

# ***NORTH CAROLINA REGISTER***

**VOLUME 31 • ISSUE 23 • Pages 2261 – 2437**

**June 1, 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.**

Office of Administrative Hearings

Rules Division

1711 New Hope Church Road

Raleigh, North Carolina 27609

(919) 431-3000

(919) 431-3104 FAX

contact: Molly Masich, Codifier of Rules

molly.masich@oah.nc.gov

(919) 431-3071

Dana Vojtko, Publications Coordinator

dana.vojtko@oah.nc.gov

(919) 431-3075

Lindsay Woy, Editorial Assistant

lindsay.woy@oah.nc.gov

(919) 431-3078

### **Rule Review and Legal Issues**

Rules Review Commission

1711 New Hope Church Road

Raleigh, North Carolina 27609

(919) 431-3000

(919) 431-3104 FAX

contact: Abigail Hammond, Commission Counsel

abigail.hammond@oah.nc.gov

(919) 431-3076

Amber Cronk May, Commission Counsel

amber.may@oah.nc.gov

(919) 431-3074

Amanda Reeder, Commission Counsel

amanda.reeder@oah.nc.gov

(919) 431-3079

Jason Thomas, Commission Counsel

jason.thomas@oah.nc.gov

(919) 431-3081

Alexander Burgos, Paralegal

alexander.burgos@oah.nc.gov

(919) 431-3080

Julie Brincefield, Administrative Assistant

julie.brincefield@oah.nc.gov

(919) 431-3073

### **Fiscal Notes & Economic Analysis and Governor's Review**

Office of State Budget and Management

116 West Jones Street

Raleigh, North Carolina 27603-8005

(919) 807-4700

(919) 733-0640 FAX

Contact: Anca Grozav, Economic Analyst

osbmruleanalysis@osbm.nc.gov

(919) 807-4740

Carrie Hollis, Economic Analyst

osbmruleanalysis@osbm.nc.gov

(919) 807-4757

NC Association of County Commissioners

215 North Dawson Street

Raleigh, North Carolina 27603

(919) 715-2893

contact: Amy Bason

amy.bason@ncacc.org

NC League of Municipalities

(919) 715-4000

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Sarah Collins

scollins@nclm.org

### **Legislative Process Concerning Rule-making**

545 Legislative Office Building

300 North Salisbury Street

Raleigh, North Carolina 27611

(919) 733-2578

(919) 715-5460 FAX

Karen Cochrane-Brown, Director/Legislative Analysis Division

karen.cochrane-brown@ncleg.net

Jeff Hudson, Staff Attorney

Jeffrey.hudson@ncleg.net

**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 <sup>th</sup> 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
31:15	02/01/17	01/10/17	02/16/17	04/03/17	04/20/17	06/01/17	05/2018	10/29/17
31:16	02/15/17	01/25/17	03/02/17	04/17/17	04/20/17	06/01/17	05/2018	11/12/17
31:17	03/01/17	02/08/17	03/16/17	05/01/17	05/22/17	07/01/17	05/2018	11/26/17
31:18	03/15/17	02/22/17	03/30/17	05/15/17	05/22/17	07/01/17	05/2018	12/10/17
31:19	04/03/17	03/13/17	04/18/17	06/02/17	06/20/17	08/01/17	05/2018	12/29/17
31:20	04/17/17	03/24/17	05/02/17	06/16/17	06/20/17	08/01/17	05/2018	01/12/18
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
31:23	06/01/17	05/10/17	06/16/17	07/31/17	08/21/17	10/01/17	05/2018	02/26/18
31:24	06/15/17	05/24/17	06/30/17	08/14/17	08/21/17	10/01/17	05/2018	03/12/18
32:01	07/03/17	06/12/17	07/18/17	09/01/17	09/20/17	11/01/17	05/2018	03/30/18
32:02	07/17/17	06/23/17	08/01/17	09/15/17	09/20/17	11/01/17	05/2018	04/13/18
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
32:04	08/15/17	07/25/17	08/30/17	10/16/17	10/20/17	12/01/17	05/2018	05/12/18
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
32:06	09/15/17	08/24/17	09/30/17	11/14/17	11/20/17	01/01/18	05/2018	06/12/18
32:07	10/02/17	09/11/17	10/17/17	12/01/17	12/20/17	02/01/18	05/2018	06/29/18
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
32:10	11/15/17	10/24/17	11/30/17	01/16/18	01/22/18	03/01/18	05/2018	08/12/18
32:11	12/01/17	11/07/17	12/16/17	01/30/18	02/20/18	04/01/18	05/2018	08/28/18
32:12	12/15/17	11/22/17	12/30/17	02/13/18	02/20/18	04/01/18	05/2018	09/11/18

## **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.

PUBLIC NOTICE  
STATE OF NORTH CAROLINA  
ENVIRONMENTAL MANAGEMENT COMMISSION

The Division of Energy, Mineral, and Land Resources (DEMLR) invites public comment on, or objections to, the permitting actions listed below. Persons wishing to comment or object may submit written comments to the address below by the due dates indicated. All comments received prior to the dates will be considered in the final determinations regarding permit issuance. Public comments may result in changes to the proposed permitting actions. All comments should reference the specific permitting actions listed below and the permit number. DEMLR intends to re-issue the following NPDES industrial General Permits. Please note that for some permits below multiple actions are proposed for the same permit over two separate comment periods.

NCG140000 for Ready-mix concrete Plants: to be revised and re-issued with proposed re-issuance date – 06/30/2017; public comment period ends 6/15/2017.

The General Permits and Fact Sheets may be viewed 45 days in advance of the scheduled re-issuance dates noted above at:  
<https://deq.nc.gov/about/divisions/energy-mineral-land-resources/events>

Please direct comments or objections to: Stormwater  
Permitting Program  
NC Division of Energy, Mineral, and Land Resources  
1612 Mail Service Center  
Raleigh, NC 27699-1612  
Telephone Number: (919) 807-6376  
[rick.riddle@ncdenr.gov](mailto:rick.riddle@ncdenr.gov)

Notice of Application to modify existing Innovative Approval of a Wastewater System for On-site Subsurface Use

Pursuant to NCGS 130A-343(g), the North Carolina Department of Health and Human Services (DHHS) shall publish a Notice in the NC Register that a manufacturer has submitted a request for approval of a wastewater system, component, or device for on-site subsurface use. The following applications have been submitted to DHHS:

Application by: Stephen Sedgwick  
AquaPoint.3, LLC  
39 Tarklin Place  
New Bedford, MA 02745

For: Modification of Innovative Approval for AquaPoint.3, LLC existing Innovative Approval IWWS-2002-1-R1

DHHS Contact: Nancy Deal  
1-919-707-5875  
Fax: 919-845-3973  
Nancy.Deal@dhhs.nc.gov

These applications may be reviewed by contacting the applicant or Nancy Deal, Branch Head at 5605 Six Forks Rd., Raleigh, NC, On-Site Water Protection Branch, Environmental Health Section, Division of Public Health. Draft proposed innovative approvals and proposed final action on the application by DHHS can be viewed on the On-Site Water Protection Branch web site: <http://ehs.ncpublichealth.com/oswp/>.

Written public comments may be submitted to DHHS within 30 days of the date of the Notice publication in the North Carolina Register. All written comments should be submitted to Ms. Nancy Deal, Branch Head, On-site Water Protection Branch, 1642 Mail Service Center, Raleigh, NC 27699-1642, or Nancy.Deal@dhhs.nc.gov, or fax 919-845-3973. Written comments received by DHHS in accordance with this Notice will be taken into consideration before a final agency decision is made on the innovative subsurface wastewater system application.

Notice of Application to modify existing Innovative Approval of a Wastewater System for On-site Subsurface Use

Pursuant to NCGS 130A-343(g), the North Carolina Department of Health and Human Services (DHHS) shall publish a Notice in the NC Register that a manufacturer has submitted a request for approval of a wastewater system, component, or device for on-site subsurface use. The following applications have been submitted to DHHS:

Application by: Dave Lentz, PE  
Infiltrator Water Technologies  
PO Box 768  
Old Saybrook, CT 06475

For: Modification of Innovative Approval for Infiltrator Water Technologies existing Innovative Approval IWWS-1993-02- R16

DHHS Contact: Nancy Deal  
1-919-707-5875  
Fax: 919-845-3973  
Nancy.Deal@dhhs.nc.gov

These applications may be reviewed by contacting the applicant or Nancy Deal, Branch Head at 5605 Six Forks Rd., Raleigh, NC, On-Site Water Protection Branch, Environmental Health Section, Division of Public Health. Draft proposed innovative approvals and proposed final action on the application by DHHS can be viewed on the On-Site Water Protection Branch web site: <http://ehs.ncpublichealth.com/oswp/>.

Written public comments may be submitted to DHHS within 30 days of the date of the Notice publication in the North Carolina Register. All written comments should be submitted to Ms. Nancy Deal, Branch Head, On-site Water Protection Branch, 1642 Mail Service Center, Raleigh, NC 27699-1642, or Nancy.Deal@dhhs.nc.gov, or fax 919-845-3973. Written comments received by DHHS in accordance with this Notice will be taken into consideration before a final agency decision is made on the innovative subsurface wastewater system application.

Notice of Application to modify existing Innovative Approval of a Wastewater System for On-site Subsurface Use

Pursuant to NCGS 130A-343(g), the North Carolina Department of Health and Human Services (DHHS) shall publish a Notice in the NC Register that a manufacturer has submitted a request for approval of a wastewater system, component, or device for on-site subsurface use. The following applications have been submitted to DHHS:

Application by: Dave Lentz, PE  
Infiltrator Water Technologies  
PO Box 768  
Old Saybrook, CT 06475

For: Modification of Innovative Approval for Infiltrator Water Technologies existing Innovative Approval IWWS-1995-03R7

DHHS Contact: Nancy Deal  
1-919-707-5875  
Fax: 919-845-3973  
Nancy.Deal@dhhs.nc.gov

These applications may be reviewed by contacting the applicant or Nancy Deal, Branch Head at 5605 Six Forks Rd., Raleigh, NC, On-Site Water Protection Branch, Environmental Health Section, Division of Public Health. Draft proposed innovative approvals and proposed final action on the application by DHHS can be viewed on the On-Site Water Protection Branch web site: <http://ehs.ncpublichealth.com/oswp/>.

Written public comments may be submitted to DHHS within 30 days of the date of the Notice publication in the North Carolina Register. All written comments should be submitted to Ms. Nancy Deal, Branch Head, On-site Water Protection Branch, 1642 Mail Service Center, Raleigh, NC 27699-1642, or Nancy.Deal@dhhs.nc.gov, or fax 919-845-3973. Written comments received by DHHS in accordance with this Notice will be taken into consideration before a final agency decision is made on the innovative subsurface wastewater system application.

Notice of Application to modify existing Innovative Approval of a Wastewater System for On-site Subsurface Use

Pursuant to NCGS 130A-343(g), the North Carolina Department of Health and Human Services (DHHS) shall publish a Notice in the NC Register that a manufacturer has submitted a request for approval of a wastewater system, component, or device for on-site subsurface use. The following applications have been submitted to DHHS:

Application by: Dave Lentz, PE  
Infiltrator Water Technologies  
PO Box 768  
Old Saybrook, CT 06475

For: Modification of Innovative Approval for Infiltrator Water Technologies existing Innovative Approval IWWS-2010-01R4

DHHS Contact: Nancy Deal  
1-919-707-5875  
Fax: 919-845-3973  
Nancy.Deal@dhhs.nc.gov

These applications may be reviewed by contacting the applicant or Nancy Deal, Branch Head at 5605 Six Forks Rd., Raleigh, NC, On-Site Water Protection Branch, Environmental Health Section, Division of Public Health. Draft proposed innovative approvals and proposed final action on the application by DHHS can be viewed on the On-Site Water Protection Branch web site: <http://ehs.ncpublichealth.com/oswp/>.

Written public comments may be submitted to DHHS within 30 days of the date of the Notice publication in the North Carolina Register. All written comments should be submitted to Ms. Nancy Deal, Branch Head, On-site Water Protection Branch, 1642 Mail Service Center, Raleigh, NC 27699-1642, or Nancy.Deal@dhhs.nc.gov, or fax 919-845-3973. Written comments received by DHHS in accordance with this Notice will be taken into consideration before a final agency decision is made on the innovative subsurface wastewater system application.

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

**TITLE 02 – DEPARTMENT OF AGRICULTURE AND  
CONSUMER SERVICES**

- ☐ No fiscal note required by G.S. 150B-21.4  
☒ No fiscal note required by G.S. 150B-21.3A(d)(2)

*Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. and G.S. 150B-21.2(g) that the Board of Agriculture intends to readopt without substantive changes the rule cited as 02 NCAC 09G .2010 with changes from the proposed text noticed in the Register, Volume 31, Issue 05, pages 355.*

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

**Proposed Effective Date:** October 1, 2017

**Reason for Proposed Action:** This rule was originally published to be repealed through the readoption process on September 1, 2017. After careful review of the rule and federal standards, and in the interest of public health and food safety, this rule is being republished as a readoption without substantive changes. The rule deals with restrictions on dispensing raw milk.

**Comments may be submitted to:** Tina Hlabse, 1001 Mail Service Center, Raleigh, NC 27699-1001; email [tina.hlabse@ncagr.gov](mailto:tina.hlabse@ncagr.gov)

**Comment period ends:** July 31, 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

**CHAPTER 09 - FOOD AND DRUG PROTECTION**

**SUBCHAPTER 09G - MILK AND MILK PRODUCTS**

**SECTION .2000 - GRADE A MILK SANITATION**

**02 NCAC 09G .2010 RESTRICTIONS ON  
DISPENSING RAW MILK**

(a) Dairy farms shall dispense raw milk or raw milk products only to a permitted milk hauler or to a processing facility for which the processing of milk is permitted, graded or regulated by a state or federal agency.

(b) The farmer or the owner of the raw milk or raw milk products may, nevertheless, destroy the milk or dispense it for animal feed in accordance with any applicable state and federal regulations.

Authority G.S. 106-266.31.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. and G.S. 150B-21.2(g) that the Board of Agriculture intends to readopt with substantive changes the rule cited as 02 NCAC 37 .0203 with changes from the proposed text noticed in the Register, Volume 31, Issue 15, pages 1534-1535.*

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

**Proposed Effective Date:** October 1, 2017

**Reason for Proposed Action:** This rule is being republished as readoption with substantive changes to accurately reflect the fee for routine nematode assay service at \$3.00, and \$10:00 for nematode research and nematode non-resident samples that is currently in statute. There is also the inclusion of recently added services: pinewood nematode assay and molecular diagnosis.

**Comments may be submitted to:** Tina Hlabse, 1001 Mail Service Center, Raleigh, NC 27699-1001; email [tina.hlabse@ncagr.gov](mailto:tina.hlabse@ncagr.gov)

**Comment period ends:** July 31, 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
- ☒ No fiscal note required by G.S. 150B-21.3A(d)(2)

**CHAPTER 37 - AGRONOMIC SERVICES**

**SECTION .0200 - PROGRAMS**

**02 NCAC 37 .0203 NEMATODE ADVISORY SERVICE**

(a) Individuals desiring nematode analysis may obtain sample containers and instructions from the Agronomic Services Division, county extension office, farm supply dealers, Agronomic Division Regional Agronomists, or other local agricultural advisors. If plant-destructive nematodes are found in the soil, the best method of control will be recommended. ~~A fee of two dollars (\$2.00) will be charged for each sample analyzed.~~

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

- (1) Routine nematode assay - \$3.00.
- (2) Nonresident nematode assay - \$10.00.
- (3) Research nematode assay - \$10.00.
- (4) Pinewood nematode assay - \$10.00.
- (5) Rapid nematode identification (molecular diagnosis) - \$10.00.

Authority G.S. 106-22(17).

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Agriculture intends to adopt the rules cited as 02 NCAC 52J .0901 and .0902.*

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

**Proposed Effective Date:** October 1, 2017

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than June 16, 2017 to Tina Hlabse, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001*

**Reason for Proposed Action:** *The Animal Shelter Support Fund was created by the General Assembly to reimburse local governments for expenses related to their operation of a registered animal shelter due to the denial, suspension, or revocation of the shelter's registration, or an unforeseen catastrophic disaster at an animal shelter. These rules spell out the eligibility requirements and application process. These rules are going through the permanent rulemaking process after becoming a temporary adoption on November 29, 2016.*

**Comments may be submitted to:** Tina Hlabse, 1001 Mail Service Center, Raleigh, NC 27699-1001; email [tina.hlabse@ncagr.gov](mailto:tina.hlabse@ncagr.gov)

**Comment period ends:** July 31, 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 52 - VETERINARY**

**SUBCHAPTER 52J - ANIMAL WELFARE SECTION**

**SECTION .0900 – ANIMAL SHELTER SUPPORT FUND**

**02 NCAC 52J .0901 ELIGIBLE EXPENSES**

Eligible expenses include:

- (1) Veterinary costs – Reimbursement may be requested for veterinary expenditures incurred

\*\*\*\*\*

for the assessment, diagnostic and triage evaluation, medical treatment, minor surgical treatment, medications, first aid and minor medical supplies, vaccinations, parasite control/treatment or euthanasia of animals housed at the shelter at the time of the event or impounded during the interim or transition period.

- (2) Sanitation costs – Reimbursement may be requested for expenditures related to sanitation of the affected shelter, including detergent/disinfectant supplies, cleaning supplies, labor costs for the sanitation of the shelter, and waste and carcass disposal costs.
- (3) Animal sustenance and supplies – Reimbursement may be requested for expenditures for animal food, provision of water to the shelter, and food and water bowls or buckets, as well as labor costs for the feeding and watering of the shelter animals.
- (4) Temporary housing and sheltering of animals – Reimbursement may be requested for expenditures for animal cages and kennels, animal transport carriers, fencing panels for runs, tarps, fencing, dog or cat houses and other construction supplies, as well as labor costs or equipment or facility leasing expenses incurred during the construction or repair of temporary animal housing.

Authority G.S. 19A-67(b); 19A-68(a).

**02 NCAC 52J .0902 APPLICATION GUIDELINES**

A local government applying for reimbursement from the Fund shall submit the request for reimbursement to the Animal Welfare Section (AWS) of the North Carolina Department of Agriculture and Consumer Services. The request shall:

- (1) be received by AWS by mail, email, or fax within 60 days of the date the eligible expense was incurred;
- (2) include a completed "Animal Shelter Support Fund Reimbursement Application" with the county name, tier of county, facility name, facility license number, and contact information. This application can be found on the AWS website (<http://www.ncagr.gov/vet/AWS/>);
- (3) include an itemized listing of eligible expenses for which reimbursement is sought;
- (4) include proof that matching funds have been provided; and
- (5) include proof of payment of the eligible expense. Should the payment of expense occur after the application was submitted, proof of payment shall be submitted to AWS within 30 days of payment of the expense.

Authority G.S. 19A-67(b); 19A-68(a).

*Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. and G.S. 150B-21.2(g) that the Soil and Water Conservation Commission intends to readopt with substantive changes the rules cited as 02 NCAC 59E .0101-.0105; 59F .0106; 59G .0101-.0105 with changes from the proposed text noticed in the Register, Volume 31, Issue 05, pages 369-374.*

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

**Proposed Effective Date:** *October 1, 2017*

**Reason for Proposed Action:** *These rules have been through the rules review process and now are being readopted. These rules deal with the procedures and guidelines to implement the nondischarge rule for animal waste systems, and the approval of technical specialists and best management practices for water quality protection. These changes in the rules clean up language and makes edits to names and references that have changed or have been updated (like other rules and statutes). They are being republished after taking into consideration several comments that were received after they were published in the Register on September 1, 2016.*

**Comments may be submitted to:** *Christina Waggett, 1001 Mail Service Center, Raleigh, NC 27699-1001, email [Christina.waggett@ncagr.gov](mailto:Christina.waggett@ncagr.gov)*

**Comment period ends:** *July 31, 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**
- ☒ **No fiscal note required by G.S. 150B-21.3A(d)(2)**

**CHAPTER 59 - SOIL AND WATER CONSERVATION  
COMMISSION**

**SUBCHAPTER 59E - PROCEDURES AND GUIDELINES  
TO IMPLEMENT THE NONDISCHARGE RULE FOR  
ANIMAL WASTE MANAGEMENT SYSTEMS**

**02 NCAC 59E .0101 PURPOSE**

This Subchapter describes rules to implement the provisions of ~~15A NCAC 02H .0200~~ 15A NCAC 02T .1300 - Waste Not Discharged To Surface Waters; Waters: Animal Waste Management Systems, hereinafter called the Nondischarge Rule for Animal Waste Management Systems. In agreement with the Environmental Management Commission (EMC) and the Division of ~~Environmental Management (DEM); Water Resources (DWR)~~, the Soil and Water Conservation Commission sets forth these Rules for certification of animal waste management systems in accordance with ~~15A NCAC 02H .0217; 15A NCAC 02T .1300~~. Alternatively, and in lieu of these Rules, the requirements of 15A NCAC 02H .0200 may be satisfied also by receiving an individual nondischarge permit from the Division of Environmental Management in accordance with 15A NCAC 02H .0217(d). An owner must either obtain certification under these Rules or meet DEM requirements for an individual nondischarge permit. The review process of the District does not abrogate the responsibilities of the owner to either obtain a certification or to meet DEM requirements for an individual nondischarge permit.

*Authority G.S. 106-840; 139-2; 139-4.*

**02 NCAC 59E .0102 DEFINITIONS**

The terms used in this Subchapter shall be as defined in G.S. 139-3; ~~143-215.74; G.S. 106-850; 143B-294; G.S. 106-840; 15A NCAC 02H .0203; G.S. 143-15.10B; 15A NCAC 02T .0103; 02 NCAC 59D .0102~~; and as follows:

- (1) ~~"Agronomic rates" means those amounts of animal waste or compost to be applied to lands as contained in the nutrient management standard of the USDA Soil Conservation Service Technical Guide Section IV or as recommended by the North Carolina Department of Agriculture and the North Carolina Cooperative Extension Service at the time of certification of the animal waste management plan.~~
- (2)(1) "Certification" means the certification required in the Nondischarge Rule for Animal Waste Management Systems (15A NCAC 02H .0217) for the animal waste management plan in 15A NCAC 02T .1300 and G.S. 143-215.10C.
- (2) "Certified Crop Advisor" means an individual who has obtained and maintained the Certified Crop Advisor Credential from the American Society of Agronomy.
- (3) "DEM" "DWR" means the Division of Environmental Management, Department of Environment, Health, and Natural Resources,

and the agency to receive the certification forms and responsible for enforcement of 15A NCAC 02H .0200. Water Resources of the Department of Environmental Quality.

- (4) ~~"Design approval authority" means that authority granted by the Commission to designated individuals or groups of individuals to certify that a BMP or the system of BMPs for waste management has been designed to meet the standards and specifications of practices adopted by the Commission.~~

- (5)(4) "Installation approval authority" means that authority granted by the Commission to designated individuals or groups of individuals to certify a BMP or system of BMPs for waste management has been installed to meet the standard of practices adopted by the Commission. "Interagency Nutrient Management Committee" means a committee represented by the Agronomics Division of the NC Department of Agriculture and Consumer Services, the Division of Water Resources of the NC Department of Environmental Quality, the North Carolina Cooperative Extension Service – Department of Soil and Crop Science, and the Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture to provide uniform nutrient management recommendations based on scientific data and research.

- (6)(5) "Technical Specialist" means individuals or groups of individuals an individual designated by the Commission at 02 NCAC 59E .0105 to certify an entire or portion of an animal waste management plan that the planning, design, and implementation of BMPs, including all or part of an animal waste management plan, are to the standards and specifications of the Commission or NRCS.

*Authority G.S. 106-840; 106-850; 139-4.*

**02 NCAC 59E .0103 REQUIREMENTS FOR  
CERTIFICATION OF WASTE MANAGEMENT PLANS**

(a) In order for an animal waste management plan to receive the certification required by G.S. 143-215.10C and 15A NCAC 02T .1300, the technical specialist shall certify that the system is designed and installed to properly collect, treat, store, or apply animal waste as required in G.S. 143-215.10C. In accordance with 15A NCAC 02H .0217(a)(1), owners of animal waste management systems are required to:

- (4) obtain certification that the system will properly collect, treat, store, or apply animal waste to the land such that no discharge of pollutants occurs to surface waters of the state by any means except as a result of a storm event more severe than the 25 year, 24 hour storm as required in 15A NCAC 02H .0203(3); or

(2) ~~receive an individual nondischarge permit from the Division of Environmental Management in accordance with 15A NCAC 02H .0217(d).~~

(b) The certification is to shall be made by a Technical Specialist ~~technical specialist~~ designated pursuant to this Subchapter, and will shall confirm that the best management practices (BMPs) contained in the animal waste management plan meet applicable minimum standards and ~~specifications~~ specifications as approved by the Commission pursuant to Rule .0104 of this Section. BMPs in an existing system ~~are not shall not be~~ required to meet current standards and specifications as established by the Commission as long as the system is certified to be nondischarging as required in ~~15A NCAC 02H .0203(3); G.S. 143-215.10C.~~

(c) More than one ~~Technical Specialist~~ technical specialist may be consulted for the design of BMPs and installation of BMPs. A ~~Technical Specialist~~ technical specialist ~~must shall~~ certify the ~~entire animal waste management plan as installed; only parts of the animal waste management plan within their approved designated category pursuant to 02 NCAC 59G .0104 and for which they are technically competent. The technical specialist must provide a copy of the certification to the owner or operator of the animal waste management system.~~

(d) ~~Upon receiving a certification from a Technical Specialist, the owner must submit a copy of the certification to DEM and a copy of both the certification and the waste management plan to the District in which the system is or is to be located.~~

(e) ~~The District shall review the waste management plan and, within 30 days of receipt of the plan, notify the owner, the certifying Technical Specialist, DEM and the Division if the District does not concur that the certification was signed by an approved Technical Specialist and that the waste management plan satisfies the purpose of proper conservation and utilization of farm-generated animal by products. If the District, upon review, concurs with the certification, no further action is required.~~

(f) ~~The District shall maintain a copy of all animal waste management plans and the accompanying certification form.~~

(g) ~~If the District does not concur that the certification was signed by a Technical Specialist, or that the waste management plan is acceptable, and if either the owner or the DEM requests that the District reconsider its decision, the District shall review its decision and within 45 days of the request, notify the owner, the certifying Technical Specialist, DEM, and the Division of the District's final decision. The District is encouraged to utilize other technical specialists, local agricultural agencies and disinterested agricultural producers in reconsidering its initial decision. If the District fails to act within 45 days on a request for reconsideration, the District's initial decision shall become final.~~

(h) ~~An owner not receiving concurrence from the District may request that the Commission mediate a dispute over concurrence. Nothing in this Rule creates an administrative remedy which must be exhausted prior to exercising permit appeal rights pursuant to the rules of the Environmental Management Commission.~~

(i) ~~An owner who does not obtain a certification is not deemed permitted pursuant to G.S. 143-215.1(d) and must apply for an individual permit from the Division of Environmental Management. Nothing in these Rules prohibits permit appeal rights pursuant to the rules of the Environmental Management Commission.~~

(j)(d) Any proposed modification of an animal waste management plan ~~requires approval by a Technical Specialist.~~ shall be certified by a technical specialist.

(k) ~~Any modifications made in the system as a result of changes in the operation such as types and numbers of animals, equipment, or crops, must be in accordance with the BMP standards and specifications approved by the Commission and in effect at the time of the modification.~~

(4)(e) A change in the cropping pattern as a result of weather-caused delays after application of animal waste shall not require the owner to obtain a new ~~certification~~ certification, as long as the owner followed the application rates set forth in the certified waste management plan ~~application rates~~ and no discharge occurs to surface waters.

(m)(f) The certifying ~~Technical Specialist~~ technical specialist and the District ~~are not shall not be~~ required to spot check or otherwise assure proper maintenance and operation of an animal waste management system installed to meet the ~~DEM certification requirements~~ requirements pursuant to G.S. 143-215.10C. ~~Enforcement of the Nondischarge Rule for Animal Waste Management Systems (15A NCAC 02H .0217) shall remain the responsibility of DEM.~~

Authority G.S. 106-840; 106-850; 139-4.

#### **02 NCAC 59E .0104 APPROVED BEST MANAGEMENT PRACTICES (BMPs)**

(a) The Commission will approve a list of BMPs that are acceptable as part of an approved animal waste management ~~system.~~ plan. The list of BMPs will ~~be approved annually (by August 1) and revised as needed during the year by the Commission.~~

(b) As required by ~~DEM in 15A NCAC 02H .0217, 15A NCAC 02T .1300,~~ a BMP or system of BMPs designed and installed for an animal waste management plan at the time of certification ~~must shall~~ either:

- (1) meet the minimum standards and specifications of the US Department of Agriculture ~~Soil Conservation Service~~ Natural Resources Conservation Service (NRCS) Technical Guide, Section IV or minimum standards and specifications as otherwise determined by the Commission; or
- (2) ~~the owner must receive an approved individual nondischarge permit as required for the animal waste management system.~~ meet the Swine Waste System Performance Standards pursuant to 15A NCAC 02T .1307 and follow the approval process as described in 15A NCAC 02T .1308.

