10A NCAC 15 .1645*	31:07 NCR
<u>Radiological Requirements for License Termination</u>	10A NCAC 15 .1653*	31:07 NCR

SOCIAL SERVICES COMMISSION

<u>Reports of Neglect, Abuse or Dependency</u>	10A NCAC 70A .0103*	31:04 NCR
<u>Eligibility</u>	10A NCAC 70B .0102*	31:04 NCR
<u>Eligibility Requirements for Regular Monthly Cash Assista...</u>	10A NCAC 70M .0402*	31:04 NCR
<u>Requirements</u>	10A NCAC 70M .0603*	31:04 NCR

<u>Scope</u>	10A NCAC 70P .0101*	31:04 NCR
<u>Purpose</u>	10A NCAC 70P .0102	31:04 NCR
<u>Definitions</u>	10A NCAC 70P .0103*	31:04 NCR
<u>Guardianship Assistance Program Eligibility</u>	10A NCAC 70P .0104*	31:04 NCR
<u>Guardianship Assistance Program Requirements</u>	10A NCAC 70P .0105*	31:04 NCR

LABOR, DEPARTMENT OF

<u>Definitions</u>	13 NCAC 13 .0101*	31:09 NCR
<u>North Carolina Commission</u>	13 NCAC 13 .0203*	31:09 NCR
<u>Owner-User Inspection Agency</u>	13 NCAC 13 .0205*	31:09 NCR

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Reclassification of Risk Levels</u>	15A NCAC 02L .0507	31:07 NCR
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MEDICAL BOARD

<u>Annual Renewal</u>	21 NCAC 32M .0106*	31:09 NCR
<u>Continuing Education (CE)</u>	21 NCAC 32M .0107*	31:09 NCR
<u>Prescribing Authority</u>	21 NCAC 32M .0109*	31:09 NCR

MIDWIFERY JOINT COMMITTEE

<u>Application</u>	21 NCAC 33 .0103*	31:09 NCR
<u>Nurse Midwife Applicant Status</u>	21 NCAC 33 .0107	31:09 NCR
<u>Continuing</u>	21 NCAC 33 .0111*	31:09 NCR

NURSING, BOARD OF

<u>Annual Renewal</u>	21 NCAC 36 .0806*	31:09 NCR
<u>Continuing Education (CE)</u>	21 NCAC 36 .0807*	31:09 NCR
<u>Prescribing Authority</u>	21 NCAC 36 .0809*	31:09 NCR

PHARMACY, BOARD OF

<u>Hours: Records: Providers: Correspondence: Reciprocity</u>	21 NCAC 46 .2201*	31:08 NCR
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VETERINARY MEDICAL BOARD

<u>Current Information Required by the Board</u>	21 NCAC 66 .0106*	31:06 NCR
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TITLE 02 - DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

02 NCAC 09C .0501 GENERAL: CURRENT GOOD MANUFACTURING PRACTICES AND FISH AND FISHERY PRODUCTS

- (a) The criteria in 21 CFR Part 110 shall apply in determining whether the facilities, methods, practices, and controls used for the manufacture, processing, packing, or holding of fish and seafood products comply with and are operated or administered in conformity with good manufacturing practices to produce, under sanitary conditions, food for human consumption.
- (b) The criteria in 21 CFR Part 123 – Fish and Fishery Products, as adopted by reference in 02 NCAC 09B .0116(o)(56), shall apply to facilities subject to Part 123 process fish and fishery products.

*History Note: Authority G.S. 106-139;
Eff. January 1, 1985;
Readopted Eff. March 1, 2017.*

02 NCAC 09C .0502 DEFINITIONS

The following definitions shall apply to this Section:

- (1) Smoked or smoke-flavored fishery products means the finished food prepared by:
 - (a) Treating fish with salt (sodium chloride), and
 - (b) Subjecting it to the direct action of smoke from burning wood, sawdust, or similar material or imparting to it the flavor of smoke by a means other than the direct action of smoke such as

immersing it in a solution of wood smoke. This definition shall not alter the labeling requirements.

- (c) This Paragraph does not alter the labeling requirements.
- (2) "Hot process smoked or hot-process smoke-flavored fish" means the finished food prepared by subjecting forms of smoked fish to heat.

*History Note: Authority G.S. 106-139;
Eff. January 1, 1985;
Readopted Eff. March 1, 2017.*

02 NCAC 09C .0503 PLANTS AND GROUNDS

- (a) Unloading platforms shall be:
- (1) maintained free of refuse; and
 - (2) equipped with drainage facilities adequate to accommodate all seepage and wash water.
- (b) The following processes shall be carried out in separate rooms or facilities, and the interior walls separating these processes shall extend from floor to ceiling and contain only necessary openings (such as for conveyors and doorways):
- (1) receiving or shipping;
 - (2) storage of raw fish;
 - (3) presmoking operations (thawing, dressing, brining, etc.);
 - (4) drying and smoking;
 - (5) cooling and packing; and
 - (6) storage of final product.
- (c) The product shall be so processed as to prevent contamination by exposure to areas, utensils, equipment involved in earlier processing steps, or refuse.

*History Note: Authority G.S. 106-139;
Eff. January 1, 1985;
Readopted Eff. March 1, 2017*

02 NCAC 09C .0504 SANITARY FACILITIES

- (a) Hand-washing and sanitizing facilities shall be located in all processing rooms or in one area easily accessible from the processing rooms.
- (b) Readily understandable signs directing employees to wash and sanitize their hands after each absence from post of duty shall be posted in all processing rooms and elsewhere in the plant as appropriate, such as bathrooms or break areas.
- (c) Offal shall be placed in covered containers for removal at least once a day, or more frequently if necessary, or shall be removed by conveyors or chutes.

*History Note: Authority G.S. 106-139;
Eff. January 1, 1985;
Readopted Eff. March 1, 2017.*

02 NCAC 09C .0505 SANITARY OPERATIONS

- (a) Before beginning the day's operation, all utensils and product-contact surfaces of equipment to be used for the day's operation shall be rinsed and sanitized.

(b) Containers used to convey or store fish shall not be nested while they contain fish or otherwise handled during processing or storage in a manner conducive to direct or indirect contamination of their contents.

(c) Cleaning and sanitizing of utensils and portable equipment shall be conducted in an area set aside for these purposes and shall be carried out in such a manner as to prevent contamination of fish or fish products.

*History Note: Authority G.S. 106-139;
Eff. January 1, 1985;
Readopted Eff. March 1, 2017.*

02 NCAC 09C .0506 EQUIPMENT AND PROCEDURES

- (a) All food-contact surfaces such as tanks, belts, tables, and utensils shall be so designed and of such material and workmanship as to be cleanable.
- (b) Metal seams shall be smoothly soldered, welded, or bonded.
- (c) Each freezer and cold storage compartment used for fish or fish products shall be fitted with the following:
- (1) an automatic control for regulating temperature;
 - (2) an indicating thermometer so installed as to show accurately the temperature within the compartment; and
 - (3) a temperature recording device so installed as to indicate accurately at all times the temperature within the compartment.
- (d) Thermometers or other temperature-measuring devices shall have an accuracy of ± 2 degrees Fahrenheit.

*History Note: Authority G.S. 106-139;
Eff. January 1, 1985;
Readopted Eff. March 1, 2017.*

02 NCAC 09C .0601 COMMINGLING OF SHELL AND EGG PROHIBITED

Eggs for human food shall be processed in a manner which:

- (1) allows examination of the content of individual eggs being processed; and
- (2) does not allow egg content to commingle with the egg shell or shell membrane during processing.

*History Note: Authority G.S. 106-131; 106-139;
Eff. April 1, 1987;
Readopted Eff. March 1, 2017.*

02 NCAC 09C .0701 SCOPE

The source approval requirements of this Section apply to bottled water sources located within this State. Bottled water from sources located outside this State must comply with the source approval requirements of Title 21, Code of Federal Regulations, Part 129, which is adopted by reference in 02 NCAC 09B .0116(o)(57).

*History Note: Authority G.S. 106-139;
Eff. April 1, 1992;*

*Temporary Amendment Eff. May 13, 1996;
Amended Eff. April 1, 2003; April 1, 1997;
Readopted Eff. March 1, 2017.*

02 NCAC 09C .0702 DEFINITIONS

For the purposes of this Section:

- (1) "Approved source" when used in reference to a plant's product or operations water, means a source of water and the water therefrom, whether it be from a spring, well, municipal water supply, or any other source that has been approved by the Department of Agriculture and Consumer Services' designated representative, the Department of Environmental Quality, Division of Water Resources in accordance with this Section;
- (2) "Spring" means a natural orifice in the earth's surface from which water freely flows without the aid of mechanical means;
- (3) "Well" means a hole that is cored, bored, drilled, jetted, dug, or otherwise constructed so as to tap an aquifer from which water is withdrawn by mechanical means.

*History Note: Authority G.S. 106-139;
Eff. April 1, 1992;
Temporary Amendment Eff. May 13, 1996;
Amended Eff. April 1, 1997;
Readopted Eff. March 1, 2017.*

02 NCAC 09E .0102 TERMS USED IN REFERENCE TO COMMERCIAL FEEDS

The terms used in reference to commercial feeds shall be the Official Feed Terms adopted by the Association of American Feed Control Officials, except as the Board of Agriculture designates otherwise in specific cases. A list of the Official Feed Terms can be found in the AFFCO Official Publication. The publication can be purchased for a fee of seventy dollars (\$70.00) for members, or one-hundred twenty-five dollars (\$125.00) for non-members at www.aafco.org/publications. You may also contact the North Carolina Department of Agriculture and Consumer Services Food and Drug Protection Division at 919-733-7366.

*History Note: Authority G.S. 106-284.41;
Eff. February 1, 1976;
Readopted Eff. March 1, 2017.*

02 NCAC 09E .0103 COMMODITIES DECLARED EXEMPT

The following commodities are hereby declared exempt from the definition of commercial feed, under the provisions of G.S. 106-284.33(4):

- (1) hay,
- (2) straw,
- (3) stover,
- (4) silages,
- (5) cobs,
- (6) husks,

- (7) hulls when unground and when not mixed or intermixed with other materials;
- provided that these commodities are not adulterated within the meaning of G.S. 106-284.38(1).

*History Note: Authority G.S. 106-284.33(4); 106-284.41;
Eff. February 1, 1976;
Amended Eff. October 1, 1987;
Readopted Eff. March 1, 2017.*

02 NCAC 09G .0101 ADOPTION BY REFERENCE

The following are adopted by reference, including subsequent amendments and editions:

- (1) "Milk for Manufacturing Purposes and Its Production and Processing, Recommended Requirements," U.S. Department of Agriculture, Agricultural Marketing Service, Dairy Programs. A copy of this document is available at no cost from the USDA, Agricultural Marketing Service, at www.ams.usda.gov. A farmstead shall be exempt from all mandatory milk testing except the mastitic milk test and the appearance and odor test. For the purposes of this Section, "farmstead" means a milk or milk product production facility that uses only milk from its own animals in its product production and has no other source of milk.
- (2) "Grading and Inspection - General Specifications for Approved Dairy Plants and Standards for Grades of Dairy Products," 7 C.F.R. 58. A copy of this document is available at no cost from the Government Publishing Office at www.gpo.gov.

*History Note: Authority G.S. 106-139; 106-267; 106-267.2;
Eff. February 1, 1976;
Amended Eff. August 1, 2002; December 1, 1987; January 1, 1987; January 1, 1985; August 1, 1982;
Readopted Eff. March 1, 2017.*

02 NCAC 09G .2001 GENERAL - ADOPTION BY REFERENCE

The North Carolina Board of Agriculture incorporates by reference, including subsequent amendments and editions, the Pasteurized Milk Ordinance, including all appendices, supplements, memoranda, procedures, FDA's Milk Guidance methods, and administrative procedures recommended by the U.S. Public Health Service/Food and Drug Administration, published by the U.S. Department of Health and Human Services, Public Health Service and the Food and Drug Administration. A certified copy may be obtained from the Department of Health and Human Services, Public Health Service, Food and Drug Administration, Division of Plant and Dairy Food Safety (HFS-316), 5100 Paint Branch Parkway, College Park, MD 20740-3835.

*History Note: Authority G.S. 106-266.31;
Eff. January 1, 1985;*

*Amended Eff. December 1, 1990; June 1, 1988; July 1, 1986;
Transferred from 15A NCAC 18A .1201 Eff. May 1, 2012;
Readopted Eff. March 1, 2017.*

**02 NCAC 09G .2002 MODIFICATIONS OF THE
ADOPTION BY REFERENCE**

*History Note: Authority G.S. 106-266.31;
Eff. January 1, 1985;
Amended Eff. January 1, 1999; September 1, 1991; December 1,
1990; July 1, 1985;
Transferred from 15A NCAC 18A .1202 Eff. May 1, 2012;
Repealed Eff. March 1, 2017.*

02 NCAC 09G .2003 DEFINITIONS

The following definitions shall apply to this Section:

- (1) All definitions contained in the Pasteurized Milk Ordinance shall apply.
- (2) Whenever "the of" appears in the Pasteurized Milk Ordinance, the word "State" shall be inserted in the first blank, and the words "North Carolina" shall be inserted in the second blank.
- (3) In all instances in the Pasteurized Milk Ordinance where the term "Regulatory Agency" appears, the "Regulatory Agency" shall be deemed to be the North Carolina Department of Agriculture & Consumer Services, Food and Drug Protection Division.
- (4) In all instances in the Pasteurized Milk Ordinance where the term "Government Water Control Authority" appears, the "Government Water Control Authority" shall be deemed to be the North Carolina Department of Environmental Quality, Division of Water Resources.
- (5) "Independent Milk Distributor" shall be defined as any person who is not under the control or ownership of a milk plant and who sells or offers for sale any Grade "A" pasteurized milk or milk products.
- (6) Any violation of the Pasteurized Milk Ordinance shall be a violation of Article 12 of G.S. 106, as provided by G.S. 106-124.1.

*History Note: Authority G.S. 106-266.31;
Eff. January 1, 1985;
Amended Eff. December 1, 1990;
Transferred from 15A NCAC 18A .1203 Eff. May 1, 2012;
Readopted Eff. March 1, 2017.*

02 NCAC 09G .2004 PERMITS REQUIRED

(a) It shall be unlawful for any person who does not possess a permit from the North Carolina Department of Agriculture and Consumer Services, Food and Drug Protection Division, to manufacture, bring into, send into, or receive into this State or its jurisdiction, for sale, to sell, or to offer for sale therein or to have in storage any milk or milk products, as defined in the Pasteurized Milk Ordinance.

(b) Any person holding a permit shall not assign, sell, or otherwise transfer a permit to a third party. A permit issued pursuant to this Section governing operations at a particular location shall not apply to any other location.

(c) No exemptions shall be allowed except those defined in the Pasteurized Milk Ordinance.

*History Note: Authority G.S. 106-266.31;
Eff. January 1, 1985;
Amended Eff. December 1, 1990;
Transferred from 15A NCAC 18A .1204 Eff. May 1, 2012;
Readopted Eff. March 1, 2017.*

**02 NCAC 09G .2006 PERMIT SUSPENSION AND
REVOCATION**

**02 NCAC 09G .2007 ENFORCEMENT AND
PENALTIES**

*History Note: Authority G.S. 106-266.31;
Eff. January 1, 1985;
Amended Eff. September 1, 1991; December 1, 1990; October 1,
1985;
Transferred from 15A NCAC 18A .1206 Eff. May 1, 2012;
Transferred from 15A NCAC 18A .1207 Eff. May 1, 2012;
Repealed Eff. March 1, 2017.*

**02 NCAC 09H .0109 UNAVOIDABLE DEFECT
LEVELS FOR CORNMEAL AND FLOUR SAMPLES**

Notwithstanding the limits set forth in FDA Compliance Policy Guide incorporated by reference in 02 NCAC 09B .0116(f), reaching or exceeding the following limits shall constitute product adulteration pursuant to G.S. 106-129(1)c. requiring embargo and voluntary recall by manufacturer:

- (1) whole insects--one per 50 grams of product;
- (2) rodent pellet fragments--one per 50 grams of product;
- (3) rodent hairs--one per 50 grams of product;
- (4) insect fragments--100 per 50 grams of product;
- (5) webbing, larvae, etc.--No minimum (indicates product age).

*History Note: Authority G.S. 106-139; 106-267; 106-267.2;
Eff. February 1, 1976;
Amended Eff. January 1, 1985;
Readopted Eff. March 1, 2017.*

**02 NCAC 09K .0102 GENERAL SAMPLING
PROCEDURES**

(a) Raw milk for producer payment shall be sampled as set forth in the Standard Methods for the Examination of Dairy Products, incorporated by reference in 02 NCAC 09B .0116(j).

(b) Milk sampling and hauling procedures shall be conducted as set forth in the Pasteurized Milk Ordinance Appendix B, Milk Sampling Hauling and Transportation, incorporated by reference in 02 NCAC 09G .2001.

*History Note: Authority G.S. 106-139; 106-267; 106-267.2;
Eff. February 1, 1982;
Amended Eff. June 1, 1988; January 1, 1985; January 1, 1984;*

Readopted Eff. March 1, 2017.

02 NCAC 09K .0104 PLACE OF TESTING

Unless written permission of the Commissioner is received a tester shall test a sample only at the plant or place where the sample is received.

History Note: Authority G.S. 106-267; 106-267.2;

Eff. February 1, 1982;

Readopted Eff. March 1, 2017

02 NCAC 09K .0112 SAMPLING CREAM

(a) Cream samples shall be obtained by following the same procedure as in sampling milk.

(b) A sampler shall obtain at least a two-ounce sample of cream.

History Note: Authority G.S. 106-267; 106-267.2;

Eff. February 1, 1982;

Amended Eff. December 31, 1983;

Readopted Eff. March 1, 2017.

02 NCAC 09K .0201 SPECIFIC REQUIREMENTS

The requirements in the rules of this Section shall apply in addition to the regulations set out in Title 21, Code of Federal Regulations, parts of 110 and 135 as adopted by reference in 02 NCAC 09B .0116(o)(49) and (61).

History Note: Authority G.S. 106-253; 106-267;

Eff. February 1, 1982;

Readopted Eff. March 1, 2017.

02 NCAC 09K .0202 DEFINITIONS

(a) "Wholesale Frozen Dessert Manufacturer" means any owner or operator of an establishment where frozen desserts are made or stored for disposal at wholesale to retail dealers for resale in this State.

(b) "Retail Frozen Dessert Manufacturer" means any owner, operator, or proprietor of a retail frozen dessert dispenser or a mobile frozen dessert manufacturing unit.

(c) "Retail Frozen Dessert Dispenser" means any device that dispenses a frozen dessert at retail.

Retail Frozen Dessert Dispenser shall not include the conventional spindle-type milkshake mixers, but shall include other dispenser milkshake machines.

(d) "Mobile Frozen Dessert Manufacturing Unit" means a retail frozen dessert dispenser that is mounted on or connected to any vehicle from which frozen desserts are sold.

(e) "Wholesale Cheese Manufacturer" means any owner or operator of an establishment where cheese is produced for disposal at wholesale to retail dealers for resale in this State.

(f) "Retail Cheese Manufacturer" means any owner or operator of an establishment where cheese is produced for disposal at retail only in this State.

(g) "Wholesale Butter Processing Manufacturer" means any owner or operator of an establishment where butter is manufactured or processed for disposal at wholesale to retail dealers for resale in this State.

(h) "Frozen Dessert" means ice cream, ice milk, milkshake, milkshake base, milkshake mix, milk sherbet, sherbet, water ices,

and other similar frozen or semi-frozen food products including yogurt, ice milk, and frozen custard.

(i) "Frozen Dessert Mix" means any mixture or compound in liquid or dry form from which a frozen dessert is made.

(j) "Rerun" means frozen dessert mix which has been drawn through a retail frozen dessert dispenser.

(k) "Dispenser Milkshake Machine" means any fountain type or similar type machine dispensing a semi-frozen milkshake or imitation milkshake with a minimum temperature of 25 degrees F. in a retail establishment.

(l) "Imitation Frozen Dessert" means any substance, mixture, or compound which is made in imitation of, or does in fact imitate, any frozen dessert or frozen dessert mix for which a standard of identity has been established in 21 CFR 135 or these Rules, and which does not conform to said standard of identity.

(m) "Milk Products" includes cream, dried cream, plastic cream (sometimes known as concentrated milk fat), butter, butter oil, milk, concentrated milk, evaporated milk, sweetened condensed milk, superheated condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, condensed skim milk, sweetened condensed part-skim milk, nonfat dry milk, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweet cream buttermilk, skim milk that has been concentrated and from which part of the lactose has been removed by crystallization, skim milk in concentrated or dried form which has been modified by treating the concentrated skim milk with calcium hydroxide and disodium phosphate, lactose (pure milk sugar), concentrated cheese whey, and dried cheese whey.

History Note: Authority G.S. 106-253; 106-267;

Eff. February 1, 1982;

Readopted Eff. March 1, 2017.

02 NCAC 09O .0102 LOOSE EGG DISPLAYS

(a) A loose egg display shall be deemed to meet the requirements of G.S. 106-245.18 when the display is labeled with the correct grade and size.