(c) BMPs approved for use in the Agriculture Cost Share Program for Nonpoint Source Pollution Control ~~are hereby shall be~~ deemed approved for these purposes.

(d) Land application BMPs following the nutrient management standard contained in the Section IV of the ~~SCS NRCS~~ Technical Guide or as recommended by the Agronomic Division of the North Carolina Department of Agriculture and Consumer Services ~~(Soil (predictive Soil Test Report and predictive Waste Analysis, Form AD-10) Analysis Report, and the Cooperative~~

Extension Service (AG 439-4)(AG 439-5)(AG 439-28) are shall be acceptable. In cases where NC agronomic rates are not specified in the nutrient management standard established for a specific crop or vegetative type, application rates may be determined using the best judgement of the certifying Technical Specialist after consultation with NCDA or CES. by the NC Interagency Nutrient Management Committee. A technical specialist may use plant and tissue analysis to justify additional nitrogen and extend the application period with concurrence from a NCDA&CS Regional Agronomist, a voting member of the NC Agricultural Consultants Association (NCACA), or a Certified Crop Advisor (CCA).

(e) ~~Exemptions from the minimum buffer requirements for animal waste storage and treatment facilities and animal concentration areas are acceptable if no practical alternative exists and the BMP installed as an equivalent control meets the requirements for Nondischarge except as a result of a storm event more severe than the 25 year, 24 hour storm.~~

*Authority G.S. 106-840; 106-850; 139-4.*

## **02 NCAC 59E .0105 TECHNICAL SPECIALIST DESIGNATION**

(a) ~~As required in 15A NCAC 02H .0217, the Commission designates the following individuals or groups of individuals as Technical Specialists, to assist owners in animal waste management plan development and certification. No rights are afforded to Technical Specialists by this designation. Technical Specialists are defined as:~~

- (1) ~~Individuals who have been assigned design approval authority or installation approval authority by the USDA, Soil Conservation Service, the NC Cooperative Extension Service or the NC Department of Agriculture;~~
- (2) ~~Professional engineers subject to "The North Carolina Engineering and Land Surveying Act" as rewritten by Session Laws 1975, c. 681, s. 1, and recodified; and~~
- (3) ~~Individuals with demonstrated skill and experience in the design or installation of animal waste management system BMPs.~~

(b) ~~Design approval authority or installation approval authority of Technical Specialists may be for specific BMPs or a system of BMPs to be applied to complete an entire or a portion of an animal waste management plan.~~

(c) ~~Those individuals not designated in Subparagraphs (a)(1) or (2) of this Rule must:~~

- (1) ~~Meet the minimum qualifications established by the Commission for each BMP or system of BMPs;~~
- (2) ~~Provide to the NPS Section of the Division an "Application for Designation as a Technical Specialist" and evidence of demonstrated skill and experience required for a BMP or system of BMPs for which they are requesting Technical Specialist designation. This documentation must be received by the second Wednesday of the first month of the quarter in order to have~~

~~the application reviewed for designation that quarter; and~~

- (3) ~~The individual may provide additional information and request that their approval authority be updated based on new evidence of skill and experience.~~

(d) ~~A copy of the minimum requirements for skill and experience will be available at the District field office. The NPS Section of the Division will provide a list of designated Technical Specialists to all Districts, after each Commission meeting where action was taken concerning Technical Specialists. The list will specify the BMPs or system of BMPs which the Technical Specialist has designed or installed. The individual will be notified of the Commission action.~~

*Authority G.S. 106-840; 106-850; 139-4.*

## **SUBCHAPTER 59F - CONSERVATION RESERVE ENHANCEMENT PROGRAM (CREP) -- STATE PORTION OF THE PROGRAM**

### **SECTION .0100 - CONSERVATION RESERVE ENHANCEMENT PROGRAM (CREP) -- STATE PORTION OF THE PROGRAM**

## **02 NCAC 59F .0106 NONCOMPLIANCE WITH CREP AGREEMENT**

(a) If noncompliance with any CREP agreement is determined, the landowner must return the enrolled area to the condition that meets the guidelines of the CREP upon receiving written notification to do so. The notice, from the ~~appropriate CREP agency, Division,~~ will contain:

- (1) a detailed description of the enrolled area;
- (2) a description of the area in noncompliance;
- (3) recommended measures ~~for repair of the practice; and to correct the noncompliance; and~~
- (4) a time frame for repair.

Any expense incurred ~~due to~~ correct the noncompliance of a practice will be the responsibility of the landowner. ~~Landowners are not responsible for repayment of cost share due to a failure of a practice through no fault of their own. If the noncompliance involves a cost-shared practice that is within the state cost share contract maintenance period, then the requirements in 02 NCAC 59D .0107 shall be followed.~~

(b) From the date of the notice of noncompliance, the landowner will be given 30 days to reply in writing to the Division with a plan for repairing the easement area. The Division will work with the landowner to ensure that the plan of repair meets the CREP objectives. Once a plan is approved in writing by the Division, the landowner has 90 days from the date of said approval to complete restoration of the easement area. For vegetative practices, applicants are given one calendar year to re-establish the vegetation. An extension may be granted by the Division if it is determined that compliance cannot be met due to circumstances beyond the landowner's control.

(c) In the event that an easement has been found to be noncompliant and the landowner does not agree to ~~repair or re-implement the cost shared practice, the landowner and the Division may jointly request the Commission to mediate the case~~

~~as set forth in the NC CREP contract between the parties. To invoke this method, both parties must stipulate that said mediation is binding. correct the noncompliance, the Division may invoke procedures to achieve resolution to the noncompliance, including any and all remedies available to it under the easement or applicable law.~~

*Authority G.S. 106-840; 106-850(a); 139-4.*

## **SUBCHAPTER 59G - APPROVAL OF TECHNICAL SPECIALISTS AND BMPS FOR WATER QUALITY PROTECTION**

### **02 NCAC 59G .0101 PURPOSE**

This Subchapter describes criteria and procedures for the Soil and Water Conservation Commission to approve water quality technical specialists and to approve Best Management Practices (BMPs) for use in water quality protection ~~programs of the Department. programs.~~ These criteria and procedures are intended for use by the Commission where technical specialists or BMPs are needed in conjunction with actions by the Environmental Management ~~Commission or other commissions in Department water quality protection programs.~~ Commission.

*Authority G.S. 106-840; 139-4.*

### **02 NCAC 59G .0102 DEFINITIONS**

When used in this Subchapter:

- (1) "Best Management Practice" (BMP) means a structural or nonstructural management practice used singularly or in combination to reduce nonpoint source inputs to receiving waters.
- (2) "Certified Animal Waste Management Plan" means the animal waste management plan certified by a technical specialist as required in the ~~EMC Nondischarge Rule for 15A NCAC 02T .1300 Animal Waste Management Systems (15A NCAC 02H .0217): Systems.~~
- (3) "Commission" means the Soil and Water Conservation Commission.
- (4) ~~"Department" means the Department of Environment and Natural Resources.~~
- ~~(5)(4)~~ "EMC" means the Environmental Management Commission.
- (5) "Land application" means providing nutrients to a receiving crop by spraying, spreading, or injecting inorganic fertilizer or animal waste (including liquid, solid, or sludge) pursuant to a certified nutrient or animal waste management plan.
- (6) "NCCES" means the North Carolina Cooperative Extension Service.
- (7) "NRCS" means the USDA Natural Resources Conservation Service.
- (8) "Nutrient management" means a BMP for managing the amount, source, placement, form and timing of nutrients to ensure adequate

fertility for plant production and to minimize the potential for water quality impairment.

- (9) "Technical Specialist" means an individual designated by the Commission to certify that the planning, design and implementation of ~~BMPs~~ BMPs, including all or part of an animal waste management plan, are to the standards and specifications of the Commission or NRCS.
- (10) "Technical specialist designation category" means a ~~designation specific to any of several individual or groups of BMPs. category~~ specified in Rule .0104(a) of this Section.
- (11) "Water management" means ~~a BMP for control of water levels in the soil profile, including but not limited to, the use of flashboard risers or other similar structures placed in drainage ditches to benefit meet~~ crop water needs and reduce nutrient loss.

*Authority G.S. 106-840; 139-4.*

### **02 NCAC 59G .0103 APPROVAL OF BEST MANAGEMENT PRACTICES (BMPS)**

(a) The Commission may approve individual BMPs or systems of BMPs in conjunction with water quality protection programs for agriculture and other nonpoint sources.

(b) Approved BMPs shall meet the minimum technical standards of the USDA Natural Resources Conservation Service Field Office Technical Guide, Section IV, Raleigh, North Carolina, except as specified in Paragraph (c) of this Rule.

(c) The Commission shall approve alternative BMPs Practices, ~~Technical~~ Technical, or Performance Specifications, and Operation and Maintenance requirements where any of the following criteria are met:

- (1) Where no existing USDA technical standard ~~specifically achieves the desired~~ exists for water quality protection ~~benefits; benefits~~ equivalent to the benefits achieved by an approved BMP as established in Paragraph (a) of this Rule;
- (2) Where an existing USDA technical standard includes design or installation requirements for purposes other than those necessary ~~to achieve the desired~~ for water quality protection ~~benefits; or protection; or~~
- (3) Where there is a need for additional operator flexibility to reduce the initial cost of installing or implementing the BMP, while providing ~~equivalent~~ water quality protection benefits. benefits equivalent to the benefits achieved by an approved BMP as established in Paragraph (a) of this Rule.

(d) In approving BMPs, the Commission shall consider technical input from persons engaged in agriculture or experienced in nonpoint source management.

*Authority G.S. 106-840; 139-4.*

**02 NCAC 59G .0104 APPROVAL OF WATER QUALITY TECHNICAL SPECIALISTS**

(a) ~~Technical specialist designation categories and roles are as follows:~~ specialists shall be designated in one or more of the following technical specialist designation categories:

- (1) The Structural Animal Waste category provides for the approval of the design and construction inspection installation of lagoons, storage ponds, dry ~~stacks~~ stacks, and other similar structures.
- (2) The Waste Utilization ~~Plan~~ Plan/Nutrient Management category provides for:
  - (A) ~~The development~~ Development of land application ~~plans~~ plans, including crop acreages available to meet nutrient and hydraulic loading rates, application windows, determination of animal waste nutrient amounts, and other similar determinations such as evaluation of fields for phosphorous loss, and field buffers and related measures; ~~buffers;~~
  - (B) Confirmation of storage volumes, exterior lots, ~~lagoon closures,~~ and cropping ~~systems;~~ and systems;
  - (C) Development and establishment of buffers and setbacks to manage runoff from exterior lots. verification of land application setbacks;
  - (D) Certification that the land application component of a USDA Comprehensive Nutrient Management Plan; and
  - (E) Authority to approve nutrient management plans to comply with Rule .0105 of this Section.
- (3) The Runoff Control category provides for the approval of the design and ~~implementation of filter strips, diversions, grass channels and related BMPs which manage runoff from exterior lots.~~ installation of erosion control BMPs pursuant to NRCS job approval authority or engineering licensure.
- (4) The Irrigation Equipment category provides for the approval of the design and installation of irrigation systems to include pipe size, pump horsepower, nozzle size, and system layout, and other system parameters. layout including required land application setbacks.
- (5) The Wettable Acres category provides for the determination of irrigated acreage in accordance with a Certified Animal Waste Management Plan.
- (6) ~~The Waste Utilization Plan/Nutrient Management category provides for the items included in Subparagraph (a)(2) of this Rule and the authority to approve river basin nutrient management plans and to certify the land~~

~~application—component—of—a—USDA Comprehensive Management Plan.~~

~~(7)(6)~~ The Inorganic Fertilizer/Nutrient Management category provides for approval of river basin nutrient management plans to comply with Rule .0105 of this Section for inorganic fertilizer only.

~~(8)(7)~~ The Water Management category provides for the approval of the design and installation of subsurface water management systems.

~~(8)~~ The Waste Facility Closure category provides for the design and oversight of decommissioning waste storage ponds, lagoons, and other similar structures.

(b) The Commission ~~designates~~ shall designate the following individuals who meet the criteria and training requirements of this Rule as technical specialists:

(1) Individuals ~~who to whom the NRCS has have been assigned approval authority for a designation to conduct the activities specified in a technical specialist category by the USDA NRCS, the North Carolina Department of Agriculture and Consumer Services, the Division of Soil and Water Conservation, or the North Carolina Cooperative Extension Service. Soil and Water Conservation District employees are assigned approval authority by the USDA NRCS. Agency employees who do not have a designation at the time this Rule becomes effective must meet the training requirements included in Subparagraph (c)(2) of this Rule in order to receive a designation; described in Paragraph (a) of this Rule;~~

(2) Professional engineers subject to the "The NC Engineering and Land Surveying Act" for the categories of ~~structural animal waste, Structural Animal Waste, waste utilization plan, Waste Utilization Plan, runoff control, Runoff Control, irrigation equipment Irrigation Equipment and water management designation; Water Management and Waste Facility Closure designation; or~~

(3) Individuals not included in Subparagraph (b)(1) and (b)(2) who meet the criteria in Paragraph (c) of this Rule.

~~(c) Those individuals not designated in Subparagraphs (b)(1) or (b)(2) of this Rule must have an existing designation at the time this Rule becomes effective under 02 NCAC 59E .01025 or must~~ Individuals shall meet the following criteria and training requirements:

(1) ~~Minimum criteria~~ Criteria for each technical specialist designation category are: shall be the following:

(A) ~~The Irrigation Equipment designation category~~ requires designation as an irrigation designer by the National Irrigation Association or three years experience in the design of irrigation systems for waste application.

- (B) ~~The Wettable Acres designation category~~ requires holding either the ~~waste utilization plan~~ Waste Utilization Plan/Nutrient Management or ~~irrigation equipment~~ Irrigation Equipment designation.
- (C) ~~The Waste Utilization Plan/Nutrient Management and the Inorganic Fertilizer~~ Only/Nutrient Fertilizer/Nutrient Management ~~designations categories~~ require either three years experience in nutrient management, a four year degree in agronomy or related ~~field~~ field, or a combination of education and experience totaling four years.
- (D) ~~The Structural Animal Waste, Runoff Control and Control, Water Management and Waste Facility Closure designations categories~~ are reserved only for those individuals included in Subparagraphs (b)(1) or (b)(2);
- (2) Training requirements ~~are~~ shall be the following:
- (A) For all categories except Inorganic Fertilizer/Nutrient Management category, NC Rules and Regulations Governing Animal Waste Management Systems taught by the Division or Department of Environmental Quality, and advertised through the Division website.
- ~~(A)(B)~~ For the category of Waste Utilization Plan/Nutrient Management, Management and Inorganic Fertilizer/Nutrient Management, North Carolina Nutrient Management Course taught by the Division, NCCES NCCES, or the NRCS and the North Carolina Nutrient Management Software Course taught by the Division or the NCCES, NCCES, and advertised through the Division website.
- ~~(B)~~ For the category of Inorganic Fertilizer Only/Nutrient Management, North Carolina Inorganic Fertilizer Nutrient Management Course taught by the NCCES or the NRCS and the North Carolina Nutrient Management Software Course taught by the Division or the NCCES.
- (C) For the category of Wettable Acres, the North Carolina Wettable Acres Course taught by the NCCES, NCCES, and advertised through the Division website.
- ~~(3) Provide to the Division an "Application for Designation for Technical Specialist" and evidence of experience and training required for each designation category. A list of three references who can attest to the applicant's technical competence must accompany the application.~~
- ~~(4) Be determined by the Commission to meet the requirements of this Rule for designation.~~
- (d) All individuals requesting technical specialist designation shall provide to the Division an "Application for Designation for Technical Specialist" and evidence of expertise, skills, and training required for each designation category. A list of three references who can attest to the applicant's technical competence must accompany the application.
- (e) All individuals requesting technical specialist designation shall be determined by the Commission to meet the requirements of this Rule and be approved by the Commission for designation. Applicants will be notified of the Commission's actions.
- ~~(d)(f)~~ Professional Engineers included in Subparagraph (b)(2) who are licensed after the effective date of this Rule must April 1, 2003 shall attend the North Carolina Nutrient Management Course and the Course, the North Carolina Nutrient Management Software Course and the NC Rules and Regulations Governing Animal Waste Management Systems in order to use the waste utilization plan Waste Utilization Plan/Nutrient Management designation.
- ~~(e)(g)~~ All technical specialists must attend training as provided by the Division, NRCS or NCCES when new areas evolve within their designation in order to maintain their designation. Technical specialist shall perform services only in areas of the technical specialist's designated category and technical competence.
- (h) The Division shall maintain a database and make available the names of designated technical specialists and their designated categories on the Division's website.
- (i) A valid designation as a technical specialist shall be maintained by completion of six hours of training approved by the Commission during each three-year period following initial designation.
- ~~(f)(j)~~ Upon the finding by the Commission that the work of a technical specialist designated under Subparagraph (b)(3) of pursuant to this Rule fails to comply with the requirements of 15A NCAC 02H .02017(a), 15A NCAC 06F, 15A NCAC 02T .1300, 02 NCAC 59E, the NRCS Technical Guide Guide, or any applicable state or federal laws, or submits false data or is in any other way dishonest, the Commission may withdraw its designation of the technical specialist in any or all categories. In addition, technical specialist designation shall be rescinded by the Commission for failure to complete the approved additional training by the end of each three-year period.
- ~~(k) Upon the finding by the commission that~~ When the Commission makes findings regarding the work of a technical specialist designated under Subparagraph (b)(1) of this Rule Rule, the Commission shall forward these findings to the respective agency with the request that the agency provide documentation that their technical specialist has received training to correct deficiencies in the area of work concern to retain a designation. If the agency fails to provide such documentation, the Commission

may withdraw its designation of the technical specialist for any or all categories.

*Authority G.S. 106-840; 139-4.*

**02 NCAC 59G .0105 APPLICATION OF BMP APPROVAL AND TECHNICAL SPECIALIST DESIGNATION TO WATER QUALITY PROTECTION PROGRAMS**

Approved BMPs or systems of BMPs and technical specialist ~~designation~~ designations by the Commission under this Subchapter may be used to satisfy the requirements of:

- (1) The Neuse Basin Rule in 15A NCAC 02B .0238(8)(b)(x) and (c)(i) and 15A NCAC 02B .0239(2)(a) and (b);
- (2) The Tar-Pamlico Rule in 15A NCAC 02B .0256 and 15A NCAC 02B .0257(f)(2); and
- (3) Other applicable water quality protection rules to address agricultural nonpoint source impacts, as adopted by the EMC or other commissions that include agricultural BMP development or implementation or technical specialist designation by the Commission.

*Authority G.S. 106-840; 139-4.*

**TITLE 04 – DEPARTMENT OF COMMERCE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of the Commissioner of Banks intends to amend the rules cited as 04 NCAC 16A .0105; 16C .0304; 16E .0103, .0104, .0301, .0302, .0401, .0403, .0502; 16F .0101, .0103, .0105; 16G .0103, .0104, .0106, .0311-.0313, .0315, .0405, .0509-.0513, .0515, .0516, .0712, .0713, .0715, .0717, .0718, .0720, .0722, .0823; 16H .0101, .0103-.0105, .0108; 16I .0702, .0703, .0801-.0803, .0901, .0902, .1001-.1003, .1102-.1105, .1301, .1302; 16K .0101-.0112, .0117; 16L .0102-.0104 and repeal the rules cited as 04 NCAC 16A .0101, .0104, .0201-.0203, .0301, .0302, .0401-.0409; 16C .0101-.0105, .0201-.0203, .0305, .0401-.0405, .0501-.0503; 16D .0101, .0103, .0201-.0204, .0301, .0302, .0401-.0403, .0405, .0407, .0501, .0502, .0504, .0901, .0902; 16E .0201-.0204, .0303, .0402, .0404, .0405, .0501, .0601, .0602, .0701, .0702; 16F .0106-.0113; 16G .0105, .0314, .0316, .0404, .0514, .0606-.0608, .0714, .0716, .0719, .0822, .0824-.0833, .0908-.0912, .1203, .1204; 16H .0106, .0107; 16I .0704, .1101, .1106, .1201-.1203; 16J .0101-.0103; 16K .0113-.0116; and 16L .0101.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://www.nccob.gov/Public/financialinstitutions/banks/SavingsAndLoanRules.aspx>

**Proposed Effective Date:** *October 1, 2017*

**Public Hearing:**

**Date:** *June 16, 2017*

**Time:** *9:30 a.m.*

**Location:** *316 W. Edenton Street, 2<sup>nd</sup> Floor Hearing Room, Raleigh, NC 27603*

**Reason for Proposed Action:** *The Office of the Commissioner of Banks and the Banking Commission reviewed the rules in Chapter 16 and determined that the rules needed to be amended in order to clarify rules, improve readability, correct the regulator, update the rules to current practices, delete unnecessary or outdated language. The repeals are being made to eliminate outdated rules, eliminate rules that restate what is already in the general statutes, or eliminate rules that are no longer useful or necessary.*

**Comments may be submitted to:** *Lonnie E. Christopher, Rules Coordinator, 316 W. Edenton Street, 4309 Mail Service Center, Raleigh, NC 27699-4309; phone (919) 715-7438; fax (919) 733-6918; email lchristopher@nccob.gov*

**Comment period ends:** *July 31, 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

**NOTE:** *Pursuant to G.S. 150B-21.17, the Codifier has determined that publication of the complete text of the rules proposed for repeal is impractical. The text of the repealed rules is accessible on the OAH Website: <http://www.ncoah.com>.*

**CHAPTER 16 - SAVINGS INSTITUTIONS DIVISION,  
SAVINGS INSTITUTIONS COMMISSION**

**SUBCHAPTER 16A - GENERAL PROVISIONS**

**SECTION .0100 - GENERAL**

**04 NCAC 16A .0101 SAVINGS INSTITUTIONS  
DIVISION**

Authority G.S. 54B-4; 54B-55; 54C-4; 54C-53.

**04 NCAC 16A .0104 SUPERVISORY FEE**

Authority G.S. 54B-55; 54B-57; 54C-53; 54C-55.

**04 NCAC 16A .0105 RESTRICTIONS: PAYMENT OF DIVIDENDS AND REPURCHASE OF STOCK**

(a) A stock savings institution shall not declare or pay a cash dividend ~~on, on~~ or repurchase any ~~of, of~~ its capital stock if the effect ~~thereof~~ would be to reduce the net worth of the savings institution to an amount ~~which that~~ is less than the minimum required by the federal regulatory authority ~~or, for savings banks,~~ or an amount less than the minimum required by ~~G.S. 54C-163, G.S. 54C-163, whichever is greater.~~

(b) Without the prior written approval of the Commissioner of Banks, a stock savings institution ~~which that~~ has been in operation or converted from mutual form for less than five years shall not repurchase any of its capital stock. Such approval shall be granted only upon a showing that the proposed repurchase will not adversely affect the safety and soundness of the savings institution.

(c) A stock savings institution ~~which that~~ has been in operation or converted from mutual form for less than five years shall obtain the written approval of the Commissioner of Banks before declaring or paying a cash dividend on its capital stock in an amount in excess of one-half of the greater of:

- (1) the savings institution's net income for the most recent fiscal year end; or
- (2) the average of the savings institution's net income after dividends for the most recent fiscal year end and not more than two of the immediately preceding fiscal year ~~ends, if applicable, ends.~~

(d) For a period of three years following the date of completion of a conversion from mutual to stock form, no person shall, directly or indirectly, offer to acquire or acquire the beneficial ownership of more than 10 percent of any class of an equity security of a converted savings institution without the prior written approval of the Commissioner of Banks. Such approval shall be granted only as follows:

- (1) ~~During upon a finding by the Commissioner of Banks that during~~ the first year following the date of completion of the conversion to protect the safety and soundness of the institution; or
- (2) ~~During during~~ the second and third years following the date of completion of the conversion upon a finding by the Commissioner of Banks that:
  - (A) such acquisition:
    - (i) is necessary to protect the safety and soundness of the institution, or
    - (ii) is supported by the board of directors of the converted savings institution, and
  - (B) the person acquiring in excess of 10 percent of any class of an equity security of the converted institution is

of good character and integrity, possesses satisfactory managerial skills, ~~and~~ after the acquisition such person will be a source of financial strength to the converted savings ~~institution~~ institution, and the interests of the public will not be adversely affected thereby.

(e) Securities ~~beneficially-owned~~ owned in violation of Paragraph (d) of this Rule in excess of 10 percent of any class of securities shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in connection with any matters submitted to the stockholders for a vote.

(f) Paragraphs (d) and (e) shall not apply to:

- (1) any offer with a view toward public resale made ~~exclusively~~ to the savings ~~institution or institution, its underwriters the institutions~~ underwriters, or the selling group acting on ~~its~~ the institution's behalf; or
- (2) any offer to acquire or acquisition of beneficial ownership of more than 10 percent of the common stock of a savings institution by a corporation whose ownership is or will be substantially the same as the ownership of the savings institution, provided that the offer or acquisition is made more than one year following the date of completion of the conversion.

Authority G.S. 54B-43; 54B-55; 54C-44; 54C-53.

**SECTION .0200 – RULE-MAKING HEARINGS**

**04 NCAC 16A .0201 PETITION FOR ADOPTION: AMENDMENT OR REPEAL OF RULES**

**04 NCAC 16A .0202 NOTICE OF RULE-MAKING HEARINGS**

**04 NCAC 16A .0203 RULE-MAKING HEARINGS: GENERAL INFORMATION**

Authority G.S. 53-93; 54B-55; 150B-12; 150B-20; 150B-21.2(d).

**SECTION .0300 - DECLARATORY RULINGS**

**04 NCAC 16A .0301 PETITION FOR DECLARATORY RULING**

**04 NCAC 16A .0302 RESPONSE OF COMMISSIONER OF BANKS TO PETITION**

Authority G.S. 53-93; 54B-2; 54B-52; 54B-55; 54C-2; 54C-3; 54C-52; 54C-53; 150B-2(5); 150B-4.

**SECTION .0400 - ADMINISTRATIVE HEARINGS**

**04 NCAC 16A .0401     RIGHT TO HEARING**  
**04 NCAC 16A .0402     INFORMAL SETTLEMENT**  
**04 NCAC 16A .0403     REQUEST FOR HEARING**  
**04 NCAC 16A .0404     NOTICE OF HEARING**  
**04 NCAC 16A .0405     INTERVENTION IN AN**  
**ADMINISTRATIVE HEARING**  
**04 NCAC 16A .0406     DEPOSITIONS**  
**04 NCAC 16A .0407     SUBPOENAS**  
**04 NCAC 16A .0408     SERVICE OF SUBPOENAS**  
**04 NCAC 16A .0409     OBJECTION TO A SUBPOENA**

*Authority G.S. 53-93; 54B-2; 54B-52; 54B-55; 54C-2; 54C-3; 54C-52; 54C-53; 150B-2(5); 150B-4; 150B-38; 150B-39.*

#### **SUBCHAPTER 16C - APPLICATIONS**

##### **SECTION .0100 - CHARTER APPLICATION**

**04 NCAC 16C .0101     FORMS**

*Authority G.S. 54B-9; 54B-55; 54C-9; 54C-53.*

**04 NCAC 16C .0102     CHARTER APPLICATION**  
**RESTRICTIONS**

*Authority G.S. 54B-2; 54B-52; 54B-55; 54C-2; 54C-52; 54C-53.*

**04 NCAC 16C .0103     CORPORATE NAME**

*Authority G.S. 54B-10; 54B-55; 54C-12; 54C-53.*

**04 NCAC 16C .0104     INTERIM SAVINGS**  
**INSTITUTIONS**

*Authority G.S. 54B-45; 54B-55; 54C-46; 54C-53.*

**04 NCAC 16C .0105     CONVERSION TO SAVINGS**  
**BANK**

*Authority G.S. 54C-30; 54C-53.*

##### **SECTION .0200 - BRANCH OFFICE APPLICATION**

**04 NCAC 16C .0201     FORM**

*Authority G.S. 54B-22; 54B-55; 54C-23; 54C-53.*

**04 NCAC 16C .0202     BRANCH OFFICE**  
**APPLICATION RESTRICTIONS**  
**04 NCAC 16C .0203     FORFEITURE OF BRANCH**  
**OFFICE FINAL APPROVAL**

*Authority G.S. 54B-22; 54B-55; 54C-23; 54C-53.*

##### **SECTION .0300 - APPLICATION TO CHANGE** **LOCATION OF BRANCH OFFICE OR PRINCIPAL** **OFFICE**

**04 NCAC 16C .0304     TEMPORARY CLOSING OF**  
**OFFICE**

The Commissioner of Banks shall be notified if an office is closed temporarily for any reason other than observance of a holiday. If a bank's office is closed temporarily, the bank shall notify the Commissioner of Banks no later than 72 hours after such closure if the closure may interfere with the bank's operations or poses an existing or imminent threat to the safety or security of persons on property, or both, other than closures in observance of a holiday.

*Authority G.S. 54B-55; 53B-110; 53C-175.*

**04 NCAC 16C .0305     PURCHASE OF BRANCH**

*Authority G.S. 54B-22; 54B-55; 54C-24; 54C-53.*

##### **SECTION .0400 - REMOTE SERVICE UNITS**

**04 NCAC 16C .0401     DEFINITIONS**  
**04 NCAC 16C .0402     APPLICATION: GUIDELINES**  
**FOR APPROVAL BY ADMINISTRATOR**  
**04 NCAC 16C .0403     GENERAL POLICIES**  
**04 NCAC 16C .0404     UNMANNED REMOTE**  
**SERVICE UNIT ACCESS TECHNIQUES**  
**04 NCAC 16C .0405     PRIVACY OF ACCOUNT DATA**

*Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.*

##### **SECTION .0500 - INTERSTATE RECIPROCAL** **ACQUISITIONS**

**04 NCAC 16C .0501     FORM**  
**04 NCAC 16C .0502     ACQUISITION RESTRICTIONS**  
**04 NCAC 16C .0503     FEES**

*Authority G.S. 54B-48.6; 54B-55; 54C-53; 54C-178.*

#### **SUBCHAPTER 16D - OPERATION OF SAVINGS** **ASSOCIATIONS**

##### **SECTION .0100 - DIRECTORS: OFFICERS AND** **EMPLOYEES**

**04 NCAC 16D .0101     COMPOSITION OF BOARD OF**  
**DIRECTORS**

*Authority G.S. 54B-55.*

**04 NCAC 16D .0103     BYLAWS**

*Authority G.S. 54B-2; 54B-9; 54B-52; 54B-55; 54C-2; 54C-9; 54C-52; 54C-53.*

##### **SECTION .0200 - PROXIES**

<b>04 NCAC 16D .0201</b>	<b>VOTING BY PROXY</b>
<b>04 NCAC 16D .0202</b>	<b>FORM OF PROXY</b>
<b>04 NCAC 16D .0203</b>	<b>HOLDERS OF PROXIES</b>
<b>04 NCAC 16D .0204</b>	<b>PROXY SOLICITATION</b>

*Authority G.S. 54B-55; 54B-105.*

### **SECTION .0300 - RECORDS**

<b>04 NCAC 16D .0301</b>	<b>GENERAL POLICIES</b>
<b>04 NCAC 16D .0302</b>	<b>RETENTION: REPRODUCTION AND DISPOSITION OF RECORDS</b>

*Authority G.S. 54B-2; 54B-9; 54B-21; 54B-52; 54B-55; 54C-2; 54C-52; 54C-53.*

### **SECTION .0400 - LOANS**

<b>04 NCAC 16D .0401</b>	<b>SERVICING LOANS</b>
<b>04 NCAC 16D .0402</b>	<b>APPRAISALS</b>
<b>04 NCAC 16D .0403</b>	<b>RECORDS WITH RESPECT TO LOAN</b>

*Authority G.S. 54B-55; 54B-161.*

<b>04 NCAC 16D .0405</b>	<b>UNSECURED LOANS LIMIT</b>
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*Authority G.S. 54B-55; 54B-151.*

<b>04 NCAC 16D .0407</b>	<b>LOANS TO ONE BORROWER</b>
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*Authority G.S. 54B-55; 54B-164.*

### **SECTION .0500 - WITHDRAWABLE ACCOUNTS**

<b>04 NCAC 16D .0501</b>	<b>SIGNATURE CARDS</b>
<b>04 NCAC 16D .0502</b>	<b>HOLDING OF CERTIFICATE OR PASSBOOK</b>

*Authority G.S. 54B-55; 54B-121.*

<b>04 NCAC 16D .0504</b>	<b>NEGOTIABLE ORDER OF WITHDRAWAL ACCOUNTS</b>
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*Authority G.S. 54B-55; 54B-127.*

### **SECTION .0900 - INVESTMENTS**

<b>04 NCAC 16D .0901</b>	<b>SECURITIES</b>
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*Authority G.S. 54B-55; 54B-193; 54C-53; 54C-141.*

<b>04 NCAC 16D .0902</b>	<b>STOCK IN OTHER DEPOSITORY INSTITUTIONS</b>
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*Authority G.S. 54B-55; 54B-193; 54C-53; 54C-141.*

### **SUBCHAPTER 16E - OPERATION OF SAVINGS INSTITUTIONS**

### **SECTION .0100 - DIRECTORS, BYLAWS AND CHARTER**

#### **04 NCAC 16E .0103 BOARD OF DIRECTORS**

~~(a) Requirements for the composition of a board of directors are as follows:~~

- ~~(1) Except in the case of a savings bank having 80 percent or more of any class of voting shares owned by a holding company or controlling person, no more than one third of the Board of Directors shall be salaried officers or employees of the savings bank, or of any subsidiary or any holding company or affiliate thereof or any controlling person affiliate thereof.~~
- ~~(2) In the case of a savings bank having 80 percent or more of any class of voting shares owned by a holding company or controlling person, no more than 49 percent of the Board of Directors shall be salaried officers or employees of the savings bank, or of any subsidiary or any holding company or affiliate thereof or any controlling person affiliate thereof.~~
- ~~(3) No more than two directors shall be members of the same immediate family.~~
- ~~(4) No two directors who are attorneys may be members of the same law firm.~~
- ~~(5) The managing officer of the savings bank shall be a member of the Board of Directors.~~

~~(b)(a)~~ A director shall not vote on any matter in which ~~he has~~ they have a personal or financial interest.

~~(e)(b)~~ When a savings bank institution takes action ~~resulting in the establishment of~~ establishing a new chief executive officer or director, the savings bank institution shall notify the ~~Administrator~~ Commissioner of Banks ~~in advance in writing within 14 calendar days~~ of such change, and shall provide the name of the new chief executive officer or director, the effective date of the appointment, and a statement of the person's past and current business and professional affiliations. The name of any departing chief executive officer or director shall also be provided to the ~~Administrator~~ Commissioner of Banks in writing.

~~(d)(c)~~ Significant ownership interest for the purposes of G.S. 54C 101(c) ~~shall depend upon the ownership circumstances of each savings bank as determined by the Administrator who shall apply the requirement considering the relevant community to assure this requirement is not applied in a manner which would render it unattainable or unreasonably burdensome. In determining whether a director of a savings institution has a significant ownership interest for the purposes of G.S. 54C 101(c), the Commissioner of Banks shall consider the institutions market area to assure this requirement is not applied in a manner that would render it unattainable or unreasonably burdensome.~~ Notwithstanding the above, any of the following shall be deemed to be significant ownership interests:

- (1) For stock savings banks under fifty million dollars (\$50,000,000) in assets, stock ownership in the institution or its holding company of two thousand five hundred dollars

- (2) For mutual savings banks under fifty million dollars (\$50,000,000) in assets, a two thousand five hundred dollar (\$2,500) deposit relationship; or
- (3) For stock savings banks over fifty million dollars (\$50,000,000) in assets, stock ownership in the institution or its holding company of five thousand dollars (\$5,000) in market value at time of purchase; or
- (4) For mutual savings banks over fifty million dollars (\$50,000,000) in assets, a five thousand dollar (\$5,000.00) deposit relationship.

For savings bank institutions that cross the fifty million dollar (\$50,000,000) threshold, the Administrator will Commissioner of Banks shall allow a reasonable period up to one year for the Directors to comply with the ownership interest requirement.

*Authority G.S. 54B-55; 54C-53; 54C-101.*

#### **04 NCAC 16E .0104 BYLAWS**

The Commissioner of Banks shall be deemed to have approved any bylaws or amendments ~~to which he that the Commissioner has not objected within 25 days after the date on which such bylaws or amendments are filed. that the bylaws are filed with the Commissioner of Banks.~~

*Authority G.S. 54B-9; 54B-52; 54C-9; 54C-52; 54C-53; 54C-102.*

### **SECTION .0200 - PROXIES**

- 04 NCAC 16E .0201 VOTING BY PROXY**
- 04 NCAC 16E .0202 FORM OF PROXY**
- 04 NCAC 16E .0203 HOLDERS OF PROXIES**
- 04 NCAC 16E .0204 PROXY SOLICITATION**

*Authority G.S. 54C-53; 54C-105.*

### **SECTION .0300 - RECORDS AND POLICIES**

#### **04 NCAC 16E .0301 GENERAL POLICIES**

(a) Records to be Kept at Principal Office. ~~Every Each savings bank institution, each affiliate, and the institution's parent company shall keep and make available for examination by the representatives of the Commissioner of Banks at the principal office correct and complete office, books of account and minutes of the proceedings of members, shareholders, directors and committees. and records of all the transactions of the institution in its true financial condition. Records shall be kept to permit and facilitate a speedy examination, by the representatives of the Commissioner of Banks. Complete records of all business transacted at the principal office shall be maintained at the principal office. Everything relating to the business of a savings bank shall be examined and investigated by the Commissioner of Banks on a regular and periodic basis determined by the size and complexity and current expected condition and recent performance of the institution, the availability of examiners,~~

~~coordination of state and federal schedules, the convenience of the institution, and any other requirements or constraints. Every savings bank and service corporation thereof shall be audited at least once in each calendar year by independent auditors. The audit shall be done on the basis of generally accepted accounting principles, unless otherwise provided by this Chapter. The savings bank shall file with the Commissioner of Banks one copy of the audit report along with one copy of the auditor's management letter and any other letters regarding the audit within 90 days after the end of its fiscal year, unless extended in writing by the Commissioner of Banks. Such extension by the Commissioner of Banks shall be granted upon a showing by the savings bank that the failure to file within 90 days of the close of its fiscal year was due to circumstances beyond its control or that compliance with the time period would have resulted in a substantial increase in audit costs. The savings bank shall also submit to the Commissioner of Banks a copy of the savings bank's written response to the auditor's management letter at the time such response is provided to the appropriate federal regulatory authority.~~

~~(b) Records to be Prepared at Branch Office. Each branch office shall prepare records of all business transacted at such branch office, and shall furnish full control records to the principal office.~~

~~(c) Closing Date for Books. Every savings bank shall close its books at the close of business on December 31 of each year, or shall obtain the approval of the Commissioner of Banks to designate any other closing date. When determining whether to designate a different closing date, the Commissioner shall consider what is in the best interest of depositors, borrowers, other customers, the institution's owners, employees, creditors, and the community in general.~~

~~(d) Bonds and Other Obligations to be Carried at Actual Costs. The bonds or other investments of a savings bank shall not be carried on its books at more than the actual costs thereof.~~

~~(e) Real Estate to be Carried at Amount Invested in Same. A savings bank shall not carry any real estate on its books at a sum in excess of the total amount invested by such savings bank on account of such real estate, including advances, costs, and improvements, but excluding accrued, uncollected interest.~~

~~(f) Appraisal of Real Estate Owned. Every savings bank shall appraise each parcel of real estate at the time of acquisition thereof. The report of each such appraisal shall be submitted in writing to the Board of Directors and shall be kept in the records of the savings bank.~~

~~(g)(b) Maintenance of Membership and Stockholder Records. Every mutual savings bank institution shall maintain membership records, that shall show the name and address of the member, the status of member, status of the member as a deposit account holder, or an obligor, or a deposit account holder and obligor, and the date of the membership thereof. or stockholder records. When a savings institution has reason to believe 10 percent or more of the outstanding capital stock of the savings institution is controlled by one owner the institution shall notify the Commissioner in writing, and shall include the residential address and the number of shares held by the shareholder.~~

~~(h) Maintenance of Stockholder Records. Every stock savings bank shall keep at its principal office or at the office of its transfer agent or register, a record of its stockholders that contains the names and addresses of all stockholders, and the number, class~~

and series of shares held by each. Whenever called upon by the Commissioner of Banks, a stock savings bank shall file in the office of the Commissioner of Banks a correct list of all its stockholders, the resident address of each, the number of shares of stock held by each, and the dates of issue. When a savings bank has reason to believe ten percent or more of the outstanding capital stock of the savings bank is controlled by one owner, a savings bank shall notify the Commissioner of Banks in writing, and shall include the resident address and number of shares held by the shareholder.

(c) Savings institutions shall keep the following books and records at the institution, or at its parent holding company, unless another storage site is approved by the Commissioner of Banks in writing:

- (1) Alphabetical direct and indirect liability ledgers. Each institution shall keep an alphabetical direct and indirect liability ledger. The alphabetical direct liability ledger shall show each customer's direct obligations owed to the institution by loan name or account number and the balance outstanding under each account. The alphabetical indirect liability ledger shall show each customer's indirect obligations owed to the institution by loan name or account number and the balance outstanding under each account. The alphabetical direct liability ledger shall be kept in balance with the general ledger control. The alphabetical indirect liability ledger shall be updated at least monthly. Where the aggregate total of a customer's direct and indirect obligations to the institution do not exceed twenty thousand dollars (\$20,000), the indirect obligations of that customer may be omitted from the alphabetical indirect liability ledger. In an institution whose automated record system is not able to produce an alphabetical liability ledger, the institution shall produce an alphabetical listing of customers showing all of a customer's loan or account numbers and the amount outstanding under each account number when called upon by representatives of the Commissioner of Banks. Each institution shall produce both the direct and indirect liability ledgers in hard copy form upon request by representatives of the Commissioner of Banks.
- (2) Monthly reconciliation of accounts with correspondent banks. A record shall be kept, showing the monthly reconciliation of each account with correspondent banks. A signed review of such reconciliations shall be made by an officer or employee of the institution other than the person responsible for preparing the reconciliation.
- (3) Purchases and sales of securities. A record shall be kept of purchases and sales of securities. The record shall include the following:
  - (A) dates of purchases and sales;
  - (B) interest rates;
  - (C) maturities;
  - (D) par value;
  - (E) cost value;
  - (F) all write-ups or write-downs;
  - (G) a full description of the security;
  - (H) from whom purchased;
  - (I) to whom sold;
  - (J) purchase price;
  - (K) selling price; and
  - (L) when, where, and why pledged or deposited.

- (C) maturities;
- (D) par value;
- (E) cost value;
- (F) all write-ups or write-downs;
- (G) a full description of the security;
- (H) from whom purchased;
- (I) to whom sold;
- (J) purchase price;
- (K) selling price; and
- (L) when, where, and why pledged or deposited.

This record shall be maintained in balance with the general ledger control.

- (4) Charge-offs. A record shall be kept of all items charged-off and of all recoveries. All charge-offs shall be authorized or approved by the executive committee or by the board of directors, and such action shall be recorded in their minutes. The charge-off record shall show the date of the charge-off, a description of the asset, and the amount of the charge-off. The record shall be supported by the actual charged-off items or the final disposition of any charged-off item. The record of recoveries shall show the date and amount of each recovery.
- (5) Records of real estate. A record shall be kept of all parcels owned, including the banking house. The record shall show when the property was acquired, how the property was acquired, the cost of the property, the book value of the property, and detailed income and expense reports relating to the property. This record shall be supported by appraisals, title certificates showing assessed value, tax receipts, and hazard insurance policies relating to the property. Every savings institution shall appraise the value of each parcel of real estate taken in satisfaction of debts previously contracted at the time of acquisition. The report of each appraisal shall be submitted in writing to the Board of Directors and shall be kept in the records of the savings institution.
- (6) Meeting minutes. Minutes of all board of directors' meetings, board committee meetings, and members and stockholders meetings shall be kept showing any action resulting from the meeting. All minutes shall be signed by the chairman and the secretary of such meeting.
- (7) Cash items held over. A daily record shall be kept of all cash items held over from the day's business, including all checks that would cause an overdraft if handled according to the institution's check-posting policy. This record shall be kept in balance with the general ledger control and shall identify the account on which the item is drawn or is obligated for payment, the reason the item is being held, the date the item was placed in the cash items account, and the amount of the item.

**PROPOSED RULES**

- (8) Record of income and expenses. A detailed record of income and expenses shall be kept and balanced monthly. A report of this record shall be made to the executive committee or board of directors, and the receipt of same shall be noted in the meeting minutes.

(d) Unless another storage site is approved by the Commissioner of Banks in writing, the books and records of the institution's parent holding company shall be kept at the institution or at the institution's parent holding company; and the books and records of an affiliate of the institution shall be kept at the affiliate, the institution, or the institution's parent holding company.

(f) Based upon the financial condition of a savings institution as determined by examination or otherwise, the Commissioner of Banks may require a savings institution to prepare or maintain different or additional books, records, and reports.

*Authority G.S. 54B-2; 54B-9; 54B-52; 54B-55; 54C-2; 54C-22; 54C-52; 54C-53.*

**04 NCAC 16E .0302 RETENTION, REPRODUCTION AND DISPOSITION OF RECORDS**

(a) Each savings ~~bank~~ institution shall take ~~reasonable~~ precautions to protect records from damage by fire, ~~flood~~ flood, or other ~~hazards~~, hazards and to safeguard records from unnecessary deterioration as a result of excess heat, humidity, ~~dryness~~ dryness, or lack of proper ventilation. ~~Adequate~~ Safeguards shall be maintained to protect records from access or removal by unauthorized persons.

(b) Each savings ~~bank~~ institution or branch ~~officer thereof~~ office shall retain all records set forth in this Paragraph for ~~at least~~ the periods specified.

<u>RECORDS TO BE</u>	<u>MINIMUM RETENTION</u>
<u>RETAINED</u>	<u>PERIOD (YRS.)</u>

ACCOUNTING - ASSOCIATION

<u>Bank Statements and Reconcilements</u>	5
<u>Cancelled Checks</u>	5
<u>Check Vouchers or Stubs</u>	5
<u>Duplicate Deposit Slips</u>	5
<u>Expense and Paid Bills File</u>	3
<u>FHLB and State Reports</u>	5
<u>General and Subsidiary Ledgers</u>	P 15
<u>General and Other Journals</u>	P 15
<u>Original Entry Records</u>	5
<u>Pre-authorized Bank Forms</u>	5
<u>Tellers' Cash Proof Sheets</u>	2
<u>Trial Balances</u>	3

CORPORATE

<u>Audit Reports</u>	3
<u>Pension Trust (IRS Ruling, Bylaws, Trust Agreements)</u>	T + 5
<u>Annual Reports to Supervisors</u>	5
<u>Examination Reports and Supervisory Letters</u>	5
<u>Minute Books, (Members, Stockholder, Directors and Committees)</u>	P
<u>Charter, Bylaws and Amendments</u>	P
<u>Blanket Bonds</u>	T + 5

<u>Ballots and Proxy Votes of Members and Stockholders</u>	3
<u>Certificate of Insurance</u>	P
<u>FHLB Membership Certificate</u>	P
<u>Attachments, Executions and Releases</u>	3
<u>Claims, Court Orders and Restraining Orders</u>	10
<u>Deeds, Leases and Contracts; Titles to Vehicles</u>	T + 5
<u>U.S. Corporate Income Tax Forms</u>	15
<u>N.C. Corporate Tax Forms</u>	15
<u>Social Security and Unemployment Tax Records</u>	15
<u>Personal Property Tax Records</u>	15

<u>Annual Reports to Supervisors</u>	5
<u>Attachments, Executions, and Releases</u>	3
<u>Audit Reports</u>	3
<u>Ballots and Proxy Votes of Members and Stockholders</u>	3
<u>Blanket Bonds</u>	T + 5
<u>Certificate of Insurance</u>	P
<u>Charter, Bylaws, and Amendments</u>	P
<u>Claims, Court Orders, and Restraining Orders</u>	10
<u>Deeds, Leases, and Contracts; Titles to Vehicles</u>	T + 5
<u>Examination Reports and Supervisory Letters</u>	5
<u>FHLB Membership Certificate</u>	P
<u>Minute Books, (Members, Stockholder, Directors, and Committees)</u>	P
<u>N.C. Corporate Tax Forms</u>	15
<u>Pension Trust (IRS Ruling, Bylaws, Trust Agreements)</u>	T + 5
<u>Personal Property Tax Records</u>	15
<u>Social Security and Unemployment Tax Records</u>	15
<u>U.S. Corporate Income Tax Forms</u>	15

ACCOUNTING — ASSOCIATION

<u>Bank Statements and Reconcilements</u>	5
<u>Cancelled Checks</u>	5
<u>Check Vouchers or Stubs</u>	5
<u>Duplicate Deposit Slips</u>	5
<u>Expense and Paid Bills File</u>	3
<u>FHLB and State Reports</u>	5
<u>General and Subsidiary Ledgers</u>	P
<u>General and Other Journals</u>	P
<u>Original Entry Records</u>	5
<u>Pre-authorized Bank Forms</u>	5
<u>Tellers' Cash Proof Sheets</u>	2
<u>Trial Balances</u>	3

DEPOSIT ACCOUNTS

<u>Deposit</u>	5
<u>Inheritance Tax Releases</u>	10
<u>Cancelled Savings Certificates</u>	5
<u>Withdrawal Slips or Checks</u>	P
<u>Affidavits for Lost Passbook or Certificate</u>	P
<u>Lost Instrument Bonds for Passbooks or Certificates</u>	P
<u>Power of Attorney or Affidavits</u>	P
<u>Signature Card Files</u>	T + 5
<u>Savings Certificates Record of Issue</u>	T + 5
<u>Deposit Account Loan Notes</u>	R
<u>Deposit Account Loan Disclosures After Note "Paid"</u>	2
<u>Deposit Account Assignment or Transfer Records</u>	P
<u>Returned 1099 Forms</u>	6
<u>No-Mail Notice</u>	T + 4

**PROPOSED RULES**

<u>Affidavits for Lost Passbook or Certificate</u>	P	<u>Flood Insurance Documentation</u>	T + 3
<u>Cancelled Savings Certificates</u>	5	<u>Additional Collateral Agreement</u>	T + 3
<u>Deposit</u>	5	<u>Settlement Statement</u>	T + 3
<u>Deposit Account Assignment or Transfer Records</u>	P	<u>Correspondence</u>	T + 3
<u>Deposit Account Loan Disclosures After Note "Paid"</u>	2	<u>Modifications</u>	T + 3
<u>Deposit Account Loan Notes</u>	R	<u>Additional Collateral Agreement</u>	T + 3
<u>Inheritance Tax Releases</u>	10	<u>Affidavits</u>	T + 3
<u>Lost Instrument Bonds for Passbooks or Certificates</u>	P	<u>Applications</u>	T + 3
<u>No-Mail Notice</u>	T + 4	<u>Appraisals</u>	T + 3
<u>Power of Attorney or Affidavits</u>	P	<u>Collection Records</u>	T + 3
<u>Returned 1099 Forms</u>	6	<u>Commitments</u>	T + 3
<u>Savings Certificates Record of Issue</u>	T + 5	<u>Construction Loan Agreement</u>	T + 3
<u>Signature Card Files</u>	T + 5	<u>Construction Loan Authorizations</u>	T + 3
<u>Withdrawal Slips or Checks</u>	5	<u>Correspondence</u>	T + 3
		<u>Cost Estimates</u>	T + 3
<b>INSURANCE</b>		<u>Credit Reports</u>	T + 3
<u>Directors and Officers Liability</u>	10	<u>Disclosure and Recision</u>	T + 3
<u>Fire and Extended Coverage, Auto Errors and Omissions</u>	3	<u>Escrow Agreements and Records</u>	T + 3
<u>Public Liability - Workers Compensation</u>	10	<u>FHA Insurance Receipts</u>	T + 3
<u>LOANS (Commercial, Consumer Credit, Credit Cards)</u>		<u>Flood Insurance Documentation</u>	T + 3
<u>Borrowers' Statement</u>	T + 3	<u>Inspection Reports</u>	T + 3
<u>Charged-off Loan Records</u>	10	<u>Loan Register</u>	P
<u>Collateral Records</u>	10	<u>Modifications</u>	T + 3
<u>Customer Application</u>	T + 1	<u>Mortgage Loan Disclosure Statement (Form HMDA-1)</u>	5
<u>Disclosure Document</u>	2	<u>Paid Bills for Borrowers Construction</u>	T + 3
<u>Interest Rebate Record</u>	T + 3	<u>Settlement Statement</u>	T + 3
<u>Liability Card and/or Ledger</u>	T + 3	<u>Signature Cards</u>	T + 3
<u>Loan Ledger Cards</u>	T + 3	<u>Title Opinions</u>	T + 3
<u>Loans Made Record</u>	T + 3	<u>Waiver of Liens</u>	T + 3
<u>Loans Paid Record</u>	T + 3		
<u>Loan Proceeds Disbursement Records</u>	T + 3	<u>LOANS (Commercial, Consumer Credit, Credit Cards)</u>	
<u>Merchant Agreement - Credit Card</u>	T + 2	<u>Borrowers' Statement</u>	T + 3
<u>Note and/or Loan Register</u>	P	<u>Posting or Transaction Journal</u>	3
<u>Posting or Transaction Journal</u>	3	<u>Loan Proceeds Disbursement Records</u>	T + 3
<u>Resolutions</u>	T + 3	<u>Interest Rebate Record</u>	T + 3
<u>Sales Tickets or Drafts - Credit Card</u>	3	<u>Loans Made Record</u>	T + 3
<u>Statement of Account - Credit Card</u>	5	<u>Loans Paid Record</u>	T + 3
		<u>Liability Card and/or Ledger</u>	T + 3
<b>MORTGAGE LOANS</b>		<u>Loan Ledger Cards</u>	T + 3
<u>Loan Register</u>	P	<u>Note and/or Loan Register</u>	P
<u>Mortgage Loan Disclosure Statement (Form HMDA-1)</u>	5	<u>Resolutions</u>	T + 3
<u>Commitments</u>	T + 3	<u>Charged-off Loan Records</u>	10
<u>Signature Cards</u>	T + 3	<u>Collateral Records</u>	10
<u>Construction Loan Agreement</u>	T + 3	<u>Disclosure Document</u>	2
<u>Cost Estimates</u>	T + 3	<u>Customer Application</u>	T + 1
<u>Inspection Reports</u>	T + 3	<u>Sales Tickets or Drafts - Credit Card</u>	3
<u>Waiver of Liens</u>	T + 3	<u>Statement of Account - Credit Card</u>	5
<u>Paid Bills for Borrowers Construction</u>	T + 3	<u>Merchant Agreement - Credit Card</u>	T + 2
<u>Affidavits</u>	T + 3		
<u>Collection Records</u>	T + 3	<b>REAL ESTATE OWNED</b>	
<u>FHA Insurance Receipts</u>	T + 3	<u>Trustee's Report</u>	T + 3
<u>Applications</u>	T + 3	<u>Appraisal</u>	T + 3
<u>Appraisals</u>	T + 3	<u>Contracts for Sale</u>	T + 3
<u>Construction Loan Authorizations</u>	T + 3	<u>Leases</u>	T + 3
<u>Credit Reports</u>	T + 3	<u>Tax Records</u>	T + 3
<u>Escrow Agreements and Records</u>	T + 3	<u>Deeds</u>	T + 3
<u>Title Opinions</u>	T + 3	<u>PMI Claims</u>	T + 3
<u>Disclosure and Recision</u>	T + 3	<u>Notice of Intent to Foreclose</u>	T + 3

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**PROPOSED RULES**

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Title Policies	T+3	All Related Forms and Documents	T + 7
<u>INSURANCE</u>		<u>General Correspondence</u>	<u>3</u>
Public Liability — Workers Compensation	40		
Fire and Extended Coverage, Auto Errors and Omissions	3	<u>Investments</u>	
Directors and Officers Liability	40	<u>Purchase and</u>	
<u>MISCELLANEOUS</u>		<u>Sale</u> T + 3	
		<u>Register</u>	<u>P</u>
Savings Bonds		<u>Safe-Keeping Receipts</u>	<u>T + 3</u>
Applications	2	<u>Mail Register</u>	<u>3</u>
Duplicate Stubs	2		
Letter of Transmittal of Bonds Redeemed	2	<u>OSHA</u>	
Monthly Report of Sales and Holdings	2		
		<u>OSHA Records and Reports</u>	<u>6</u>
Travelers Checks		<u>Personnel Records</u>	
Applications	2		
Consignment Receipts	2	<u>Employment Applications</u>	
		<u>1. Hired</u>	<u>T + 3</u>
Personnel Records		<u>2. Not Hired</u>	<u>3</u>
		<u>Group Insurance Records</u>	<u>T + 6</u>
Time Cards	3	<u>Payroll Records</u>	<u>10</u>
Group Insurance Records	T+6	<u>Time Cards</u>	<u>3</u>
Employment Applications			
1. Hired	T+3	<u>Purchases, Sales and Participation</u>	
2. Not Hired	3		
Payroll Records	40	<u>Agreement</u>	<u>T + 3</u>
		<u>Remittance Report</u>	<u>T + 3</u>
Safe Deposit Boxes		<u>Sale List</u>	<u>T + 3</u>
Rent Receipts	3	<u>Safe Deposit Boxes</u>	
Lease Contracts	T+3		
History Cards	P	<u>History Cards</u>	<u>P</u>
		<u>Lease Contracts</u>	<u>T + 3</u>
Investments		<u>Rent Receipts</u>	<u>3</u>
Register	P	<u>Savings Bonds</u>	
Purchase and			
Sale T + 3		<u>Applications</u>	<u>2</u>
Safe-Keeping Receipts	T+3	<u>Duplicate Stubs</u>	<u>2</u>
		<u>Letter of Transmittal of Bonds Redeemed</u>	<u>2</u>
Mail Register	3	<u>Monthly Report of Sales and Holdings</u>	<u>2</u>
General Correspondence	3	<u>Travelers Checks</u>	
OSHA		<u>Applications</u>	<u>2</u>
		<u>Consignment Receipts</u>	<u>2</u>
OSHA Records and Reports	6		
Purchases, Sales and Participation		<u>REAL ESTATE OWNED</u>	
		<u>Appraisal</u>	<u>T + 3</u>
Agreement	T+3	<u>Contracts for Sale</u>	<u>T + 3</u>
Sale List	T+3	<u>Deeds</u>	<u>T + 3</u>
Remittance Report	T+3	<u>Notice of Intent to Foreclose</u>	<u>T + 3</u>
		<u>Leases</u>	<u>T + 3</u>
		<u>PMI Claims</u>	<u>T + 3</u>
All Retirement Plan Accounts		<u>Tax Records</u>	<u>T + 3</u>
		<u>Title Policies</u>	<u>T + 3</u>

Trustee's Report

T + 3

**KEY TO SYMBOLS USED**

- P - Permanent  
T - ~~Termination (Closed, Paid-off or Settled)~~  
R - Return to Customer After Termination of Contractual Relationship  
T = Termination (Closed, Paid-off, or Settled)

*Authority G.S. 54B-55; 54C-53.*

**04 NCAC 16E .0303 REQUIRED POLICIES**

*Authority G.S. 54C-53.*

**SECTION .0400 - LOANS**

**04 NCAC 16E .0401 SERVICING LOANS**

A savings ~~bank~~ institution may service loans originated by the savings ~~bank~~ institution or by other lenders.