(b) The block letters of the label shall be at least three-eighths of an inch in height.

(c) The grade and size shall be written or printed on or otherwise attached to or associated with the container or display of such eggs, and such designation shall be visible to the public when the eggs or containers of such eggs are visible to the public.

(d) Retailers may display eggs in bulk without the grade and size designated thereon when such eggs are purchased directly from persons eligible to sell ungraded eggs, and if the display is labeled with the words, "Ungraded Eggs". This label shall be bold legible letters at least three-eighths inch high.

History Note: Authority G.S. 106-245.15; 106-245.18; 106-245.21;

Eff. August 1, 1982;

Amended Eff. December 1, 2011;

Transferred from 02 NCAC 43H .0102 Eff. May 1, 2012;

Readopted Eff. March 1, 2017.

02 NCAC 09O .0103 STANDARDS FOR SHELL EGGS

(a) The United States Standards, Grades, and Weight Classes for Shell Eggs, adopted by the Agricultural Marketing Service of the

United States Department of Agriculture as AMS-56, are incorporated by reference including subsequent amendments and editions, and shall apply to all shell eggs sold, offered for sale, or advertised for sale in this State, except the term "ungraded eggs" may be used to designate eggs exempt from grading pursuant to G.S. 106-245.15. Copies can be found on the USDA AMS website at <https://www.ams.usda.gov/grades-standards/shell-egg-grades-and-standards>.

(b) Title 9, Code of Federal Regulations, Part 590, Inspection of Eggs and Egg Products, is incorporated by reference including subsequent amendments and editions.

(c) Cracked or checked eggs may be sold by producers or processors to a consumer for his or her personal use, but shall not be sold to an "institutional consumer" as defined in G.S. 106-245.14. Such sales shall be made only at the premises where the cracked or checked eggs were produced or processed.

(d) Cracked or checked eggs may also be sold to a processing plant by a producer or processor for further processing.

(e) It shall be unlawful for cracked or checked eggs to be displayed, sold, or offered for sale in a retail outlet except as permitted by Rule .0101(4) of this Section and Paragraph (a) of this Rule.

(f) Except when sold directly by the producer to the consumer, it shall be unlawful to offer for sale any repackaged eggs at any retail outlet.

History Note: Authority G.S. 106-245.16; 106-245.21;
Eff. August 1, 1982;
Amended Eff. July 1, 2005; April 1, 1988; December 1, 1987;
Transferred from 02 NCAC 43H .0103 Eff. May 1, 2012;
Amended Eff. January 1, 2015;
Readopted Eff. March 1, 2017.

02 NCAC 090 .0104 SANITATION AND MATERIALS

(a) The sanitation requirements of G.S. 106-245.22 shall be deemed to be met when facilities conform to the requirements of 7 C.F.R. Section 56.76 which is incorporated by reference including subsequent amendments and editions.

(b) Eggs shall be deemed to be held in a proper environment, as specified in G.S. 106-245.22, when gathered and placed in a refrigerated cooling room with an ambient temperature of 45 degrees F. or lower until graded and packed. After grading and packing, eggs shall be held or transported at a refrigerated ambient temperature of 45 degrees F. or lower without freezing until sold to the consumer or used in food preparation.

History Note: Authority G.S. 106-245.16; 106-245.21;
106-245.22;
Eff. August 1, 1982;
Amended Eff. December 1, 1991; December 1, 1987;
Transferred from 02 NCAC 43H .0104 Eff. May 1, 2012;
Readopted Eff. March 1, 2017.

02 NCAC 090 .0105 SALE OF INEDIBLE OR LOSS EGGS TO CONSUMER PROHIBITED

Inedible or loss eggs shall not be sold or offered for sale for human consumption in North Carolina.

History Note: Authority G.S. 106-245.16; 106-245.21;
106-245.22;
Eff. August 1, 1982;
Transferred from 02 NCAC 43H .0105 Eff. May 1, 2012;
Readopted Eff. March 1, 2017.

02 NCAC 090 .0106 DETERMINING GRADES

The final determination as to eggs meeting grade requirements shall be made by candling.

History Note: Authority G.S. 106-245.15; 106-245.16;
106-245.19; 106-245.21;
Eff. August 1, 1982;
Transferred from 02 NCAC 43H .0106 Eff. May 1, 2012;
Readopted Eff. March 1, 2017.

02 NCAC 38 .0201 ADOPTION BY REFERENCE

The board hereby adopts by reference, including subsequent amendments and editions, NIST Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices" except as otherwise indicated in this Chapter. Copies of the above are available for inspection in the Office of the Director of the Standards Division and may be obtained for free at <http://www.nist.gov/pml/wmd/pubs/index.cfm>.

History Note: Authority G.S. 81A-2; 150B-21.6
Eff. May 1, 1983;
Amended Eff. January 1, 1990; June 1, 1988; April 1, 1987;
May 1, 1986;
Readopted Eff. March 1, 2017.

02 NCAC 38 .0202 WEIGHING AND MEASURING DEVICES

The requirements of NIST Handbook 44 shall apply as follows:

- (1) To commercial weighing and measuring equipment; that is, weights and measures and weighing and measuring devices commercially used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption purchased, offered, or submitted for sale, hire, or award, or in computing any basic charge or payment for services rendered on the basis of weight or measure;
- (2) To any accessory attached to or used in connection with a commercial weighing or measuring device when such accessory is so designed that its operation affects the accuracy of the device; and
- (3) To weighing and measuring equipment in official use for the enforcement of law or for the collection of statistical information by government agencies.

History Note: Authority G.S. 81A-2;
Eff. May 1, 1983;

*Amended Eff. January 1, 1990;
Readopted Eff. March 1, 2017.*

02 NCAC 38 .0301 ADOPTION BY REFERENCE

The following are adopted by reference, including subsequent amendments and editions, as standards for packaging and labeling and for determining compliance of packaged goods with net contents labeling requirements:

- (1) NIST Handbook 130, "Packaging and Labeling Regulation," with the exception of Sections 13, 14, and 15 of the "Packaging and Labeling Regulation" which are deleted; and
- (2) NIST Handbook 133, "Checking the Net Contents of Packaged Goods".

Copies of Handbook 130 and Handbook 133 are available for inspection in the Office of the Director of the Standards Division and may be obtained for free at <http://www.nist.gov/pml/wmd/pubs/index.cfm>.

*History Note: Authority G.S. 81A-4; 150B-21.6;
Eff. May 1, 1983;
Amended Eff. January 1, 1990; December 1, 1988; June 1, 1988; April 1, 1987;
Readopted Eff. March 1, 2017.*

02 NCAC 38 .0401 ADOPTION BY REFERENCE

The Board hereby adopts by reference including subsequent amendments and editions the NIST Handbook 130, "Method of Sale of Commodities Regulation" with the following additions and exceptions:

- (1) The preferred method for measuring fireplace and stove wood is by the cord or fractional parts of a cord, however, nothing in Section 2.4, "Fireplace and Stove Wood", shall be construed as preventing the purchaser and seller of fireplace or stove wood from agreeing on a quantity other than a cord or fractional parts of a cord.
- (2) Section 2.20, "Gasoline-Oxygenate Blends" is deleted.
- (3) Section 2.19. shall apply only to kerosene sold in a container or kerosene sold through a retail device. In addition, a container or a device shall indicate for 1-K kerosene "SUITABLE FOR USE IN UNVENTED HEATERS" and for 2-K kerosene "MAY NOT BE SUITABLE FOR USE IN UNVENTED HEATERS".
- (4) In Section 2.21., the temperature compensation requirements shall not be mandatory. However, if a company elects to sell liquefied petroleum gas on a temperature compensated basis, then all meters in the truck fleet shall be equipped with an activated automatic temperature compensator which shall remain in continuous operation for a period of not less than one year.
- (5) The price for propane dispensed into containers of less than 240 pounds water capacity may be on a minimum price basis provided that the seller displays the minimum price at the point

of container fill and the point of sale. This Rule shall not apply to propane container exchange sales where an empty or partially empty container is exchanged for a full one.

Copies of NIST Handbook 130, "Method of Sale of Commodities Regulation" are available for inspection in the Office of the Director of the Standards Division and may be obtained for free at <http://www.nist.gov/pml/wmd/pubs/index.cfm>.

*History Note: Authority G.S. 81A-4; 150B-21.6;
Eff. May 1, 1983;
Amended Eff. June 1, 1994; January 1, 1990; December 1, 1988; June 1, 1988;
Readopted Eff. March 1, 2017.*

02 NCAC 38 .0601 RETAIL MOTOR FUEL DISPENSERS/HALF-PRICING

- (a) All retail motor fuel dispensing outlets shall sell motor fuel by the full price per unit as stated in NIST Handbook 130 method for that fuel type.
- (b) Retail motor fuel dispensing outlets shall not sell motor fuel by the half-price per gallon method.

*History Note: Authority G.S. 81A-2;
Eff. May 1, 1983;
Amended Eff. February 1, 2009;
Readopted Eff. March 1, 2017.*

02 NCAC 38 .0604 PRICE POSTING/CASH DISCOUNTS FOR RETAIL MOTOR FUEL SALES

- (a) If any condition or qualification is required to purchase fuel at the posted price, that condition or qualification shall be posted in conjunction with the advertised price.
- (b) At those locations where separate dispensers or islands are established for credit card and cash sales, the dispensers or islands shall be identified to avoid customer confusion.
- (c) At those locations where the same dispenser is used for cash and credit card sales, the following apply:

- (1) If the dispenser is capable of computing only one price, then the dispenser shall be set at the highest unit price and the unit discount rate (either per gallon, percentage, or per gallon credit price) shall be displayed. A receipt shall contain the total volume of the delivery, the unit price, the total computed price, an itemization of the discounts to the unit price, and the final total price;
- (2) If the dispenser is capable of computing both cash and credit sales, either the credit surcharge rate (either per gallon, percentage, or per gallon credit price) or the cash discount rate (either per gallon, percentage, or per gallon price) shall be displayed; and
- (3) The location must indicate whether "debit" transactions are treated as cash or credit transactions. Labels such as "cash/debit," "debit=cash," or "credit/debit" are acceptable.

History Note: Authority G.S. 81A-2; 81A-23;

Eff. May 1, 1983;

Amended Eff. October 1, 2011; December 1, 1987;

Readopted Eff. March 1, 2017.

02 NCAC 38 .0701 ADOPTION BY REFERENCE

The following are incorporated by reference, including subsequent amendments and editions, as standards for storage, handling and installation of liquefied petroleum gas:

- (1) National Fire Protection Association, document NFPA 58 "Liquefied Petroleum Gas Code," with the following additions and exceptions:
 - (a) "Firm Foundation" means that the foundation material has a level top surface, rests on solid ground, is constructed of a masonry material or wood treated to prevent decay by moisture rot, and will not settle, careen or deteriorate;
 - (b) No person shall use liquefied petroleum gas as a source of pressure in lieu of compressed air in spray guns or other pressure operated equipment, except that liquefied petroleum gas may be used as a source of pressure for operating internal valves and emergency shutoff valves;
 - (c) Piping, tubing, or regulators shall be considered well supported when they are rigidly fastened in their intended position;
 - (d) At bulk storage installations, the bulkhead and the plant piping on the hose side of the bulkhead shall be designed and constructed so that an application of force from the hose side will not result in damage to the plant piping on the tank side of the bulkhead. In addition, the bulkhead shall incorporate a means, for instance, mechanical or pneumatic, to automatically close emergency valves in the event of a pull away;
 - (e) As an alternative to the requirement for a fire safety analysis, the owner, or his designee, of an LP-gas facility which utilizes individual storage containers in excess of 4,000 gallons water capacity, storage containers interconnected through the liquid withdrawal outlets of the containers with an aggregate water capacity in excess of 4,000 gallons, or storage containers interconnected through the vapor withdrawal outlets of the containers with an aggregate capacity in excess of 6,000 gallons, shall, for all installations of containers of such capacity or for additions to an existing LP-gas facility which result in

containers in excess of such capacity, meet with fire officials for the jurisdiction in which the facility is located in order to:

- (i) review potential exposure to fire hazards to or from real property which is adjacent to such facility;
- (ii) identify emergency access routes to such facility; and
- (iii) review the equipment and emergency shut-down procedures for the facility.

The owner of such facility or his designee shall document in writing the time, date and place of such meeting(s), the participants in the meeting, and the discussions at the meeting in order to provide a written record of the meeting. This documentation shall be made available to the Department not later than 60 days after installation of the new or additional containers. Compliance with the availability requirement shall be met by having a copy of the documentation kept on site or at the owner's office and available for review by NCDA&CS inspection personnel as soon as it is requested. This meeting, review, and documentation shall be repeated when the North Carolina Department of Agriculture and Consumer Services determines that the plant design has changed or that potential exposures have significantly changed, so as to increase the likelihood of injury.

- (f) An LP-gas facility which utilizes storage containers that are interconnected through the vapor withdrawal outlets of the containers only with an aggregate water capacity in excess of 4,000 gallons, but not in excess of 6,000 gallons, is exempt from the requirements of a fire safety analysis; and
- (g) A fire safety analysis as described in NFPA 58 may be prepared by the owner of an LP-Gas facility or by an employee of such owner in the course of the employee's employment, and the Department shall not require that it be prepared, approved, or sealed by a professional engineer. Note: This is in keeping with a formal interpretation (F.I. No.: 58-01-2) by the technical committee for Liquefied Petroleum Gases issued by the National Fire

Protection Association on November 7, 2001, with an effective date of November 27, 2001. However, the North Carolina Board of Examiners for Engineers and Surveyors regulates the practice of engineering, and has taken the position that the preparation of a fire safety analysis constitutes the practice of engineering.

- (2) National Fire Protection Association document NFPA 54, "National Fuel Gas Code," with the addition that underground service piping shall rise above ground immediately (within six inches of wall) before entering a building.
- (3) National Fire Protection Association, document NFPA 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages," Chapter 12 (in 2008 Edition) as it applies to LP-Gas dispensers for motor vehicle fuel along with dispensers for other motor vehicle fuels.

Copies of NFPA 54, NFPA 58 and NFPA 30A are available for inspection in the Office of the Director of the Standards Division. They may be obtained at a cost of fifty-four dollars and fifty cents (\$54.50) each for NFPA 54 and NFPA 58 and for forty-two dollars (\$42.00) for NFPA 30A (March 2014 prices), plus shipping, by contacting National Fire Protection Association, Inc., 1 Batterymarch Park, Quincy, Massachusetts 02269, by calling them at 617-770-3000 or 800-344-3555, or by accessing them on the Internet at www.nfpa.org/catalog.

History Note: Authority G.S. 119-55;
Eff. May 1, 1983;
Amended Eff. November 1, 2011; April 1, 2009; September 1, 2002; August 1, 2002; January 1, 1994; June 1, 1993;
December 1, 1988; December 1, 1987;
Readopted March 1, 2017.

TITLE 07 - DEPARTMENT OF NATURAL AND CULTURAL RESOURCES

07 NCAC 04R .0101 STATEMENT OF PURPOSE

History Note: Authority G.S. 150B-10;
Eff. February 1, 1985;
Amended June 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;
Repealed Eff. June 1, 2017.

07 NCAC 04R .0201 PURPOSE

Persons seeking State or federal funding, licenses, permits, or approval in developing undertakings with respect to historic, archaeological, and architectural resources shall file an application with the HPO and OSA, as staff to the State Historic Preservation Officer (SHPO) and the North Carolina Historical Commission, pursuant to this Section.

History Note: Authority G.S. 113A-4(2); 121-8; 121-9; 121-12(a); 121-23; 143B-62; 42 U.S.C. 4321; 54 U.S.C. 302301; 302303; 36 C.F.R. 800;
Eff. February 1, 1985;
Amended Eff. June 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;
Amended Eff. June 1, 2017.

07 NCAC 04R .0202 DEFINITIONS

The following definitions apply to this Subchapter unless otherwise indicated within the Rules:

- (1) "Adverse Effect" is defined as in 36 C.F.R. 800.5(a)(1).
- (2) "Area of Potential Effects" is defined as in 36 C.F.R. 800.16(d).
- (3) "Effect" is defined as in 36 C.F.R. 800.16(i).
- (4) "Historic property" is defined as in 36 C.F.R. 800.16(l).
- (5) "Office of State Archaeology" (OSA) is a section of the Division of Historical Resources, North Carolina Department of Natural and Cultural Resources. The OSA is responsible for protecting archaeological sites in North Carolina.
- (6) "State Historic Preservation Office" (HPO) is a section of the Division of Historical Resources, North Carolina Department of Natural and Cultural Resources. The HPO is responsible for administering historic preservation programs pursuant to State and federal law.
- (7) "State Historic Preservation Officer" (SHPO) is the Deputy Secretary, Office of Archives and History, North Carolina Department of Natural and Cultural Resources, and is further defined in 36 C.F.R. 800.16(v).
- (8) "Undertaking" means any project, activity, or program that can result in changes in the character or use of historic properties located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a Federal or State agency, including those carried out by or on behalf of a Federal or State agency; those carried out with Federal or State financial assistance; and those requiring a Federal or State permit, license, or approval. Undertakings include new and continuing projects, activities, or programs and any of their elements, including changes to the project's scope and location.
- (9) "Underwater Archaeology Branch" (OAB) is a unit of the OSA. The OAB is responsible for identifying, studying, interpreting, and protecting archaeological resources that represent the maritime history of North Carolina.

History Note: Authority G.S. 121-8; 121-12(a); 121-23; 143B-62; 54 U.S.C. 302301, 302303, 306108; 36 C.F.R. 800.3-800.6, 800.16;
Eff. February 1, 1985;
Amended Eff. June 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;
Amended Eff. June 1, 2017.

07 NCAC 04R .0203 SUBMISSIONS FOR REVIEW

(a) All persons proposing an undertaking as defined in Rule .0202(8) of this Section shall submit a written request in writing to the HPO containing the following information:

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

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

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

(c) All proposed undertaking applications shall be reviewed as either State-involved undertakings or federally-involved undertakings.

- (1) State-involved undertakings are those that require State approval or implicate State funds. State-involved undertakings include any State-issued permits, State-issued grants, and State-issued licenses. State-involved undertakings shall be reviewed by the HPO as staff to the Historical Commission for their effect on submerged cultural resources as well as historical, architectural, or archaeological structures, sites, districts, or objects. Any State-involved undertakings which may affect a property listed on the National Register of Historic Places shall be reviewed according to Rule .0206 of this Section.
- (2) Federally-involved undertakings are those that require federal approval or implicate federal funds. Federally-involved undertakings shall be reviewed by the SHPO using the regulations set forth in 36 C.F.R. 800. 36 C.F.R. 800 is hereby incorporated by reference, including subsequent amendments and additions, and may be accessed at no cost at <http://www.achp.gov/regs-rev04.pdf>.

(d) The HPO shall issue a response within 30 days of receipt of the submission.

History Note: Authority G.S. 121-4(13); 121-8; 121-9; 121-12(a); 143B-62; 16 U.S.C. 470; 54 U.S.C. 302301; 302303; 36 C.F.R. 800;
Eff. February 1, 1985;
Amended Eff. June 1, 1989;
Readopted Eff. June 1, 2017.

**07 NCAC 04R .0204 UNDERWATER
 ARCHAEOLOGICAL REVIEW**

07 NCAC 04R .0205 ARCHITECTURAL REVIEW

History Note: Authority G.S. 113-229(e); 113A-4(2); 121-4(13); 121-22 through 121-28; 136-42.1; 143B-62(1)(f)(3); 143B-62(2)g; 16 U.S.C. 470; 36 C.F.R. 63; 36 C.F.R. 800.
Eff. February 1, 1985;
Amended Eff. June 1, 1989;
Repealed Eff. June 1, 2017.

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

(a) This Rule shall apply to State-involved undertakings affecting property listed in the National Register of Historic Places. National Register-listed properties may be identified through use of the HPO's Geographic Information System HPOWEB located at <http://gis.ncdcr.gov/hpweb> or use of the North Carolina Listings in the National Register located at <http://www.hpo.ncdcr.gov/NR-PDFs.html>.

(b) For purposes of this Rule, the "agency concerned" means the State agency, commission, or entity responsible for issuing the grant, funding, license, or other approval required for the undertaking.

(c) Prior to the approval of any State funds and prior to any approval, license, or permit for any State-involved undertaking the head of the agency concerned shall:

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

(d) Based on the application and the statement submitted in Paragraph (c) of this Rule, the SHPO shall determine whether the undertaking creates an adverse effect requiring review by the Historical Commission. For purposes of this Rule, an undertaking shall be deemed to have an adverse effect requiring review by the Historical Commission when the undertaking creates an effect which meets the definition of "adverse effect" in Rule .0202 of this Section or when the undertaking includes the transfer or sale of a State-owned property listed in the National Register without conditions or restrictions regarding preservation, maintenance, or use of the National Register property.

(e) Review by the Historical Commission shall be required if any repair does not comply with the Standards of Rehabilitation in 36

C.F.R. 67.7. Replacement of existing windows shall be subject to review under this Rule.

(f) If the SHPO finds that an undertaking will have an adverse effect which requires review by the Historical Commission, he or she shall transmit a notice of the next regularly scheduled meeting of the Historical Commission to the agency head. From the time of receipt of the notice until the conclusion of the Historical Commission meeting, the agency shall take no action which would affect a property listed in the National Register of Historic Places without the approval of the SHPO acting for and on behalf of the Historical Commission. Such approval shall only be granted in the case a building inspector determines the National Register property poses a threat to public safety because of an unsafe or dangerous condition. Requests for emergency approval shall be emailed to environmental.review@ncdcr.gov. Emergency requests shall contain a copy of the original application as required in Rule .0203 of this Section and a copy of the building inspection.

(g) Members of the public who have knowledge of any undertaking that would have an adverse effect upon a property listed in the National Register of Historic Places may comment in writing to the SHPO, Department of Natural and Cultural Resources, MSC 4617, Raleigh, North Carolina 27699.

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

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

History Note: Authority G.S. 121-12(a); 143B-62; Eff. February 1, 1985; Amended Eff. June 1, 1989; Readopted Eff. June 1, 2017.

07 NCAC 04R .0301 NATIONAL REGISTER ADVISORY COMMITTEE

(a) The SHPO shall appoint 12 members to the National Register Advisory Committee (NRAC), which serves as the State historic preservation review board required by 54 U.S.C. 302301(2). The NRAC's membership shall include five members of the North Carolina Historical Commission and seven members of the general public. The following professions shall be represented in the membership, with a majority of members being professionals as required by 54 U.S.C. 300318:

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

(b) The NRAC reviews North Carolina nominations to the National Register of Historic Places (Register). The NRAC shall make a recommendation to the SHPO on whether the property nominated meets the National Register criteria for nomination as set forth in 36 C.F.R. 60.4.

(c) Mail for the NRAC shall be addressed to the HPO, Attention National Register Coordinator, 4617 Mail Service Center, Raleigh, NC 27601.

History Note: Authority G.S. 143B-62; 54 U.S.C. 300318, 302104, 302301; 36 C.F.R. 60.3(o), 60.4, 60.6. Eff. February 1, 1985; Amended Eff. June 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015; Amended Eff. June 1, 2017.

07 NCAC 04R .0302 PUBLIC SUGGESTIONS FOR NATIONAL REGISTER

History Note: Authority G.S. 121-8(b); 143B-62(1),(3); Eff. February 1, 1985; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015; Repealed Eff. June 1, 2017.

07 NCAC 04R .0303 NATIONAL REGISTER STUDY LIST

(a) The Study List process is a formal screening process used to determine a property's likelihood of qualifying for the National Register. Placement on the Study List means the further study of the property's integrity and significance is recommended to prepare a National Register nomination form as provided in Rule .0304 of this Section.

(b) Study List applications are available upon request by contacting the HPO's Survey and National Register Branch. Contact information is available at www.hpo.ncdcr.gov/hpostaff.htm. To apply for inclusion on the Study List, an applicant shall submit a Study List application to the address in Rule .0301(c) of this Section. Applications may be submitted by HPO staff, a professional consultant, a governmental agency, the property owner, or any person. Applications for inclusion on the Study List shall include the following information and documentation:

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

(c) Study List applications shall be reviewed at a meeting of the NRAC. The NRAC shall review Study List applications pursuant to 36 C.F.R. 60.4 and 60.6(j) and provide a recommendation to the SHPO as to whether the property should be placed on North Carolina's Study List. The SHPO shall review the applications pursuant to 36 C.F.R. 60.4 and 60.6(k) and (l). The SHPO shall make a determination whether the property shall be placed on North Carolina's Study List.

(d) The SHPO shall notify the site owner or, if a district, the executive officer of the municipality or affected area, by mail of his or her opinion regarding the property's eligibility for the National Register. If the SHPO determines the property may be eligible for nomination to the National Register upon further study, the SHPO shall place the property on the Study List. The SHPO shall also notify the owner or executive officer of the

effects of listing the property in the National Register in accordance with the applicable rules and statutes.

History Note: Authority G.S. 121-8(b); 143B-62; 54 U.S.C. 302104; 36 C.F.R. 60.5, 60.6, 60.9;
Eff. February 1, 1985;
Amended Eff. June 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;
Amended Eff. June 1, 2017.

07 NCAC 04R .0304 NATIONAL REGISTER NOMINATIONS

(a) An applicant who wishes to have a property nominated to the National Register shall submit a draft nomination in writing by mail to the address in Rule .0301(c) of this Section. Nomination forms are available at www.nps.gov/nr/publications/forms.htm. Forms 10-900, 10-900a, and 10-900b are hereby incorporated by reference, including subsequent amendments and editions. The forms are available online at no cost.

(b) Upon request, the HPO shall provide nomination applicants with an electronic copy of the National Register Bulletin "How to Apply the National Register Criteria for Evaluation," available at <https://www.nps.gov/nr/publications/bulletins/nrb15/> and the National Register Bulletin "How to Complete the National Register Form" available at www.nps.gov/nr/publications/bulletins/nrb16a/. Both Bulletins are hereby incorporated by reference, including subsequent amendments and editions. The Bulletins are available online at no cost. Applicants shall use the Bulletins as a guide when completing the National Register nomination form.

(c) The HPO shall review draft nomination forms using the standards in the Bulletins incorporated in Paragraph (b) of this Rule. The HPO shall provide written guidance to the applicant on necessary revisions to ensure the nomination meets the standards set forth in the Bulletins.

(d) When the HPO determines the nomination form is complete and in compliance with the Bulletins incorporated in subsection (b) of this Rule, the HPO shall send the application to the NRAC for consideration.

(e) The HPO shall provide written notice to the owner or owners of the nominated property in accordance with 36 C.F.R. 60.6. The HPO shall notify owners listed in the official land recordation records or tax records. The owner or owners shall have the opportunity to object to the nomination by submitting a written and notarized statement in accordance with 36 C.F.R. 60.6(g) to the address in Rule .0301(c) of this Section. If a majority of the owners of private property submit objections to its nomination, the SHPO shall follow the procedure set forth in 36 C.F.R. 60.6(n).

(f) Individuals and local government entities may provide comments on a proposed nomination as provided in 36 C.F.R. 60.6(g).

(g) The NRAC shall review nominations pursuant to 36 C.F.R. 60.4 and 60.6(j). The NRAC shall provide a recommendation to the SHPO as to whether the property meets the National Register Criteria for Evaluation in 36 C.F.R. 60.4 and should be forwarded to the Keeper of the National Register for listing in the National Register.

(h) The SHPO shall review the nomination and the NRAC's recommendation along with any public comments. The SHPO may, in his or her discretion, submit the nomination and comments to the Keeper of the National Register, Department of the Interior, National Park Service, Washington, D.C. 20240. The SHPO shall notify the property owner or owners and applicant of his or her final decision regarding the nomination.

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

History Note: Authority G.S. 121-8(b); 143B-62; 36 C.F.R. 60.6, 60.11;
Eff. February 1, 1985;
Amended Eff. June 1, 1989;
Readopted Eff. June 1, 2017.

07 NCAC 04R .0305 NATIONAL REGISTER NOMINATION PRIORITIES

History Note: Authority G.S. 121-8(b); 143B-62(3); 36 C.F.R. 60.11;
Eff. February 1, 1985;
Amended Eff. June 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;
Repealed Eff. June 1, 2017.

07 NCAC 04R .0501 REVIEW OF COMMISSION REPORTS

Local governments, municipal governing boards, local preservation commissions, historic district commissions, and landmark commissions shall submit requests for review of reports pursuant to G.S. 160A-400.4(b) and G.S. 160A-400.6(2)-(3) to the State Historic Preservation Officer (SHPO) in care of the State Historic Preservation Office (HPO), North Carolina Department of Natural and Cultural Resources, 4617 MSC, Raleigh, NC 27699 or emailed to the HPO's Local Government Coordinator. The Local Government Coordinator's contact information is available at www.hpo.ncdcr.gov/hpostaff.htm.

History Note: Authority G.S. 121-8(e); 160A-400.4(b)(2); 160A-400.6 (2,3);
Eff. February 1, 1985;
Amended Eff. June 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;
Amended Eff. June 1, 2017.

07 NCAC 04R .0502 CERTIFICATES OF APPROPRIATENESS

(a) Local preservation commissions, in their discretion, may seek the advice of the Department of Natural and Cultural Resources when reviewing applications for Certificates of Appropriateness pursuant to G.S. 160A-400.9. Local preservation commissions

shall submit such requests in writing to the HPO, North Carolina Department of Natural and Cultural Resources, 4617 MSC, Raleigh, NC 27699, or by email to the HPO's Local Government Coordinator. The Local Government Coordinator's contact information is available at www.hpo.ncdcr.gov/hpostaff.htm. The review will be completed within 30 days of receipt. Comments in response to the request will be conveyed in writing to the commission requesting the review.

- (b) Requests for review of applications for Certificates of Appropriateness shall include a copy of the Certificate of Appropriateness application.
- (c) Local preservation commission decisions regarding Certificates of Appropriateness may be appealed as provided in Rule .0503 of this Section.

History Note: Authority G.S. 121-8(e); 160A-400.9(d); Eff. February 1, 1985;
Amended Eff. June 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;
Amended Eff. June 1, 2017.

07 NCAC 04R .0503 REVIEW OF APPEALS

(a) The State of North Carolina and its agencies may appeal decisions of local preservation commissions to the North Carolina Historical Commission. Agencies shall submit requests for appeals to the Chairman, North Carolina Historical Commission c/o HPO, North Carolina Department of Natural and Cultural Resources, 4617 MSC, Raleigh, NC 27699. Agencies shall submit a copy of the record and decision from the local preservation commission as well as an explanation of the grounds for appeal. The Historical Commission shall consider appeals according to the standards set forth in G.S. 160A-400.9. The Historical Commission may reverse, sustain, or modify the decision of the local preservation commission.

History Note: Authority G.S. 143B-62; 160A-400.9(f); Eff. February 1, 1985;
Amended Eff. June 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;
Amended Eff. June 1, 2017.

07 NCAC 04R .0504 ADEQUATE INFORMATION

History Note: Authority G.S. 160A-395(2); 160A-397; 160A-398.1; 160A-399.5(2); 160A-399.6;
Eff. February 1, 1985;
Amended Eff. June 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;
Repealed Eff. June 1, 2017.

07 NCAC 04R .0601 STATEMENT OF PURPOSE

History Note: Authority G.S. 121-8; Building Code Authority Chapter 10, Sec. 1009.1(a)(1), 1010.1(a)(1);

Eff. February 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;
Repealed Eff. June 1, 2017.

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

(a) Applications for designation of buildings as "historic buildings" as provided in 2012 North Carolina Rehab Code, Sec. 1.33 and 2015 North Carolina Existing Building Code, Chapter 2, Sec. 202 may be obtained from the State Historic Preservation Officer (SHPO), Attention Survey and National Register Branch, State Historic Preservation Office (HPO), North Carolina Department of Natural and Cultural Resources, 4617 MSC, Raleigh, N. C. 27699, or by email to the Supervisor of the Survey and National Register Branch of the Historic Preservation Office. The Supervisor's contact information is available at www.hpo.ncdcr.gov/hpostaff.htm. Applications shall include the contents required by Rule .0605 of this Section.

(b) The SHPO or designee shall sign the application form deeming the property historic for the purposes of either the North Carolina Rehab Code or the 2015 North Carolina Existing Building Code if it meets one or more of the following criteria:

- (1) It is listed in the North Carolina or National Registers of Historic Places either individually or as a contributing building to a historic district;
- (2) It has been issued a Determination of Eligibility pursuant to 36 C.F.R. part 63 by the Keeper of the National Register of Historic Places;
- (3) It is identified as a contributing building to a local historic district under 36 C.F.R. 67.5; or
- (4) It is certified by the State Historic Preservation Officer using criteria set forth in 36 C.F.R. 60.4, as eligible to be listed on the National Register of Historic Places either individually or as a contributing building to a historic district. Properties "eligible to be listed on the National Register" include properties listed on the National Register Study list as provided in Rule .0303 of this Subchapter.

(c) The SHPO shall forward the application with a determination of whether the property has been deemed historic to the property owner, with copies to the local building inspector and the HPO's Restoration Branch.

(d) Any building determined by the SHPO to be individually eligible for listing in the National Register of Historic Places pursuant to Paragraph (b)(4) of this Rule shall be presented for addition to the State Study List at the next meeting of the National Register Advisory committee as provided in Rules .0301-.0304 of this Subchapter.

History Note: Authority G.S. 121-8; 54 U.S.C. 302303;
Eff. February 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;
Amended Eff. June 1, 2017.

07 NCAC 04R .0603 CRITERIA FOR DESIGNATION
07 NCAC 04R .0604 DESIGNATING BUILDINGS AS
HISTORIC FOR BUILDING CODE PURPOSES

History Note: Authority G.S. 121-8(a),(c), and (f); Building Code Authority Chapter 1009.1(a)(1), 1010.1(a)(1); Eff. February 1, 1985;
Amended Eff. June 1, 1989;
Pursuant to G.S. 150B-21.3A, rules are necessary without substantive public interest Eff. July 26, 2015;
Repealed Eff. June 1, 2017.

07 NCAC 04R .0605 DOCUMENTATION REQUIRED
 Applicants for "historic building" determinations shall include the following information and documentation in addition to the applicant's contact information:

- (1) An application for a building individually listed in the National Register or the National Register Study List shall include the following:
 - (a) a photograph of the building; and
 - (b) a citation to the National Register nomination by name and county.
- (2) An application for a building individually designated by local historic properties commissions shall include the following:
 - (a) a photograph of the building;
 - (b) a copy of the local designation report; and
 - (c) a letter from the local designating authority certifying that the property is designated as a local historic landmark or is in a local historic district.
- (3) An application for a building in a historic district that is listed in the National Register, listed on the State Study List, or in a locally designated historic district, shall include the following:
 - (a) the name of the district and shall indicate whether the building is designated in the National Register, on the State Study List, or locally;
 - (b) a photograph of the building;
 - (c) the address of the building;
 - (d) a statement of the building's significance as a contributing building in the district, pursuant to 36 C.F.R. 60.4, 36 C.F.R. 67.5, G.S. 160A-400.4 or G.S. 160A-400.5;
 - (e) a map of the district showing the location of the building; and
 - (f) for a building in a locally designated district, the applicant shall also provide a copy of the ordinance designating the district and the material required by Items (1) and (2) of this Rule relating to the property. The certification letter from the local designating authority required by Item (2) of this Rule shall certify that the

property lies within the boundary of a locally designated district.

- (4) An application for a building not falling into any of the above categories shall include the following:
 - (a) photographs of the building (including interior features);
 - (b) a statement of the historical associations and significance of the building;
 - (c) an architectural description of the building; and
 - (d) a statement of the National Register criteria under 36 C.F.R. 60.4 it meets and how.

History Note: Authority G.S. 121-8; 54 U.S.C. 302303; Eff. February 1, 1985;
Amended Eff. June 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;
Amended Eff. June 1, 2017.

07 NCAC 04R .0606 APPEALS PROCEDURE

History Note: Authority G.S. 121-8(a),(c), and (f); 143B-62; Building Code Authority Chapter 1009.1(a)(1), 1010.1(a)(1); Eff. February 1, 1985;
Amended Eff. June 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;
Repealed Eff. June 1, 2017.

07 NCAC 04R .0801 OPERATING HOURS

History Note: Authority G.S. 121-5(b); 121-8(b),(f); Eff. February 1, 1985;
Amended Eff. April 1, 2001;
Repealed Eff. June 1, 2017.

07 NCAC 04R .0802 DISPOSITION OF ARTIFACTS; LOANS

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

- (1) whether the artifacts possess any new or undiscovered historical or archaeological information to add to the scientific community; and
 - (2) whether other comparable artifacts exist, so that there is no reason to retain the artifacts for future scientific research and reference purpose.
- (b) Artifacts in the custody of the Office of State Archaeology shall be loaned only for:
- (1) museum or research purposes;
 - (2) non-museum public display by local, state, or federal agencies; or

(3) to institutions for the purpose of public education.

(c) Loaned artifacts, specimens, documents, and records shall be maintained in the condition in which they were delivered. The borrower shall insure the articles against loss or damage for two times the amount of its fair market value as of the date the artifact was delivered. The artifacts shall be packaged in a manner that protects them from damage.

(d) The artifacts, specimens, documents, and records shall remain the property of the State of North Carolina and may be removed by the State with 10 days' written notice to the borrower. An item may be removed if the item has been damaged in any way or if there is a threat of theft or damage to the item. Notwithstanding any other provision of this Rule, an item may be immediately removed if requested by the borrower in writing to the State Archaeologist.

(e) Written authorization may be issued by the Office of State Archaeology to permit photography or duplication of any artifact of any kind. Requests shall be made in writing to the State Archaeologist and include: the name, address, and telephone number of the requestor, a description of the item being photographed or duplicated, and a statement describing the need for photographing or duplicating the items. An acknowledgment credit shall identify each artifact image with the Office of State Archaeology, North Carolina Division of Archives and History. The Office of State Archaeology may deny authorization if:

- (1) photography or duplication would degrade the quality of the item, such a fading or cracking from overexposure to light, air or moisture; or
- (2) handling of the item during photography or duplication would increase risk of damage to the item, such as accidental dropping, theft, or vandalism.

(f) All requests for loans of artifacts shall be submitted in writing to the State Archaeologist at least 30 days before the requested loan period. All requests shall include:

- (1) the requestor's name and address;
- (2) a statement describing the purpose for the loan, such as an exhibit, study, conservation;
- (3) a description of the requested object(s); and
- (4) the proposed loan period.

Requests shall be submitted to State Archaeologist, North Carolina Office State Archaeology, 4619 Mail Service Center, Raleigh NC 27699.

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

History Note: Authority G.S. 121-2(8); 121-4(12); 121-5(b); 121-7; 121-8(c); 143B-62;
Eff. February 1, 1985;
Amended Eff. April 1, 2001; June 1, 1989;
Readopted Eff. June 1, 2017.

07 NCAC 04R .0803 CURATION OF ARCHAEOLOGICAL COLLECTIONS

(a) All requests to store archaeological, archival, and photographic collections at OSA curation facilities shall be

submitted in writing to the State Archaeologist. All requests shall include:

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

Requests shall be submitted to State Archaeologist, North Carolina Office State Archaeology, 4619 Mail Service Center, Raleigh NC 27699.

(b) Decisions on storage requests shall be provided in writing by the State Archaeologist, in consultation with the Director of the Office of Archives and History, North Carolina Department of Natural and Cultural Resources, based on the following factors:

- (1) confirmation of the information submitted in the request under Paragraph (a) of this Rule;
- (2) the condition of the materials contained in the collection, such as fragility, rarity, or other conservation needs; and
- (3) the availability of storage space.

(c) Fees may be charged for curation and conservation services in the amount of two hundred dollars (\$200.00) per cubic foot of materials.

History Note: Authority G.S. 70-11; 121-4(8),(9),(13),(14); 121-4(14); 121-8(b),(c),(f); 143B-62;
Eff. February 1, 1985;
Amended Eff. April 1, 2001; June 1, 1989;
Readopted Eff. June 1, 2017.

07 NCAC 04R .0804 DEACCESSIONS
07 NCAC 04R .0805 ACCESS TO
ARCHAEOLOGICAL COLLECTIONS
07 NCAC 04R .0806 ARCHAEOLOGICAL SITE
FILES
07 NCAC 04R .0807 PUBLIC ACCESS TO
EXCAVATIONS
07 NCAC 04R .0808 ARCHAEOLOGICAL SURVEY
AND EVALUATION REPORT GUIDELINES

History Note: Authority G.S. 70-18; 121-8(b),(d),(e),(f); 121-4(9); 132-1(a); 132-2; 132-9; 132-3(a); 143B-62(2)d; 143B-62(2)(g);
Eff. February 1, 1985;
Amended Eff. April 1, 2001; June 1, 1989;
Repealed Eff. June 1, 2017.

07 NCAC 04R .1002	DEFINITIONS
07 NCAC 04R .1003	DEPARTMENT AUTHORIZED TO GRANT PERMITS AND LICENSES
07 NCAC 04R .1004	EXCEPTIONS
07 NCAC 04R .1005	PERMIT FOR EXPLORATION: RECOVERY OR SALVAGE
07 NCAC 04R .1006	TERMS AND CONDITIONS OF PERMITS
07 NCAC 04R .1007	APPEALS RELATING TO PERMITS
07 NCAC 04R .1008	OWNERSHIP AND DIVISION OF RECOVERED ITEMS
07 NCAC 04R .1009	PROTECTED AREAS
07 NCAC 04R .1010	SPECIAL AREAS FOR SPORT AND HOBBY OPERATIONS
07 NCAC 04R .1011	REPORTING REQUIREMENTS
07 NCAC 04R .1012	REPORT REVIEW
07 NCAC 04R .1013	TERMINATION OF PERMIT

History Note: Authority G.S. 121-22; 121-23; 121-24; 121-25; 150B;
Eff. February 1, 1985;
Amended Eff. June 1, 1989;
Repealed Eff. June 1, 2017.