*Authority G.S. 54B-55; 54B-161; 54C-53.*

**04 NCAC 16E .0402 APPRAISALS**

*Authority G.S. 54C-53; 54C-128.*

**04 NCAC 16E .0403 RECORDS WITH RESPECT TO LOANS**

~~(a) Mortgage Loans. Each savings bank shall maintain records with respect to each loan on the security of real estate which shall include:~~

- ~~(1) An application signed by the borrower or his agent, containing adequate information which shall include the purpose of the loan, the identity of the property or properties securing the loan, and the purchase price of the property paid by or agreed to be paid by the applicant where the purpose of the loan is for the purchase of the real estate securing such loan;~~
- ~~(2) The credit ability of the applicant shall be ascertained in the application or by credit report, a financial report or by others at the request of the savings bank;~~
- ~~(3) A written appraisal report conforming to the written appraisal policy of the savings bank, signed and dated prior to the approval of the application;~~
- ~~(4) Evidence to show:
  - ~~(A) proper approval of the loan and the terms and conditions of such approval;~~
  - ~~(B) a loan settlement statement, signed by the borrower, showing the distribution of the loan proceeds;~~
  - ~~(C) the savings bank's approved attorney's title opinion or a valid title insurance policy from a title insurance company authorized to do business in North Carolina;~~~~

- ~~(D) hazard insurance coverage;~~
- ~~(E) release or releases of any portion of the collateral, with a revised appraisal of the remaining security retained; and~~
- ~~(F) the loan agreement, inspection reports, owner's and contractor's affidavits and other necessary procedures on construction loans, where applicable;~~

~~(5) All loan modifications, properly executed and documented and recorded in the minutes;~~

~~(6) Record of insurance expirations unless a master mortgagee insurance policy is held in full force and effect;~~

~~(7) Tax records;~~

~~(8) A mortgage loan register to show:~~

- ~~(A) account number;~~
- ~~(B) borrower's name;~~
- ~~(C) date of deed of trust;~~
- ~~(D) appraisal;~~
- ~~(E) interest rate;~~
- ~~(F) monthly payment and date of first payment;~~

~~(G) purpose of the loan and purchase price if for purchase of property securing the loan and the contract price if for purposes of construction; and~~

~~(H) hypothecation, if any, designating hypothecator, amount, and type of pledge collateral; all to be incorporated in the hypothecation agreement;~~

~~(9) Records on acquisition of mortgaged security to include:~~

- ~~(A) a detailed record of the acquisition, whether through foreclosure or otherwise, and a description of the property or properties including the name of the former owner;~~
- ~~(B) maintenance of subsidiary ledger accounts for each separate acquisition, to record all items subject to capitalization or to income and expense during the period such property is owned by the savings bank;~~
- ~~(C) designation of all fees, charges and commissions and to whom such were paid;~~
- ~~(D) a copy of the trustee's report relating to foreclosure, when applicable;~~

~~(10) A review of 60 days or over delinquent mortgage loans by the savings bank's board of directors or executive committee at least once a month and such review to be recorded in the minutes of the Board of Directors or Executive Committee meeting;~~

~~(11) A "loans in process account" to support the undisbursed portion of the proceeds of each construction loan; and~~

- (12) ~~A certification signed by the borrower indicating that the borrower has received the disclosure material required by the Federal Truth In Lending Act, 15 USC 1601 et. seq.~~

(b) ~~Deposit Account Loans. Each savings bank shall maintain records with respect to each loan secured by deposit accounts which shall include a deposit account loan register. Such loan register or registers shall include:~~

- (1) ~~account number;~~
- (2) ~~borrower's name;~~
- (3) ~~date of loan;~~
- (4) ~~interest rate;~~
- (5) ~~payment schedule.~~

(c) ~~Consumer Loans. Defined as loans for personal, family or household purposes and loans incident thereto, which may be made as either open end or closed end consumer credit, but not including credit extended in connection with credit cards or bona fide overdraft loans. Each institution shall maintain records with respect to each consumer loan which shall include:~~

- (1) ~~An application signed by the borrower or his agent, containing adequate information which shall include the purpose of the loan, the identity of the collateral securing the loan and the purchase price of the collateral where the purpose of the loan is to purchase said collateral.~~
- (2) ~~The credit ability of the applicant shall be ascertained in the application and supported by a written credit report and a complete financial statement, verified and analyzed by a qualified loan officer.~~
- (3) ~~A written appraisal or value estimate of the collateral conforming to the written policies of the institution and dated prior to the approval of the application if the loan is to be secured.~~
- (4) ~~An approved attorney's title opinion or valid title insurance policy issued by an insurance company authorized to do business in North Carolina if the loan is underwritten based on the value of real estate collateral.~~
- (5) ~~Evidence to show:~~
  - (A) ~~proper approval of the loan and the terms and conditions of such approval;~~
  - (B) ~~the distribution of the loan proceeds;~~
  - (C) ~~proper insurance coverage on the collateral;~~
  - (D) ~~perfection of liens or security interest by proper endorsement of automobile titles and/or UCC filings.~~
- (6) ~~All loan modifications, extensions and renewals properly executed and documented and, if required by the savings bank's consumer lending policy, recorded in the minutes.~~
- (7) ~~A consumer loan register to show:~~
  - (A) ~~account number;~~
  - (B) ~~borrower's name;~~
  - (C) ~~date of loan;~~

- (D) ~~interest rate;~~
- (E) ~~payment schedule and date of first payment;~~
- (F) ~~purpose of loan;~~
- (G) ~~type and value of collateral, if secured.~~

(d) ~~Commercial Loans. Defined as any loan for commercial, corporate, business or agricultural purposes which would not otherwise qualify as a mortgage loan. Each institution shall maintain records with respect to each commercial loan which shall include:~~

- (1) ~~An application signed by the borrower or his agent containing adequate information to include the purpose of the loan, and the collateral securing the loan (if applicable).~~
- (2) ~~The credit ability of the applicant shall be ascertained in the application and supported by a written credit report and a complete set of current financial statements, verified and analyzed by a qualified loan officer.~~
- (3) ~~A written appraisal report, if secured by real estate, or other written estimate of value conforming to the institution's policies if secured by other than real estate.~~
- (4) ~~Evidence to show:~~
  - (A) ~~proper approval of the loan and the terms and conditions of such approval;~~
  - (B) ~~a loan settlement statement, signed by the borrower, showing the distribution of the loan proceeds;~~
  - (C) ~~adequate perfection of all liens and security interests including attorney's title opinion or valid title insurance policy from a title insurance company authorized to do business in North Carolina if secured by commercial real estate;~~
  - (D) ~~appropriate insurance on all collateral;~~
  - (E) ~~release or partial releases of collateral, with a revised appraisal of the remaining collateral;~~
  - (F) ~~all loan modifications, extensions and renewals, properly executed and documented and recorded in the minutes.~~
- (5) ~~A commercial loan register to show:~~
  - (A) ~~account number;~~
  - (B) ~~borrower's name;~~
  - (C) ~~date of note;~~
  - (D) ~~appraisal or other estimate of value;~~
  - (E) ~~interest rate;~~
  - (F) ~~payment schedule and date of first payment;~~
  - (G) ~~loan purpose and type of collateral, if secured.~~

Unless otherwise provided, each savings institution shall maintain the following loan documentation:

- (1) Financial Statements. Financial statements shall be required from any person who is a maker, co-maker, guarantor, endorser, or surety

- on any unsecured loans or other unsecured extensions of credit in an amount of fifty thousand dollars (\$50,000) or more in the aggregate. Financial statements required by this Item shall:
- (a) be signed or otherwise properly executed;
  - (b) be dated within 18 months preceding the origination date of the credit obligation;
  - (c) be renewed within 18 months after the date of the last financial statement on file;
  - (d) be addressed to or made for the lending savings institution; and
  - (e) include information reflecting the assets, liabilities, net worth, and income of the borrower.
- (2) Financial Statement Exceptions. A savings institution may waive the financial statement required by Item (1) of this Rule for credit granted under a credit card. For an individual whose unsecured obligations consist of consumer loans scheduled to be repaid in at least quarterly installments, a savings institution may substitute a current credit bureau report for the financial statement required by Item (1) of this Rule. A credit bureau report shall be within 18 months from its date of issue.
- (3) Personal Property Appraisals. Appraisals on personal property used as collateral for a loan shall be obtained and shall be completed as follows:
- (a) Except as provided by Sub-item (3)(c) of this Rule a written appraisal of personal property used to collateralize any loan shall be made or approved.
  - (b) Requirements. The appraisal required by this Item shall include:
    - (i) the name of the borrower;
    - (ii) the date the appraisal was made;
    - (iii) the value of the collateral;
    - (iv) the signatures of two people making the appraisal;
    - (v) a brief description of the property;
    - (vi) the amount of any senior lien and the holder of the lien, if any; and
    - (vii) the original amount or outstanding balance of the loan that the property is used to secure.
  - (c) Appraisal Exceptions. No appraisal shall be required under the following circumstances:
    - (i) on collateral to notes of less than fifty thousand dollars (\$50,000);
    - (ii) on loans fully secured by obligations of the United States or the State of North Carolina;
    - (iii) on loans fully secured by deposits in the savings institution maintaining the loan account; or
    - (iv) on loans fully secured by the cash surrender or loan value of life insurance policies.
  - (d) Renewal Exceptions. Appraisals need not be renewed biennially where a motor vehicle or mobile home is the sole or partial collateral for a loan.
  - (e) Single Signature Exception. An appraisal may be performed and signed by only one person where a motor vehicle or mobile home is the sole collateral for a loan.
- (4) Real Estate Appraisals. Unless otherwise provided, all real estate taken as security for loans shall be appraised in the form and manner set forth in Sub-item (4)(a) through (4)(c) of this Rule. In addition, the appraisal shall be independent in that the appraiser shall not be involved in the loan transaction secured by the property being appraised and shall have no interest, financial or otherwise, in the property.
- (a) The savings institution may elect to waive the requirement for an appraisal of real estate given as security for loans of fifty thousand dollars (\$50,000) or less.
  - (b) Appraisals of real estate given as security for loans over fifty thousand dollars (\$50,000), but not exceeding two hundred fifty thousand dollars (\$250,000), whether directly or indirectly pledged as collateral, shall be prepared by:
    - (i) Two members of the board of directors who are familiar with real estate values in the community where the property is located;
    - (ii) Two savings institution employees who are familiar with real estate values in the community where the property is located, provided that one of the two employees shall not be involved in the loan transaction secured by the property being appraised; or

- (iii) A state-licensed real estate appraiser, state-certified real estate appraiser, or a person certified as a real estate appraiser by an appraisal trade organization approved by the savings institution to perform an appraisal.
- (c) Appraisals prepared pursuant to Sub-item (4)(b) of this Rule shall be in writing and shall be signed and dated by the person or persons making the appraisal. The appraisal shall identify the loan transaction for which it was made; identify the current balance of any senior lien and the identity of the holder of the lien, if any; segregate values of improvements from values of the land; and describe the property so as to make it identifiable. If a professional appraisal form is used that does not include this information, the savings institution shall complete and attach to the appraisal its own appraisal summary form disclosing the required information. The appraisal shall state the basis or approach used to determine the value of the property. Acceptable approaches to determining the value of real property are:
- (i) the current cost of replacing a property, less depreciation relating to deterioration from functional or economic obsolescence;
- (ii) the value indicated by recent sales of comparable properties in the market and other market factors such as listings and offers to sell; or
- (iii) the value that the property's net earning power will support, based on a capitalization of net income.
- (d) All real estate given as security for loans in an amount over two hundred fifty thousand dollars (\$250,000), whether directly or indirectly pledged as collateral, shall be appraised, and such appraisal shall be subject to the provisions of 12 C.F.R. 323.1 through 12 C.F.R. 323.7, which are hereby incorporated by reference including subsequent amendments or additions. This information is available at the U.S. Printing Office website at <http://www.ecfr.gov/cgi-bin/text-id.x?SID=cb59b820da3e668ebb33313>
- 9d429ce0c&node=pt12.5.323&rgn=d  
iv5 at no cost at the time this Rule was adopted.
- (5) Certificate of Title. A title opinion furnished by an attorney at law, a title report or title insurance policy issued by a company licensed by the Commissioner of Insurance, or other insurance coverage that provides the savings institution with similar protection against loss from title defects, errors, or omissions at closing or other loan-related risks shall be obtained in connection with each deed of trust or mortgage given as security on each real estate-secured loan when:
- (a) the loan is primarily secured by real property and only secondarily by the borrower's general credit-worthiness; and
- (b) the amount of the loan secured by the real property is fifty thousand dollars (\$50,000) or more.
- (6) Stock Certificate and Stock Powers. Where stock certificates or similar negotiable securities are accepted as collateral for a loan, each certificate shall be either endorsed and witnessed or accompanied by a stock power signed and witnessed in ink. Where such collateral is in the name of someone other than the maker or endorser of the note, there shall be on file in the savings institution written authority from the collateral owner permitting the hypothecation of the collateral.
- (7) Corporate Resolutions. A loan made directly to a corporation shall be supported by a certified copy of a resolution of the board of directors of the corporation authorizing the loan transaction.
- (8) Partnership Declaration. A loan made directly to a partnership shall be supported by a declaration of the general partners showing the composition of the partnership, and unless all partners sign the note, the authority of the partner(s) executing the note to bind the partnership.
- (9) Limited Liability Company Certification. A loan made directly to a limited liability company shall be supported by a certification of a manager thereof that the loan has been duly authorized by the limited liability company.
- (10) Unlisted Securities. Full credit information on all unlisted securities, now owned or hereafter acquired, shall be kept on file in the savings institution.
- Authority G.S. 54C-53; 54C-128.
- 04 NCAC 16E .0404      UNSECURED LOANS LIMIT**
- Authority G.S. 54C-53; 54C-121.

**04 NCAC 16E .0405 LOANS TO ONE BORROWER**

*Authority G.S. 54C-53; 54C-128.*

**SECTION .0500 - DEPOSIT ACCOUNTS**

**04 NCAC 16E .0501 SIGNATURE CARDS**

*Authority G.S. 54C-53; 54C-164.*

**04 NCAC 16E .0502 HOLDING OF CERTIFICATE OR PASSBOOK**

An unpledged savings certificate or passbook shall not be held by a savings ~~bank~~ institution for the convenience of an account holder ~~or otherwise unless maintained in a manner designed to ensure its security.~~ holder.

*Authority G.S. 54B-55; 54B-121; 54C-53; 54C-164.*

**SECTION .0600 - LIQUIDITY AND NET WORTH**

**04 NCAC 16E .0601 LIQUIDITY**

**04 NCAC 16E .0602 NET WORTH**

*Authority G.S. 54C-53; 54C-162.*

**SECTION .0700 - INVESTMENTS**

**04 NCAC 16E .0701 SECURITIES**

**04 NCAC 16E .0702 STOCK IN OTHER DEPOSITORY INSTITUTIONS**

*Authority G.S. 54C-53; 54C-141.*

**SUBCHAPTER 16F - SERVICE CORPORATIONS AND FINANCE SUBSIDIARIES**

**04 NCAC 16F .0101 PERMITTED ACTIVITIES**

The service corporation of a savings institution may engage in ~~these activities which that~~ are approved by the federal regulatory authority for service corporations owned solely by federal associations which that have principal offices in this ~~State,~~ State and may engage in any other activity authorized for state-chartered savings institutions and approved in advance in writing by the ~~Administrator.~~ Commissioner of Banks. Such other activities shall be approved ~~only~~ upon a showing by the savings institution that the activity enhances the safe and sound operation of the savings institution, is properly managed, is subject to adequate controls, and is not otherwise violative of law or regulation.

*Authority G.S. 54B-55; 54B-194; 54C-53; 54C-144.*

**04 NCAC 16F .0103 DEBT LIMITATION FOR WHOLLY-OWNED SERVICE CORPORATIONS**

The aggregate amount of secured and unsecured debt ~~which that~~ a wholly-owned service corporation may have outstanding at any

one time to the savings institution and to non-stockholders shall not exceed:

- (1) ten times the total of the service corporation's net worth and unsecured debt to the savings institution; or
- (2) twenty times ~~such the~~ total if the service corporation engages solely in originating, investing in, selling, purchasing, servicing, or otherwise dealing in (including brokerage or warehousing) loans, loans and participations in loans, on a prudent basis that are underwritten in accordance with the savings institution's lending policy and secured by real estate or liens on mobile homes.

*Authority G.S. 54B-55; 54B-194; 54C-53; 54C-144.*

**04 NCAC 16F .0105 AMENDMENTS TO ARTICLES OF INCORPORATION OR BYLAWS**

(a) Prior to filing with the Secretary of State of North Carolina, a service corporation shall file with the Commissioner of Banks copies of any proposed amendment to its articles of incorporation. The Commissioner of Banks must ~~give his approval to~~ approve the form and content of ~~such the proposed amendment as set forth in G.S. 54B-12 and G.S. 54B-13.~~ amendment.

(b) Before the bylaws or any amendments to the bylaws of a service corporation ~~can~~ shall become effective, a certified copy of the bylaws or amendments shall be filed with and approved by the Commissioner of ~~Banks as set forth in G.S. 54B-12 and G.S. 54B-13.~~ Banks. ~~In the event of the failure of the~~ If the Commissioner of Banks fails to act upon the bylaws or amendment within ~~25~~ 60 days of receipt, the bylaws or amendment shall be deemed approved.

*Authority G.S. 54B-55; 54B-194; 54C-53; 54C-144.*

**04 NCAC 16F .0106 ESTABLISHMENT OF FINANCE SUBSIDIARIES**

**04 NCAC 16F .0107 BOARD ACTION REQUIRED**

**04 NCAC 16F .0108 FINANCE SUBSIDIARY TRANSACTIONS WITH PARENT**

**04 NCAC 16F .0109 ISSUANCE OF SECURITIES BY FINANCE SUBSIDIARIES**

**04 NCAC 16F .0110 TRANSFER OF PROCEEDS**

**04 NCAC 16F .0111 HOLDING COMPANY SUBSIDIARIES AND FINANCE SUBSIDIARIES**

**04 NCAC 16F .0112 NOTIFICATION TO THE COMMISSIONER OF BANKS**

**04 NCAC 16F .0113 EXAMINATION OF FINANCE SUBSIDIARIES**

*Authority G.S. 54B-55; 54B-77; 54B-195; 54C-53; 54C-144; 54C-146.*

**SUBCHAPTER 16G - MUTUAL TO STOCK CONVERSIONS**

**SECTION .0100 - SCOPE**

**04 NCAC 16G .0103 DEFINITIONS**

As used in this Subchapter ~~and in the forms prescribed under this Subchapter~~, the words and phrases defined by G.S. 54C-4 and the following definitions apply, unless the context otherwise requires:

- (1) ~~"Affiliate," "an~~ "An affiliate of," or "a person affiliated with" used in connection with another specified person shall mean a person that directly, or indirectly through one or more intermediaries, controls or is under common control ~~with, with~~ the person specified.
- (2) "Amount," when used in regard to securities, shall mean the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares of stock, ~~and or~~ the number of units if relating to any other kind of security.
- (3) "Applicant" shall mean a savings ~~bank which~~ institution that has applied to convert to stock ownership pursuant to this Subchapter.
- (4) "Broker" shall mean any person engaged in the business of effecting transactions in securities for the account of others.
- (5) ~~"Capital stock" shall mean common stock, permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital.~~
- (6)(5) "Dealer" shall mean any person who engages either for all or part of ~~his~~ their time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.
- (7)(6) "Deposit account" shall mean that part of the liability of the savings ~~bank which~~ institution that is credited to the account of the holder thereof, including certificates of deposit.
- (8)(7) "Eligibility record date" shall mean the record date for determining eligible account holders of a converting savings ~~bank.~~ institution.
- (9)(8) "Eligible account holder" shall mean any person holding a qualifying deposit as determined in accordance with Rule .0313 of this Subchapter.
- (10)(9) "Employee" shall not mean a director or executive officer of a savings ~~bank.~~ institution.
- (11)(10) "Equity security" shall ~~mean any stock or similar security, or any security convertible, with or without considerations, into such security, or carrying any warrant or right to subscribe to or purchase such security, or any such warrant or right.~~ mean:
  - (a) any stock or similar security;
  - (b) any security convertible, with or without considerations, into a security, or carrying any warrant or right to subscribe to or purchase a security; or
  - (c) any warrant or right to subscribe to or purchase a security.

- (12)(11) "Executive Officer" shall mean any person performing a ~~policy-making~~ policy-making function with respect to any ~~organization~~ organization, whether incorporated or unincorporated.
- (13)(12) "Investment representative" shall mean a professional investment advisor acting as agent for the purchaser and independent of the seller and not acting on behalf of the seller in connection with the transaction.
- (14)(13) "Market maker" shall mean a dealer who, with respect to a particular security:
  - (a) regularly publishes a bona fide, competitive ~~bid bid~~ bid and offer ~~quotations~~ quotation in a recognized inter-dealer quotation ~~system;~~ system or furnishes bona fide competitive bid and offer quotations on request; and
  - (b) is ready, ~~willing~~ willing, and able to effect transactions in reasonable quantities at ~~his~~ the quoted prices with other brokers or dealers.
- (15)(14) "Material," when used to qualify a requirement ~~for the furnishing of~~ to provide information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before purchasing an equity security of the applicant, or matters as to which an average prudent savings ~~bank~~ institution member ought reasonably to be informed in voting upon the plan of conversion of the applicant.
- (16)(15) "Negotiated transactions" shall mean transactions in which the securities are offered and the terms and arrangements relating to any sale of the securities are arrived at through direct communications between the seller or any person acting in its ~~behalf,~~ behalf and the purchaser or his investment representative.
- (17)(16) "Offer," "offer to sell," or "offer of sale" shall mean every attempt or offer to dispose ~~of,~~ of or solicitation of an offer to ~~buy,~~ buy a security or interest in a ~~security,~~ security for value. These terms shall not include preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are or will be in privity of contract with an applicant.
- (18)(17) "Person" ~~includes an individual and entity as is~~ defined in G.S. 55-1-40.
- (19)(18) "Proxy" shall mean every form of authorization by which a person is, or may be deemed to be, designated to act for a savings ~~bank~~ institution member in the exercise of his voting rights in the affairs of a savings ~~bank.~~ institution. ~~Such an~~ An authorization may take the form of failure to dissent or object.
- (20)(19) "Purchase" and "buy" shall mean every contract to ~~purchase, buy, or otherwise~~ acquire a security or interest in a security for value.

~~(21)~~(20) "Sale" and "sell" shall mean every contract to ~~sell or otherwise~~ dispose of a security or interest in a security for value.

~~(22)~~(21) "Security" shall mean any note, stock, treasury stock, bond, debenture, transferable share, investment contract, voting-trust certificate, or in general, any instrument commonly known as a "security". It shall also include any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the ~~forgoing~~ foregoing.

~~(23)~~(22) "Solicitation" and "solicit" shall mean:

- (a) any request for a proxy whether or not accompanied by or included in a form of proxy;
- (b) any request to execute, not execute, or revoke a proxy; or
- (c) ~~the furnishing of~~ providing a form of proxy or other communication to savings ~~bank~~ institution members under circumstances ~~reasonably~~ calculated to result in the procurement, withholding, or revocation of a proxy. The terms ~~do shall~~ not apply, ~~however~~, to the furnishing of a form of proxy to a savings ~~bank~~ institution member upon the unsolicited request of the member, ~~the performance of~~ performing acts required by Rule .0514 of this Subchapter, or to the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

~~(24)~~(23) "Subscription offering" shall mean ~~the offering of shares of capital stock, through nontransferable subscription rights issued rights~~ to:

- (a) eligible account holders as required by Rule .0311(2) of this Subchapter;
- (b) supplemental eligible account holders as required by Rule .0311(4) of this Subchapter;
- (c) members entitled to vote at the meeting called to consider the conversion as required by Rule .0311(5) of this Subchapter;
- (d) directors, executive officers, and employees, as permitted by Rule .0312(2) of this Subchapter; and
- (e) eligible account holders, supplemental eligible account holders, and voting members as permitted by Rule .0312(3) of this Subchapter.

~~(25)~~(24) "Subsidiary" of a specified person shall mean a person controlled, directly or indirectly, through one or more intermediaries by the specified person.

~~(26)~~(25) "Supplemental eligible account holder" shall mean any person holding a qualifying deposit, except executive officers, directors, and their associates, as of the supplemental eligibility record date required by Rule .0311 of this Subchapter.

~~(27)~~(26) "Underwriter" shall mean any person who has purchased from an applicant with a view to, or any person who offers or sells for an applicant in connection with, the distribution of any security; or participates or has a direct or indirect participation in the direct or indirect underwriting of any ~~such~~ undertaking. ~~Such term~~ Undertaking shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. The term "principal underwriter" shall mean an underwriter in privity of contract with the applicant or other issuer of securities as to which he is the underwriter.

Authority G.S. 54C-33; 54C-53.

#### **04 NCAC 16G .0104 GENERAL REQUIREMENTS**

(a) No application for conversion shall be approved by the ~~administrator~~ Commissioner of Banks unless:

- (1) The conversion ~~will~~ shall be conducted as ~~provided by law in compliance with G.S. 54B or G.S. 54C, as applicable, and this Subchapter and pursuant to a plan of conversion approved by the administrator.~~ Commissioner of Banks; and
- (2) The conversion ~~will~~ shall not result in a taxable reorganization under the Internal Revenue Code.

(b) ~~The corporate existence of a mutual savings bank converting to stock ownership shall not terminate.~~ The converted savings bank shall be deemed to be a continuation of the savings ~~bank~~ institution so converted.

Authority G.S. 54C-33; 54C-53.

#### **04 NCAC 16G .0105 APPLICATION FOR CONVERSION**

Authority G.S. 54C-33; 54C-53.