07 NCAC 04R .1501	OPERATING HOURS
07 NCAC 04R .1502	HISTORIC STRUCTURE SITE FILES AND MAPS

History Note: Authority G.S. 70-18; 121-4; 121-2(8); 121-4(13),(14); 121-4.1(a); 121-5(d); 121-8(b),(c),(f); 143B-62(2b); 143B-62(2d); 150B-2(8a);
Eff. April 1, 2001;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;
Repealed Eff. June 1, 2017.

07 NCAC 04R .1503 VISITATION POLICY

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

(b) When multiple visitors seek access to the files on the same day, the branch supervisor or his or her designee may limit duration of visits and limit the number of visitors using the file collection. The branch supervisor or his or her designee may limit access based upon the following factors:

- (1) the files are in use by the Department;
- (2) space is unavailable to view the files;
- (3) the files would be damaged or harmed by exposure to environmental elements, such as air, light, or moisture; and

- (4) any other circumstances that will ensure the preservation of the files, as determined by the branch supervisor or his or her designee. "Other circumstances" include those that may result in theft or damage during use.

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

(d) Survey and National Register Branch staff shall have priority in using the copy machine.

History Note: Authority G.S. 121-4(13); 121-8(b),(c),(f); 143B-62(3);
Eff. April 1, 2001;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;
Amended Eff. June 1, 2017.

07 NCAC 04R .1601 DEFINITIONS

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

- (1) "Abandoned shipwrecks" means sunken vessels, ships, boats, and other watercraft and their associated cargoes, tackle, and materials that have remained unclaimed for 10 years as set forth in G.S. 121-22.
- (2) "Applicant" means a person or entity applying for a permit or license to conduct any archaeological investigations on State lands or archeological sites, or any type of exploration, recovery, or salvage operations of any part of an Abandoned shipwreck or its contents.
- (3) "Emergency archaeological investigation" means any surface collection, subsurface test, excavation, or other activity that results in the disturbance or removal of archaeological resources occurring on State lands or Abandoned shipwrecks undertaken because of:
 - (a) the accidental discovery of archaeological resources during construction or other ground disturbing activities; or
 - (b) threat of damage or destruction to archaeological resources caused by events including vandalism, fire, erosion, land clearing, road construction, dredging, flood, or hazardous contamination.
- (4) "Ground disturbance" means any activity that compacts or disturbs the ground including disturbance upon State lands or Abandoned shipwrecks related to the construction, alteration, trenching or expansion of dikes, borrow pits, utility lines, airports, bridges, housing developments, boat basins and channels, and the placement of fill or spoil dirt.
- (5) "Land controlling agency" means the State agency with management responsibilities for State land.

- (6) "Permit" means written authorization in accordance with these Rules to conduct archaeological investigation on State lands or Abandoned shipwrecks.
- (7) "Protected Area" means an area identified by the Department of Natural and Cultural Resources as having scientific, archaeological, or historical value, as evaluated by criteria set forth in 36 C.F.R. 60.4.
- (8) "Principal Investigator Archaeologist" means a person possessing the following:
 - (a) a postgraduate degree or equivalent training and experience in archaeology, anthropology, history, or another related field with a specialization in archaeology;
 - (b) a minimum of one year's experience in conducting archaeological field research; and
 - (c) a minimum of five years' experience in theoretical and methodological design and in collecting, handling, analyzing, evaluating, and reporting archaeological data.
- (9) "Risk of harm" means any disclosure of the nature or location of any archaeological resource that results or may result in the loss or destruction of archaeological context or information or the loss of historical, scientific, environmental, monetary, or religious attributes and values attributable to in archeological sites and artifacts.
- (10) "State Archaeologist" means the head of the Office of State Archaeology (Archaeology Section), Division of Historical Resources, Office of Archives and History, Department of Natural and Cultural Resources.
- (11) "State lands" shall mean "land" as defined in G.S. 70-12.
- (12) "Archaeological artifacts" means those materials showing human workmanship or modification or having been used or intended to be used or consumed by humans, including relics, monuments, tools and fittings, utensils, instruments, weapons, ammunition, and treasure trove and precious materials including gold, silver, bullion, pottery, ceramic, and similar or related materials.

History Note: Authority G.S. 70-12; 70-13; 70-14; 121-4; 121-22; 121-23; 143B-62(1)(h);
Eff. June 1, 2017.

07 NCAC 04R .1602 ARCHAEOLOGICAL INVESTIGATIONS ON STATE LANDS

(a) Any person conducting archeological investigations on State lands or Abandoned shipwrecks shall obtain a permit. Upon consultation with the Department of Administration and subject to the criteria and discretion set forth in this Section, Article 2 of

G.S. 70 and Article 3 of G.S. 121, the State Archaeologist, as designee of the Secretary of the Department of Natural and Cultural Resources, may grant permits to any person wishing to conduct terrestrial or underwater archaeological investigations on State lands, the exploration, recovery, or salvage of abandoned shipwrecks, and of underwater archaeological artifacts of state-owned bottoms in navigable waters.

(b) No archaeological investigation, exploration, recovery, or salvage operations shall be conducted on State lands or Abandoned shipwrecks without a permit from the Department of Natural and Cultural Resources.

(c) After issuance, no permit or any part thereof shall be assigned or sublet.

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

- (1) General Permits shall be issued to those land controlling agencies that employ Principal Investigator Archaeologists on a full time permanent basis to conduct archaeological investigations on State lands or Abandoned shipwrecks under the agency's control in accordance with the rules in this Section; and
- (2) Specific Permits shall be issued to Principal Investigator Archaeologists and shall include all permits other than General Permits.

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

History Note: Authority G.S. 70-13; 70-14; 121-23; 121-25; 143B-10; 143B-62(1)(h);
Eff. June 1, 2017.

07 NCAC 04R .1603 APPLICATION FOR ARCHAEOLOGICAL PERMITS

(a) General Permit. Applications for a land controlling agency shall include the following information:

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

- (9) the principal investigator archaeologist's plans, if any, for dissemination of the results of the investigation in addition to the reporting requirements of Rule .1611 of this Section.

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

- (1) a written description of the location of the proposed investigation, including the county and township;
- (2) a 1: 24,000 or larger scale map depicting the location of the proposed investigation;
- (3) a description of the nature, objectives and scope of the proposed investigation, including the methods to be employed and the requirements for clearing of vegetation;
- (4) the schedule for the investigation, including hours of the day and days of the week, as well as beginning and completion dates. The schedule shall include 60 days for review and comment of the draft report by the State Archaeologist and the land-controlling agency and a maximum of 30 days for response, revisions, and submittal of the final report by the applicant;
- (5) the name, address, telephone number, institutional affiliation, and qualifications of the principal investigator archaeologist;
- (6) the name, address, telephone number, and qualifications of the field director, if different from the principal investigator;
- (7) the approximate number of people proposed to carry out the investigation;
- (8) evidence of the applicant's capability to initiate, conduct, and complete the proposed investigations, such as prior training or participation in the type of investigation proposed in the application;
- (9) written criteria for evaluation of requests for access to records and artifacts at the facility where the records and artifacts are to be curated;
- (10) the facility identified for curation of all artifacts, records, data, photographs, and other documents or information resulting from the investigation;
- (11) written concurrence from the land-controlling agency regarding the applicant's proposed curatorial arrangements;
- (12) facilities and plans for stabilization and preservation of perishable or unstable artifacts;
- (13) the person or position in the institution or agency with responsibility for curation of artifacts and records, and other documentation or information as to who will determine access to this material;

- (14) a description of the type and timing of all access needs on State property, vehicular or otherwise, required to conduct the investigations;
- (15) a description of how the project will be coordinated with the site-specific land manager, including the applicant's documentation that initial contact has been made and the name of the person contacted;
- (16) a description of the provisions to be made to secure the permit area to assure the safety of non-project personnel who may visit the permit area during and after project hours;
- (17) an indication of the length of time each excavation unit will be open and a schedule for reclaiming all areas disturbed by any aspect of the archaeological investigations; and
- (18) the applicant's plans, if any, for dissemination of the results of the investigations in addition to the reporting requirements noted in Rule .1612 of this Section.

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

History Note: Authority G.S. 70-13; 70-14; 121-4(13); 121-23; 121-25; 143B-10; 143B-62(1)(h);
Eff. June 1, 2017.

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

(a) Applicants for permits to conduct archaeological investigations shall certify on the application that they:

- (1) have a postgraduate degree, or equivalent training and experience, in archaeology, anthropology, history, or another related field with a specialization in archaeology;
- (2) have a minimum of one year's experience in conducting archaeological field research;
- (3) have obtained and submitted for review by the State Archaeologist a criminal record check by the State Bureau of Investigation as set forth in G.S. 70-13.1 and G.S. 121-25.1;
- (4) have funds, equipment, and facilities to undertake and complete the operation, provide supervision of all phases of the operation, and demonstrate the ability to carry out acceptable investigations that meet current professional standards, like those established by the Society for Historical Archaeology, the Conference on Underwater Archaeology, or the American Museum Association;
- (5) will undertake the proposed activity for the purpose of furthering archaeological knowledge;
- (6) will employ accepted techniques of survey, excavation, recovery, recording, preservation, and analysis used in investigations as follows:
 - (A) for investigations on State lands, the Secretary of Interior's Standards for

- Archaeology and Historic Preservation which is incorporated by reference, including subsequent amendments and editions, available for free at https://www.nps.gov/history/local-law/arch_stnds_0.htm, and available for inspection at no cost in the Office of State Archaeology; and
- (B) for Abandoned shipwrecks, applicants shall use the Abandoned Shipwreck Act Guidelines which is incorporated by reference, including subsequent amendments and editions, available for free at https://www.nps.gov/history/local-law/arch_stnds_0.htm, and available for inspection at no cost in the Office of State Archaeology; and
- (7) will conserve the archaeological artifacts recovered during the proposed project and ensure that those artifacts and all original archaeological records and data associated with the undertaking shall be conserved and curated in accordance with the National Park Service Standards as set forth in 36 CFR.

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

(c) The Specific Permit shall be issued or denied within 90 days following submission of the completed application provided the terms and requirements of the rules in this Section pertaining to Specific Permits are fulfilled.

(d) A Specific Permit shall not be issued to any person or entity conducting an Emergency archaeological investigation until the State Archaeologist receives and accepts a final report in accordance with Rules .1611 and .1612 of this Section.

(e) No General or Specific Permit shall be considered valid until a signed and dated original copy is returned to the State Archaeologist by the permittee.

History Note: Authority G.S. 70-11; 70-13; 70-13.1; 121-4(13); 121-23; 121-25; 121-25.1; 143B-10; 143B-62(1)(h); Eff. June 1, 2017.

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

(a) A Permit issued under this Section shall be extended or renewed in accordance with this Rule. Requests to extend or renew a Permit shall be submitted in writing to the State Archaeologist. The requests shall include:

- (1) the permittee's name, address, and telephone number;
- (2) a copy of the original permit;
- (3) whether the request is for an extension or renewal;
- (4) the time limit requested for an extension, not to exceed six months;

- (5) a statement describing the need for the extension or renewal; and
- (6) a statement certifying compliance with Rule .1604 of this Section.

(b) General Permits shall be valid for a period of five years from the date of issuance. General Permits may be extended for up to six months as requested by the permittee or renewed for five additional years. General Permits shall be extended only once, but may be renewed any number of times.

(c) Specific Permits shall be valid for a period of three years from the date of issuance. Specific Permits may be extended for up to six months as requested by the permittee or renewed for three additional years. Specific Permits may be extended only once, but may be renewed any number of times.

(d) Requests shall be approved or denied by the State Archaeologist based on:

- (1) the information submitted in the request under Paragraph (a); and
- (2) evaluation of past performance under the permit, such as compliance with the terms and conditions under the Permit and the progress of work completed under the Permit.

History Note: Authority G.S. 70-13; 70-14; 121-23; 121-25; 143B-62(1)(h); Eff. June 1, 2017.

07 NCAC 04R .1606 TERMS AND CONDITIONS OF PERMITS

(a) All permits shall specify:

- (1) the nature and extent of the investigations allowed under the permit, including the time, duration, scope, location, and purpose of the investigations;
- (2) the name of the individual responsible for conducting the investigations and, if different, the name of the individual responsible for carrying out the terms and conditions of the permit;
- (3) the name of the land-controlling agency, university, museum, or other scientific or educational institution in which any collected materials and data will be deposited; and
- (4) the reporting requirements and schedule as set forth in Rules .1611 and .1612; and
- (5) other terms and conditions as determined by the Department to be necessary to ensure public safety, protect natural and cultural resources, safeguard land uses, and limit activities to investigations authorized under the permit.

(b) Inspections may occur at the archeological investigation site to ensure that the terms and conditions of the permit are being met.

(c) The permittee shall obtain and submit evidence of liability insurance upon acceptance of the terms and conditions of the permit.

(d) Archaeological investigations conducted under a permit shall comply with all applicable state, federal, and local rules and regulations.

(e) All access to State-owned lands during permitted investigations shall be controlled by and coordinated with the land-controlling agency and the site-specific land manager, such as superintendents, wardens, or facilities managers.

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

(g) The land-controlling agency shall report in writing to the Secretary of the Department of Administration and State Archaeologist any change the Principal Investigator Archaeologist named in a General Permit within 10 days of that change.

History Note: Authority G.S. 70-13; 70-14; 121-23; 121-25; 143B-62(1)(h); Eff. June 1, 2017.

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

(a) A permit may be denied if the State Archeologist finds that:

- (1) the proposed investigations would represent an adverse effect, as defined in 36 C.F.R. 800.5(a)(1), to a unique or fragile natural resource, such as endangered plant or animal species;
- (2) the proposed investigations would interfere with the operation and management of an area;
- (3) the proposed investigations would pose a threat to public safety;
- (4) the applicant has not completed the terms and conditions of a previous permit; or
- (5) the results of the required criminal record check reveal one or more convictions listed in G.S. 70-13.1 or G.S. 125-25.1.

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

- (1) the terms and conditions of the permit have been or are being violated;
- (2) the permit applicant is convicted of a crime enumerated in G.S. 70-13.1 or G.S. 125-25.1;
- (3) the permit holder fails to comply with the rules in this Section or applicable State or federal laws; or
- (4) disclosure of information that the Department has determined would create a risk of harm in accordance with G.S. 70-18.

History Note: Authority G.S. 70-13; 70-14; 121-23; 121-24; 121-25; 143B-10; 143B-62(1)(h); Eff. June 1, 2017.

07 NCAC 04R .1609 EMERGENCY ARCHAEOLOGICAL INVESTIGATIONS

(a) Emergency archaeological investigations on State lands or Abandoned shipwrecks shall not require a Permit. Emergency archaeological investigations shall include any unforeseen discovery of artifacts or records found during any land disturbing activity, whether or not through a permit issued under this Section, conducted on State lands or Abandoned shipwrecks.

(b) Upon discovery or the need for an Emergency archaeological investigation, the State Archaeologist shall be notified. The State Archaeologist shall oversee the administration of Emergency archaeological investigations. The State Archaeologist shall designate a Principal investigator archaeologist to lead the investigation. Reporting requirements for emergency archaeological investigations shall be those set forth in Rule 1611 and .1612.

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

History Note: Authority G.S. 70-13; 70-14; 121-23; 123-25; 143B-10; 143B-62(1)(h); Eff. June 1, 2017.

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

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

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

(c) The principal investigator archaeologist may request to extend the submission of the final report as set forth in Paragraph (d) of this Rule. The request shall be in writing to the State Archaeologist and include a copy of the permit. The State Archaeologist may extend the date to submit the final report based on the following factors:

- (1) environmental changes;
- (2) changes in the project specifications by the project sponsor; or
- (3) unforeseen discoveries of complex or fragile archaeological materials, including human remains.

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

- (1) information concerning the physical location of artifacts, records, and all other documentation for all archaeological investigations;
- (2) itemized list of all recovered archaeological resources by type, variety, material, or other description and a list of accession numbers or other identifiers applied to the recovered resources;
- (3) an itemized list of records, photographs, and other documents and a list of accession numbers or other identifiers applied to the records and data; and
- (4) a summary of the results of all archaeological investigations as part of the report(s) required by the permit.

(e) The State Archaeologist and head of the land-controlling agency shall review at least once a year the permittee's

performance under any General Permit issued for a period greater than one year. The State Archaeologist shall review the final reports for General Permits to ensure that the reports meet the federal Secretary of the Interior's Standards for Archaeology and Historic Preservation and may request revisions of the final report if said standards are not met.

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

(g) The principal investigator shall revise and submit the final report, in accordance with the State Archaeologist written comments, within 30 days of receipt of review and comments by the State Archaeologist.

History Note: Authority G.S. 70-13; 70-14; 121-4; 121-23; 121-25; 143-10; 143B-62(1)(h); Eff. June 1, 2017.

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

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

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

(c) The permittee shall submit a letter to the State Archaeologist within 60 days after completion of the on-site archaeological investigation describing the activities conducted under the investigation. The letter to the State Archaeologist shall include the date for submission of the draft report as required by Paragraph (d) of this Rule.

(d) The permittee shall submit draft reports according to the schedule established in the permit or, in the case of emergency archaeological investigations, by the date specified in the letter as required in Paragraph (c) of this Rule. Draft reports submitted for emergency archaeological investigations shall include information on storage and curation of artifacts, records, and other data in accordance with the specifications in Rule .1603(b)(9) through (13) of this Section.

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

(f) If the specified submission date for a draft report of emergency archaeological investigations extends beyond one year from the date of submission a letter, as set forth in Paragraph (c) of this Rule, shall be submitted a year from the issuance date of the permit.

(g) The permittee or, in the case of an emergency archaeological investigation, the the Principal Investigator Archaeologist, shall provide in the final report the following information:

- (1) the physical location of artifacts, records, and all other documentation;
- (2) an itemized list of all recovered archaeological resources by type, variety, material, or other description and a list of accession numbers or

other identifiers applied to the recovered resources; and

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

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

(i) Permits issued for a period greater than one year shall be reviewed at least once a year through interim reports submitted by the permittee and by compliance inspections conducted at the investigation location. The review shall be conducted with the State Archaeologist and the head of the land-controlling agency or his or her designee. The interim report shall include: the name of the permittee, the location where the investigation is being conducted, the permit number, the name of the Principal Investigator Archaeologist, a description of the project goals, a description of the methods of research, all archaeological findings, and the project schedule.

(j) The State Archaeologist and the land-controlling agency shall review all draft and final reports for Permits to ensure that the investigations serve the public interest and the reports meet the federal Secretary of Interior's Standards for Archaeology and Historic Preservation which are incorporated by reference, including subsequent amendments and editions, for free at https://www.nps.gov/history/local-law/arch_stnds_0.htm, and available for inspection at no cost at the Office of State Archaeology. The State Archaeologist may request revisions of the draft or final reports. Terms and conditions of a Permit shall be considered satisfied only after report revisions have been completed and the report has been accepted by the State Archaeologist.

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

(l) The Principal Investigator Archaeologist shall revise and submit the final report, in accordance with the State Archaeologist written comments, within 30 days of receipt of review and comments by the State Archaeologist.

History Note: Authority G.S. 70-13; 70-14; 121-4; 121-23; 121-25; 143B-10; 143B-62(h); Eff. June 1, 2017.

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

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

(b) The location of all records, artifacts, or other materials shall not be changed from that approved in the permit without prior approval of the State Archaeologist and, in the case of Specific Permits, the land-controlling agency. This restriction shall not apply to the temporary removal and relocation of artifacts or records for the purposes of scientific, historical, or educational research or for purposes of public display or education, so long as the artifacts or records remain:

- (1) In the case of General Permits, under the custody or control of the Principal Investigator Archaeologist or the land-controlling agency; or
- (2) In the case of Specific Permits, under the custody or control of the museum, university, or

scientific or educational institution approved in the permit.

(c) Transfers of records and artifacts between universities, museums, and scientific or educational institutions shall be approved by the State Archaeologist. In the case of General Permits this Paragraph shall not apply to the movement of artifacts in the custody of a land-controlling agency so long as the artifacts remain under the control of the Principal Investigator Archaeologist and the land-controlling agency.

(d) All requests to relocate or transfer records, artifacts, or other materials related to a permit issued under this Section shall be in writing to the State Archaeologist. The requests shall include:

- (1) the permittee's name, address, and telephone number;
- (2) a copy of the permit;
- (3) a statement specifying whether the request is for relocation or transfer;
- (4) a description of items being relocated or transferred;
- (5) a statement describing the reason needed for the relocation or transfer;
- (6) the name, address, and telephone number of the institution where the items will be relocated or transferred; and
- (7) a letter from the permittee certifying that the receiving institution meets the qualifications for curation and preservation of the items as set forth in 36 C.F.R. 79

(e) Following a review of the application materials, the State Archaeologist shall notify the permittee in writing of its decision to approve or deny the request. Requests for relocation or transfer may be denied by the State Archaeologist if it:

- (1) would harm the safety of the item, such as by theft, vandalism, or risk of accidental damage; or
- (2) result in damage to the item, such as fading, breaking or, cracking due to overexposure from light, air, moisture, or additional movement.

History Note: Authority G.S. 70-13; 70-14; 121-23; 121-25; 143B-10; 143B-62(1)(h);
Eff. June 1, 2017.

07 NCAC 04T .0104 CRITERIA

(a) All highway historical markers shall designate places, events, or persons of statewide historical significance. Historical Significance shall mean any person, place, or event of the past that has been recorded, documented, or recognized in a primary or secondary source, such as in books, diaries, journals, newspaper articles, speeches, documentaries, textbooks, artifacts, or other items, as having a lasting contribution to North Carolina history. Subjects of local or regional importance shall not be approved for highway historical markers. Statewide historical significance

must be documented by the applicant. Applications shall be submitted to determine historical significance as set forth in this Rule.

(b) Applications shall be requested from and submitted in writing to the Historical Research Office of the Division of Archives and History, 4610 Mail Service Center, Raleigh, North Carolina 27699-4610, and include the following:

- (1) the subject to be marked;
- (2) the location associated with the subject;
- (3) a detailed statement describing the subject's significance and its impact on the North Carolina's history; and
- (4) copies of primary and secondary sources detailing the subject's historical significance to North Carolina.

(c) An individual shall be eligible for consideration of a historical marker 25 years following his or her death.

(d) Statewide historical significance shall be determined by the Highway Historical Marker Advisory Committee based on the following factors:

- (1) the relationship of the subject to North Carolina's history;
- (2) the relationship of the subject to existing markers, such as whether the subject is included on an existing marker;
- (3) the subject's contributions to North Carolina; and
- (4) consequence of the subject on North Carolina's history.

(e) If a person is named in the text of a marker, that individual will not be approved as the subject of a separate marker.

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

Eff. June 1, 1989;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;

Amended Eff June 1, 2017.

TITLE 10A - DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 15 .0302 EXEMPTIONS FOR SOURCE MATERIAL

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

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

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

Eff. February 1, 1980;

*Amended Eff. June 1, 1989; October 1, 1984; October 1, 1980;
Transferred and Recodified from 15A NCAC 11 .0302 Eff.
February 1, 2015;
Amended Eff. March 1, 2017.*

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

(a) Any person possessing radioactive material in individual quantities specified in 10 CFR 30.18(a) or (b) shall be exempt from the requirements for a radioactive materials license and shall comply with the provisions of 10 CFR 30.18(c) through (e).
(b) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beece594411a03e50b2468ae31f89b&pid=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.

*History Note: Authority G.S. 104E-7; 104E-10(b); 104E-20;
10 CFR 30.71;
Eff. February 1, 1980;
Amended Eff. October 1, 2013; May 1, 1993;
Transferred and Recodified from 15A NCAC 11 .0304 Eff.
February 1, 2015;
Amended Eff. March 1, 2017.*

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

(a) Any person possessing items containing radioactive material listed in 10 CFR 30.15(a)(1) through (9) shall be exempt from the requirements for a radioactive materials license and shall comply with the provisions of 10 CFR 30.15.
(b) Any person possessing self-luminous products listed in 10 CFR 30.19(a) shall be exempt from the requirements for a radioactive materials license and shall comply with the provisions of 10 CFR 30.19.
(c) Any person possessing gas and aerosol detectors listed in 10 CFR 30.20(a) shall be exempt from the requirements for a radioactive materials license and shall comply with the provisions of 10 CFR 30.20.
(d) Any person possessing radioactive drugs containing carbon-14 urea for diagnostic use in humans listed in 10 CFR 30.21(a) shall be exempt from the requirements for a radioactive materials license and shall comply with the provisions of 10 CFR 30.21.
(e) Any person possessing industrial devices listed in 10 CFR 30.22(a) shall be exempt from the requirements for a radioactive materials license and shall comply with the provisions of 10 CFR 30.22.
(f) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beece594411a03e50b2468ae31f89b&pid=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.

*History Note: Authority G.S. 104E-7; 104E-10(b); 104E-20;
Eff. February 1, 1980;*

*Amended Eff. October 1, 2013; April 1, 1999; June 1, 1993;
October 1, 1982; September 1, 1981;
Transferred and Recodified from 15A NCAC 11 .0305 Eff.
February 1, 2015;
Amended Eff. March 1, 2017.*

10A NCAC 15 .0307 GENERAL LICENSES: SOURCE MATERIAL

(a) Any person possessing source material in quantities equal to or less than the quantities shown in 10 CFR 40.22(a) shall be issued a general license in accordance with Rule .0306(a) of this Section, and shall comply with the provisions of 10 CFR 40.22(b) through (e).
(b) Any person possessing depleted uranium for the purpose authorized in 10 CFR 40.25(a) shall be issued a general license in accordance with Rule .0306(a) of this Section, and shall comply with the provisions of 10 CFR 40.25(b) through (e).
(c) Reports required by 10 CFR 40.22(b)(4) or 40.25(c) shall be sent to the agency at the address shown in Rule .0111 of this Chapter.
(d) Notwithstanding Rule .0117 of this Chapter, the regulations cited in this Rule from 10 CFR Chapter I (2015) are hereby incorporated by reference, excluding subsequent amendments and editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beece594411a03e50b2468ae31f89b&pid=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.

*History Note: Authority G.S. 104E-7; 104E-10(b);
Eff. February 1, 1980;
Amended Eff. January 1, 1994; May 1, 1992;
Transferred and Recodified from 15A NCAC 11 .0307 Eff.
February 1, 2015;
Amended Eff. March 1, 2017.*

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

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

*History Note: Authority G.S. 104E-7; 104E-10(b);
Eff. February 1, 1980;
Amended Eff. January 1, 2005; January 1, 1994;
Transferred and Recodified from 15A NCAC 11 .0308 Eff.
February 1, 2015;
Amended Eff. March 1, 2017.*

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

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

required by 10 CFR 31.5 shall be sent to the agency at the address listed in Rule .0111 of this Chapter.

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

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

Eff. February 1, 1980;

Amended Eff. October 1, 2013; January 1, 2005; January 1, 1994; June 1, 1989;

Transferred and Recodified from 15A NCAC 11 .0309 Eff.

February 1, 2015;

Amended Eff. March 1, 2017.

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

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

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

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

Eff. February 1, 1980;

Amended Eff. January 1, 2005;

Transferred and Recodified from 15A NCAC 11 .0310 Eff.

February 1, 2015;

Amended Eff. March 1, 2017.

10A NCAC 15 .0316 GENERAL LICENSES: TRANSPORTATION

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

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

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

(d) Any person preparing radioactive material for shipment or transporting radioactive material shall be subject to the provisions of 10 CFR Part 71 as applicable to the shipment and mode of transportation. Notwithstanding Rule .0117(a)(2)(J) of this

Chapter, 10 CFR 71.85(a) through (c), and 71.91(b) are excluded from incorporation by reference for the purposes of this Rule.

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

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

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

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

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

History Note: Authority G.S. 20-167.1; 104E-7; 104E-10(b); 104E-15(a);

Eff. February 1, 1980;

Amended Eff. January 1, 1994; May 1, 1992; October 1, 1982;

Transferred and Recodified from 15A NCAC 11 .0316 Eff.

February 1, 2015;

Amended Eff. March 1, 2017.

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

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

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

<https://www.nrc.gov/reading-rm/doc-collections/forms/nrc313.pdf>.

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

- (1) manufacture items containing exempt quantities of radioactive material or to manufacture exempt quantities of radioactive material that is not incorporated into a manufactured item shall meet the applicable requirements of 10 CFR Part 32, Subpart A;
- (2) manufacture or initially transfer generally licensed devices containing byproduct material shall meet the applicable requirements of 10 CFR Part 32, Subpart B;
- (3) manufacture radioactive drugs, sources, or devices not containing exempt quantities of radioactive material for medical use shall meet the applicable requirements of 10 CFR Part 32, Subpart C;
- (4) conduct broad scope activities shall meet the requirements of 10 CFR 33.12 and 33.16, as applicable to licensed activities. Broad scope medical licensees meeting the criteria of 10 CFR 33.13(a) shall be exempt from certain licensing and regulatory requirements as specified in 10 CFR 35.15. 10 CFR 33.11 is not incorporated by reference;
- (5) perform industrial radiography shall meet the requirements of 10 CFR 34.11;
- (6) administer radioactive material or radiation from a licensed source to humans for medical use when a license is required by 10 CFR 35.11 shall meet the requirements of 10 CFR 35.12 and 35.13, as applicable to licensed activities. Notifications required by 10 CFR 35.14 shall be sent to the agency at the address shown in Rule .0111 of this Chapter;
- (7) irradiate material using gamma radiation from sealed sources in facilities listed in 10 CFR 36.1(b) shall meet the requirements of 10 CFR 36.1;
- (8) conduct well logging activities shall meet the requirements of 10 CFR 39.11;
- (9) possess, use, or transfer source material shall meet the requirements of 10 CFR 40.31;
- (10) dispose of radioactive waste received from another person shall meet the requirements of Section .1200 of this Chapter;
- (11) receive, possess, or use special nuclear material shall meet the requirements of 10 CFR 70.22(a), 70.22(d), and 70.22(e), 70.33, or 70.34 as applicable to licensed activities; or
- (12) manufacture or initially transfer calibration or reference sources containing plutonium to persons generally licensed under Rule .0312 of this Section shall meet the requirements of 10 CFR 70.39.

(c) Applications for sealed source and device registration certification, amendment of sealed source and device registration

certificates, and inactivation of previously issued sealed source and device registration certificates shall comply with the provisions of 10 CFR Part 32, Subpart D.

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

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

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

Eff. February 1, 1980;

Amended Eff. October 1, 2013; April 1, 1999; May 1, 1992; November 1, 1989;

Transferred and Recodified from 15A NCAC 11 .0317 *Eff.* February 1, 2015;

Amended Eff. March 1, 2017.

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

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

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

Eff. February 1, 1980;

Transferred and Recodified from 15A NCAC 11 .0327 *Eff.* February 1, 2015;

Amended Eff. March 1, 2017.

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

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

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

Eff. February 1, 1980;

Amended Eff. October 1, 2013; January 1, 1994;

Transferred and Recodified from 15A NCAC 11 .0328 *Eff.* February 1, 2015;

Amended Eff. March 1, 2017.

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

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

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

Eff. February 1, 1980;
Transferred and Recodified from 15A NCAC 11 .0329 Eff.
February 1, 2015;
Amended Eff. March 1, 2017.

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

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

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

History Note: Authority G.S. 104E-7; 104E-10(b);
Eff. February 1, 1980;
Transferred and Recodified from 15A NCAC 11 .0330 Eff.
February 1, 2015;
Amended Eff. March 1, 2017.

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

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

History Note: Authority G.S. 104E-7; 104E-10(b);
Eff. February 1, 1980;
Amended Eff. October 1, 2013; January 1, 1994;
Transferred and Recodified from 15A NCAC 11 .0331 Eff.
February 1, 2015;
Amended Eff. March 1, 2017.

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

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

History Note: Authority G.S. 104E-7; 104E-10(b);
Eff. February 1, 1980;
Transferred and Recodified from 15A NCAC 11 .0332 Eff.
February 1, 2015;
Amended Eff. March 1, 2017.

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

An application for a specific license authorizing the manufacture and initial transfer of products containing depleted uranium to persons generally licensed under Rule .0307(b) of this Section,

shall comply with the provisions of Rule .0317(a), (b)(9), (c), and (d) of this Section as applicable to the licensed activities.

History Note: Authority G.S. 104E-7; 104E-10(b);
Eff. February 1, 1980;
Amended Eff. January 1, 1994;
Transferred and Recodified from 15A NCAC 11 .0335 Eff.
February 1, 2015;
Amended Eff. March 1, 2017.

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

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

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

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

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

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

Eff. February 1, 1980;

Amended Eff. June 1, 1993;

Transferred and Recodified from 15A NCAC 11 .0337 Eff.

February 1, 2015;

Amended Eff. March 1, 2017.

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

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

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

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

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

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

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

Eff. February 1, 1980;

Amended Eff. October 1, 2013; May 1, 1993; May 1, 1992; June 1, 1989;

Transferred and Recodified from 15A NCAC 11 .0338 Eff.

February 1, 2015;

Amended Eff. March 1, 2017.

10A NCAC 15 .0343 TRANSFER OF MATERIAL

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

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

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

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

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

Eff. February 1, 1980;

Amended Eff. May 1, 1993; June 1, 1989;

Temporary Amendment Eff. August 20, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Amended Eff. May 1, 1995;

Transferred and Recodified from 15A NCAC 11 .0343 Eff.

February 1, 2015;

Amended Eff. March 1, 2017.

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

(a) All licenses authorizing the receipt, possession, use, and transfer of byproduct material, and all sealed source and device registration certificates issued by the agency under the rules of this Section, are subject to modification by the agency in accordance with 10 CFR 30.61.

(b) All licenses issued by the agency for the receipt, possession, use, and transfer of source material under the rules of this Section, are subject to modification by the agency in accordance with 10 CFR 40.71.

(c) All licenses issued by the agency for the receipt, possession, transfer, or disposal of radioactive waste from another person are subject to modification by the agency in accordance with the provisions of 10 CFR 61.24.

(d) All licenses issued by the agency for the receipt, possession, use, and transfer of special nuclear material are subject to modification by the agency in accordance with 10 CFR 70.81.

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

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

Eff. February 1, 1980;

Amended Eff. June 1, 1993;

Transferred and Recodified from 15A NCAC 11 .0344 Eff.

February 1, 2015;

Amended Eff. March 1, 2017.

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

(a) Applications for a new license filed with the agency under Rule .0317 of this Section, and applications for the renewal of a license filed with the agency under Rule .0340 of this Section, shall include an evaluation of the need for financial assurance based upon the quantity of radioactive material requested in the application.

(b) Applications for amendment of a license filed with the agency under Rule .0341 of this Section, changing the quantity of radioactive material authorized for possession by a licensee, shall include an evaluation of the need for financial assurance based upon the quantity of radioactive material that shall be authorized by the amended license.

(c) Evaluation of the need for financial assurance shall be performed by the applicant based upon the type of application listed in Paragraph (a) or (b) of this Rule, using one or more the methods shown in Paragraph (d) of this Rule.

(d) Applicants shall require financial assurance to possess the following types and quantities of radioactive material:

- (1) byproduct material in the quantities shown in 10 CFR 30.35(a) or (b);
- (2) source material in the quantities shown in 10 CFR 40.36(a) or (b); and
- (3) special nuclear material in the quantities shown in 10 CFR 70.25(a)(2) or (b).

(e) Applicants requiring financial assurance shall:

- (1) comply with the provisions of 10 CFR 30.35(c) for the possession of byproduct material;
- (2) comply with the provisions of 10 CFR 40.36(c) for the possession of source material; and
- (3) comply with the provisions of 10 CFR 70.25(c) for the possession of special nuclear material.

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

History Note: Authority G.S. 104E-7; 104E-18; Eff. May 1, 1992; Amended Eff. May 1, 2006; April 1, 1999; August 1, 1998; January 1, 1994; Transferred and Recodified from 15A NCAC 11 .0353 Eff. February 1, 2015; Amended Eff. March 1, 2017.

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

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

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

- (3) special nuclear material shall provide for financial assurance in compliance with 10 CFR 70.25(f).

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

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

History Note: Authority G.S. 104E-7; 104E-18; Eff. May 1, 1992; Transferred and Recodified from 15A NCAC 11 .0354 Eff. February 1, 2015; Amended Eff. March 1, 2017.

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

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

- (1) parent companies guaranteeing funds for decommissioning shall have a tangible net worth of at least ten million dollars (\$10,000,000) to meet the asset requirement set forth in Section II, Paragraphs A.1(iii) or A.2(iii), of Appendix A to 10 CFR Part 30;
- (2) licensees self-guaranteeing funds for decommissioning who issue bonds, and whose bonds meet the bond rating requirements of Section II, Paragraph A.(3) of Appendix C to 10 CFR Part 30 shall have a tangible net worth of at least ten million dollars (\$10,000,000), and at least six times the amount of decommissioning funds being assured by the self-guarantee to meet the asset requirements set forth in Section II, Paragraph A.(2) and A.(3) of Appendix C to 10 CFR Part 30;
- (3) licensees self-guaranteeing funds for decommissioning who do not issue bonds, or whose bonds do not meet the bond rating requirements of Section II, Paragraph A.(3) of Appendix C to 10 CFR Part 30, shall have a tangible net worth of at least ten million dollars (\$10,000,000), and at least six times the amount of decommissioning funds being assured by the self-guarantee to meet the asset requirements set forth in Section II, Paragraph A.(1) and A.(2) of Appendix D to 10 CFR Part 30;

- (4) licensees self-guaranteeing funds for decommissioning who are nonprofit publicly funded colleges, universities, or hospitals shall meet the funding requirements set forth in 10 CFR 30.35(f)(4). For the purpose of this Rule, publicly funded trade schools, technical institutes, technical colleges, technical universities, or other publicly funded educational institutions are to be interpreted as "nonprofit publicly funded colleges;"
- (5) licensees self-guaranteeing funds for decommissioning who are nonprofit privately funded, or nonprofit semi-privately funded colleges, or universities who do not issue bonds, or whose bonds do not meet the bond rating requirements of Section II, Paragraph A.(1) of Appendix E to Part 30 shall have an unrestricted endowment consisting of assets worth of at least ten million dollars (\$10,000,000), and at least six times the amount of decommissioning funds being assured by the self-guarantee to meet the asset requirements set forth in Section II, Paragraph A.(2) of Appendix E to 10 CFR Part 30; or
- (6) licensees self-guaranteeing funds for decommissioning who are nonprofit privately funded, or nonprofit semi-privately funded hospitals who do not issue bonds, or whose bonds do not meet the bond rating requirements of Section II, Paragraph B.(1) of Appendix E to 10 CFR Part 30 shall have a tangible net worth of at least ten million dollars (\$10,000,000), and at least six times the amount of decommissioning funds being assured by the self-guarantee to meet the asset requirements set forth in Section II, Paragraph B.(2) of Appendix E to 10 CFR Part 30.

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

History Note: Authority G.S. 104E-7; 104E-18;
 Eff. May 1, 1992;
 Transferred and Recodified from 15A NCAC 11 .0355 Eff.
 February 1, 2015;
 Amended Eff. March 1, 2017.

10A NCAC 15 .0357 REPORTING REQUIREMENTS

- (a) All reports required by this Rule shall be made to the agency in accordance with Rule .0111 of this Chapter.
- (b) Reports of incidents involving exposure, or incidents threatening to cause exposure to radiation in excess of the annual occupational limits of Rule .1604 of this Chapter, shall be made to the agency in accordance with the provisions of 10 CFR 20.2202.

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

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

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

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

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

History Note: Authority G.S. 104E-7(a)(2); 104E-10(b);
 Temporary Adoption Eff. August 20, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
 Eff. May 1, 1995;
 Transferred and Recodified from 15A NCAC 11 .0357 Eff.
 February 1, 2015;
 Amended Eff. March 1, 2017.

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

(a) Licensees shall comply with the provisions of 10 CFR 35.63, except that dosage determination shall be made by direct measurement for all unsealed photon-emitting radioactive drugs prior to administration to any person. Licensees shall ensure that instruments used to measure dosages under this Rule are calibrated in accordance with the provisions of 10 CFR 35.60.

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

History Note: Authority G.S. 104E-7; 104E-10(b); 104E-12;
 Eff. April 1, 1999;
 Amended Eff. November 1, 2007;
 Transferred and Recodified from 15A NCAC 11 .0359 Eff.
 February 1, 2015;
 Amended Eff. March 1, 2017.

10A NCAC 15 .0521 PERFORMANCE REQUIREMENTS FOR RADIOGRAPHY EQUIPMENT

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

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

History Note: Authority G.S. 104E-7;
Temporary Adoption Eff. August 20, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. May 1, 1995;
Amended Eff. April 1, 1999;
Transferred and Recodified from 15A NCAC 11 .0521 Eff. February 1, 2015;
Amended Eff. March 1, 2017.

10A NCAC 15 .1004 NOTIFICATIONS AND REPORTS TO INDIVIDUALS

(a) Licensees and registrants shall report radiation exposure data for any occupationally exposed person to that person or their designee in accordance with the provisions of 10 CFR 19.13, except that the report shall contain the following statement in lieu of the statement appearing in 19.13(a): "This report is furnished to you under the provisions of 10A NCAC 15 Section .1000: NOTICES: INSTRUCTIONS: REPORTS AND INSPECTIONS. You should preserve this report for future reference."

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

History Note: Authority G.S. 104E-7; 104E-10(b); 104E-12;
Eff. February 1, 1980;
Amended Eff. October 1, 2013; January 1, 1994;
Transferred and Recodified from 15A NCAC 11 .1004 Eff. February 1, 2015;
Amended Eff. March 1, 2017.

10A NCAC 15 .1613 SURVEYS

(a) Licensees and registrants shall conduct surveys, and monitor for radiation and radiation exposure in accordance with the provisions of 10 CFR 20.1501.