#### **04 NCAC 16G .0106 CONFIDENTIAL INFORMATION**

~~Should the~~ If an applicant ~~desire to submit any~~ submits information it deems to be ~~of a confidential nature~~ regarding the answer to any item or ~~a part of any~~ exhibit included in the Application for Conversion, ~~such the~~ the information ~~pertaining to such item~~ or exhibit shall be separately bound and labeled ~~"confidential,"~~ confidential and a statement shall be submitted ~~therewith briefly~~ setting forth the grounds on which ~~such the~~ the information should be treated as confidential ~~under~~ pursuant to G.S. 54C-60. Only general reference ~~thereto need to such~~ to such

confidential information shall be made in that portion of the application ~~which that~~ the applicant deems not to be confidential. Applications under this Subchapter shall be made available for inspection by the public, except for portions ~~which that~~ are bound and labeled "confidential" and ~~which that~~ the Commissioner of Banks determines to be of a confidential nature under confidential pursuant to G.S. 54C-60. ~~The administrator will withhold the public availability of preliminary copies of proxy soliciting materials without the necessity of their being bound and labeled as "confidential". Preliminary copies of proxy-soliciting materials shall be confidential regardless of whether they are bound and labeled as "confidential."~~ The applicant ~~will~~ shall be advised of any decision by the ~~administrator~~ Commissioner of Banks to make public information designated as "confidential" by the applicant. ~~Even though sections of the application are considered "confidential" as far as public inspection thereof is concerned, the administrator, to the extent permitted by G.S. 54C-60, Notwithstanding the provisions of this Rule and to the extent permitted by G.S. 54C-60, the Commissioner of Banks may comment on such the confidential submissions in any public statement in connection with any decision on regarding the application without prior notice to the applicant.~~

*Authority G.S. 54C-33; 54C-53; 53C-2-7.*

## **SECTION .0300 - GENERAL PRINCIPLES FOR CONVERSIONS**

### **04 NCAC 16G .0311 REQUIRED PROVISIONS IN PLAN OF CONVERSION**

The plan of conversion ~~shall~~ shall include the following:

- (1) Provide that the converting savings ~~bank~~ institution shall issue and sell its capital stock at a total price equal to the estimated pro forma market value of ~~such~~ stock in the converted savings ~~bank~~, institution, based on an independent valuation, as provided in Rule .0717 of this Subchapter.
- (2) Provide that each eligible account holder shall ~~receive~~ receive, without ~~payment~~, payment nontransferable subscription rights to purchase capital stock. Subscription rights shall be allocated among the eligible account holders on an equitable basis in an amount not greater than the maximum purchase limitation established for the public offering or the direct community offering. The plan of conversion shall provide a comprehensive description of this allocation including a detailed description of the allocation in the event of an oversubscription of the capital stock. In the event of an oversubscription, shares shall be allocated on an equitable basis that is related to the amount of the subscriber's qualifying deposits.
- (3) Provide that nontransferable subscription rights to purchase capital stock received by executive officers and directors of the applicant and their ~~associates~~ associates, based on their increased deposits in the applicant savings ~~bank~~

institution in the one-year period preceding the eligibility record ~~date~~ date, shall be subordinated to all other subscriptions involving the exercise of nontransferable subscription rights to purchase shares pursuant to Paragraph Item (2) of this Rule.

- (4) ~~Provide that, in~~ In plans involving an eligibility record date that is more than 15 months prior to the date of the latest amendment to the application for conversion filed prior to the ~~administrator's~~ Commissioner of Banks' approval, provide that a supplemental eligibility record date shall be determined whereby each supplemental eligible account holder of the applicant shall ~~receive~~ receive, without payment, nontransferable subscription rights to purchase capital stock in an amount related to ~~his/her~~ his or her respective qualifying deposits.

- (a) Subscription rights received pursuant to Paragraph Item (4) of this Rule shall be subordinated to all rights received by eligible account holders to purchase shares pursuant to ~~Paragraphs~~ Paragraphs Items (2) and (3) of this Rule.

- (b) Any nontransferable subscription rights to purchase shares received by an eligible account holder in accordance with Paragraph Item (2) of this Rule shall be applied in partial satisfaction of the subscription rights to be distributed pursuant to this Paragraph.

- (c) In the event of an oversubscription for supplemental shares pursuant to this Paragraph, shares shall be allocated among the subscribing supplemental eligible account holders on ~~such an~~ an equitable basis, related to the amounts of their respective qualifying deposits, as may be provided in the plan of conversion.

- (5) Provide that voting members who are not either eligible account holders or supplemental eligible account holders shall receive, without payment, nontransferable subscription rights to purchase capital stock on an equitable basis defined in the plan of conversion. Subscription rights received pursuant to this Paragraph shall be subordinated to all rights received by eligible account holders and supplemental eligible account holders to purchase shares pursuant to ~~Paragraphs~~ Paragraphs Items (2), (3), and (4) of this Rule. In the event of an oversubscription of capital stock pursuant to this Paragraph, shares shall be allocated among the subscribing voting members on such equitable basis as may be provided in detail in the plan of conversion.

- (6) Provide that any shares of the applicant not sold to persons with subscription rights shall either be sold in a public offering through an underwriter or directly by the applicant in a direct community offering, subject to the applicant demonstrating to the ~~administrator~~ Commissioner of Banks the feasibility of the method of sale and ~~to such of~~ conditions as may be provided in the plan of conversion. ~~Such conditions~~ Conditions shall include, but not be limited to: may include:
- (a) ~~A condition limiting~~ Limiting purchases in the public offering or the direct community offering by any person together with any associate or group of persons acting in concert to a percentage of the total offering of shares not exceeding five percent; except ~~that any one or more tax-qualified employee stock benefit plans of the applicant may purchase in the aggregate not more than ten percent of the total offering of shares and shall be entitled to purchase such amount regardless of the number of shares to be purchased by other parties, and that shares held by one or more tax-qualified employee stock benefit plans and attributed to a person shall not be aggregated with other shares purchased directly by or otherwise attributable to that person that:~~
- (i) any one or more tax-qualified employee stock benefit plans of the applicant may purchase in the aggregate not more than ten percent of the total offering of shares and shall be entitled to purchase that amount regardless of the number of shares to be purchased by other parties; and
- (ii) that shares held by one or more tax-qualified employee stock benefit plans and attributed to a person shall not be aggregated with other shares purchased directly by or otherwise attributable to that person.
- (b) ~~A condition requiring~~ Requiring that orders for stock in any public offering or direct community offering shall first be filled up to a maximum of two percent of the conversion stock per order and thereafter remaining shares shall be allocated on an equal number
- of shares basis per order until all orders have been ~~filled~~ filled:
- (c) ~~A condition requiring the~~ Requiring that stock to be offered and sold in the public offering or the direct community offering ~~to shall~~ be offered and sold in a manner requiring that will achieve the widest distribution of the ~~stock~~ stock; or
- (d) ~~A condition that any~~ Any direct community offering by the applicant shall give a preference to ~~natural persons~~ a person residing in the counties in which the applicant has an office.
- (7) Provide that the number of shares ~~which that~~ any person together with any associate or group of persons acting in concert may subscribe or purchase in the conversion shall not exceed five percent of the total offering of ~~shares~~ shares, except that any one or more tax-qualified employee stock benefit plans of the applicant may purchase in the aggregate not more than 10 percent of the total offering of shares. Shares held by one or more tax-qualified or non-tax-qualified employee stock benefit plans and attributed to a person shall not be aggregated with shares purchased directly by or otherwise attributable to that person. For purpose of this ~~Paragraph~~ Item the members of the converting savings ~~bank's~~ bank's institution's board of directors shall not be deemed to be associates or a group of persons acting in concert solely as a result of their board membership.
- (8) Provide that for a period of three years following the conversion no executive officer or director or any associate of an executive officer or director shall purchase without the prior written approval of the ~~administrator~~ Commissioner of Banks the capital stock of the converted savings ~~bank~~ bank institution except from a broker or dealer registered with the Secretary of State of North Carolina ~~and/or~~ or the Securities and Exchange Commission. This provision shall not apply to negotiated transactions involving more than one percent of the outstanding capital stock of the converted savings ~~bank~~ bank institution or to purchases of stock made by and held by any one or more tax qualified or non-tax-qualified employee stock benefit plans of the applicant ~~which that~~ may be attributable to executive officers or directors.
- (9) Provide that the sales price of the shares of capital stock to be sold in the conversion shall be a uniform price ~~determined in accordance with Rule .0714 of this Subchapter~~ and specify the underwriting and other marketing arrangements to be made to assure the sale of any shares not sold in the subscription offering.

- (10) Provide that each deposit account holder of the converting savings ~~bank~~ institution shall receive, without payment, a deposit account or accounts in the converted savings ~~bank~~ institution equal in amount to the value of ~~such the~~ the account holder's deposit account or accounts in the converting savings ~~bank~~ institution.
- (11) Provide for the establishment and maintenance of a liquidation account for the benefit of eligible account holders and supplemental eligible account holders in the event of a subsequent complete liquidation of the converted savings ~~bank~~, ~~in accordance with the provisions of Rule .0314 of this Section~~ institution.
- (12) Provide for an eligibility record date ~~which that~~ which shall be not less than 90 days prior to the date of adoption of the plan by the converting savings ~~bank's~~ institution's board of directors.
- (13) Provide that the holders of the capital stock of the converted savings ~~bank~~ institution shall have exclusive voting rights.
- (14) Provide that the plan of conversion adopted by the applicant's board of directors may be substantively amended by ~~such the~~ the board of directors prior to the solicitation of proxies from members to vote on the plan and at any time thereafter with the concurrence of the ~~administrator~~ Commissioner of Banks, and that the conversion may be terminated by the board of directors at any time prior to the meeting of members called to consider the plan of conversion and at any time thereafter with the concurrence of the ~~administrator~~ Commissioner of Banks.
- (15) Establish a time period within which the conversion ~~must~~ shall be completed prior to termination. This time period shall be not more than 12 months from the date the members approve the plan of conversion. This time period may be extended an additional 12 months by a plan amendment.
- (16) Provide that all shares of capital stock purchased by directors and executive officers on original issue in the conversion either directly from the applicant (by subscription or otherwise) or from an underwriter of ~~such~~ such shares, shall be subject to the restriction that such shares shall not be sold for a period of not less than one year following the date of ~~purchase~~ purchase except in the event of death of the director or executive officer. The ~~administrator~~ Commissioner of Banks may grant permission for the transfer of restricted stock upon a determination that the restriction imposes a substantial personal financial hardship on ~~such the~~ the individual due to changed unforeseeable circumstances outside the control of ~~such the~~ the individual.
- (17) Provide that, in connection with shares of capital stock subject to restriction on sale under ~~Paragraph Item~~ Item (16) of this Rule:
  - (a) Each certificate for such stock shall bear a legend giving appropriate notice of the applicable restrictions;
  - (b) ~~appropriate instructions~~ Instructions shall be issued to the transfer agent for the converted savings ~~bank's~~ institution's capital stock with respect to applicable restrictions on transfer of any restricted stock; and
  - (c) Any shares issued as a stock dividend, stock ~~split~~ split or otherwise with respect to any restricted stock shall be subject to the same restrictions as may apply to the restricted stock.
- (18) Provide that the converting savings ~~bank~~ institution shall:
  - (a) ~~use its best efforts to~~ assist encourage and assist a market maker to establish and maintain a market for the securities issued in connection with the conversion; and
  - (b) ~~use its best efforts to~~ list those shares issued in connection with the conversion on a national or regional securities ~~exchange~~ exchange, or on the NASDAQ system.
- (19) Provide that the expenses incurred in the conversion shall be reasonable.
- (20) Contain no provision ~~which that~~ which the ~~administrator may determine~~ Commissioner of Banks finds to be inequitable or detrimental to the applicant, its account holders or other savings banks or to be contrary to the public interest.
- (21) Contain no provision ~~which that~~ which the ~~administrator~~ Commissioner of Banks finds will harm the community and public served by the savings ~~bank~~ institution.
- (22) Provide that the converting savings bank shall not loan funds or otherwise extend credit on an unsecured basis or upon the security of the savings ~~bank's~~ institution's capital stock to any person to purchase the capital stock of the converting savings ~~bank~~ institution.
- (23) Provide that the savings ~~bank~~ institution may make scheduled discretionary contributions to a tax-qualified employee stock benefit plan provided ~~such the~~ the contributions do not cause the savings ~~bank~~ institution to fail to meet its net worth requirements.

*Authority G.S. 54C-33; 54C-53.*

**04 NCAC 16G .0312      OPTIONAL PROVISIONS IN  
PLAN OF CONVERSION**

The plan of conversion may provide any or all of the following:

- (1) That the applicant may commence the direct community offering or the public offering, or both, concurrently with or at any time during the subscription offering. The subscription offering may be commenced concurrently with or at any time after the mailing to members ~~pursuant to Rule .0607 of this Subchapter~~ of the proxy statement authorized for use by the ~~administrator.~~ Commissioner of Banks. The subscription offering may be closed before the meeting of the members held to vote on the plan of conversion, provided that the offer and sale of capital stock shall be conditioned upon the approval of the plan of conversion by the ~~members as provided in Section .0600 of this Subchapter.~~ members.
- (2) That directors, executive officers, and employees of the converting savings ~~bank~~ institution shall receive, without payment, nontransferable subscription rights to purchase shares of capital stock, to the extent that shares are available after satisfying the subscriptions of eligible account holders, supplemental eligible account holders, and voting members provided for under ~~Paragraphs Items~~ Paragraphs Items (2), (4) and (5) of Rule .0311 of this Section. The shares shall be allocated among directors, officers, and employees on an equitable basis such as by giving weight to length of service, compensation, and position, subject to the limitation in ~~Paragraph Item~~ Paragraph Item (7) of Rule .0311 of this Section on the amount of shares ~~which~~ that may be purchased by any person, ~~associate thereof,~~ associate, or group of affiliated persons or group of persons otherwise acting in concert.
- (3) That any account holder receiving rights to purchase stock in the subscription offering shall also receive, without payment, nontransferable subscription rights to purchase up to one percent of the total offering of shares of capital stock, to the extent that ~~such~~ shares are available after satisfying the subscriptions provided for under ~~Paragraphs Items~~ Paragraphs Items (2), (4), and (5) of Rule .0311 of this Section, subject to ~~such~~ conditions as may be provided in the plan of conversion. In the event of an oversubscription for ~~such~~ additional shares, the shares available shall be allocated among the subscribing eligible account holders, supplemental eligible account holders, and voting members on ~~such an~~ an equitable ~~basis,~~ basis related to the amounts of their respective subscriptions, as may be provided in the plan of conversion.
- (4) That the applicant may require members to return by a ~~reasonable~~ date certain a

postage-paid written communication provided by the ~~applicant~~ applicant, requesting receipt of a subscription offering ~~circular,~~ circular or a preliminary or final offering circular in an offering pursuant to ~~Paragraph Item~~ Paragraph Item (10) of this Rule, in order to be entitled to receive an offering circular from the applicant; provided, that the subscription offering or the offering pursuant to ~~Paragraph Item~~ Paragraph Item (10) of this Rule shall not be closed until 30 days after the mailing by the applicant to members of the postage-paid written communication. If the subscription offering or the offering pursuant to ~~Paragraph Item~~ Paragraph Item (10) of this Rule is not commenced within 45 days after the meeting of members, any converting savings ~~bank~~ institution adopting this optional provision shall ~~transmit~~ transmit, not more than 30 days prior to the commencement of the subscription offering or the offering pursuant to ~~Paragraph Item~~ Paragraph Item (10) of this Rule to each member who had been furnished with proxy solicitation materials, written notice of the commencement of the offering ~~which notice~~ that shall state that the converting savings ~~bank~~ institution is not required to furnish an offering circular to a member unless the member returns by a ~~reasonable~~ date certain the postage-paid written communication provided by the converting savings ~~bank~~ institution requesting receipt of an offering circular.

- (5) That the applicant may require eligible account holders and supplemental eligible account holders who are not voting members ~~pursuant to Rule .0608 of this Subchapter~~ to return by a ~~reasonable~~ date certain a postage-paid written communication in accordance with the procedure established in ~~Paragraph Item~~ Paragraph Item (4) of this Rule.
- (6) That any ~~insignificant~~ residue of shares of the converting savings ~~bank~~ institution not sold in the subscription offering or in a public offering or direct community offering may be sold ~~in such other manner~~ as provided in the plan of conversion with the written consent of the ~~administrator.~~ Commissioner of Banks.
- (7) That the number of shares ~~which~~ that any person or group of persons affiliated with each other or otherwise acting in concert may subscribe for in the subscription offering may be made subject to a limit of not less than one percent of the total offering of the shares.
- (8) That any person exercising subscription rights to purchase capital stock shall be required to purchase a minimum number of ~~shares~~ shares, but the aggregate price for any minimum share purchase shall not exceed five hundred dollars (\$500.00).

- (9) That the converted savings ~~bank~~ institution shall issue and sell, in lieu of shares of its capital stock, units of securities consisting of capital stock and long-term warrants or other equity securities, in which event any reference in the provisions of this Subchapter to capital stock shall apply to ~~such~~ units of equity securities unless the context otherwise requires.
- (10) That, instead of a separate subscription offering, all subscription rights issued in connection with the conversion shall be exercisable by delivery of ~~properly~~ completed and executed order forms to the underwriters or selling group for the public offering or pursuant to any other procedure, subject to the applicant demonstrating to the ~~administrator~~ Commissioner of Banks the feasibility of the method of exercising such right and to such conditions as shall be provided in the plan of conversion.
- (11) That the ~~administrator~~ Commissioner of Banks may approve ~~such~~ other equitable provisions as necessary to avert ~~imminent~~ injury to the converting savings ~~bank~~ institution.
- (12) That the proxy statement ~~required~~ authorized by ~~Rule .0607 of this Subchapter~~ G.S. 54B-33 or G.S. 54C-33 may be in summary form, ~~provided~~: provided the proxy meets the requirements of 04 NCAC 16G .0512.
- (a) ~~A statement is made in bold faced type on the summary proxy statement that a more detailed description of the proposed transaction may be obtained by returning an attached postage paid postcard or other written communication requesting a supplemental information statement which, together with the summary proxy statement, complies with the requirements of Form PS contained in the Application for Conversion.~~
- (b) The date on which the summary proxy statement is mailed to members will be deemed the date on which notice is given for purposes of Rule .0607 of this Subchapter. Without the prior written consent of the administrator the meeting of members shall not be held less than 20 days after the date on which the supplemental information statement is mailed to requesting members.
- (c) ~~The supplemental information statement required to be furnished to members pursuant to Subparagraph (a) of this Paragraph may be combined with Form OC, if the subscription offering is commenced concurrently with or during the proxy~~
- ~~solicitation period pursuant to Paragraph (1) of this Rule.~~
- (d) ~~The form of the summary proxy statement has been approved by the administrator.~~
- (13) That, in the event that the converting institution is establishing a tax-qualified employee stock ownership plan (ESOP) for the benefit of its employees, then notwithstanding the priorities established under ~~Subparagraphs~~ Items (2), (4), and (5) of Rule .0311 of this Section, the plan of conversion may provide that ~~such~~ the ESOP may purchase up to 10 percent of the aggregate shares offered in the conversion prior to offering ~~any~~ shares to eligible account holders, supplemental eligible account holders or other voting members.
- (14) That eligible ~~accountholders~~ account holders, shall be divided into two subcategories for purposes of determining the aggregate number of shares of conversion stock allocated to be purchased by ~~such~~ the accountholders in each subcategory: those whose permanent residence is within the market area of the converting institution and those whose permanent residence is outside the market area of the converting institution. ~~The~~ A plan of conversion that divides accountholders into subcategories shall provide:
- (a) That each eligible accountholder who resides within the applicant's market area shall receive nontransferable subscription rights to purchase a number of shares based on ~~such~~ the accountholder's qualifying deposit balance up to the maximum purchase limitation established pursuant to Rule .0311(7) of this ~~Section~~; Section, provided that the aggregate number of shares of conversion stock to be allocated for purchase by eligible ~~accountholders~~ account holders within the converting institution's market area shall equal that number of shares (rounded to the nearest whole number) determined by multiplying the total number of shares of stock to be sold in the offering times a fraction the numerator of which is the sum of qualifying deposits held by eligible accountholders residing inside the market area and the denominator of which is the sum of all qualifying deposits.
- (b) That each eligible ~~accountholder~~ account holder who resides outside the applicant's market area shall receive nontransferable subscription rights to purchase a number of shares based on

~~such—accountholder's~~ the account holder's qualifying deposit balance up to the maximum purchase limitations established pursuant to Rule .0311(7) of this ~~Section; Section~~, provided that the aggregate number of shares of conversion stock to be allocated for purchase by eligible ~~accountholders~~ account holders outside the converting institution's market area shall equal that number of shares (rounded to the nearest whole number) determined by multiplying the total number of shares to be sold in the offering times a fraction the numerator of which is the sum of qualifying deposits held by eligible ~~accountholders~~ account holders residing outside the converting institution's market area and the denominator of which is the sum of all qualifying deposits.

- (c) Within each subcategory, a formula to be used in the event of an oversubscription for the equitable allocation of shares of stock within ~~such the~~ subcategory ~~which that~~ relates to an eligible ~~accountholder's~~ account holder's qualifying deposit balance.
- (d) For the purposes of this ~~Paragraph~~, Item, a converting institution shall define its "market area" to include each county in which it has an office and may include ~~such~~ additional counties contiguous to those counties in which it maintains an ~~office~~ (regardless office, regardless of whether such counties are in the State of North ~~Carolina)~~ Carolina, ~~as it may designate to be part of its "market area" in its plan of conversion.~~

*Authority G.S. 54B-33; 54C-33; 54C-53.*

**04 NCAC 16G .0313 RECORD DATES FOR QUALIFYING DEPOSITS**

~~Unless otherwise provided in the plan of conversion, for the purposes of this Section, the~~ The amount of the qualifying deposit of an eligible account holder or supplemental eligible account holder shall be the total of the deposit balances in the eligible account holder's or supplemental eligible account holder's deposit accounts in the converting savings ~~bank~~ institution as of the close of business on the eligibility record date or supplemental eligibility record date. ~~However, the~~ The plan of conversion may provide that any deposit accounts with total deposit balances of

less than fifty dollars (\$50.00) ~~or any lesser amount~~ shall not constitute a qualifying deposit.

*Authority G.S. 54C-33; 54C-53.*

**04 NCAC 16G .0314 LIQUIDATION ACCOUNT**

*Authority G.S. 54C-33; 54C-53.*

**04 NCAC 16G .0315 MANIPULATIVE AND DECEPTIVE DEVICES**

In the offer, sale, or purchase of securities issued incident to its conversion, no savings bank, ~~or any~~ director, executive officer, attorney, agent or employee ~~thereof~~ shall:

- (1) employ any device, scheme, or artifice to defraud; or
- (2) obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances ~~under which that~~ they were made, not misleading; or
- (3) engage in any act, transaction, practice, or course of business ~~which that~~ operates or would operate as a fraud or deceit upon a purchaser or seller.

*Authority G.S. 54C-33; 54C-53.*

**04 NCAC 16G .0316 MERGER OF CONVERTED SAVINGS BANKS**

*Authority G.S. 54C-33; 54C-53.*

**SECTION .0400 - NOTICE OF FILING: PUBLIC STATEMENTS: CONFIDENTIALITY**

**04 NCAC 16G .0404 INFORMATION PRIOR TO APPROVAL OF PLAN OF CONVERSION**

*Authority G.S. 54C-33; 54C-53.*

**04 NCAC 16G .0405 NOTICE OF FILING**

(a) Upon determination that an application for conversion is ~~properly executed and is not materially incomplete, complete,~~ the ~~administrator will~~ Commissioner of Banks shall advise the applicant, in writing, applicant to publish a notice of the filing of the application. ~~Promptly after receipt of such advice, the applicant shall prominently post the notice in each of its offices and publish a notice of such filing in a newspaper having general circulation in each community in which an office of the applicant is located, as follows: The applicant shall publish the notice in a newspaper having general circulation in the community that the home office of the applicant is located, and the notice shall state the following:~~

NOTICE OF FILING OF AN APPLICATION FOR CONVERSION  
TO A STOCK SAVINGS BANK

Notice is hereby given that, pursuant to General Statute 54C-33,

\_\_\_\_\_  
(fill in name of applicant)

has filed an application with the ~~administrator of the Savings Institutions Division~~ Office of the Commissioner of Banks for approval to convert to the stock form of organization. Copies of the application have been delivered to the ~~Savings Institutions Division, 1110 Navaho Drive, Suite 301, Raleigh, North Carolina, 27609.~~ North Carolina Office of the Commissioner of Banks, 316 W. Edenton Street, Raleigh, North Carolina 27603.

Written comments, including ~~any~~ objections to the plan of conversion and materials supporting ~~such~~ the objections, from any member of the applicant or ~~any~~ aggrieved person ~~will~~ shall be considered by the ~~administrator~~ Commissioner of Banks if filed within ~~40~~ 14 business days after the date of this notice. ~~Failure to make such written comments or objections may preclude the pursuit of any administrative or judicial remedies. Any comments~~ Comments or objections shall be sent to the ~~administrator~~ Commissioner of Banks at the address noted above. ~~The proposed plan of conversion and any comments thereon will be available for inspection by any member of the applicant at the office of the administrator.~~ A copy of the plan may also be inspected at each office of ~~obtained from~~ the applicant.

~~(b) If a significant number of the applicant's members only speak a language other than English and a newspaper in that language is published in the area served by the applicant, an appropriate translation of the notice shall also be published in that newspaper.~~

~~(c)~~ (b) Promptly after After publication of the notice prescribed in Paragraph (a) of this Rule, the applicant shall file a copy of the notice with the ~~administrator~~ Commissioner of Banks. The applicant shall also file a copy of an affidavit of publication from each newspaper publisher.

*Authority G.S. 54B-33; 54C-33; 54C-53.*

**SECTION .0500 - SOLICITATION OF PROXIES: PROXY  
STATEMENT**

**04 NCAC 16G .0509 SOLICITATIONS TO WHICH  
RULES APPLY**

This Section applies to every solicitation of a proxy from a member of a savings ~~bank institution~~ for the meeting ~~at which that~~ a plan of conversion will be voted upon, except the following:

- (1) any solicitation made otherwise than on behalf of the management of the savings ~~bank~~ institution where the total number of persons solicited is not more than 50; or
- (2) any solicitation through the medium of a newspaper advertisement ~~which that~~ informs members, following approval of the plan of conversion, of a source from which they may obtain copies of a proxy statement, form of proxy, or any other solicitation material and ~~does~~ shall contain no more than:
  - (a) name the savings ~~bank~~, bank;
  - (b) state the reason for the ~~advertisement~~, advertisement;
  - (c) identify the proposal or proposals to be acted upon by ~~members~~, members; and
  - (d) urge members to vote at the meeting.

*Authority G.S. 54B-33; 54C-33; 54C-53.*

**04 NCAC 16G .0510 USE OF PROXY SOLICITING  
MATERIAL TO BE AUTHORIZED**

~~No proxy solicitation material required to be filed with the administrator prior to use shall be furnished to members or otherwise released for distribution until the use of such material has been authorized in writing by the administrator.~~ Proxy solicitation material shall not be furnished to members or distributed until the material has been authorized, in writing, by the Commissioner of Banks. Proxy solicitation material authorized for use by the ~~administrator~~ Commissioner of Banks shall be mailed to the members within 10 days of ~~such~~ authorization or within 10 days of the date ~~such that the~~ material is declared effective by the Securities and Exchange Commission, if applicable, whichever is later. The ~~administrator~~ Commissioner of Banks may extend ~~such the~~ date upon a showing that adherence to the ~~40-day~~ 10-day rule would ~~work~~ cause a hardship upon the savings institution and that the delay, if approved in writing, would not be disadvantageous to any interested party.

*Authority G.S. 54B-33; 54C-33; 54C-53.*

**04 NCAC 16G .0511 INFORMATION TO BE  
FURNISHED TO MEMBERS**

No solicitation shall be made unless each person solicited is ~~concurrently~~ furnished, or has previously been furnished, a written proxy statement ~~the use of which that~~ has been authorized in writing by the ~~administrator~~ Commissioner of Banks.

*Authority G.S. 54C-33; 54C-53.*

**04 NCAC 16G .0512 REQUIREMENTS AS TO PROXY**  
(a) The form of proxy shall:

- (1) indicate in bold face type whether the proxy is solicited on behalf of management;
- (2) provide ~~specifically designated~~ blank spaces for dating and signing the proxy;
- (3) identify ~~clearly and impartially~~ each matter or group of related matters intended to be acted upon;
- (4) be ~~clearly~~ labeled "Revocable Proxy" in bold face ~~type of at least 18 point~~ type;

- (5) describe any charter or state law requirement restricting or conditioning voting by proxy;
- (6) contain an acknowledgement by the person giving the proxy that the person has received a proxy statement prior to signing the form of proxy;
- (7) contain the date, time, and place of meeting, if practicable;
- (8) provide, by a box or otherwise, a means whereby the person solicited is afforded an opportunity to specify by ballot a choice between approval or disapproval of each matter intended to be acted upon; and
- (9) indicate in bold face type how the proxy shall be voted on each such matter if no choice is specified.