(b) The exposure of individual monitoring devices, individual monitoring equipment, or personnel monitoring equipment to radiation from any source for the purpose of falsifying exposure records shall be prohibited.

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

editions. Copies of these regulations are available free of charge at http://www.ecfr.gov/cgi-bin/text-idx?SID=2beeece594411a03e50b2468ae31f89b&pid=20160101&tpl=/ecfrbrowse/Title10/10tab_02.tpl.

History Note: Authority G.S. 104E-7(a)(2);
Eff. January 1, 1994;
Amended Eff. August 1, 2002;
Transferred and Recodified from 15A NCAC 11 .1613 Eff. February 1, 2015;
Amended Eff. March 1, 2017.

10A NCAC 15 .1645 REPORTS OF THEFT OR LOSS OF LICENSED RADIOACTIVE MATERIAL

(a) Reports of the theft or loss of radioactive material shall be made to the agency in accordance with the provisions of 10 CFR 20.2201, at the telephone number and addresses shown in Rule .0111 of this Chapter.

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

History Note: Authority G.S. 104E-7(a)(2);
Eff. January 1, 1994;
Transferred and Recodified from 15A NCAC 11 .1645 Eff. February 1, 2015;
Amended Eff. March 1, 2017.

10A NCAC 15 .1653 RADIOLOGICAL REQUIREMENTS FOR LICENSE TERMINATION

(a) Licensees shall comply with the provisions of 10 CFR Part 20, Subpart E, to meet the requirements for license termination and decommissioning.

(b) The agency shall not publish a notice in the Federal Register of the receipt of a license termination plan or decommissioning plan as set forth in 10 CFR 20.1405(b), but shall make other notices and solicit comments from interested parties as required by 10 CFR 20.1405.

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

History Note: Authority G.S. 104E-7(a)(2); 104E-10(b);
Eff. April 1, 1999;
Transferred and Recodified from 15A NCAC 11 .1653 Eff. February 1, 2015;
Amended Eff. March 1, 2017.

**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 for investigation when the alleged perpetrator is:

- (1) an employee of the county department of social services;
- (2) a foster parent supervised by that county department of social services;
- (3) a member of the Board of Social Services for that county, a member of the Board of County Commissioners, the County manager, or a member of the governance structure for the county department of social services;
- (4) a caretaker in a sole-source contract group home;
- (5) a child's parent/caretaker is an incompetent adult and a ward of that county department of social services; or
- (6) a minor in foster care who is also a parent/caretaker.

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

*History Note: Authority G.S. 7B-100; 7B-300; 143B-153;
Effective January 27, 1977;
Readopted Eff. October 31, 1977;
Amended Eff. March 1, 2017; September 1, 1994; July 1, 1993;
June 1, 1990.*

10A NCAC 70B .0102 ELIGIBILITY

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

- (1) The child has been removed 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 with the county department of social services, 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 county department of social services 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 licensed or approved by the Department of Health and Human Services and in compliance with the Civil Rights Act of 1964, Title VI, 42 U.S.C. 2000d et seq., ("Title VI of the Civil Rights Act"), hereby incorporated by reference, including any subsequent amendments and editions. This Act may be accessed free of charge at <https://www.justice.gov/crt/fcs/TitleVI-Overview>;
- (C) a private group home licensed or approved by the Department of Health and Human Services and in compliance with Title VI of the Civil Rights Act;
- (D) a foster care facility 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; or
- (G) an allowable independent supervised living setting for youth 18 or older; and

(5) The child is in need of care that is not available in his or her own home or the home of a relative.

(b) A child placed in foster care who has attained 18 years of age may continue receiving foster care services and benefits until

reaching 21 years of age if he or she enters into a voluntary placement agreement with the county department of social services, and meets one of the following:

- (1) Completing secondary education or a program leading to an equivalent credential;
- (2) Enrolled in an institution that provides post-secondary or vocational education;
- (3) Participating in a program or activity designed to promote or remove barriers to employment;
- (4) Employed for at least 80 hours per month; or
- (5) Is incapable of doing any of the previously described educational or employment activities due to a medical condition or disability.

(c) 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.

History Note: Authority G.S. 108A-24; 108A-48; 108A-49; 131D-10.2; 131D-10.5; 143B-153.

Eff. July, 1982;

Amended Eff. March 1, 2017; April 1, 2003.

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 was 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 was legally adopted and the child's special needs, though pre-existing, were 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 is under 18 years of age; and was adopted after reaching the age of 16 but prior to reaching the age of 18;
- (6) The child may continue to receive adoption assistance payments after his or her 18th birthday until his or her 21st birthday if an adoption assistance agreement was entered into on or after his or her 16th 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 that 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 or disability.

(b) In order 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 a known and diagnosed medical, mental, or emotional condition that will require periodic treatment or therapy of a medical or remedial nature.

A child's eligibility for vendor payments may be determined by the agency administering adoption assistance benefits 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.

(d) 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.

History Note: Authority G.S. 48-1-101; 108A-48; 108A-49; 108A-50; 143B-153;

Eff. July 1, 1982;

Amended Eff. March 1, 2017; July 18, 2002; July 1, 1991; March 1, 1990.

10A NCAC 70M .0603 REQUIREMENTS

The non-recurring expenses of a person who adopts a child with special needs shall 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 the department determines 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 Decree 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.

History Note: Authority G.S. 108A-49; 108A-50; 143B-153; 42 U.S.C. 673;
Eff. July 1, 1991;
Amended Eff. March 1, 2017.

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 that shall be met under Chapter 7B of the General Statutes and in administration of the Guardianship Assistance Program.

History Note: Authority G.S. 143B-153; S.L. 2015-241, s. 12C.4;
Eff. March 1, 2017.

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.

History Note: Authority G.S. 7B-101(18b); 143B-153;
Eff. March 1, 2017.

10A NCAC 70P .0103 DEFINITIONS

The following definitions apply to this Chapter:

- (1) "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 residential group care, foster homes or adoptive homes.
- (2) "County DSS" means a county department of social services.
- (3) "Guardianship Assistance" means a monthly cash assistance payment no greater than the graduated amount set by G.S. 108A-49.1 from the Guardianship Assistance Program.
- (4) "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

under which guardianship assistance may be terminated.

- (5) "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.
- (6) "Legal Guardianship" shall be 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 court finds the guardian is unfit;
 - (c) the court finds the guardian has neglected a guardian's duties; or
 - (d) the guardian is unwilling or unable to continue assuming a guardian's duties.
- (7) "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.
- (8) "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.

History Note: Authority G.S. 143B-153;
Eff. March 1, 2017.

10A NCAC 70P .0104 GUARDIANSHIP ASSISTANCE PROGRAM ELIGIBILITY

The following eligibility criteria shall be met in order to receive Guardianship Assistance:

- (1) A determination by the Court that reunification and adoption are not appropriate permanency options for the child;
- (2) The child was placed in the licensed home for a minimum of six 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 has 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, he or she remains eligible to receive Guardianship Assistance until 21 years of age if, upon turning 18 years of age, he or she meets any of the following conditions:
 - (a) Completing secondary education or a program leading to an equivalent credential;
 - (b) Enrolled in an institution that 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 or disability.

History Note: Authority G.S. 143B-153; 42 U.S.C. 671;
Eff. March 1, 2017.

10A NCAC 70P .0105 GUARDIANSHIP ASSISTANCE PROGRAM REQUIREMENTS

- (a) Guardianship Assistance benefits for a child shall become effective the first month following the month that 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 set forth in 10A NCAC 70M .0403 and G.S. 108A-49.

History Note Authority G.S. 143B-153;
Eff. March 1, 2017.

TITLE 13 - DEPARTMENT OF LABOR

13 NCAC 13 .0101 DEFINITIONS

The following definitions shall apply throughout the rules in this Chapter and shall be construed as controlling in case of any conflict with the definitions contained in ANSI/NB-23 National Board Inspection Code Parts 2 and 3, The American Society of

Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, or The North Carolina State Building Code:

- (1) "Accepted Design and Construction Code" means the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers (ASME Code), or a comparable code with standards that the Chief Inspector determines to be equivalent to the ASME Code.
- (2) "Appurtenance" means any control, fitting, appliance, or device attached to or working in conjunction with the boiler proper or pressure vessel.
- (3) "ASME Code" means the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers.
- (4) "Audit" means activities, other than certificate inspections, conducted by the Chief Inspector or his designee. Audits include the following:
 - (a) reviews and surveys for ASME and National Board stamp issuance and renewal;
 - (b) audits conducted of an authorized inspector at the location of a manufacturer or repair organization as may be required by the ASME Code, National Board Inspection Code, or National Board Rules for Commissioned Inspectors; and
 - (c) audits pursuant to evaluation for the issuance of North Carolina Specials.
- (5) "Automatically fired boiler" means a boiler that cycles in response to a control system and that does not require a constant attendant for the purpose of introducing fuel into the combustion chamber or to control electrical input.
- (6) "Authorized Inspection Agency" means an organization employing commissioned inspectors, including the following:
 - (a) the Bureau, as defined in Item (11) of this Rule.
 - (b) an inspection agency of an insurance company licensed to write boiler and pressure vessel insurance; or
 - (c) an owner-user inspection organization that is accredited by the National Board.
- (7) "Authorized inspector" means an employee of an Authorized Inspection Agency who is commissioned by the National Board and this State, holds an endorsement on his or her National Board Commission appropriate for the work to be performed, and inspects as the third party inspector in ASME Code manufacturing facilities.
- (8) "Boiler," as defined in G.S. 95-69.9(b), includes the following types of boilers:
 - (a) "Exhibition boiler" means a historical or antique boiler that generates steam or hot water for the purposes of

- entertaining or educating the public or is used for demonstrations, tourist transportation, or exhibitions. This term includes boilers used in steam tractors, threshers, steam powered sawmills, and similar uses;
- (b) "High pressure boiler" means a boiler in which steam or other vapor is generated at a pressure of more than 15 psig or water is heated to a temperature greater than 250°F and a pressure greater than 160 psig for use external to itself. High pressure boilers include the following:
- (i) Electric boilers;
 - (ii) Miniature boilers;
 - (iii) High temperature water boilers; and
 - (iv) High temperature liquid boilers (other than water);
- (c) "Low pressure boiler" means a boiler in which steam or other vapor is generated at a pressure of not more than 15 psig or water is heated to a temperature not greater than 250°F and a pressure not greater than 160 psig, including the following:
- (i) "Hot water heating boiler" means a low pressure boiler that supplies heated water that is returned to the boiler from a piping system and is used normally for building heat applications (hydronic boiler);
 - (ii) "Hot water supply boiler" means a low pressure boiler that furnishes hot water to be used externally to itself; and
 - (iii) "Steam heating boiler" means a low pressure boiler that generates steam to be used normally for building heat applications;
- (d) "Model hobby boiler" means a boiler that generates steam, whether stationary or mobile, and is used for the purpose of entertainment or exhibiting steam technology, where the boiler does not exceed:
- (i) 20 square feet of heating surface;
 - (ii) a shell diameter of 16 inches;
 - (iii) a volume of 5 cubic feet; and
 - (iv) a pressure of 150 psig;
- (e) "Water heater" means a closed vessel in which water is heated by the combustion of fuel, by electricity, or by any other source and withdrawn for
- potable use external to the system at pressures not exceeding 160 psig and temperatures not exceeding 210°F.
- (9) "Boiler blowoff" means the system associated with the rapid draining of boiler water to remove concentrated solids that have accumulated as a result of steam generation. This term also applies to the blowoff for other boiler appurtenances, such as the low-water fuel cutoff.
- (10) "Boiler proper" or "pressure vessel" means the internal mechanism, shell, and heads of a boiler or pressure vessel terminating at:
- (a) the first circumferential joint for welded end connections;
 - (b) the face of the first flange in bolted flange connections; or
 - (c) the first threaded joint in threaded connections.
- (11) "Bureau" means the Boiler Safety Bureau of the North Carolina Department of Labor.
- (12) "Certificate inspection" means an inspection, the report of which is used by the Chief Inspector as justification for issuing, withholding, or revoking the inspection certificate. The term "certificate inspection" also applies to the external inspection conducted in accordance with this Chapter whether or not a certificate is intended to be issued as a result of the inspection.
- (13) "Condemned boiler or pressure vessel" means a boiler or pressure vessel:
- (a) that has been found not to comply with G.S. Chapter 95, Article 7A, or this Chapter;
 - (b) that constitutes a menace to public safety; and
 - (c) that cannot be repaired or altered so as to comply with G.S. Chapter 95, Article 7A, and this Chapter.
- (14) "Coil type watertube boiler" means a boiler having no steam space, such as a steam drum, whereby the heat transfer portion of the water-containing space consists only of a coil of pipe or tubing.
- (15) "Commissioned inspector" means an employee of an Authorized Inspection Agency who is commissioned by the National Board and this State, holds an endorsement on his or her National Board Commission appropriate for the work to be performed, and who is charged with conducting in-service inspections of pressure equipment and inspecting repairs or alterations to that equipment.
- (16) "Defect" means any deterioration to the pressure equipment affecting the integrity of the pressure boundary or its supports. Defects may be cracks, corrosion, erosion, bags, bulges, blisters, leaks, broken parts integral to the

- pressure boundary such as stays, or other flaws identified by NDE or visual inspection.
- (17) "Deficiency" means any violation of the Uniform Boiler and Pressure Vessel Act, rules of this Chapter, or identified defects.
- (18) "Design criteria" means design and construction code requirements relating to the mode of design and construction of a boiler or pressure vessel.
- (19) "External inspection" means an inspection of the external surfaces and appurtenances of a boiler or pressure vessel. An external inspection may entail "shutting down" a boiler or pressure vessel while it is in operation, including inspection of internal surfaces, if the inspector determines this action is warranted.
- (20) "Hydropneumatic storage tank" means a pressure vessel used for storage of water at ambient temperature not to exceed 120°F and where a cushion of air is contained within the vessel.
- (21) "Imminent danger" means any condition or practice in any location that a boiler or pressure vessel is being operated such that a danger exists that could be expected to cause death or serious physical harm if the condition is not abated.
- (22) "Insurance inspector" means the special inspector employed by an insurance company, and holding a valid North Carolina Commission and National Board Commission.
- (23) "Internal inspection" means as complete an examination as can be made of the internal and external surfaces and appurtenances of a boiler or pressure vessel while it is shut down.
- (24) "Maximum allowable working pressure" or "MAWP" means the maximum gauge pressure as determined by employing the stress values, design rules, and dimensions designated by the accepted design and construction code or as determined by the Chief Inspector in accordance with this Chapter.
- (25) "Menace to public safety" means a boiler or pressure vessel that cannot be operated without a risk of injury to persons and property.
- (26) "Miniature boiler" means a boiler that does not exceed any of the following:
- (a) 16 inch inside shell diameter;
 - (b) 20 square feet of heating surface (does not apply to electrically fired boilers);
 - (c) 5 cubic feet volume; and
 - (d) 100 psig maximum allowable working pressure.
- (27) "National Board Commission" means the commission issued by the National Board to those individuals who have passed the National Board commissioning examination and have fulfilled the requirements of the National Board Rules for Commissioned Inspectors.
- (28) "National Board Inspection Code" or "NBIC" means the ANSI/NB-23 standard published by the National Board, as incorporated by reference under Rule .0103 of this chapter.
- (29) "Nondestructive examination" or "NDE" means examination methods used to verify the integrity of materials and welds in a component without damaging its structure or altering its mechanical properties. NDE may involve surface, subsurface, and volumetric examination. Visual inspection, x-rays, and ultrasound are examples of NDE.
- (30) "Nonstandard boiler or pressure vessels" means:
- (a) high pressure boilers contracted for or installed before December 7, 1935;
 - (b) heating boilers contracted for or installed before January 1, 1951;
 - (c) pressure vessels contracted for or installed before January 1, 1976;
 - (d) hydropneumatic storage tanks contracted for or installed before January 1, 1986; and
 - (e) boilers or pressure vessels to which the ASME Code is not intended to apply, other than those boilers and pressure vessels to which the term North Carolina Special applies.
- (31) "Normal working hours" means between the hours of 6:00 AM and 6:00 PM, Monday through Friday, except for State recognized holidays established in 25 NCAC 01E .0901.
- (32) "North Carolina Commission" means the commission issued by the Commissioner to those individuals who have passed the examination administered by the Chief Inspector relating to the Uniform Boiler and Pressure Vessel Act and the rules of this Chapter, and who also hold a National Board Commission, authorizing them to conduct inspections in this State.
- (33) "North Carolina Special" means a boiler or pressure vessel that is not constructed in compliance with the Accepted Design and Construction Code as defined in Item (1) of this Rule and for which the owner or operator shall apply for a special inspection certificate with the Chief Inspector.
- (34) "NPS" means nominal pipe size.
- (35) "Nuclear component" means the items in a nuclear power plant such as pressure vessels, piping systems, pumps, valves, and component supports.
- (36) "Nuclear system" means a system comprised of nuclear components that serve the purpose of producing and controlling an output of thermal energy from nuclear fuel and includes those associated systems essential to the function and overall safety of the power system.

- (37) "Operating pressure" means the pressure at which a boiler or pressure vessel operates. It shall not exceed the MAWP except as shown in Section I of the ASME Code for forced-flow steam generators.
- (38) "Owner or user" means any person or legal entity responsible for the operation of any boiler or pressure vessel installed in this State. This term also applies to a contractor, installer, or agent of the owner or user.
- (39) "Owner-user inspector" means an individual who holds a valid North Carolina Commission and National Board Commission and is employed by a company operating pressure vessels for its own use and not for resale and maintaining an inspection program that meets the requirements of the National Board for periodic inspection of pressure vessels owned or used by that company.
- (40) "Pressure piping" means piping, including welded piping, external to high pressure boilers from the boiler proper to the required valve(s).
- (41) "Pressure relief devices" mean the devices on boilers and pressure vessels set to open and relieve the pressure in the event of an over-pressurization event, and include the following:
 - (a) "Non-reclosing pressure relief device" means a pressure relief device designed to remain open after operation; and
 - (b) "Pressure relief valve" means a pressure relief device that is designed to reclose and prevent the further flow of fluid after normal conditions have been restored. These devices include:
 - (i) "Relief valve" means an automatic pressure relief valve that is actuated by static pressure upstream of the valve that opens further with the increase in pressure over the opening pressure;
 - (ii) "Safety relief valve" means an automatic pressure relief valve that is actuated by static pressure upstream of the valve and characterized by full opening pop action or by opening in proportion to the increase in pressure over the opening pressure; and
 - (iii) "Safety valve" means an automatic pressure relief valve that is actuated by static pressure upstream of the valve and characterized by full opening pop action.
- (42) "PSIG" means pounds per square inch gauge.
- (43) "Reinspection or Follow-Up Inspection" means an examination necessary to verify that any repair or corrective action required as a result of a certificate inspection is completed.
- (44) "Service vehicle" means a vehicle mounted with an air storage tank that services vehicles and equipment in the field away from the owner's shop.
- (45) "Shop inspection" means an inspection conducted by an Authorized Inspector or a Commissioned Inspector pursuant to an inspection service agreement whereby the fabrication process or the repair or alteration of a boiler or pressure vessel is observed to ensure compliance with the ASME Code and the NBIC, including nuclear shop inspection where fabrication or material supply is done by the holder of an ASME "N" type certificate.
- (46) "Special inspection" means any inspection conducted by a Deputy Inspector other than a regularly scheduled inspection, including the performance of an inspection by a Deputy Inspector that requires that the inspector make a special trip to meet the needs of the individual or organization requesting the inspection, conducting certificate inspections during hours other than normal working hours, and inspection of field repairs and alterations.
- (47) "Special inspector" means a National Board commissioned inspector employed by an insurance company authorized to write boiler and pressure vessel insurance in the State of North Carolina.
- (48) "Violation" means the failure to comply with the requirements of the Uniform Boiler and Pressure Vessel Act or this Chapter.

History Note: Authority G.S. 95-69.11; 95-69.14; Eff. May 29, 1981; Temporary Amendment [(16)]; Eff. March 10, 1982, for a Period of 120 Days to Expire on July 8, 1982; Amended Eff. March 1, 2017; March 1, 2015; July 1, 2011; January 1, 2009; July 1, 2006; January 1, 1995; January 1, 1987; January 1, 1986; June 1, 1982.

13 NCAC 13 .0203 NORTH CAROLINA COMMISSION

- (a) When requested by the employer and upon presentation of a completed Application for Commission as an Inspector of Boilers and Pressure Vessels, a North Carolina Commission, bearing the signature of the Commissioner, shall be issued by the Commissioner to persons holding a valid National Board Commission who have taken and passed the examination specified in 13 NCAC 13 .0202(b).
- (b) Applications for a North Carolina Commission shall be processed upon proof of a National Board Commission and payment of a thirty-five dollar (\$35.00) fee to the Department of Labor.

(c) North Carolina Commissions shall be valid through December 31, at which time the inspector's employer shall submit a renewal request letter and a thirty-five dollar (\$35.00) fee to the Department of Labor.

(d) The North Carolina Commission shall be returned by the employing company with notification of termination date to the Bureau within 30 days of termination of employment.