(b) No proxy obtained pursuant to the conversion shall confer authority to vote at any meeting other than the meeting, or any adjournment thereof, to vote on the plan of conversion. A proxy may be deemed to confer authority to vote with respect to matters incident to the conduct of such the meeting. If the plan of conversion is considered at an annual meeting, existing proxies may be voted with respect to matters not related to the plan of ~~conversion or in accordance with Paragraph (d) of this Rule.~~ conversion.

(c) The proxy statement or form of proxy shall provide that the votes represented by the proxy will be voted. Where the person solicited specifies by means of a ballot provided pursuant to Subsection (a)(8) of this Rule a choice with respect to any matter to be acted upon, the votes will be voted in accordance with the specifications. If no choice is specified, the votes ~~will~~ shall be cast as indicated in bold face type on the form of proxy.

~~(d) Notwithstanding any other provisions of this Rule, the proxy may be in a form previously obtained from a voting member and conferring general authority to vote on any and all matters at any meeting of the members or other authority to vote on matters to be presented at the special meeting; provided, that such voting member has been furnished a proxy statement and the voting member does not grant a later dated proxy to vote at the meeting to consider the plan of conversion or attend the meeting and vote in person.~~

*Authority G.S. 54C-33; 54C-53.*

#### **04 NCAC 16G .0513 MATERIAL REQUIRED TO BE FILED**

(a) An applicant shall file a preliminary copy of the proxy materials to be used by such the applicant as a part of the application for conversion filed with the ~~administrator.~~ Commissioner of Banks.

~~(b) A preliminary copy of any additional solicitation material, including press releases and radio or television scripts, to be used or furnished to members subsequent to furnishing the proxy statement, shall be filed with the administrator at least five business days prior to the date on which the administrator is requested to authorize the use of such material. Speeches may, but need not, be filed with the administrator prior to use.~~

~~(c)(b)~~ A copy of the proxy ~~statement and statement,~~ a copy of the form of proxy and all other solicitation material, in the form in

~~which such~~ that the material is furnished to ~~members;~~ members shall be filed with or mailed for filing to the ~~administrator~~ Commissioner of Banks not later than the date ~~such~~ the material is first sent or given to members. All materials filed pursuant to this Paragraph shall be accompanied by a statement of the date ~~on~~ which ~~that~~ copies of such the materials are to be released to members.

~~(d) If the solicitation is to be made in whole or in part by personal solicitation, a preliminary copy of all written instructions or other material which discusses, reviews or comments upon the merits of any matter to be acted upon and which is to be furnished to the individuals making the actual solicitation for their use directly or indirectly in connection with the solicitation shall be filed with the administrator at least five business days prior to the date on which the administrator is requested to authorize the use of such material.~~

~~(e)(c)~~ All preliminary copies of material filed pursuant to Paragraphs (a), (b), and ~~(d)~~ Paragraph (a) of this Rule shall be clearly marked on the cover page "Preliminary Copy." ~~Such preliminary~~ Preliminary copies shall be for the information of the ~~administrator~~ Commissioner of Banks only and shall not be deemed available for public inspection except that such the material may be disclosed to any department or agency of the United States, this State, or any other state, that has concurrent jurisdiction over the applicant. ~~The administrator may make such inquiries or investigation in regard to the material as may be necessary for an adequate review.~~

~~(f)(d)~~ Unless requested by the ~~administrator,~~ Commissioner of Banks, copies of replies to inquiries from members and copies of communications ~~which~~ that do no more than request that forms of proxy theretofore solicited be signed and returned need not be filed pursuant to this Rule.

~~(g)(e)~~ Where any proxy statement, form of ~~proxy~~ proxy, or other material filed pursuant to this Rule is amended or revised, a copy of such the amended or revised material filed with the ~~administrator~~ Commissioner of Banks shall be marked to indicate ~~clearly and precisely the~~ all changes effected subsequent to the previous ~~filing.~~ filing, prior to use of the amended or revised material.

*Authority G.S. 54C-33; 54C-53.*

#### **04 NCAC 16G .0514 MAILING COMMUNICATIONS FOR MEMBERS**

*Authority G.S. 54C-33; 54C-53.*

#### **04 NCAC 16G .0515 FALSE OR MISLEADING STATEMENTS**

(a) No solicitation of a proxy by the applicant, its management, or any other person for the meeting to vote on the plan of conversion shall be made by means of any ~~proxy~~ statement, ~~form of proxy, notice of meeting, or other communication,~~ written or oral, containing any ~~statement which,~~ language, which at the time and in the light of the circumstances ~~under which~~ that it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or ~~misleading or necessary to correct~~ any statement in any earlier communication with respect to the

~~solicitation of a proxy for the meeting which has become false or misleading.~~

(b) The fact that a proxy statement, form of proxy, or other solicitation material has been filed with or examined by the ~~administrator~~ Commissioner of Banks and authorized for use shall not be ~~deemed~~ a finding by the ~~Administrator~~ Commissioner of Banks that ~~such the~~ material is accurate or complete or not false or misleading, or that the ~~administrator~~ Commissioner of Banks has passed upon the merits of or approved any proposal contained therein. No representation to the contrary shall be made by any person.

(c) If a solicitation by management ~~or the applicant~~ violates any provision of this Rule, the ~~administrator~~ Commissioner of Banks may require remedial ~~measures~~ measures, including:

- (1) correction of any such violation by means of a retraction and new solicitation,
- (2) rescheduling of the meeting for a vote on the plan of conversion, ~~and or~~
- (3) any other actions ~~the administrator may deem~~ that are appropriate under the circumstances in order to ensure a fair vote.

*Authority G.S. 54C-33; 54C-53.*

**04 NCAC 16G .0516 PROHIBITION OF CERTAIN SOLICITATIONS**

No person soliciting a proxy from a member for the meeting to vote on the plan of conversion shall solicit:

- (1) any ~~updated undated~~ or post-dated proxy; ~~or~~
- (2) any proxy ~~which that~~ provides that it shall be deemed to be dated as of any date subsequent to the date ~~on which that~~ it is signed by the ~~members; or member;~~
- (3) any proxy ~~which that~~ is not revocable at will by the member giving it; or
- (4) any proxy ~~which that~~ is part of any other document or instrument, such as an account card.

*Authority G.S. 54C-33; 54C-53.*

**SECTION .0600 - VOTE BY MEMBERS**

**04 NCAC 16G .0606 VOTE AT MEMBERS MEETING**

**04 NCAC 16G .0607 NOTICE TO MEMBERS**

**04 NCAC 16G .0608 ELECTIVE NOTICE TO NON-VOTING ACCOUNT HOLDERS**

*Authority G.S. 54C-33; 54C-53.*

**SECTION .0700 - PRICING AND SALE OF SECURITIES**

**04 NCAC 16G .0712 GENERAL**

~~(a)~~ No offer to sell securities of an applicant pursuant to a plan of conversion may be ~~made prior to approval by the administrator~~ until the Commissioner of Banks has approved the plan of conversion and until the proxy statement has been authorized for use by the administrator. ~~and authorized the use of the proxy statement.~~ No sale of securities may be made except by means of

a final offering circular ~~which that~~ meets the requirements of this Section and ~~which that~~ has been ~~declared effective~~ approved by the ~~administrator~~ Commissioner of Banks. The provisions of this Rule shall not apply to preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are to be in privity of contract with the applicant.

~~(b) If the financial statements in a filing are in excess of 135 days prior to the date of the administrator's approval of the plan of conversion, an interim financial statement as of a date within 135 days of such approval shall be furnished. This interim financial statement shall be at least as current as the most recent quarterly financial statement filed with the administrator. This interim financial statement may be unaudited.~~

*Authority G.S. 54C-33; 54C-53.*

**04 NCAC 16G .0713 DISTRIBUTION OF OFFERING MATERIALS**

Any preliminary offering circular ~~which that~~ has been filed with the ~~administrator~~ Commissioner of Banks may be distributed in connection with the offering at the same time as or after the proxy statement is mailed to ~~members pursuant to Rule .0607 of this Subchapter.~~ members. No final offering circular shall be distributed until it has been ~~declared effective~~ approved by the ~~administrator~~ Commissioner of Banks. The ~~declaration of the effectiveness~~ approval of the final offering circular by the ~~administrator~~ Commissioner of Banks shall not extend beyond the maximum time period specified for the completion of the sale of all the capital ~~stock in~~ stock, pursuant to Rule .0720 of this Section, or beyond ~~such the~~ period of time the ~~administrator~~ Commissioner of Banks shall establish upon a subsequent declaration of effectiveness in the event of the granting of an extension of time ~~under~~ pursuant to Rule .0722 of this Section.

*Authority G.S. 54C-33; 54C-53.*

**04 NCAC 16G .0714 ESTIMATED PRICE INFORMATION: PROXY STATEMENTS**

*Authority G.S. 54C-33; 54C-53.*

**04 NCAC 16G .0715 PROHIBITED REPRESENTATIONS**

~~The administrator will review the price information required under this Section in determining whether to give approval to the plan of conversion when the offering is to commence prior to the meeting of the members, and the administrator will review the information in determining whether to declare a final offering circular effective.~~ No representations ~~may~~ shall be made in any manner that the price information has been approved by the ~~administrator or~~ Commissioner of Banks, that the shares of capital stock sold pursuant to the plan of conversion have been approved or disapproved by the ~~administrator~~ Commissioner of Banks or that the ~~administrator~~ Commissioner of Banks ~~has passed upon~~ opined on the accuracy or adequacy of any offering circular covering ~~such the~~ shares.

*Authority G.S. 54C-33; 54C-53.*

**04 NCAC 16G .0716 UNDERWRITING EXPENSES**

*Authority G.S. 54C-33; 54C-53.*

**04 NCAC 16G .0717 PRICING MATERIALS**

(a) ~~In considering the pricing information required under Rule .0714 of this Section, information, the administrator~~ Commissioner of Banks will shall apply the following guidelines:

- (1) ~~The the~~ materials shall be prepared by persons independent of the applicant who are experienced and expert in the area of corporate ~~appraisal, appraisal;~~
- (2) ~~The the~~ materials shall contain a brief summary of data that is sufficient to support the conclusions reached ~~therein, therein; and~~
- (3) ~~To the~~ extent that the appraisal is based on the capitalization of the pro forma income of the converted savings bank, the materials ~~must~~ shall indicate the basis for determination of the income to be derived from the proceeds of the sale of stock and demonstrate the appropriateness of the earnings multiple used, including assumptions made as to future earnings growth. To the extent that the appraisal is based on a comparison of the capital stock of the applicant with the outstanding capital stock of existing stock savings banks, the existing stock savings banks ~~must shall~~ be ~~reasonably~~ comparable to the applicant in terms of such factors as size, market area, competitive conditions, profit history, and expected future earnings.

(b) In addition to the information required in Paragraph (a) of this Rule, the applicant shall submit information demonstrating to ~~the satisfaction of the administrator~~ Commissioner of Banks the independence and expertise of any person preparing materials under this ~~Rule Rule, and the person must be acceptable in these respects to the administrator.~~ A person ~~will shall~~ not be considered as lacking independence for the reason that ~~such the~~ person will participate in effecting a sale of capital stock under the plan of conversion or will receive a fee from the applicant for services rendered in connection with ~~such the~~ appraisal.

(c) In addition to the information required in Paragraphs (a) and (b) of this Rule, the applicant shall file with the ~~administrator such~~ Commissioner of Banks additional information with respect to the pricing of the capital stock of the applicant as the ~~administrator~~ Commissioner of Banks may request, including, without limitation, a full appraisal.

*Authority G.S. 54C-33; 54C-53.*

**04 NCAC 16G .0718 ORDER FORMS FOR PURCHASE OF CAPITAL STOCK**

(a) ~~Promptly after~~ After the ~~administrator~~ Commissioner of Banks has ~~declared effective~~ authorized the offering circular for the subscription offering, the applicant shall distribute order forms for the purchase of shares of capital stock in the offering to all eligible account holders, supplemental eligible account holders (if applicable), voting ~~members~~ members, and other persons who

may subscribe for ~~such~~ shares of capital stock under the plan of conversion. If the applicant has adopted in its plan of conversion the optional provisions set forth in ~~Paragraphs~~ Items (4), (5) or (10) of Rule .0312 of this Subchapter, the applicant shall deliver order forms to the eligible account holders, supplemental eligible account ~~holders~~ holders, and voting members who requested receipt of the offering circular.

(b) Each order form shall be accompanied or preceded by the final offering circular for the subscription offering or the public offering, as the case may be, and a set of detailed instructions explaining how to ~~properly~~ complete the order forms. The offering circular and order form instructions may be included in the same document.

(c) The maximum subscription price stated on each order form shall be the amount to be paid when the order form is returned. The maximum subscription price and the actual subscription price shall be within the subscription price range stated in the ~~administrator's approval and the offering circular, offering~~ circular approved by the Commissioner of Banks. If either the maximum subscription price or the actual subscription price is not within ~~such the~~ approved subscription price range, the applicant ~~must shall~~ obtain the written consent of the ~~administrator, Commissioner of Banks for the change in price. If appropriate, the administrator~~ Commissioner of Banks Based on the magnitude of the difference the Commissioner of Banks will may condition the amended approval by requiring a resolicitation of proxies or order forms or both. If the actual public offering price is less than the maximum subscription price stated on the order form, the actual subscription price shall be correspondingly reduced and the difference shall be refunded to those who have paid the maximum subscription ~~price,~~ price unless the subscribers affirmatively elect to have the difference applied to the purchase of additional shares of capital stock.

(d) Each order form shall be prepared so as to indicate to the person receiving it, in as simple, clear, and intelligible a manner as possible, the actions ~~which that~~ are required or available to him or her with respect to the form and the capital stock offered for purchase thereby. ~~Specifically, each~~ Each order form shall:

- (1) indicate the maximum number of shares ~~which that~~ may be purchased pursuant to the subscription offering;
- (2) indicate the period of time ~~within which that~~ the subscription rights must be exercised, which ~~period of time~~ shall not be less than 20 days and no more than 45 days following the date of the mailing of the subscription offering order form;
- (3) state the maximum subscription price per share of capital stock;
- (4) indicate any requirements as to the minimum number of shares of capital stock ~~which that~~ must be purchased;
- (5) provide a ~~specifically~~ designated blank space or spaces for indicating the number of shares of capital stock ~~which that~~ the eligible account holder or other person wishes to purchase;
- (6) indicate the manner of required payment and, if ~~such the~~ payment may be made by withdrawal from a certificate of deposit, indicate that ~~such the~~ withdrawal ~~may can~~ be made without

- penalty. If payment is to be made by a withdrawal from a deposit account or certificate of deposit, a box to check shall be provided;
- (7) provide ~~specifically~~ designated blank spaces for dating and signing the order form;
  - (8) contain an acknowledgement by the account holder or other person signing the order form that the person has received the final offering circular for the subscription offering prior to signing the order form; and
  - (9) indicate the consequences of failing to ~~properly~~ complete and return the order form, including a statement ~~that to which~~ the subscription rights are nontransferable and ~~will~~ shall become void at the end of the subscription period. The order form may, and the set of instructions shall, indicate the place or places ~~to which that~~ the order forms are to be returned and when the order forms shall be deemed to be received.

(e) The order form may provide that it may not be modified without the applicant's consent after the order form has been returned to the applicant. If payment is to be made by withdrawal from a deposit account or certificate of deposit, the applicant may, ~~but need not~~, cause ~~such the~~ withdrawal to be made upon receipt of the order form. If ~~such the~~ withdrawal is made at any time prior to the closing date of the public offering, the applicant shall pay interest to the account holder on the amount withdrawn as if ~~such the~~ amount had remained in the account from which it was withdrawn until the closing date.

*Authority G.S. 54C-33; 54C-53.*

#### **04 NCAC 16G .0719 WITHDRAWAL FROM CERTIFICATE ACCOUNTS**

*Authority G.S. 54C-33; 54C-53.*

#### **04 NCAC 16G .0720 PERIOD FOR COMPLETION OF SALE**

~~The sale of all shares of capital stock of the applicant to be made under the plan of conversion, including any sale in a public offering or direct community marketing, shall be completed as promptly as possible. The applicant shall obtain the prior written approval of the administrator to sell shares of stock more than 45 days after the last day of the subscription period. complete all sales of stock within 45 days after the last day of the subscription period, unless the time period is extended as provided in Rule .0722 of this Section.~~

*Authority G.S. 54C-33; 54C-53.*

#### **04 NCAC 16G .0722 EXTENSIONS OF TIME TO COMPLETE OFFERINGS**

(a) ~~The administrator applicant may request and the Commissioner of Banks may grant one or more extensions of time required to complete the sale of all shares of capital stock under stock, pursuant to Rule .0720 of this Section, provided that no single extension of time shall exceed 90 days. No such extension shall be granted unless the savings institution shows that the~~

circumstances leading to the request for an extension were beyond the control of the savings institution and that the investors who purchased stock during the initial subscription period will not be disadvantaged by the extension.

(b) ~~Immediately upon the~~ Upon granting ~~of~~ an extension of time pursuant to Paragraph (a) of this Rule, the applicant shall distribute to each subscriber in the ~~offering, offering~~ and, if applicable, to each person who has ordered stock in the direct community ~~offering, offering~~ a post-effective amendment to the offering circular filed under an amendment to the application for conversion and ~~declared effective~~ approved by the ~~administrator~~ Commissioner of Banks pursuant to Paragraph (d) of this ~~Rule~~ which Rule. The applicant shall notify each subscriber and each ordering person of the ~~granting of the~~ extension of time, time and of the right of each subscriber and each ordering person to increase, decrease, or rescind ~~his~~ their subscription ~~either~~ at any time prior to 20 days before the end of the extension period or at any time prior to the date of the commencement of the public offering or the direct community offering, provided that ~~if~~ the public offering or the direct community offering is not completed within 20 days after its ~~commencement, all~~ commencement. All instructions from subscribers and ordering persons to increase, ~~decrease~~ decrease, or rescind their subscriptions or orders received during the 20-day offering period shall be honored by the applicant.

(c) For the purpose of this Rule, the public offering shall be deemed to commence upon the filing with the ~~administrator~~ Commissioner of Banks of the preliminary offering circular for the public offering. The direct community offering shall be deemed to commence upon ~~the declaration of effectiveness~~ approval by the ~~administrator~~ Commissioner of Banks of the final offering circular.

(d) After the expiration of the subscription rights, the converting savings ~~bank institution~~ shall file with and have ~~declared effective~~ approved by the ~~administrator~~ Commissioner of Banks a post-effective amendment to the offering circular upon the occurrence of any event, circumstance, or change of circumstance ~~which that~~ would be material to the investment decision of a subscriber or, if applicable, a person who has ordered capital stock in the direct community offering.

(e) Any post-effective amendment to an offering circular shall be distributed by the converting savings ~~bank immediately~~ institution within two business days after the ~~declaration of effectiveness.~~ approval. It shall be distributed to each subscriber, and, if applicable, each person who has ordered stock in the direct community offering. The converting savings ~~bank institution~~ shall grant to each subscriber and ordering person the right to increase, decrease, or rescind ~~his~~ their subscription or order for a period which shall be the greater of 10 days from the date of the mailing of the post-effective amendment or the period remaining in an extension of time granted by the ~~administrator~~ Commissioner of Banks pursuant to the provisions of Paragraph (b) of this Rule.

*Authority G.S. 54C-33; 54C-53.*

### **SECTION .0800 - PROCEDURAL REQUIREMENTS**

**04 NCAC 16G .0822 IMPROPERLY EXECUTED OR MATERIALLY INCOMPLETE FILINGS**

*Authority G.S. 54C-33; 54C-53.*

**04 NCAC 16G .0823 ADDITIONAL FILING REQUIREMENTS**

An applicant whose plan of conversion has been approved by the ~~administrator~~ Commissioner of Banks shall fulfill the following requirements:

- (1) ~~The applicant shall file with the administrator promptly after the meeting of members called to consider the plan of conversion.~~ After the meeting of members called to consider the plan of conversion, the applicant shall file with the Commissioner of Banks a certified copy of each resolution adopted at the meeting relating to the plan of conversion, together with the following information:
  - (a) the total number of votes eligible to be ~~east, cast;~~
  - (b) the total number of votes represented in person or by proxy at the ~~meeting,~~ meeting;
  - (c) the total number of votes cast in favor of and against each such ~~matter,~~ matter; and
  - (d) the percentage of votes necessary to approve each such matter.

The compilation of the votes cast at the meeting may be prepared by an independent public accountant or by an independent transfer agent.

- (2) ~~The applicant shall file with the administrator promptly after the meeting of members called to consider the plan of conversion.~~ After the meeting of members called to consider the plan of conversion, the applicant shall file with the Commissioner of Banks an opinion of counsel to the effect that:
  - (a) the meeting of members was duly held in accordance with all requirements of applicable state and federal law and regulation;
  - (b) all requirements of state and federal law applicable to the conversion have been complied with; and
  - (c) if the savings bank has used proxies executed prior to the proxy solicitation required by Rule .0511 of this Subchapter, the authority conferred by such proxies includes authority to vote on this plan of conversion.
- (3) Each offering circular for the offering shall be prepared in compliance with this Subchapter. The applicant shall file with the ~~administrator~~ Commissioner of Banks a copy of each preliminary offering circular and a copy of each final offering circular.

*Authority G.S. 54C-33; 54C-53.*

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| <b>04 NCAC 16G .0824</b> | <b>APPLICATION SIGNATURES</b>                            |
| <b>04 NCAC 16G .0825</b> | <b>REQUIREMENTS AS TO PAPER AND PRINTING</b>             |
| <b>04 NCAC 16G .0826</b> | <b>METHOD OF PREPARATION</b>                             |
| <b>04 NCAC 16G .0827</b> | <b>INFORMATION UNKNOWN OR NOT REASONABLY AVAILABLE</b>   |
| <b>04 NCAC 16G .0828</b> | <b>INCORPORATION OF CERTAIN INFORMATION BY REFERENCE</b> |
| <b>04 NCAC 16G .0829</b> | <b>PRESENTATION OF INFORMATION</b>                       |

*Authority G.S. 54C-33; 54C-53.*

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|--------------------------|---|
| <b>04 NCAC 16G .0830</b> | <b>CONSENT OF EXPERTS</b>                           |
| <b>04 NCAC 16G .0831</b> | <b>CONSENT OF PERSONS ABOUT TO BECOME DIRECTORS</b> |
| <b>04 NCAC 16G .0832</b> | <b>AMENDMENTS</b>                                   |
| <b>04 NCAC 16G .0833</b> | <b>POST-CONVERSION REPORTS</b>                      |

*Authority G.S. 54C-33; 54C-53.*

**SECTION .0900 - ACQUISITIONS OF SECURITIES OF CONVERTED ASSOCIATIONS**

- |                          |   |
|--------------------------|---|
| <b>04 NCAC 16G .0908</b> | <b>DEFINITIONS</b>                                    |
| <b>04 NCAC 16G .0909</b> | <b>PROHIBITED TRANSFERS</b>                           |
| <b>04 NCAC 16G .0910</b> | <b>PROHIBITION OF OFFERS AND CERTAIN ACQUISITIONS</b> |
| <b>04 NCAC 16G .0911</b> | <b>EXCEPTIONS</b>                                     |
| <b>04 NCAC 16G .0912</b> | <b>CRITERIA FOR DENIAL</b>                            |

*Authority G.S. 54C-33; 54C-53.*

**SECTION .1200 - CONVERSION: MERGERS: ACQUISITIONS**

- |                          |  |
|--------------------------|--|
| <b>04 NCAC 16G .1203</b> | <b>CONVERSION IN CONNECTION WITH ACQUISITION</b> |
| <b>04 NCAC 16G .1204</b> | <b>CONVERSION IN CONNECTION WITH MERGER</b>      |

*Authority G.S. 54C-33; 54C-53; 54C-195.*

**SUBCHAPTER 16H - SUPERVISORY ACTIONS**

**04 NCAC 16H .0101 DEFINITIONS**

As used in this Subchapter, unless the context otherwise requires, the term:

- (1) "Savings institution" ~~means~~ shall mean all savings institutions converting, merging or consolidating pursuant to G.S. 54B-44 or G.S. 54C-45 and this Subchapter.
- (2) "Consolidation" ~~means~~ shall mean a supervisory acquisition pursuant to G.S. 54B-44 or G.S. 54C-45 and this Subchapter.

- (3) "Merger" ~~means~~ shall mean a supervisory merger pursuant to G.S. 54B-44 or G.S. 54C-45 and this Subchapter.
- (4) "Plan of conversion" ~~means~~ shall mean a detailed outline of the terms, conditions and procedure of the short form conversion of a savings institution from mutual to stock form of ownership.
- (5) "Plan of merger" or "plan of consolidation" ~~means~~ shall mean a detailed outline of the terms, conditions and procedure of combining one savings institution, by merger or consolidation, with another savings institution.
- (6) "Short form conversion" ~~means~~ shall mean a supervisory conversion of a savings institution from mutual to stock form of ownership, pursuant to G.S. 54B-44 or G.S. 54C-45 and this Subchapter.
- (7) "Combination merger and conversion" ~~means~~ shall mean a supervisory conversion of a savings institution from mutual to stock form of ownership combined with a supervisory merger, pursuant to G.S. 54B-44 or G.S. 54C-45 and this Subchapter.
- (8) "Plan of combination merger and conversion" ~~means~~ shall mean a detailed outline of the terms, conditions and procedures of the short form conversion of a savings institution from mutual to stock form of ownership and combining the savings institution, by merger, with another savings institution.

*Authority G.S. 54B-44; 54C-45.*

**04 NCAC 16H .0103 NOTICE TO SAVINGS INSTITUTION**

The ~~Administrator~~ Commissioner of Banks shall give written notice to the Board of Directors of a savings institution ~~as to which~~ when a finding is made pursuant to G.S. 54B-44 or G.S. 54C-45. ~~Such~~ The notice shall set forth the basis for ~~such~~ the finding and shall authorize or require the Board of Directors to adopt a plan of conversion, a plan of merger or consolidation, a plan of combination merger and ~~conversion with another savings institution~~ conversion, or any other action specified by the ~~Administrator~~ Commissioner of Banks. The ~~Administrator~~ Commissioner of Banks may specify provisions ~~which~~ that shall be included in the plan.

*Authority G.S. 54B-44; 54C-45.*

**04 NCAC 16H .0104 ADOPTION OF PLAN**

Within such time as the ~~Administrator~~ Commissioner of Banks shall specify, the Board of Directors shall adopt a plan of conversion, merger, consolidation, combination merger and ~~conversion~~ conversion, or any other action as authorized or required by the ~~Administrator~~ Commissioner of Banks. A plan of conversion, merger, consolidation, combination merger and ~~conversion~~ conversion, or any other action adopted pursuant to

this Rule shall be submitted to the ~~Administrator~~ Commissioner of Banks for his approval.

*Authority G.S. 54B-44; 54C-45.*

**04 NCAC 16H .0105 APPROVAL BY COMMISSIONER OF BANKS**

The savings institution shall submit to the ~~Administrator~~ Commissioner of Banks for his review an executed copy of the savings institution's proposed articles of incorporation, articles of merger or ~~consolidation~~ consolidation, or evidence of ~~such~~ other action as the ~~Administrator~~ Commissioner of Banks deems appropriate. Upon finding that all requirements of the short form conversion, merger, consolidation, combination merger and ~~conversion~~ conversion, or other action have been satisfied, the ~~Administrator~~ Commissioner of Banks shall certify to the Secretary of State that ~~he has approved~~ the certificate of incorporation, articles of merger or ~~consolidation~~ consolidation, or evidence of other action has been approved for filing in the Office of the Secretary of State.

*Authority G.S. 54B-44; 54C-45.*

**04 NCAC 16H .0106 SHORT FORM MUTUAL TO STOCK CONVERSION**

**04 NCAC 16H .0107 LIQUIDATION ACCOUNT**

*Authority G.S. 54B-44; 54C-45.*

**04 NCAC 16H .0108 WAIVER**

The ~~Administrator~~ Commissioner of Banks may waive or alter any requirements set forth in this Subchapter to promote the best interests of the public or the savings institution by assuring the safe and sound operation of the savings ~~institution~~ institution or when the application of any rule would have an unintended negative impact upon the public or a savings institution.