(e) A North Carolina Commission may be suspended or revoked by the Commissioner in accordance with G.S. 95-69.11(20) if an inspector is incompetent or untrustworthy or has falsified any statement in an application or inspection report. The Commissioner shall give notice of the commencement of proceedings for suspension or revocation of a commission pursuant to G.S. 150B-23. A North Carolina Commission may be suspended prior to the hearing if the Chief Inspector determines that the public health, safety, or welfare requires the suspension. In this case, the proceedings shall be promptly commenced and determined in accordance with G.S. 150B-3. The Commissioner's decision regarding the competency of an inspector shall be determined after consideration of the knowledge, skill, and care possessed and employed by boiler and pressure vessel inspection personnel in good standing. Industry custom and practice shall be considered but are not determinative. Failure to conduct the inspections in accordance with this Chapter shall constitute incompetence. The Commissioner shall give the inspector opportunity to show that he or she is conducting his or her duties in a competent manner and that suspension or revocation is unwarranted. If the inspector believes that the decision of the Commissioner is not warranted, the inspector may take exception to the determination, in which event the inspector may appeal the final determination of the action pursuant to G.S. 150B.

History Note: Authority G.S. 95-69.11; 95-69.15; Eff. May 29, 1981; Amended Eff. March 1, 2017; March 1, 2015; July 1, 2011; January 1, 2009; July 1, 2006; January 1, 1995; March 2, 1992; September 1, 1986.

13 NCAC 13 .0205 OWNER-USER INSPECTION ORGANIZATION

(a) A company seeking to conduct inspections of its own pressure vessels shall file an application with the Chief Inspector, accompanied by the Certificate of Accreditation issued by the National Board as an Owner-User Inspection Organization.

(b) The company shall, in its application, designate a supervisor who shall be an engineer within its employ who, upon approval of the application, shall:

- (1) ascertain that the company's inspectors, pursuant to Rules .0202 and .0203 of this Section, are issued National Board Commission cards;
- (2) supervise inspections of pressure vessels and ensure that an inspection report, signed by the owner-user inspector, is filed at the equipment site;
- (3) notify the Chief Inspector of any unsafe pressure vessel that presents a condition of imminent danger;

(4) maintain a master file of inspection records that shall be available for examination by the Chief Inspector or his representative during business hours and contain the following:

- (A) identifying each pressure vessel by serial number and abbreviated description; and
- (B) showing the date of the last and next scheduled inspection; and

(5) on a date agreed upon with the Chief Inspector, file an annual statement signed by the supervisor showing the number of boilers and certifying that each inspection was conducted pursuant to this Chapter, accompanied by an administrative fee of twenty-five dollars (\$25.00) per vessel.

(c) Inspection certificates shall not be required for pressure vessels inspected under an owner-user program.

History Note: Authority G.S. 95-69.11; 95-69.15; 95-69.16; Eff. May 29, 1981; Amended Eff. March 1, 2017; March 1, 2015; January 1, 2009; July 1, 2006; January 1, 1995; March 2, 1992; September 1, 1986.

TITLE 15A - DEPARTMENT OF ENVIRONMENTAL QUALITY

15A NCAC 02L .0507 RECLASSIFICATION OF RISK LEVELS

(a) The Department may reclassify the risk posed by a release if warranted by further information concerning the potential exposure of receptors to the discharge or release or upon receipt of new information concerning changed conditions at the site. After initial classification of the discharge or release, the Department may require limited assessment, interim corrective action, or other actions that the Department believes may result in a lower risk classification. It shall be a continuing obligation of each responsible party to notify the Department of any changes that may affect the level of risk assigned to a discharge or release by the Department if the change is known or should be known by the responsible party. Such changes may include changes in zoning of real property, use of real property, or the use of groundwater that has been contaminated or is expected to be contaminated by the discharge or release.

(b) Remediation of sites with off-site migration shall be subject to the provisions of G.S. 143-215.104AA.

(c) If the risk posed by a discharge or release is determined by the Department to be high risk, the responsible party shall comply with the assessment and cleanup requirements of Rule .0106(c), (g), and (h) of this Subchapter. The goal of any required corrective action for groundwater contamination shall be restoration to the level of the groundwater standards set forth in Rule .0202 of this Subchapter, or as closely thereto as is economically and technologically feasible as determined by the Department. In any corrective action plan submitted pursuant to this Paragraph, natural attenuation may be used when the benefits of its use shall not increase the risk to the environment and human health as

determined by the Department. If the responsible party demonstrates that natural attenuation prevents the further migration of the plume, the Department may approve a groundwater monitoring plan.

(d) If the risk posed by a discharge or release is determined by the Department to be an intermediate risk, the responsible party shall comply with the assessment requirements of Rule .0106(c) and (g) of this Subchapter. As part of the comprehensive site assessment, the responsible party shall evaluate, based on site specific conditions, whether the release poses a significant risk to human health or the environment. If the Department determines, based on the site-specific conditions, that the discharge or release does not pose a significant threat to human health or the environment, the site shall be reclassified as a low risk site. If the site is not reclassified, the responsible party shall, at the direction of the Department, submit a groundwater monitoring plan or a corrective action plan, or a combination thereof, meeting the cleanup standards of this Paragraph and containing the information required in Rule .0106(h) of this Subchapter. Discharges or releases that are classified as intermediate risk shall be remediated, at a minimum, to a cleanup level of 50 percent of the solubility of the contaminant at 25 degrees Celsius or 1,000 times the groundwater standard or interim standard established in Rule .0202 of this Subchapter, whichever is lower for any groundwater contaminant except ethylene dibromide, benzene, and alkane and aromatic carbon fraction classes. Ethylene dibromide and benzene shall be remediated to a cleanup level of 1,000 times the federal drinking water standard as referenced in 15A NCAC 18C .1518 is hereby incorporated by reference including subsequent amendments and editions and is available free of charge at [http://reports.oah.state.nc.us/ncac/title 15a - environmental quality/chapter 18 - environmental health/subchapter c/15a ncac 18c .1518.pdf](http://reports.oah.state.nc.us/ncac/title%2015a%20environmental%20quality/chapter%2018%20environmental%20health/subchapter%20c/15a%20ncac%2018c%20.1518.pdf). Additionally, if a corrective action plan or groundwater monitoring plan is required under this Paragraph, the responsible party shall demonstrate that the groundwater cleanup levels are sufficient to prevent a violation of:

- (1) the rules contained in 15A NCAC 02B;
- (2) the standards contained in Rule .0202 of this Subchapter in a deep aquifer as described in Rule .0506(2)(b) of this Section; and
- (3) the standards contained in Rule .0202 of this Subchapter at a location no closer than one year time of travel upgradient of a well within a designated wellhead protection area, based on travel time and the natural attenuation capacity of the subsurface materials or on a physical barrier to groundwater migration that exists or will be installed by the person making the request.

In any corrective action plan submitted pursuant to this Paragraph, natural attenuation may be used when the benefits of its use shall not increase the risk to the environment and human health and shall not increase the costs of the corrective action.

(e) If the risk posed by a discharge or release is determined by the Department to be a low risk, the Department shall notify the responsible party that no cleanup, no further cleanup, or no further action will be required by the Department, unless the Department later determines that the discharge or release poses an

unacceptable risk or a potentially unacceptable risk to human health or the environment. No notification shall be issued pursuant to this Paragraph, however, until the responsible party has completed soil remediation pursuant to Rule .0508 of this Section or as closely thereto as economically or technologically feasible as determined by the Department; has submitted proof of public notification and has recorded any land-use restriction(s), if required; and paid any applicable statutorily authorized fees. The issuance by the Department of a notification under this Paragraph shall not affect any private right of action by any party that may be affected by the contamination.

History Note: Authority G.S. 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA; Eff. March 1, 2016; Amended Eff. March 1, 2017.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 32 - NORTH CAROLINA MEDICAL BOARD

21 NCAC 32M .0106 ANNUAL RENEWAL

(a) Each registered nurse who is approved to practice as a nurse practitioner in this State shall annually renew each approval to practice with the Board of Nursing no later than the last day of the nurse practitioner's birth month by:

- (1) Maintaining current RN licensure;
- (2) Maintaining certification as a nurse practitioner by a national credentialing body identified in Rule .0101(8) of this Subchapter;
- (3) Submitting the fee required in Rule .0115 of this Subchapter; and
- (4) Completing the renewal application.

(b) If the nurse practitioner has not renewed by the last day of her or his birth month, the approval to practice as a nurse practitioner shall lapse.

History Note: Authority G.S. 90-5.1(a)(3); 90-8.1; 90-8.2(a); Eff. January 1, 1996; Amended Eff. August 1, 2004; May 1, 1999; Recodified from Rule .0105 Eff. August 1, 2004; Amended Eff. December 1, 2009; November 1, 2008; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016; Amended Eff. March 1, 2017.

21 NCAC 32M .0107 CONTINUING EDUCATION (CE)

In order to maintain nurse practitioner approval to practice, the nurse practitioner shall earn 50 contact hours of continuing education each year beginning with the first renewal after initial approval to practice has been granted. At least 20 hours of the required 50 hours must be those hours for which approval has been granted by the American Nurses Credentialing Center (ANCC) or Accreditation Council on Continuing Medical Education (ACCME), other national credentialing bodies, or practice relevant courses in an institution of higher learning. Every nurse practitioner who prescribes controlled substances

shall complete at least one hour of the total required continuing education (CE) hours annually consisting of CE designed specifically to address controlled substance prescribing practices, signs of the abuse or misuse of controlled substances, and controlled substance prescribing for chronic pain management. Documentation shall be maintained by the nurse practitioner for the previous five calendar years and made available upon request to either Board.

History Note: Authority G.S. 90-5.1; 90-8.1; 90-8.2; 90-14(a)(5); S.L. 2015-241, s. 12F; Eff. January 1, 1996; Amended Eff. August 1, 2004; May 1, 1999; Recodified from Rule .0106 Eff. August 1, 2004; Amended Eff. December 1, 2009; April 1, 2008; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016; Amended Eff. March 1, 2017.

21 NCAC 32M .0109 PRESCRIBING AUTHORITY

(a) The prescribing stipulations contained in this Rule apply to writing prescriptions and ordering the administration of medications.

(b) Prescribing and dispensing stipulations are as follows:

- (1) Drugs and devices that may be prescribed by the nurse practitioner in each practice site shall be included in the collaborative practice agreement as outlined in Rule .0110(2) of this Section.
- (2) Controlled Substances (Schedules II, IIN, III, IIIN, IV, V) defined by the State and Federal Controlled Substances Acts may be procured, prescribed, or ordered as established in the collaborative practice agreement, providing all of the following requirements are met:
 - (A) the nurse practitioner has an assigned DEA number that is entered on each prescription for a controlled substance;
 - (B) refills may be issued consistent with Controlled Substance laws and regulations; and
 - (C) the supervising physician(s) possesses the same schedule(s) of controlled substances as the nurse practitioner's DEA registration.
- (3) The nurse practitioner may prescribe a drug or device not included in the collaborative practice agreement only as follows:
 - (A) upon a specific written or verbal order obtained from a primary or back-up supervising physician before the prescription or order is issued by the nurse practitioner; and
 - (B) the written or verbal order as described in Part (b)(3)(A) of this Rule shall be entered into the patient record with a notation that it is issued on the specific order of a primary or back-up

supervising physician and signed by the nurse practitioner and the physician.

- (4) Each prescription shall be noted on the patient's chart and include the following information:
 - (A) medication and dosage;
 - (B) amount prescribed;
 - (C) directions for use;
 - (D) number of refills; and
 - (E) signature of nurse practitioner.
- (5) Prescription Format:
 - (A) All prescriptions issued by the nurse practitioner shall contain the supervising physician(s) name, the name of the patient, and the nurse practitioner's name, telephone number, and approval number.
 - (B) The nurse practitioner's assigned DEA number shall be written on the prescription form when a controlled substance is prescribed as defined in Subparagraph (b)(2) of this Rule.
- (6) A nurse practitioner shall not prescribe controlled substances, as defined by the State and Federal Controlled Substances Acts, for the following:
 - (A) nurse practitioner's own use;
 - (B) nurse practitioner's supervising physician;
 - (C) a member of the nurse practitioner's immediate family, which shall mean:
 - (i) spouse;
 - (ii) parent;
 - (iii) child;
 - (iv) sibling;
 - (v) parent-in-law;
 - (vi) son or daughter-in-law;
 - (vii) brother or sister-in-law;
 - (viii) step-parent;
 - (ix) step-child; or
 - (x) step-siblings;
 - (D) any other person living in the same residence as the licensee; or
 - (E) anyone with whom the nurse practitioner is having a sexual relationship.

(c) The nurse practitioner may obtain approval to dispense the drugs and devices other than samples included in the collaborative practice agreement for each practice site from the Board of Pharmacy, and dispense in accordance with 21 NCAC 46 .1703 that is hereby incorporated by reference including subsequent amendments.

History Note: Authority G.S. 90-18.2; Eff. February 1, 1991; Recodified from 21 NCAC 32M .0106 Eff. January 1, 1996; Amended Eff. December 1, 2012; April 1, 2011; November 1, 2008; August 1, 2004; May 1, 1999; January 1, 1996; September 1, 1994; March 1, 1994;

Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016; Amended Eff. March 1, 2017.

CHAPTER 33 - MIDWIFERY JOINT COMMITTEE

21 NCAC 33 .0103 APPLICATION

- (a) The application to obtain approval to practice as a midwife is electronically available from the Committee on the North Carolina Board of Nursing website, www.ncbon.com.
- (b) The application requires information on the applicant's education, evidence of the applicant's certification by the American College of Nurse-Midwives, identification of the physician(s) who will supervise the applicant, and the sites where the applicant intends to practice midwifery.

History Note: Authority G.S. 90-178.4(b); 90-178.5; Eff. February 1, 1984; Amended Eff. March 1, 2017; January 1, 1989.

21 NCAC 33 .0107 NURSE MIDWIFE APPLICANT STATUS

History Note: Authority G.S. 90-178.2; 90-178.3; 90-178.5; 90-171.83; Eff. April 1, 2001; Repealed Eff. March 1, 2017.

21 NCAC 33 .0111 CONTINUING EDUCATION (CE)

In order to maintain midwifery approval to practice, the midwife shall meet the requirements of the Certificate Maintenance Program of the American College of Nurse-Midwives, including continuing education requirements. Every midwife who prescribes controlled substances shall complete at least one hour of continuing education (CE) hours annually consisting of CE designated specifically to address controlled substances prescribing practices, signs of the abuse or misuse of controlled substances, and controlled substance prescribing for chronic pain management. Documentation shall be maintained by the midwife for the previous five calendar years and made available upon request to the Committee.

History Note: Authority: G.S. 90-5.1; 90-14(a)(15); 90-178.5(2); S.L. 2015-241, s. 12F .16(b); Eff. March 1, 2017.

CHAPTER 36 – BOARD OF NURSING

21 NCAC 36 .0806 ANNUAL RENEWAL

- (a) Each registered nurse who is approved to practice as a nurse practitioner in this State shall annually renew each approval to practice with the Board of Nursing no later than the last day of the nurse practitioner's birth month by:

- (1) Maintaining current RN licensure;

- (2) Maintaining certification as a nurse practitioner by a national credentialing body identified in Rule .0801(8) of this Section;
- (3) Submitting the fee required in Rule .0813 of this Section; and
- (4) Completing the renewal application.

- (b) If the nurse practitioner has not renewed by the last day of her or his birth month, the approval to practice as a nurse practitioner shall lapse.

History Note: Authority G.S. 90-8.1; 90-8.2; 90-18(c)(14); 90-171.23(b)(14); 90-171.83; Recodified from 21 NCAC 36.0227(e) Eff. August 1, 2004; Amended Eff. March 1, 2017; December 1, 2009; November 1, 2008; August 1, 2004.

21 NCAC 36 .0807 CONTINUING EDUCATION (CE)

In order to maintain nurse practitioner approval to practice, the nurse practitioner shall earn 50 contact hours of continuing education each year beginning with the first renewal after initial approval to practice has been granted. At least 20 hours of the required 50 hours must be those hours for which approval has been granted by the American Nurses Credentialing Center (ANCC) or Accreditation Council on Continuing Medical Education (ACCME), other national credentialing bodies, or practice relevant courses in an institution of higher learning. Every nurse practitioner who prescribes controlled substances shall complete at least one hour of the total required continuing education (CE) hours annually consisting of CE designed specifically to address controlled substance prescribing practices, signs of the abuse or misuse of controlled substances, and controlled substance prescribing for chronic pain management. Documentation shall be maintained by the nurse practitioner for the previous five calendar years and made available upon request to either Board.

History Note: Authority G.S. 90-5.1; 90-8.1; 90-8.2; 90-14(a)(15); 90-18(c)(14); 90-171.23(b)(14); 90-171.42; S.L. 2015-241, s. 12F; Recodified from 21 NCAC 36 .0227(f) Eff. August 1, 2004; Amended Eff. March 1, 2017; December 1, 2009; April 1, 2008; August 1, 2004.

21 NCAC 36 .0809 PRESCRIBING AUTHORITY

- (a) The prescribing stipulations contained in this Rule apply to writing prescriptions and ordering the administration of medications.

- (b) Prescribing and dispensing stipulations are as follows:

- (1) Drugs and devices that may be prescribed by the nurse practitioner in each practice site shall be included in the collaborative practice agreement as outlined in Rule .0810(2) of this Section.
- (2) Controlled Substances (Schedules II, IIN, III, IIIN, IV, V) defined by the State and Federal Controlled Substances Acts may be procured, prescribed, or ordered as established in the collaborative practice agreement, providing all of the following requirements are met:

- (A) the nurse practitioner has an assigned DEA number that is entered on each prescription for a controlled substance;
 - (B) refills may be issued consistent with Controlled Substance laws and regulations; and
 - (C) the supervising physician(s) shall possess the same schedule(s) of controlled substances as the nurse practitioner's DEA registration.
- (3) The nurse practitioner may prescribe a drug or device not included in the collaborative practice agreement only as follows:
- (A) upon a specific written or verbal order obtained from a primary or back-up supervising physician before the prescription or order is issued by the nurse practitioner; and
 - (B) the written or verbal order as described in Part (b)(3)(A) of this Rule shall be entered into the patient record with a notation that it is issued on the specific order of a primary or back-up supervising physician and signed by the nurse practitioner and the physician.
- (4) Each prescription shall be noted on the patient's chart and include the following information:
- (A) medication and dosage;
 - (B) amount prescribed;
 - (C) directions for use;
 - (D) number of refills; and
 - (E) signature of nurse practitioner.
- (5) Prescription Format:
- (A) all prescriptions issued by the nurse practitioner shall contain the supervising physician(s) name, the name of the patient, and the nurse practitioner's name, telephone number, and approval number;
 - (B) the nurse practitioner's assigned DEA number shall be written on the prescription form when a controlled substance is prescribed as defined in Subparagraph (b)(2) of this Rule.
- (6) A nurse practitioner shall not prescribe controlled substances, as defined by the State and Federal Controlled Substances Acts, for the following:
- (A) nurse practitioner's own use;
 - (B) nurse practitioner's supervising physician;
 - (C) member of the nurse practitioner's immediate family, which shall mean a:
 - (i) spouse;
 - (ii) parent;
 - (iii) child;
 - (iv) sibling;
 - (v) parent-in-law;
 - (vi) son or daughter-in-law;
 - (vii) brother or sister-in-law;
 - (viii) step-parent;
 - (ix) step-child; or
 - (x) step-siblings;
 - (D) any other person living in the same residence as the licensee; or
 - (E) anyone with whom the nurse practitioner is having a sexual relationship.
- (c) The nurse practitioner may obtain approval to dispense the drugs and devices other than samples included in the collaborative practice agreement for each practice site from the Board of Pharmacy, and dispense in accordance with 21 NCAC 46 .1703 that is hereby incorporated by reference including subsequent amendments.

History Note: Authority G.S. 90-8.1; 90-8.2; 90-18.2; 90-18(c)(14); 90-171.23(b)(14); Recodified from 21 NCAC 36 .0227(h) Eff. August 1, 2004; Amended Eff. March 1, 2017; December 1, 2012; April 1, 2011; November 1, 2008; August 1, 2004.

CHAPTER 46 – BOARD OF PHARMACY

21 NCAC 46 .2201 HOURS: RECORDS: PROVIDERS: CORRESPONDENCE: RECIPROCITY (EFFECTIVE UNTIL DECEMBER 31, 2017)

- (a) As a condition of license renewal, a pharmacist shall accumulate 15 hours of continuing education annually.
- (b) Eight of these continuing education hours shall be obtained through contact programs. Contact programs are those in which there is an opportunity for live two-way communication between the presenter and attendee. An on-line continuing education course may satisfy this contact-hour requirement provided that the live two-way communication standard is met.
- (c) A pharmacist who accumulates more than the required 15 hours of continuing education in a single year may carry forward up to five surplus hours to be applied to the following year's continuing education requirements.
- (d) A pharmacist shall preserve all continuing education records for three years.
- (e) Upon license renewal, the pharmacist shall report continuing education hours on a form provided by the Board. The Board may require a pharmacist to submit records, reports of accredited hours and certificates of credit on a random basis pursuant to a continuing education audit.
- (f) All continuing education shall be obtained through accredited continuing education courses. The Board shall approve continuing education courses as accredited if they provide education on matters that will maintain or increase the participant's professional competence and proficiency as a pharmacist.
- (g) Continuing education shall not serve as a barrier to reciprocity; however all licensees by reciprocity must observe the

continuing education standards specified in this Rule within the first renewal period after licensure in this state.