*Authority G.S. 54B-44; 54C-45.*

**SUBCHAPTER 16I - ACQUISITION OF CONTROL**

**SECTION .0700 - GENERAL**

**04 NCAC 16I .0702 DEFINITIONS AND OTHER TERMS**

As used in this Subchapter, unless the context otherwise requires, the term:

- (1) "Acquisition" ~~means~~ shall mean a transaction in which a person or holding company acquires control of a stock savings institution by means of an exchange of its capital stock for the capital stock of the stock savings ~~institution~~ institution, or by means of a purchase of the capital stock of the stock savings institution.
- (2) "Applicant" ~~means~~ shall mean a person or holding company ~~which that~~ which has filed with the ~~Administrator~~ Commissioner of Banks ~~any an~~ application under pursuant to this Subchapter.

- (3) ~~"Control" means the power, directly or indirectly, to direct the management or policies of a savings institution or to vote 25 percent or more of any class of voting securities for a savings institution.~~
- (4)(3) ~~"Person" includes~~ shall mean an individual or group acting in concert, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization similar company, or a syndicate.
- (5) ~~"Plan of Conversion" means a plan duly adopted in accordance with the requirements of G.S. 54B-261 or G.S. 54C-195 and this Subchapter that, to the satisfaction of the Administrator, sets out all relevant terms and conditions pertaining to a mutual savings institution's conversion to ownership by a holding company.~~
- (6)(4) ~~"Plan of Reorganization" means~~ shall mean a plan duly adopted in accordance with the requirements of G.S. 54B-261 or 54C-195 and this Subchapter that, ~~to the satisfaction of the Administrator,~~ Commissioner of Banks, sets out all relevant terms and conditions pertaining to a stock savings institution's reorganization of its ownership to provide for a holding company.
- (7)(5) ~~"Registrant" means~~ shall mean any holding company ~~which that~~ has filed a registration statement with the Administrator ~~Commissioner of Banks~~ under pursuant to this Subchapter.
- (8)(6) ~~"Holding Company" means any company which that~~ directly or indirectly controls a savings institution or controls any other company ~~which that~~ is a holding company of a savings institution.
- (9)(7) ~~"Tax Free Exchange" means~~ shall mean an exchange of stock ~~which that~~ would result in no tax consequences to the holding company, the stock savings ~~institution~~ institution, and its stockholders under state or federal law.

Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.

#### **04 NCAC 16I .0703 STANDARDS FOR APPROVAL OF ACQUISITION: DUTIES AND CONDUCT**

~~(a) A savings institution may be controlled by a person or a holding company. The Administrator In evaluating an application for control, the Commissioner of Banks shall determine that the person or savings and loan holding company is qualified by character, experience, and financial responsibility to control the savings institution in a legal and responsible manner. The Administrator shall consider the applicant's financial and managerial resources, and the organizational structure and future prospects and plans of both the applicant and the savings institution. The Administrator will consider whether the business and activities of the applicant, or its officers and directors; or any other person controlling, controlled by, or associated with the~~

applicant by having a common controller, would create a material deterioration of confidence in the safety, soundness, and financial integrity of the proposed to be controlled. consider:

- (1) Whether the person or holding company is qualified by character, experience, and financial responsibility to control the savings institution in a legal and responsible manner;
- (2) the applicant's financial and managerial resources;
- (3) the organizational structure and future prospects and plans of both the applicant and the savings institution; and
- (4) whether the business and activities of the applicant, or its officers and directors, or any other person controlling, controlled by, or associated with the applicant by having a common controller, would create a material deterioration of confidence in the safety, soundness, and financial integrity of the institution to be controlled.

~~When reference is made to the word "control" in this Rule, the word "control" has the meaning given in G.S. 54B-4 or G.S. 54C-4, and additionally shall have the meaning given by any other law or regulation under which the applicant is required to report and register as a holding company, parent corporation, or other similar entity.~~

~~(b) An applicant shall be solvent, and shall have a debt to equity ratio which meets or exceeds the average of the ratios of other persons in the same line of business.~~

~~(c) The approval of an application to acquire control of a savings institution shall in no way diminish the authority of the Administrator to regulate the activities of the controlled savings institution.~~

~~(d) A controlled savings institution shall obtain the prior written approval of the administrator to lend to, or invest in, its holding company or its affiliates.~~

Authority G.S. 54B-43; 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.

#### **04 NCAC 16I .0704 INVESTMENT ACTIVITIES OF HOLDING COMPANIES**

Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.

#### **SECTION .0800 - ACQUISITIONS**

##### **04 NCAC 16I .0801 PRIOR WRITTEN APPROVAL REQUIRED**

~~(a) A person or holding company shall not acquire control of any savings institution without having filed with the Administrator Commissioner of Banks an Acquisition Application application as prescribed by the Administrator, Commissioner of Banks, and without the written approval of the Administrator Commissioner of Banks after consideration of the application and any amendments thereto.~~

~~(b) In addition to the filing of the Acquisition Application, the applicant shall file any other information requested by the~~

~~Administrator, including copies of any filings, documents or reports mentioned in Rule .1105 of this Subchapter.~~

*Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.*

**04 NCAC 16I .0802 APPLICATION FEES: FILINGS**

~~An Acquisition Application application~~ may be obtained from the ~~Division Office of the Commissioner of Banks~~ at its mailing address specified in 04 NCAC 03A .0101. Applications shall be accompanied by an application fee in the amount prescribed by the fee schedule specified in 04 NCAC 03C .1601. ~~Such The fee will be paid by check and is non-refundable.~~

*Authority G.S. 54B-55; 54B-57; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.*

**04 NCAC 16I .0803 CONFIDENTIAL INFORMATION**

Should an applicant desire to submit any information it deems to be of a confidential nature regarding the answer to any item or a part of an exhibit included in any application for filing ~~under pursuant to~~ this Subchapter, ~~such the~~ information pertaining to ~~such item or exhibit~~ items or exhibits shall be separately bound and labeled "~~confidential~~", "confidential" and a statement shall be submitted ~~therewith~~ briefly setting forth the ~~grounds on which such reasons that the~~ information should be treated as confidential. ~~Only general reference thereto need be made in that portion of the application which the applicant deems not to be confidential. Applications for filings Filings under pursuant to~~ this Subchapter shall be made available for inspection by the public, except for portions ~~which that~~ are bound and labeled "confidential" and ~~which that~~ the ~~Administrator Commissioner of Banks~~ determines to withhold from public availability because of their confidential nature ~~under pursuant to~~ the provisions of G.S. ~~54B-63 54B-63, G.S. 54B-63.1, or 54C-60 unless the Administrator Commissioner of Banks is compelled to release the information pursuant to 54B-63 G.S. 54B-63, G.S. 54B-63.1, or 54C-60.~~

*Authority G.S. 54B-55; 54B-63; 54B-63.1; 54B-261; 54B-262; 54C-53; 54C-60; 54C-195.*

**SECTION .0900 - REORGANIZING STOCK ASSOCIATION INTO HOLDING COMPANY**

**04 NCAC 16I .0901 REQUIRED APPLICATION**

A stock savings institution may be controlled by a holding company by means of a plan of reorganization. ~~This may be accomplished by filing with the Administrator~~ An applicant shall file one manually signed executed copy of an Acquisition Application. ~~Application with the Commissioner of Banks.~~ For the purposes of filing the application, the applicant shall be considered a holding company, even though it may not yet control a stock savings institution.

*Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.*

**04 NCAC 16I .0902 ACQUISITION PROCEDURE**

(a) Upon determining that an ~~Acquisition Application~~ application is ~~properly~~ executed and is not ~~materially~~ incomplete, the ~~Administrator Commissioner of Banks~~ shall ~~consider the application filed.~~ process the application. The application shall include a Plan of Reorganization If the Plan of Reorganization is not approved, the ~~Administrator Commissioner of Banks~~ shall notify the applicant ~~of such,~~ and state the reasons for its disapproval. ~~The Administrator may include advice to the applicant as to what may be required by way of amendment or other requirement to cause approval of the Plan of Reorganization.~~

(b) If the ~~Administrator Commissioner of Banks~~ approves the Plan of Reorganization, the applicant shall be notified. Commissioner shall notify the applicant. ~~Thereafter,~~ a regular or special meeting of the stockholders of the ~~subject~~ savings institution shall be called to approve reorganization of ownership of the savings institution to provide for ownership by a holding company after advance written notice to the stockholders of not less than 20 days specifying the time, place, and purpose for ~~ealling of~~ the meeting. Notice shall be published in at least one newspaper of general circulation in each county where the savings institution has an office. The applicant shall file publisher's affidavits with the ~~Administrator Commissioner of Banks~~ to confirm the publication of notice.

(c) The results of the stockholder's meeting shall be confirmed to the ~~Administrator Commissioner of Banks~~ by filing attested minutes of the meeting. If the stockholders approve reorganization of ownership of the savings institution to provide for ownership by a holding company, the ~~Administrator Commissioner of Banks~~ shall enter ~~his~~ a final order approving the reorganization.

(d) The ~~Administrator Commissioner of Banks~~ may waive or alter any requirements set forth in this Rule upon a finding that compliance would work an undue financial hardship on the applicant, would adversely affect the ~~safe and sound~~ operation of the applicant, or would have an unintended negative impact upon the public or the applicant.

*Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.*

**SECTION .1000 - ACQUISITIONS OF STOCK ASSOCIATIONS**

**04 NCAC 16I .1001 REQUIRED APPLICATION**

A person seeking to acquire control of any stock savings institution shall file with the ~~Administrator Commissioner of Banks~~ one ~~manually signed~~ executed copy of an ~~Acquisition Application.~~ application.

*Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.*

**04 NCAC 16I .1002 FOREIGN APPLICANTS**

~~(a)~~ If the applicant is a corporation for profit or having a capital stock, but not created under any general or special act of the State of North Carolina, then that corporation shall procure a Certificate of Authority from the Secretary of State under the provisions of Article 15 of Chapter 55 of the North Carolina General ~~Statutes,~~

Statutes before it shall be approved by the Administrator Commissioner of Banks to obtain control of a stock savings institution. The applicant shall file a copy of the Certificate of Authority from the Secretary of State to evidence this. ~~If the applicant foreign corporation has been certified to conduct business in this State under some provision of law of this State other than Chapter 55 of the General Statutes, then evidence of that certification shall be filed with the Administrator for his review and approval to meet the requirements of this Rule.~~

(b) ~~If the applicant is a person other than a corporation, and not a resident of this State, then the applicant shall by a duly executed instrument filed with the Administrator, constitute as its true and lawful attorney the Secretary of State and his successors in office, or some other competent resident of this State, upon whom all original process in any action or legal proceedings against it may be served, and therein shall agree that any original process against it which may be served upon the Secretary of State or other competent person, shall be of the same force and validity as if served on the person, and the authority thereof shall continue in force irrevocable so long as the person continues to control a state savings institution.~~

*Authority G.S. 54B-55; 54C-53; 54C-195; 54C-196.*

#### **04 NCAC 16I .1003 ACQUISITION PROCEDURE**

(a) Upon determining that an Acquisition Application application is properly executed and is ~~not materially incomplete~~, complete, the Administrator Commissioner of Banks shall consider its approval. If the application is not approved, the Administrator Commissioner of Banks ~~will shall~~ notify the applicant of such, and state the reasons for its disapproval. ~~The Administrator may include advice to the applicant as to what may be required by way of amendment or other requirement, to cause approval of the application.~~

(b) If the Administrator Commissioner of Banks approves the application, the applicant shall be notified. Such notice Notice shall include any requirements or stipulations the Administrator Commissioner of Banks may make as conditions of approval.

*Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.*

### **SECTION .1100 - REGISTRATION: SUPERVISION: REPORTS: FILINGS: BOOKS AND RECORDS**

#### **04 NCAC 16I .1101 REGISTRATION**

*Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.*

#### **04 NCAC 16I .1102 SUPERVISION**

(a) Officers, directors, and employees of holding companies have the same duties and responsibilities, express or implied, as officers, directors, and employees of savings institutions.

(b) Each registrant shall be subject to ~~such examinations examination~~, as the Administrator may prescribe. The cost of ~~such examinations examination~~ shall be assessed against and paid by such the registrant.

*Authority G.S. 54B-55; 54B-57; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.*

#### **04 NCAC 16I .1103 ANNUAL REPORTS**

Each registrant ~~will shall~~ file an annual report with the Administrator in the specified form: Commissioner of Banks. ~~In addition to these, each registrant will file such interim reports as may be prescribed by the Administrator.~~

*Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.*

#### **04 NCAC 16I .1104 FILING AND APPROVAL: AMENDMENTS TO ARTICLES AND BYLAWS**

(a) Prior to any filing with the Secretary of State of the State of North Carolina, a holding company ~~will shall~~ file with the Administrator Commissioner of Banks copies of any proposed amendment to its articles of incorporation. The Administrator Commissioner of Banks must give his approval to the content and form of such the proposed amendments.

(b) Before any amendments to the bylaws of a holding company ~~can shall~~ become effective, a ~~certified~~ copy of such the amendments shall be filed with and approved by the Administrator: Commissioner of Banks. ~~In the event of the failure of the Administrator to act upon the amendment within 25 days of receipt, the bylaws shall be deemed approved.~~

*Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.*

#### **04 NCAC 16I .1105 REPORTS**

(a) — Each registrant shall file simultaneously with the Administrator Commissioner of Banks copies of any filings, documents, ~~statements statements~~, or reports required to be filed with the appropriate federal regulatory authority.

~~(b) — Each registrant shall file with the Administrator such reports or other filings as the Administrator may prescribe, to be made under oath or otherwise, and to be in such form and for such periods as the Administrator may prescribe. Each such report or filing shall contain such information concerning the operations of the holding company, and any related persons, as the Administrator may require.~~

*Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.*

#### **04 NCAC 16I .1106 BOOKS AND RECORDS**

*Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.*

### **SECTION .1200 - CONVERSION OF MUTUAL ASSOCIATION INTO HOLDING COMPANY**

**04 NCAC 16I .1201      REQUIRED ACQUISITION APPLICATION**  
**04 NCAC 16I .1202      CONVERSION PROCEDURE**  
**04 NCAC 16I .1203      PLAN OF CONVERSION REQUIREMENTS**

*Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.*

**SECTION .1300 - HOLDING COMPANY ACQUISITIONS**

**04 NCAC 16I .1301      REQUIRED APPLICATION**  
A person seeking to acquire control of any holding company shall file with the ~~Administrator~~ Commissioner of Banks one ~~manually signed executed~~ copy of an ~~Acquisition Application~~. application.

*Authority G.S. 54B-55; 54B-262; 54C-53; 54C-195.*

- 04 NCAC 16I .1302      ACQUISITION PROCEDURE**
- (a) Upon determining that an ~~Acquisition Application~~ application is ~~properly~~ executed and is ~~not materially incomplete, complete,~~ the ~~Administrator~~ Commissioner of Banks shall ~~consider the application filed,~~ process the application. If the application is not approved, the ~~Administrator~~ Commissioner of Banks shall notify the applicant of such, and state the reasons for its disapproval. ~~The Administrator may include advice to the applicant as to what may be required by way of amendment or other requirement to cause approval of the application.~~
- (b) If the ~~Administrator~~ Commissioner of Banks approves the application, the applicant shall be notified. ~~Such~~ The notice shall include any requirements or stipulations the ~~Administrator~~ Commissioner of Banks may ~~make as conditions of approval,~~ require prior to the applicant's execution of the acquisition.
- (c) ~~The Administrator may waive or alter, for good cause, any requirements set forth in this Rule. The Commissioner of Banks may waive or alter any requirements set forth in this Rule upon a finding that compliance would work as undue financial hardship on the applicant, would adversely affect the safe and sound operation of the applicant, or would have an unintended negative impact upon the public or the applicant.~~

*Authority G.S. 54B-55; 54B-262; 54C-53; 54C-195.*

**SUBCHAPTER 16J - MERGER OF STATE AND FEDERAL ASSOCIATIONS**

**04 NCAC 16J .0101      MERGER OF A STATE INSTITUTION INTO A FEDERAL INSTITUTION**  
**04 NCAC 16J .0102      MERGER OF A FEDERAL INSTITUTION INTO A STATE INSTITUTION**  
**04 NCAC 16J .0103      WAIVER**

*Authority G.S. 54B-39; 54C-39; 54C-53.*

**SUBCHAPTER 16K - TRUST POWERS**

**04 NCAC 16K .0101      DEFINITIONS**

For purposes of this Section:

- (1) "Account" ~~means~~ shall mean the trust, ~~estate~~ estate, or other fiduciary relationship that has been established with a savings institution.
- (2) "Custodian Under the Uniform Transfers to Minors Act" ~~means~~ shall mean an account established pursuant to the North Carolina Uniform Transfers to Minors Act ~~contained~~ codified in Chapter 33A of the North Carolina General Statutes.
- (3) "Fiduciary" ~~means~~ shall mean a savings institution undertaking to act alone or jointly with others for the benefit of another in all matters connected with its undertaking and includes acting as trustee;—executor; administrator; guardian; receiver; managing agent; registrar of stocks and bonds; escrow; transfer; or paying agent; trustee of employee pension; welfare and profit sharing trusts; trustee, executor, administrator, guardian, receiver, managing agent, registrar of stocks and bonds, escrow, transfer or paying agent, trustee of employee pension, welfare and profit sharing trusts, and any other similar capacity.
- (4) "Fiduciary Records" ~~means~~ shall mean all matters that are written, transcribed, recorded, ~~received~~ received, or otherwise coming into the possession of a savings institution and are necessary to preserve information concerning the actions and events relevant to the fiduciary activities of the savings institution.
- (5) "Guardian" ~~means~~ shall mean the ~~guardian,~~ conservator, or committee of the estate of an infant, an incompetent individual, or a competent individual over whose estate a court has taken ~~jurisdiction,~~ jurisdiction other than under bankruptcy or insolvency laws.
- (6) "Investment Authority" ~~means~~ shall mean the responsibility conferred by action of law or a provision of an appropriate governing instrument to make, ~~select~~ select, or change investments, review investment decisions made by others, or to provide investment advice or counsel to others.
- (7) "Managing Agent" ~~means~~ shall mean the fiduciary relationship assumed by a savings institution upon the creation of an account ~~which~~ that names the savings institution as agent and confers investment discretion upon the savings institution.
- (8) "Trust Department" ~~means~~ shall mean that group or groups of officers and employees of a savings institution ~~to whom are assigned the performance who perform~~ of fiduciary services by the savings institution.
- (9) "Trust Powers" ~~means~~ shall mean the power to act in any fiduciary capacity authorized under this Section.

*Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.*

**04 NCAC 16K .0102 APPLICATIONS**

(a) A savings institution desiring to exercise fiduciary powers shall file with the ~~Administrator~~ Commissioner of Banks an application indicating which trust services it wishes to ~~offer and providing the information necessary to make the determinations under offer, together with the information required under~~ Paragraph (b) of this Rule.

(b) ~~In addition to any other facts or circumstances, the Administrator, The Commissioner of Banks, in passing upon determining whether to approve~~ an application to exercise trust powers, will shall consider the following:

- (1) the financial condition of the savings institution, provided that in no event shall trust powers be granted to a savings institution if its financial condition is such that the savings institution does not meet the requirements of the appropriate federal regulatory authority;
- (2) the general character and ability of the management of the savings institution;
- (3) the nature of the supervision to be given to the fiduciary activities, including the qualifications, ~~experience~~ experience, and character of the proposed officer or officers of the trust department; and
- (4) whether the savings institution has available legal counsel to advise and ~~pass upon review~~ review fiduciary matters when necessary.

(c) Approval by the ~~Administrator~~ Commissioner of Banks of an application under this Section authorizes the applicant to exercise only those trust powers specified in the approval. ~~Unless otherwise provided by the approval, fiduciary services based on those trust powers may be offered only in those offices listed in the application.~~

*Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.*

**04 NCAC 16K .0103 CONSOLIDATION OR MERGER OF TWO OR MORE SAVINGS INSTITUTIONS**

When two or more savings institutions consolidate or merge, and any one of ~~such the~~ the savings institutions has, prior to ~~such the~~ the consolidation or merger, ~~received approval from the Administrator to exercise trust powers which approval is in force at the time of the consolidation or merger,~~ has a current and valid approval form the Commissioner of Banks to exercise trust powers, the rights existing under ~~such the~~ the approval shall pass to the resulting savings ~~institution as provided in G.S. 36A-37 for other corporate trustees.~~ institution.

*Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.*

**04 NCAC 16K .0104 ADMINISTRATION OF TRUST POWERS**

(a) The ~~Board of Directors~~ board of directors ~~is~~ shall be responsible for the ~~proper~~ exercise of fiduciary powers by the savings institution. All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized

by the savings institution in the exercise of its fiduciary powers, are the responsibility of the ~~Board.~~ board of directors. In discharging this responsibility, the ~~Board of Directors~~ board of directors may assign, by action duly entered in the minutes, the administration of ~~such of~~ the savings institution's trust powers ~~as it may consider proper to assign, to such~~ directors, officers, employees, or ~~committees as it may designate.~~ committees.

(b) No fiduciary account shall be accepted without the prior approval of the ~~Board, or of the~~ board of directors, officers, or committees to whom the ~~Board~~ board of directors may have assigned the performance of that responsibility. A written record shall be made of ~~such the~~ the acceptances and of the relinquishment or closing out of all fiduciary accounts. Upon the acceptance of an account for which the savings institution has investment responsibilities, a ~~prompt~~ review of the assets shall be made. The ~~Board~~ board of directors shall also ensure that at least once during every calendar year thereafter, and within 15 months of the last review, all the assets in each fiduciary account ~~for over~~ over which the savings institution has investment responsibilities are reviewed to determine the advisability of retaining or disposing of such assets. The ~~Board of Directors~~ board of directors shall act to ensure that all investments have been made in accordance with the terms and purposes of the governing instrument.

(c) The trust department may ~~utilize~~ use personnel and facilities of other departments of the savings institution, and other departments of the savings institution may ~~utilize~~ use personnel and facilities of the trust department only to the extent not prohibited by law.

(d) Every savings institution exercising trust powers shall adopt written policies and procedures to ensure that the federal securities laws are complied with in connection with any decision or recommendation to purchase or sell any security. ~~Such~~ The policies and procedures, ~~in particular,~~ shall ensure that the savings institution's trust department shall not use material inside information in connection with any decision or recommendation to purchase or sell any security.

(e) Every savings institution exercising fiduciary powers shall designate, employ, or retain legal counsel who shall be ~~readily~~ readily available to ~~pass upon review~~ review fiduciary matters and to advise the savings institution and its trust department.

(f) The directors, officers, and employees of a savings institution engaged in the operation of a trust department shall acquire ~~such~~ additional bond coverage as the ~~Administrator~~ Commissioner of Banks may require.

(g) The savings institution shall comply with rules applicable to State Trust Entities in 04 NCAC 03D and the FDIC Statement of Principles on Trust Department Management, and shall include any later amendments and editions of the referenced material available free of charge, at the time of publication, at: <https://www.fdic.gov/news/news/inactivefinancial/1998/fil98100b.html>.

*Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.*

**04 NCAC 16K .0105 BOOKS AND ACCOUNTS**

(a) Every savings institution exercising trust powers shall keep its fiduciary records separate and distinct from other records of the savings institution. All fiduciary records shall be retained in a manner and for such time as is necessary to enable the savings

institution to furnish any information or reports as may be required by the ~~Administrator.~~ Commissioner of Banks. The fiduciary records shall contain full information relative to each account. The record retention schedule set forth in ~~4 NCAC 16D .0302 and 4 NCAC 16E .0302~~ 04 NCAC 03D .0303 shall apply to the fiduciary records of a savings institution exercising trust powers.

(b) Every savings institution shall keep ~~an adequate~~ a record of all pending litigation to which it is a party in connection with its exercise of trust powers.

*Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.*

**04 NCAC 16K .0106      AUDIT OF TRUST DEPARTMENT**

At least once during each calendar year, the savings institution's trust department shall be audited by independent auditors. A copy of the report of the audit shall be ~~promptly~~ filed with the ~~Administrator.~~ Commissioner of Banks.

*Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.*

**04 NCAC 16K .0107      FUNDS AWAITING INVESTMENT OR DISTRIBUTION**

(a) Funds held in trust by a savings institution, including managing agency accounts, awaiting investment or distribution may, unless prohibited by the instrument creating the trust, be deposited in other departments of the savings institution, provided the savings institution shall first set aside under control of the trust department collateral security of a kind and in an amount as specified in ~~G.S. 36A-63(b)~~ G.S. 53-163.1(b) for funds held in trust by a bank, except that no ~~such~~ collateral shall be required to the extent that ~~such the~~ funds are insured by an agency of the United States government.

(b) Any funds held by a savings institution as fiduciary awaiting investment or distribution and deposited in other departments of the savings institution shall be ~~made productive.~~ placed in an interest-bearing account.

*Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.*

**04 NCAC 16K .0108      INVESTMENT OF FUNDS HELD AS FIDUCIARY**

(a) Funds held by a savings institution in a fiduciary capacity shall be invested in accordance with the instrument establishing the fiduciary relationship. When ~~such the~~ instrument does not specify the character or class of investments to be made and does not vest in the savings institution, its directors, or its officers investment discretion in the matter in the savings institution, its directors, or its officers, funds held pursuant to ~~such the~~ instrument shall be invested in accordance with ~~Article 1 of Chapter 36A.~~ Article 7 of Chapter 32 of the North Carolina General Statutes.

(b) A savings institution appointed as a fiduciary by a court may invest funds of the account in any investment permitted to be made by fiduciaries by ~~Article 1 of Chapter 36A.~~ Article 7 of Chapter 32 of the North Carolina General Statutes, Statutes unless the appointing court limits the investment authority of the fiduciary. If the investment authority of the fiduciary is limited by the court, the savings institution ~~must~~ shall make all investments

of funds in ~~such these~~ accounts by consistent with the terms of the order of that court. Such orders in either case shall be preserved with the fiduciary records of the savings institution.

*Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.*

**04 NCAC 16K .0109      SELF-DEALING**

(a) Unless authorized by the instrument creating the ~~relationship,~~ relationship or to by court order, property held by a savings institution as fiduciary shall not be sold or transferred, by loan or otherwise, to the savings institution or its affiliates; or the directors, executive officers, or employees of either of them; or to individuals with whom there exists ~~such a connection,~~ connection or organizations in which there exists ~~such an interest,~~ interest as might affect the exercise of the best judgment of the savings ~~institution,~~ institution in selling or transferring ~~such the~~ property, except:

- (1) In cases in which the savings institution has been advised by its counsel in writing that it has incurred as fiduciary a contingent or potential ~~liability,~~ liability, and ~~desire it~~ desires to relieve itself from ~~such the~~ liability, ~~such~~ a sale or transfer may be made with the approval of the ~~Board of Directors~~ board of directors and the ~~Administrator,~~ Commissioner of Banks, provided that, in all such cases, the savings institution, upon the consummation of the sale or transfer, shall make reimbursement in cash at no loss to the account; or
- (2) As provided ~~the laws and regulations and~~ regulations G.S. 53-163.5, et seq. governing collective investment; or
- (3) When required by the ~~Administrator.~~ Commissioner of Banks.

(b) If the purchase or retention of stock or obligations of the savings institution is authorized by the instrument creating the ~~relationship,~~ relationship or by court order, it may exercise rights to purchase its own stock, or securities convertible into its own stock, when offered pro rata to stockholders. When the exercise of rights or receipt of a stock dividend results in fractional share holdings, additional fractional shares may be purchased to complement the fractional shares so acquired. In elections of directors, a savings institution's share held by the savings institution as sole trustee, whether in its own name as trustee or in the name of its nominee, ~~may shall~~ not be voted by the registered owner unless, under the terms of the trust, the manner in which such shares shall be voted may be determined by a donor or beneficiary of the trust and the donor or beneficiary actually directs how the shares will be voted.

*Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.*

**04 NCAC 16K .0110      CUSTODY OF INVESTMENTS**

(a) The investments of each account shall be kept separate from the assets of the savings ~~institution,~~ institution and shall be placed in the joint custody or control of not fewer than two of the officers or employees of the savings institution designated for that purpose either by the ~~Board of Directors~~ board of directors of the savings institution or by one or more officers designated by the ~~Board of~~

~~Directors~~ board of directors of the savings institution. All officers and employees designated as custodians of trust investments shall be ~~adequately~~ bonded. To the extent permitted by G.S. 53-159.1, a savings institution may permit the investments of a fiduciary account to be deposited elsewhere.

(b) The investment of each account shall be either:

- (1) kept separate from those of all other accounts, except as provided in Rule ~~0012~~ .0112 of this Section; or
- (2) ~~adequately~~ identified as the property of the relevant account.

*Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.*

**04 NCAC 16K .0111      COMPENSATION OF SAVINGS INSTITUTION**

(a) If the amount of the compensation for acting in a fiduciary capacity is not provided for in the instrument creating the fiduciary relationship, set forth in Chapter ~~36A~~ 32 of the General Statutes, or otherwise agreed to by the parties, a savings institution acting in such capacity may charge or deduct a reasonable compensation for its services. When the savings institution is acting in a fiduciary capacity under appointment by a court, it shall receive ~~such~~ compensation as may be allowed or approved by the court.