History Note: Authority G.S. 90-85.6; 90-85.17; 90-85.18; Eff. January 1, 1985; Amended Eff. January 1, 2008; April 1, 2005; August 1, 2004; August 1, 1998; September 1, 1993; May 1, 1989.

21 NCAC 46 .2201 HOURS: RECORDS: PROVIDERS: CORRESPONDENCE: RECIPROCITY (EFFECTIVE JANUARY 1, 2018)

- (a) As a condition of license renewal, a pharmacist shall accumulate 15 hours of continuing education annually.
- (b) Five of these continuing education hours shall be obtained through contact programs. Contact programs are those in which there is an opportunity for live two-way communication between the presenter and attendee. An online continuing education course may satisfy this contact-hour requirement provided that the continuing education course includes live two-way communication between the presenter and attendee.
- (c) A pharmacist shall preserve all continuing education records for three years. If a continuing education provider approved in Paragraph (e) of this Rule maintains an electronic database of all pharmacists granted continuing education credits accredited by the provider, then the storage of that information in the provider's database shall be deemed to satisfy the pharmacist's recordkeeping requirement.
- (d) Upon license renewal, the pharmacist shall report continuing education hours through the Board's online license renewal portal. The Board may require a pharmacist to submit records, reports of accredited hours and certificates of credit on a random basis pursuant to a continuing education audit.
- (e) All continuing education shall be obtained through continuing education courses accredited by the Accreditation Council for Pharmacy Education or the North Carolina Association of Pharmacists. Pharmacists may also acquire five hours continuing education credit for precepting, for at least 160 hours, a student enrolled in the University of North Carolina Eshelman School of Pharmacy, the Campbell University College of Pharmacy and Health Sciences, the Wingate University School of Pharmacy, or the High Point University Fred Wilson School of Pharmacy as part of these schools' academic program.
- (f) A pharmacist shall be exempt from the requirements of this Rule if:

- (1) The pharmacist is eligible for a waiver of continuing education requirements under 21 NCAC 46 .1613; or
- (2) For the entire year preceding license renewal, the pharmacist resided in another state, did not practice pharmacy in North Carolina, and satisfied the state of residence's continuing education requirements for pharmacist licensure.
- (g) Continuing education shall not serve as a barrier to reciprocity; however, all licensees by reciprocity must observe the continuing education standards specified in Paragraphs (a), (b), (c), (d), (e) and (f) of this Rule within the first renewal period after licensure in this state.

History Note: Authority G.S. 90-85.6; 90-85.17; 90-85.18; Eff. January 1, 1985; Amended Eff. January 1, 2018; January 1, 2008; April 1, 2005; August 1, 2004; August 1, 1998; September 1, 1993; May 1, 1989.

CHAPTER 66 - VETERINARY MEDICAL BOARD

21 NCAC 66 .0106 CURRENT INFORMATION REQUIRED BY THE BOARD

- (a) Each licensee and registrant shall notify the Board of his or her current mailing address and the name, address, and phone number of the current place of employment within 60 days of any change.
- (b) All changes in legal name shall be reported within 60 days, in writing, to the Board office accompanied by photocopies of the licensee's or registrant's legal documentation creating the change and a social security card showing the new legal name.
- (c) All changes of professional association, or dissolution of a professional relationship, shall be reported within 60 days to the Executive Director together with the new status and addresses of the individuals or firm.

History Note: Authority G.S. 90-185(6); Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. March 1, 2017; May 1, 1996; May 1, 1989.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission April 20, 2017 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

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

April 20, 2017	May 18, 2017
June 15, 2017	July 20, 2017

AGENDA

RULES REVIEW COMMISSION

THURSDAY, APRIL 20, 2017 10:00 A.M.

1711 New Hope Church Rd., Raleigh, NC 27609

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters
 - A. Board of Agriculture - 02 NCAC 09C .0507, .0703; 09G .2005, .2008; 09J .0101, .0102; 09K .0101, .0103, .0105, .0106, .0107, .0108, .0109, .0113, .0114, .0203, .0204, .0205, .0206, .0207, .0208, .0209, .0210, .0211, .0212, .0213, .0214; 09O .0101, .0107 (Thomas)
 - B. Commission for Mental Health, Developmental Disabilities and Substance Abuse Services - 10A NCAC 27H .0202, .0203, .0204, .0205, .0206, .0207 (May)
 - C. Department of Insurance - 11 NCAC 05A .0105, .0201, .0301, .0501, .0505, .0508, .0511, .0603, .0703, .0704 (Hammond)
 - D. Manufactured Housing Board - 11 NCAC 08 .0904 (Thomas)
 - E. Board of Massage and Bodywork Therapy - 21 NCAC 30 .0903, .0906 (Hammond)
 - F. Board of Podiatry Examiners - 21 NCAC 52 .0201, .0207 (Hammond)
- IV. Review of Log of Filings (Permanent Rules) for rules filed February 21, 2017 through March 20, 2017
 - Commission for Public Health (May)
 - Environmental Management Commission 15A NCAC 02N, 02O (Hammond)
 - Marine Fisheries Commission (Thomas)
 - Environmental Management Commission 15A NCAC 13B (May)
 - Board of Certified Public Accountant Examiners (May)
 - Locksmith Licensing Board (Reeder)
 - Board of Pharmacy (May)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. Existing Rules Review

- Review of Reports
 1. 10A NCAC 27I .0400, .0500 – DHHS/Division of MH/DD/SAS (May)
 2. 10A NCAC 27I .0600 – Commission for MH/DD/SAS (May)
 3. 10A NCAC 28A - Commission for MH/DD/SAS (May)
 4. 15A NCAC 01C - Department of Environmental Quality (Thomas)
 5. 15A NCAC 13A - Environmental Management Commission (Reeder)
 6. 15A NCAC 13B .0100-.0800, .1000-.1400, .1600-.1700 – Environmental Management Commission (Reeder)
 7. 15A NCAC 13C - Environmental Management Commission (Reeder)
- Not scheduled for review this month
 8. 15A NCAC 27 – NC Well Contractors Certification Commission (Hammond)
 9. 21 NCAC 25 - Interpreter and Transliterator Licensing Board (Reeder)
 10. 21 NCAC 33 – Midwifery Joint Committee (Hammond)
 11. 21 NCAC 36 - North Carolina Board of Nursing (Hammond)

VII. Commission Business

12. Review of Amendments to 26 NCAC 05 .0211

- Next meeting: Thursday, May 18, 2017
-

Commission Review
Log of Permanent Rule Filings
February 21, 2017 through March 20, 2017

PUBLIC HEALTH, COMMISSION FOR

The rules in Chapter 41 concern epidemiology health.

The rules in Subchapter 41A deal with communicable disease control and include reporting of communicable diseases (.0100); control measures for communicable diseases including special control measures (.0200-.0300); immunization (.0400); purchase and distribution of vaccine (.0500); special program/project funding (.0600); licensed nursing home services (.0700); communicable disease grants and contracts (.0800); and biological agent registry (.0900).

Sale of Turtles Restricted
 Amend/*

10A NCAC 41A .0302

ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Subchapter 2N concern underground storage tanks including general considerations (.0100); program scope and interim prohibition (.0200); UST systems: design, construction, installation, and notification (.0300); general operating requirements (.0400); release detection (.0500); release reporting, investigation, and confirmation (.0600); release response and corrective action for UST systems containing petroleum or hazardous substances (.0700); out-of-service UST systems and closure (.0800); performance standards for UST system or UST system component installation or replacement completed on or after november 1, 2007 (.0900); and UST systems with field-constructed tanks and airport hydrant fuel distribution systems (.1000).

General
 Amend/*

15A NCAC 02N .0101

Copies of Referenced Federal Regulations
 Amend/*

15A NCAC 02N .0102

Adoption by Reference Updates
 Repeal/*

15A NCAC 02N .0103

Identification of Tanks
 Amend/*

15A NCAC 02N .0104

<u>Applicability</u> Amend/*	15A NCAC 02N .0201
<u>Installation Requirements for Partially Excluded UST Systems</u> Amend/*	15A NCAC 02N .0202
<u>Definitions</u> Amend/*	15A NCAC 02N .0203
<u>Performance Standards for New UST System Installations or...</u> Amend/*	15A NCAC 02N .0301
<u>Upgrading of Existing UST Systems After December 22, 1988...</u> Amend/*	15A NCAC 02N .0302
<u>Notification Requirements</u> Amend/*	15A NCAC 02N .0303
<u>Implementation Schedule for Performance Standards for New...</u> Amend/*	15A NCAC 02N .0304
<u>Spill and Overfill Control</u> Amend/*	15A NCAC 02N .0401
<u>Operation and Maintenance of Corrosion Protection</u> Amend/*	15A NCAC 02N .0402
<u>Compatibility</u> Amend/*	15A NCAC 02N .0403
<u>Repairs Allowed</u> Amend/*	15A NCAC 02N .0404
<u>Reporting and Recordkeeping</u> Amend/*	15A NCAC 02N .0405
<u>Periodic Testing of Spill Prevention Equipment and Contai...</u> Adopt/*	15A NCAC 02N .0406
<u>Periodic Operation and Maintenance Walkthrough Inspections</u> Adopt/*	15A NCAC 02N .0407
<u>General Requirements for All UST Systems</u> Amend/*	15A NCAC 02N .0501
<u>Requirements for Petroleum UST Systems</u> Amend/*	15A NCAC 02N .0502
<u>Requirements for Hazardous Substance UST Systems</u> Amend/*	15A NCAC 02N .0503
<u>Methods of Release Detection for Tanks</u> Amend/*	15A NCAC 02N .0504
<u>Methods of Release Detection for Piping</u> Amend/*	15A NCAC 02N .0505
<u>Release Detection Recordkeeping</u> Amend/*	15A NCAC 02N .0506
<u>Reporting of Suspected Releases</u> Amend/*	15A NCAC 02N .0601
<u>Investigation Due to Site Impacts</u> Amend/*	15A NCAC 02N .0602
<u>Release Investigation and Confirmation Steps</u> Amend/*	15A NCAC 02N .0603
<u>Reporting and Cleanup of Spills and Overfills</u> Amend/*	15A NCAC 02N .0604
<u>General</u> Amend/*	15A NCAC 02N .0701
<u>Initial Response</u> Amend/*	15A NCAC 02N .0702

<u>Initial Abatement Measures and Site Check</u> Amend/*	15A NCAC 02N .0703
<u>Initial Site Characterization</u> Amend/*	15A NCAC 02N .0704
<u>Free Product Removal</u> Amend/*	15A NCAC 02N .0705
<u>Investigations for Soil and Groundwater Cleanup</u> Amend/*	15A NCAC 02N .0706
<u>Corrective Action Plan</u> Amend/*	15A NCAC 02N .0707
<u>Public Participation</u> Amend/*	15A NCAC 02N .0708
<u>Temporary Closure</u> Amend/*	15A NCAC 02N .0801
<u>Permanent Closure and Changes-In-Service</u> Amend/*	15A NCAC 02N .0802
<u>Assessing the Site at Closure or Change-In-Services</u> Amend/*	15A NCAC 02N .0803
<u>Applicability to Previously Closed UST Systems</u> Amend/*	15A NCAC 02N .0804
<u>Closure Records</u> Amend/*	15A NCAC 02N .0805
<u>Definitions</u> Adopt/*	15A NCAC 02N .1001
<u>General Requirements</u> Adopt/*	15A NCAC 02N .1002
<u>Additions, Exceptions, and Alternatives for UST Systems w...</u> Adopt/*	15A NCAC 02N .1003

The rules in Subchapter 2O concern financial responsibility requirements for owners and operators of underground storage tanks including general considerations (.0100); program scope (.0200); assurance mechanisms, responsibilities of owners and operators (.0400); and changes in status (.0500).

<u>Substitution of Financial Assurance Mechanisms</u> Repeal/*	15A NCAC 02O .0309
<u>Cancellation or Nonrenewal by a Provider of Assurance</u> Repeal/*	15A NCAC 02O .0310
<u>Local Government Bond Rating Test</u> Adopt/*	15A NCAC 02O .0311
<u>Local Government Financial Test</u> Adopt/*	15A NCAC 02O .0312
<u>Local Government Guarantee</u> Adopt/*	15A NCAC 02O .0313
<u>Local Government Fund</u> Adopt/*	15A NCAC 02O .0314
<u>Substitution of Financial Assurance Mechanisms</u> Adopt/*	15A NCAC 02O .0315
<u>Cancellation or Nonrenewal by a Provider of Assurance</u> Adopt/*	15A NCAC 02O .0316

MARINE FISHERIES COMMISSION

The rules in Subchapter 3H concern general information for the marine fisheries commission.

Proclamations, General 15A NCAC 03H .0103
Amend/*

The rules in Subchapter 3J concern the use of nets in general (.0100) and in specific areas (.0200); the use of pots, dredges, and other fishing devices (.0300); fishing gear (.0400); and pound nets (.0500).

Trawl Nets 15A NCAC 03J .0104
Amend/*

The rules in subchapter 3K concern oyster, clams, scallops and mussels including shellfish, general (.0100); crabs (.0200); hard clams (mercenaria) (.0300); rangia clams (.0400); and scallops (.0500).

Public Health and Control of Oysters, Clams, Scallops and... 15A NCAC 03K .0110
Amend/*

Oyster Harvest Management 15A NCAC 03K .0201
Amend/*

Culling Requirements for Oysters 15A NCAC 03K .0202
Amend/*

Mechanical Harvest of Clams from Public Bottom 15A NCAC 03K .0302
Amend/*

The rules in Subchapter 3L concern shrimp (.0100); crabs (.0200); and lobsters (.0300).

Weekend Shrimping Prohibited 15A NCAC 03L .0102
Amend/*

The rules in Subchapter 3M cover harvesting of finfish including general rules (.0100); striped bass (.0200); mackerel (.0300); menhaden and Atlantic herring (.0400); and other finfish (.0500).

Spotted Seatrout 15A NCAC 03M .0522
Adopt/*

The rules in Subchapter 3O cover various licenses (.0100); leases and franchises (.0200); license appeal procedures (.0300); Standard Commercial Fishing License Eligibility Board (.0400); and licenses, leases and franchises (.0500).

Suspension, Revocation and Reissuance of Licenses 15A NCAC 03O .0114
Amend/*

Standards and Requirements for Shellfish Bottom Leases an... 15A NCAC 03O .0201
Amend/*

Termination of Shellfish Bottom Leases and Franchises and... 15A NCAC 03O .0208
Amend/*

Procedures and Requirements to Obtain Permits 15A NCAC 03O .0501
Amend/*

Permit Conditions; Specific 15A NCAC 03O .0503
Amend/*

The rules in Subchapter 3P concern hearing procedures (.0100); declaratory rules (.0200); and petitions for rulemaking (.0300).

License, Permit, or Certificate Denial: Request for Review
Amend/*

15A NCAC 03P .0101

The rules in Subchapter 3R specify boundaries for various areas (.0100); and fishery management areas (.0200).

Primary Nursery Areas
Amend/*

15A NCAC 03R .0103

ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Chapter 13 concern Solid Waste Management.

The rules in Subchapter 13B concern Solid Waste Management including general provisions (.0100); permits for solid waste management facilities (.0200); treatment and processing facilities (.0300); transfer facilities (.0400); disposal sites (.0500); monitoring requirements (.0600); administrative penalty procedures (.0700); septage management (.0800); yard waste facilities (.0900); solid waste management loan program (.1000); scrap tire management (.1100); medical waste management (.1200); disposition of remains of terminated pregnancies (.1300); municipal solid waste compost facilities (.1400); standards for special tax treatment of recycling and resource recovery equipment and facilities (.1500); requirements for municipal solid waste landfill facilities (.1600); and requirements for beneficial use of coal combustion by-products (.1700).

Sampling and Analysis
Amend/*

15A NCAC 13B .0840

CERTIFIED PUBLIC ACCOUNTANT EXAMINERS, BOARD OF

The rules in Chapter 8 are from the N C State Board of Certified Public Accountant Examiners.

The rules in Subchapter 8A are departmental rules including organizational rules (.0100), board procedures (.0200), and definitions (.0300).

Definitions
Amend/*

21 NCAC 08A .0301

The rules in Subchapter 8I concern revocation of certificates and other disciplinary action.

Disciplinary Action
Amend/*

21 NCAC 08I .0101

The rules in Subchapter 8N are professional ethics and conduct rules including scope and applicability (.0100); rules applicable to all CPAs (.0200); rules applicable to CPAs who use the CPA title in offering or rendering products or services to clients (.0300); and rules applicable to CPAs performing attest services (.0400).

Discreditable Conduct Prohibited
Amend/*

21 NCAC 08N .0203

Reporting Convictions, Judgements, and Disciplinary Actions
Amend/*

21 NCAC 08N .0208

Retention of Client Records
Amend/*

21 NCAC 08N .0305

LOCKSMITH LICENSING BOARD

The rules in Chapter 29 include general rules (.0100); rules about examinations (.0200); licensing requirements (.0400); code of ethics (.0500); administrative law procedures (.0600); license renewal requirements (.0700); and continuing education (.0800).

<u>Meetings</u>	21	NCAC	29	.0102
Readopt with Changes/*				
<u>Examination Fee</u>	21	NCAC	29	.0201
Amend/*				
<u>Requirements of Examinees</u>	21	NCAC	29	.0204
Readopt without Changes/*				
<u>Failure to Attend Scheduled Examination Session</u>	21	NCAC	29	.0205
Readopt without Changes/*				
<u>Special Administration</u>	21	NCAC	29	.0206
Readopt without Changes/*				
<u>Application Form</u>	21	NCAC	29	.0401
Readopt without Changes/*				
<u>Establishment of Moral and Ethical Character</u>	21	NCAC	29	.0402
Readopt without Changes/**				
<u>Fees</u>	21	NCAC	29	.0404
Readopt without Changes/*				
<u>Fair Business Practices</u>	21	NCAC	29	.0502
Readopt without Changes/*				
<u>Protection of the Public Interest</u>	21	NCAC	29	.0503
Readopt without Changes/*				
<u>Technical Integrity</u>	21	NCAC	29	.0504
Readopt without Changes/*				
<u>Petitions for Adoption, Amendment or Repeal of Rules</u>	21	NCAC	29	.0601
Readopt without Changes/**				
<u>Due Date</u>	21	NCAC	29	.0702
Readopt with Changes/*				
<u>Reinstatement of Expired License</u>	21	NCAC	29	.0703
Readopt with Changes/*				
<u>Requirements</u>	21	NCAC	29	.0802
Readopt without Changes/*				
<u>Determination of Credit</u>	21	NCAC	29	.0803
Readopt without Changes/*				
<u>Record Keeping</u>	21	NCAC	29	.0804
Readopt without Changes/*				
<u>Exceptions</u>	21	NCAC	29	.0805
Readopt without Changes/*				
<u>Non Compliance</u>	21	NCAC	29	.0806
Readopt without Changes/*				

PHARMACY, BOARD OF

The rules in Chapter 46 cover organization of the board (.1200); general definitions (.1300); hospitals and other health facilities (.1400); admission requirements and examinations (.1500); licenses and permits (.1600); drugs dispensed by nurse and physician assistants (.1700); prescriptions (.1800); forms (.1900); administrative provisions (.2000); elections (.2100); continuing education (.2200); prescription information and records (.2300); dispensing in health departments (.2400); miscellaneous provisions (.2500); devices (.2600); nuclear pharmacy (.2700); compounding (.2800); product selection (.2900); disposal of unwanted drugs (.3000); clinical pharmacist practitioner (.3100); impaired pharmacist peer review program (.3200); and registry of pharmacist technicians (.3300).

<u>Examination</u>	21	NCAC	46	.1505
Amend/*				
<u>E-Profile Number Required for License Permit, or Registra...</u>	21	NCAC	46	.1615
Adopt/*				
<u>Eligibility to Vote</u>	21	NCAC	46	.2102
Amend/*				
<u>Committee on Nominations</u>	21	NCAC	46	.2104
Amend/*				
<u>Nomination by Petition</u>	21	NCAC	46	.2105
Amend/*				
<u>Ballots: Casting and Counting</u>	21	NCAC	46	.2107
Amend/*				
<u>Determination of Election Results</u>	21	NCAC	46	.2108
Amend/*				

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 Don Overby J. Randall May David Sutton	A. B. Elkins II Selina Brooks J. Randolph Ward Stacey Bawtinheimer
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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>			
NC Alcoholic Beverage Control Commission v. Osei Enterprises LLC T/A Osei Food and Beverage	15 ABC 08455	06/02/16	31:05 NCR 426
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