(b) No savings institution shall, ~~except with the specific approval of its Board of Directors~~, permit any of its officers or employees, while serving as such, ~~to retain any compensation for acting to act~~ as co-fiduciary with the savings institution in the administration of any account undertaken by it.

(c) No savings institution shall permit an officer or employee engaged in the operation of its trust department to accept a bequest or gift of trust assets unless the bequest or gift is directed or made by a relative of the officer or employee or is approved by the Board of Directors of the savings institution.

*Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.*

**04 NCAC 16K .0112      COLLECTIVE INVESTMENT**

(a) Funds held as fiduciary may be held in:

- (1) A common trust fund maintained by the savings institution ~~exclusively~~ for the collective investment and reinvestment of moneys contributed thereto by the savings institution in its capacity as trustee, executor, administrator, guardian, or custodian under the North Carolina Uniform Transfers to Minors Act; or
- (2) A fund consisting solely of assets of retirement, pension, profit sharing, stock ~~bonus~~ bonus or other trusts ~~which that~~ are exempt from Federal income taxation ~~under~~ pursuant to the Internal Revenue Code.

(b) Collective investments of funds or other property by a savings institution under Paragraph (a) of this Rule shall be administered in accordance with Comptroller of the Currency Regulation 9.18, 12 C.F.R. 9.18; and shall include any later amendments and editions of the referenced material, provided that any documents required to be filed with the Comptroller of the Currency under that regulation shall ~~also~~ be filed with the ~~Administrator who may~~

~~review such documents for compliance with all applicable laws and regulations.~~ Commissioner of Banks. This information is available at the U.S. Printing Office website at [http://www.ecfr.gov/cgi-bin/text-idx?SID=10db9d6d7ecd62689d768e1b0c9a2199&node=se12.1.9\\_118&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?SID=10db9d6d7ecd62689d768e1b0c9a2199&node=se12.1.9_118&rgn=div8) at no cost.

*Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.*

**04 NCAC 16K .0113      SURRENDER OF TRUST POWERS**

**04 NCAC 16K .0114      EFF. OF APPT.: CONSERVATOR/RECEIVER: VOLUNTARY DISSOLUTION**

**04 NCAC 16K .0115      REVOCATION OF TRUST POWERS**

**04 NCAC 16K .0116      APPLICABILITY OF GENERAL LAWS REGARDING TRUST OPERATIONS**

*Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.*

**04 NCAC 16K .0117      REPORTS AND FEES**

Savings institutions engaging in trust operations shall make ~~such~~ reports regarding those operations as the ~~Administrator~~ Commissioner of Banks may, from time to time, require to evaluate the integrity of the operations. In addition to any other fees, savings institutions acting as fiduciaries shall pay an examination fee for examination of its fiduciary activities, in an amount to be determined by the ~~Administrator~~ Commissioner of Banks in accordance with G.S. 54B-57 or 54C-55.

*Authority G.S. 54B-55; 54B-57; 54B-77; 54C-53; 54C-55; 54C-146.*

**SUBCHAPTER 16L - VOLUNTARY DISSOLUTION**

**04 NCAC 16L .0101      PLAN OF LIQUIDATION**

*Authority G.S. 54B-42; 54B-55; 54C-42; 54C-53.*

**04 NCAC 16L .0102      DISPOSITION OF ASSETS**

(a) After approval of the plan of liquidation by the ~~Administrator~~, Commissioner of Banks, the savings institution shall, except in case of dissolution under G.S. ~~54B-40 or 54C-40~~, ~~immediately cause 54B-41 or G.S. 54C-41, mail a notice of the dissolution to be mailed~~ to each known creditor of the savings ~~institution~~, institution and to the Secretary of Revenue, and ~~such the~~ notice shall be published once a week for four successive weeks in a newspaper published in the county ~~wherein~~ where the savings institution has its principal office, ~~and, however, if there be no newspaper published in such the county, then in some newspaper of general circulation in such that county.~~

(b) ~~The savings institution shall then proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its members or shareholders, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, including the collection of unpaid subscriptions necessary to equalize the~~

~~agreed payments by subscribers of its shares.~~ After approval of the plan of liquidation by the Commissioner of Banks, the savings institution shall:

- (1) collect its assets;
- (2) convey and dispose of its properties that are not to be distributed in kind to its members or shareholders;
- (3) pay, satisfy, and discharge its liabilities and obligations; and
- (4) do all other acts required to liquidate its business and affairs, including the collection of unpaid subscriptions necessary to equalize the agreed payments by subscribers of its shares.

(c) After paying or ~~adequately~~ providing for the payment of all its obligations, the savings institution shall distribute the remainder of its assets, either in cash or in kind, among its members or shareholders according to their respective rights and interests.

Authority G.S. 54B-42; 54B-55; 54C-42; 54C-53.

#### **04 NCAC 16L .0103 RESCISSION AND CANCELLATION OF DISSOLUTION**

(a) At any time after the filing of the plan of liquidation and prior to the filing of a certificate of dissolution, a voluntary dissolution may be ~~revoked~~ rescinded by filing of a statement of revocation of dissolution. The contents of ~~such a~~ the statement and the proceedings taken ~~so as~~ to revoke a dissolution shall conform with ~~such~~ the adaptations as are appropriate to revocation ~~under~~ pursuant to either G.S. 54B-40 or 54B-41 or 54C-40 or 54C-41.

(b) Upon the filing of ~~such the~~ statement of ~~revocation~~ rescission of dissolution, the ~~revocation~~ rescission of the voluntary dissolution proceedings shall become effective and the savings institution ~~may~~ shall be authorized again carry on business.

Authority G.S. 54B-42; 54B-55; 54C-42; 54C-53.

#### **04 NCAC 16L .0104 WAIVER**

The ~~Administrator~~ Commissioner of Banks may waive or alter any requirements set forth in this Section to promote the best interests of the public or the savings institution by assuring the safe and sound operation of the savings institution, or when the application of any rule would have an unintended negative impact upon the public or a savings institution.

Authority G.S. 54B-42; 54B-55; 54C-42; 54C-53.

### **TITLE 08 – BOARD OF ELECTIONS**

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Board of Elections intends to adopt the rules cited as 08 NCAC 01 .0106; 02 .0114; 05 .0111; 10B .0109; 18 .0101, .0102; 20 .0101, amend the rules cited as 08 NCAC 16 .0101, .0102, .0104, readopt with substantive changes the rules cited as 08 NCAC 02 .0110, .0111 and readopt without substantive changes the rules cited as 08 NCAC 01 .0104; 02 .0112, .0113; 03 .0101-.0106, .0201-.0202, .0301-.0302; 04*

*.0301, .0302, .0304-.0307; 06B .0103-.0105; 08 .0104; 09 .0106-.0109; 10B .0101-.0108.*

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

**Link to agency website pursuant to G.S. 150B-19.1(c):** [www.ncsbe.gov](http://www.ncsbe.gov)

**Proposed Effective Date:** *October 1, 2017*

#### **Public Hearing:**

**Date:** *July 31, 2017*

**Time:** *12:00 p.m.*

**Location:** *NCSBE, 441 N. Harrington Street, Raleigh, NC 27603*

#### **Reason for Proposed Action:**

**08 NCAC 01 .0106** – Establishes standards for the Executive Director's exercise of statutory emergency authority to change election schedules. This comes in the wake of Hurricane Matthew, the need for a clearly defined processes became clear.

**08 NCAC 02 .0110** – Adopts the rule followed by SBE during the *In re Consolidated Election Protests* hearing. Specifically, it adds Subsection (e) to clarify that canvass proceeds unless the protest involves the tabulation of ballots or the qualifications of a voters sufficient in number to change the outcome of an election.

**08 NCAC 02 .0111** – This amendment largely rewrites the protest form. It would clarify the standard of review, require a certification that the facts alleged are true and accurate, and require attorneys to indicate that they represent the protestor, among other things.

**08 NCAC 02 .0114** – This proposed rule would provide a process whereby the Executive Director can recommend that a protest be dismissed, which may become effective if no single Board Member raises an objection. A similar process is enacted for county boards of election. The rule is important to the expeditious review while avoiding unnecessary costs and delay associated with a hearing while ensuring due process.

**08 NCAC 05 .0111** – There are very few counties with fewer than 6, 501 voters. G.S. 163-36 allows those counties to operate a modified schedule, if allowed by the State board. This new rule would set a minimum operating schedule of Monday, Wednesday, and Friday for those counties.

**08 NCAC 10B .0109** - This proposed rule would codify SBE's current requirements for the organization of voting sites. The requirements are presently set out in numbered memos and other guidance. The rule sets out the organization of a voting site and describes responsibilities assigned to election officials at each station.

**08 NCAC 16 .0101** – The new section clarifies the types of facilities at which appointed multipartisan assistance teams (M.A.T.) may assist voters.

**08 NCAC 16 .0102** – The new section mandates that M.A.T. members cannot be CBE members or CBE employees. This responds to a circumstance raised in the last cycle and addresses concerns over conflicts of interest or apparent conflicts of interest.

**08 NCAC 16 .0104** – The new sections clarify that a M.A.T. member may assist the voter to sign/mark the absentee form or to coordinate a return visit for that purpose. The revision also allows coordination between CBEs to send M.A.T. members to assist a voter who may be in a care facility outside their county of registration.

**08 NCAC 18 .0101** – The proposed rule would allow a person qualified to assist a disabled voter to deposit his or her absentee ballot into the closest U.S. mail depository or mailbox.

**08 NCAC 18 .0102** – The proposed rule would codify a best practice requiring that those who deliver absentee ballots to the CBE also to complete a form identifying themselves. This is to comply better with statutory requirements that specify who may return an absentee ballot to the CBE office.

**08 NCAC 20 .0101** – The proposed rule would codify SBE guidance from numbered memos regarding election observers at early voting sites and precinct locations.

**Comments may be submitted to:** *Katelyn Love, Deputy General Counsel, State Board of Elections, 441 N. Harrington St., Raleigh, NC 27603; email rules@ncsbe.gov*

**Comment period ends:** *July 31, 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
- ☒ No fiscal note required by G.S. 150B-21.3A(d)(2)

**CHAPTER 01 - DEPARTMENTAL RULES**

**08 NCAC 01 .0104 PROCEDURES FOR POLITICAL COMMITTEES (READOPTED WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 01 .0106 EMERGENCY POWERS OF EXECUTIVE DIRECTOR**

(a) The Executive Director acting under G.S. 163-27.1, as chief State elections official, may exercise emergency power to conduct an election when, having reviewed the totality of the circumstances, the Executive Director finds a substantial likelihood that one or more critical components of election administration has been impaired by a disruption arising from any of the following:

- (1) A natural disaster or extremely inclement weather, which may include any of the following:
  - (A) Hurricane;
  - (B) Tornado;
  - (C) Storm or snowstorm;
  - (D) Flood;
  - (E) Tidal wave or tsunami;
  - (F) Earthquake or volcanic eruption;
  - (G) Landslide or mudslide; or
  - (H) Catastrophe arising from natural causes resulted in a disaster declaration by the President of the United States or the Governor.

- (2) A military conflict that includes mobilization, pre-deployment, or deployment of active or reserve members of the United States armed forces or National Guard during a national emergency or time of war

(b) The Executive Director acting under G.S. 163-27.1 must ensure that remedial measures are substantially calculated to offset the practical effects of the disruption(s) found under Paragraph (a) of this Rule. In crafting appropriate relief, the Executive Director shall consider:

- (1) Geographic scope of disruption;
- (2) Effects on contests spanning effected and non-effected areas;
- (3) Length of forewarning and foreseeability of disruption;
- (4) Availability of alternative registration or voting opportunities;
- (5) Duration of disruption;
- (6) Displacement of voters or election workers;
- (7) Access to secure voting locations;
- (8) Sufficiency of time remaining for the General Assembly and the Governor to adopt emergency legislation addressing the disruption;
- (9) Detrimental effects on election integrity and ballot security; and
- (10) Aggregate effects on important Federal and State certification deadlines.

*Authority G.S. 163-27.*

**CHAPTER 02 - ELECTION PROTESTS**

**SECTION .0100 – ELECTION PROTESTS**

**08 NCAC 02 .0110 ACTIONS OF COUNTY BOARD AS TO ELECTION PROTESTS**

(a) The county board shall deliver or place in the mail, a copy of an election protest form and any attachments to it, to the State Board of Elections within 24 hours after it is filed. Faxing the protest, with attachments, on that same day it was filed to the State Board shall constitute the required delivery. Sending the protest and attachments, by e-mail, on the same day it was filed shall also constitute the required delivery.

(b) The county board may not consider election protests not filed in time, but shall refer all such untimely protests, along with copies of the protest and attachments, to the State Board of Elections office for consideration of a possible hearing by the State Board of Elections under G.S. 163-182.12.

(c) If after preliminary consideration of a protest, the county board determines that a hearing should be held as authorized by G.S. 163-182.10, the board shall set the hearing no later than ten business days from the date of the preliminary consideration, and shall start no earlier than 8:00 a.m. and no later than 8:00 p.m. at any location set by the county board of elections. The county board may continue hearings for good cause. Only for good cause and upon informing the State Board of Elections office, may a hearing be set on or continued to a weekend day or holiday.

(d) Notice of hearing as required by G.S. 163-182.10 (b)(2) shall be given at least three business prior to the day of the hearing, and the notice required shall be actual notice by any means chosen by the county board. Any oral notice of the hearing shall be followed as soon as possible with a written notice. The oral notice shall constitute valid notice meeting the three-day notice requirement.

(1) Upon a reasonable and relevant request by a protester or interested person, the chair or any two members of the county board may issue subpoenas for persons or documents. Such subpoenas shall be served in the same manner as allowed in the North Carolina Rules of Civil Procedure.

(2) The county board shall notify the person protesting, any affected candidate, and any affected officeholder of its decision in a protest hearing no later than 5:00 p.m. the next day after the conclusion of the hearing itself. The board shall file at the board office a written decision within the mandates of G.S. 163-182.10 (d) by 5:00 p.m. five business days after the oral decision is given to the person filing the protest. Such written decision shall be served by any means of actual delivery upon the protestor and any affected candidate or officeholder within 24 hours after being filed at the board office. Nothing herein shall discourage more prompt decisions and written orders.

(3) All election protest hearings before county boards shall be recorded by a court reporter. The hearing need not be transcribed unless the board's decision is appealed. Upon notice of appeal to the State Board of an election protest, the county board shall cause the record of the hearing to be transcribed and delivered to the State Board, at the county board's expense, within seven business days of the notice of appeal. A county board may cause hearings, that on their face do not present merit to be recorded by mechanical means and not by court reporter only with prior permission of the Executive Director of the State Board of Elections. Any non-transcribed record of the county hearings may be destroyed 60 days after the date of hearing if not appealed, or 60 days after the entry of any final order or decision in an appealed hearing. Transcripts of hearings shall be kept for two years after their creation.

(4) If the State Board sets an appeal for hearing, it shall designate who shall appear on behalf of the county board.

(e) A county board of elections shall timely hear and decide all protests, unless:

(1) the protest is administratively dismissed pursuant to Rule .0114 of this Section; or

(2) the county board of elections receives alternative instructions from the State Board issued under G.S. 163-182.12. If a protest does not concern the manner in which votes were counted or results tabulated, a county board of elections shall not delay canvass in order to hear the protest. A protest that alleges the occurrence of an election law violation regarding an insufficient number of votes to change the outcome of a contest within the jurisdiction of a county board of elections shall not delay canvass by a county board of elections.

Authority G.S. 163-22; 163-182.10.

**08 NCAC 02 .0111 ELECTION PROTEST FORM**

All persons ~~filing bringing an~~ election protest ~~under Article 15A with a county board of election~~ shall complete and timely file use the following form. Please note this form should not be used to challenge the registration of an individual voter or to report an incident other than an irregularity affecting the outcome of an election.

**ELECTION PROTEST**

(Use of this form is required by G.S. 163-182.9(c) )

This form must be filed with the county board of elections within the timeframes set out in G.S. 163-182.9 (b)(4). Please print or type your answers. ~~Feel free to use and attach~~ Use additional sheets if needed to ~~fully~~ answer the ~~questions~~ below questions fully. Number the pages of all additional sheets. Please note that filings will be a public record. Please redact all confidential information, such as date

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## **PROPOSED RULES**

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of birth, Social Security number, and driver's license number. You may also attach relevant exhibits and documents. Please number the pages of such additional sheets and attachments.

Respond to all prompts. Failure to complete this form as required may result in the dismissal of your protest. Attach additional sheets as necessary, including all exhibits and supplemental documents. All attachments are deemed incorporated and covered under the Protest Certification.

### **PROTESTOR**

**1. Provide your preferred contact information:**

Name: _____	County of Residence: _____
Email: _____	Phone: _____
Mailing Address: _____	

NOTE: You will be deemed to consent to service at all of the above addresses (including email), unless you attach an addendum indicate otherwise.

**2. Are you represented by counsel? ☐ Yes ☐ No**

NOTE: If you answered Yes, above, your counsel must complete and you must attach the Counsel Certification Addendum.

**3. Mark all that describe you:**

- ☐ Candidate for the office of \_\_\_\_\_
- ☐ Registered voter eligible to participate in the protested election contest
- ☐ Neither of the above\*

\*If you select this option, you are not eligible to file a protest.

### **PROTEST SCOPE**

4. List all election contests subject to your protest and calculate the margin of votes separating the apparent winner from the runner-up as of the date of filing. Your response does not waive your right to contest the validity of the current vote count. If your protest concerns all contests on the ballot, you must include the vote margin for each contest.

<b><u>Protested Contest(s)</u></b>	<b><u>Current Vote Margin</u></b> <small>(subtract runner-up totals from apparent winner's totals)</small>
<i>Example: Mayor of Townsville</i>	<u>75</u>

**5. This protest alleges (select at least one):**

- ☐ A defect in the manner by which votes were counted or results tabulated sufficient to cast doubt on the apparent results of the election.
- ☐ A violation of election law, irregularity, or misconduct sufficient to cast doubt on the apparent results of the election.

### **FACTUAL BASIS & LEGAL ARGUMENT**

6. Provide all factual allegations in support of your protest. If any fact you allege is outside the scope of your personal knowledge, you may attach affidavits from those who have personal knowledge of that fact. All facts you allege in connection with this protest must be true and accurate to the best of your knowledge, and brought in the sincere belief that the facts alleged form a good faith basis to protest the conduct and results of the election.

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## *PROPOSED RULES*

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7. List all individuals, if any, you may call as witnesses to substantiate facts listed in Prompt 6. If there are multiple individuals, summarize the facts of which the individual has personal knowledge.

8. Cite any statute or case, administrative rule or decisions, and election policy or procedure that supports your claim set out under Prompt 5.

### RELIEF

9. What effect do you believe the facts alleged in response to Prompt 6, if proven, will have on the electoral outcome in the protested contest(s)? Your response should account for the current vote margin calculated in response to Prompt 4.

- ☐ The electoral outcome of the protested contest(s) will change.
- ☐ The electoral outcome of the protested contest(s) will not change.
- ☐ I am uncertain whether the outcome of the contest(s) will change.
- ☐ Other \_\_\_\_\_

10. What relief do you seek?

- ☐ Correct the vote count
- ☐ A new election
- ☐ Other: \_\_\_\_\_

### ASSISTANCE

11. List all persons who assisted you in preparing the contents of this protest and indicate the nature of the assistance provided:

Note: For protestors represented by an attorney, this protest is the initial filing in a proceeding as defined by N.C. State Bar Rules. See 27 NCAC 02 Rule 1.00(n).

12. Has any candidate, political party, organization, or person acting on behalf of the same requested that you bring this protest?

- ☐ Yes.
- ☐ No.

13. Have you received any financial or other benefit or promise of future financial or other benefit in exchange for filing this protest?

- ☐ Yes.
- ☐ No.

### AFFECTED PARTIES & SERVICE

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**PROPOSED RULES**

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You must serve copies of all filings on every person with a direct stake in the outcome of this protest ("Affected Parties"). Affected Parties include every candidate seeking nomination or election in the protested contest(s) listed under Prompt 4, not only the apparent winner and runner-up. If a protest concerns the eligibility or ineligibility of particular voters, all such voters are Affected Parties and must be served. Address information for registered voters is available from the county board of elections or using the Voter Lookup at [www.ncsbe.gov](http://www.ncsbe.gov).

Materials may be served by personal delivery, transmittal through U.S. Mail or commercial carrier service to the Affected Party's mailing address of record on file with the county board of elections or the State Board of Elections, or by any other means affirmatively authorized by the Affected Party. If you know the Affected Party is represented by an attorney, service must be made on his or her counsel. Service must occur within one (1) business day of filing materials with the county board of elections. If service is by transmittal through the U.S. Mail or commercial carrier service, service will be complete when the properly addressed, postage-paid parcel is deposited into the care and custody of the U.S. Mail or commercial carrier service. It is your responsibility to ensure service is made on all Affected Parties.

14. List all Affected Parties, including their service address:

Affected Party

Service Address

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**PROTESTOR CERTIFICATION**

15. By signing this protest application, you affirm the following:

I, \_\_\_\_\_ (full name), swear, under penalty of perjury, that the information provided in this protest filing is true and accurate to the best of my knowledge, and that I have read and understand the following:

(initial)

\_\_\_\_\_ I have reviewed the statutes and administrative rules governing election protests, including all deadlines.

\_\_\_\_\_ My protest must originate with a filing at the county board of elections.

\_\_\_\_\_ I must timely serve all Affected Parties.

\_\_\_\_\_ I must prove by *substantial evidence* either the existence of a defect in the manner by which votes were counted or results tabulated or the occurrence of a violation of election law, irregularity, or misconduct, either of which were sufficient to cast doubt on the apparent results of the election.

\_\_\_\_\_ It is a crime to interfere unlawfully with the conduct and certification of an election.

\_\_\_\_\_ It is a crime to interfere unlawfully with the ability of a qualified individual to vote and to have that vote counted in the election.

\_\_\_\_\_ The facts I allege in connection with this protest are true and accurate to the best of my knowledge, and I have a good faith basis to protest the conduct and results of the election.

**Submitting fraudulently or falsely completed declarations is a Class I felony under Chapter 163 of the General Statutes. This notice is provided pursuant to S.L. 2013-381 § 5.4.**

Signature of Protestor: \_\_\_\_\_ Date: \_\_\_\_\_

(This signature must be signed in the presence of a notary)

State of North Carolina, County of \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Official Seal)

Official Signature of Notary

Printed Name

\_\_\_\_\_, Notary Public

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**PROPOSED RULES**

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My commission expires: \_\_\_\_\_

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1. Full name and mailing address of person filing the protest.

2. Home and business phone number, fax number, and e-mail address.

3. Are you either a candidate or registered voter eligible to vote in the protested election. If a candidate, for what office?

4. List the date, location, and exact nature of the election protested. Name all candidates in the election and the number of votes each received. Note the winning candidate(s) elected or nominated.

5. Does this protest involve an alleged error in vote count or tabulation? If so, please explain in detail.

6. Does this protest involve an irregularity or misconduct not described in number 5 above? If so, please give a detailed description of such misconduct or irregularity and name those who committed such action.

7. Please set out all election laws or regulations that you allege were violated in your responses to 5 or 6 above. State how each violation occurred. Please provide the names, addresses, and phone numbers of those who you allege committed such violations.

8. Please provide the names, addresses, and phone numbers of any witnesses to any misconduct alleged by you in this protest, and specify what each witness listed saw or knows.

9. What action do you desire the county board of elections to take in this matter?

10. Do you contend the allegations set out by you are sufficient to have affected or cast doubt upon the results of the protested election? If your answer is yes, please state the factual basis for your opinion.

11. Have you read and reviewed the North Carolina law pertaining to election protests as set out in G.S. 163-182.9 through G.S. 163-182.14 and current North Carolina State Board of Elections regulations pertaining to election protests?

12. How many pages of additional answer are attached to this protest? \_\_\_\_ How many pages of attachments are attached? \_\_\_\_

Signature of Protestor \_\_\_\_\_

Date/Time Filed with County Board \_\_\_\_\_

(to be filled out completed by the county board)

**NOTE:** The county board must provide the State Board with a complete copy of a filed protest within one business day after it is filed. In addition, the county board shall provide a copy of the election audit with this copy of the protest.

Please direct any questions to your county board of elections or the North Carolina State Board of Elections, PO Box 27255, Raleigh, NC 27611-7255, (919) 733-7173-27611-7255.

COUNSEL OF RECORD ADDENDUM

*If you answered Yes to Prompt 2 on the above, your attorney must complete this form and you must file it with your Election Protest Application.*

Attorney Must complete all of the following:

Protestor Name: \_\_\_\_\_

Protestor County: \_\_\_\_\_

Attorney Name: \_\_\_\_\_

Attorney Email: \_\_\_\_\_

Attorney Phone: \_\_\_\_\_

☐ I am a member in good standing with the North Carolina State Bar

☐ I am not licensed to practice law in North Carolina but am a member in good standing in \_\_\_\_\_ (State or District of Columbia), and do hereby apply to appear *pro hac vice* and certify that I have or will file all appropriate documents required under G.S. § 84.4.1.

Law Firm: \_\_\_\_\_  
Bar Number: \_\_\_\_\_

I (choose one) ☐ am ☐ am not:

Subject to any order of any court or administrative agency disbaring, suspending, enjoining, restraining, or otherwise restricting me in the practice of law. If you are subject to any orders, explain in the space below.

I represent the Protestor whose name is provided above. I have read and understand the laws governing election protests in North Carolina General Statutes Chapter 163 and Title 8 of the N.C. Administrative Code. I swear/attest that the information I have provided in this Addendum is true and accurate to the best of my knowledge.

\_\_\_\_\_  
Attorney Signature

\_\_\_\_\_  
Date

*Authority G.S. 163-22; 163-182.9.*

**08 NCAC 02 .0112 APPEAL TO THE STATE  
BOARD OF ELECTIONS (READOPTIOIN WITHOUT  
SUBSTANTIVE CHANGES)**

**08 NCAC 02 .0113 NEW ELECTIONS ORDERED  
BY STATE BOARD OF ELECTIONS (READOPTIOIN  
WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 02 .0114 DISMISSAL OF IMPROPER  
FILINGS**

(a) Dismissal on the basis of one or more defects listed in Paragraph (b) of this Rule may be entered administratively in the manner described in Paragraphs (c) through (e) of this Rule, or by a majority vote of the county board of elections or of the State Board of Elections.

(b) The county board of elections shall, and the State Board of Elections may, dismiss any matter purporting to arise under G.S. 163-182.9 on the following bases:

- (1) The matter fails to contest the manner in which votes were counted or results tabulated, or fails to allege a violation of election law or irregularity or misconduct sufficient to cast doubt on the results of the election;
- (2) The individual submitting the matter was neither a registered voter eligible to participate in the protested contest within the county nor a candidate for nomination or election in the protested contest;
- (3) The matter was submitted after the statutory deadline, filed on improper or incomplete forms, or was brought in the incorrect jurisdiction;
- (4) The protest is duplicative or was made in bad faith or for the purpose of delay;

- (5) The protest filing, taking into account the totality of the circumstances, fails to include evidence which, if true, substantiates the probable occurrence of an outcome-determinative defect in the manner in which votes were counted or results tabulated, or the probable occurrence of an outcome-determinative violation of election law, irregularity, or misconduct; or

- (6) The matter, including the initial filing and all subsequent oral or written submissions, fails to allege facts sufficient to constitute substantial evidence of the occurrence of an outcome-determinative violation of election law, irregularity, or misconduct.

Nothing in this rule shall be construed to limit the State Board in its exercise under G.S. 163-182.12.

(c) If the matter is filed with a county board of elections, the county director of elections shall promptly review the allegations and evidence presented in or attached to the filing. If the director of elections finds that the filing must be dismissed pursuant to Paragraph (b) of this Rule, the director shall transmit his or her administrative recommendation that the matter be dismissed, citing applicable defects and the requirements of this Rule. The director's administrative recommendation shall be transmitted in writing to the county board members and the executive director of the State Board no later than two business days after the matter was filed. The director of elections shall attempt to confirm that the county board members have received all filings and the director's administrative recommendation before proceeding to issue a notice of dismissal. The executive director of the State Board may designate an appropriate proxy authorized to receive notices required under this Paragraph. Nothing in this Paragraph shall delay the county board of elections in proceeding to consider the protest required under G.S. 163-182.10. If after two calendar

days, following the transmission required under this Paragraph, neither a county board member nor the executive director of the State Board has raised any oral or written objection to the county director's recommendation for administrative dismissal, the county director shall issue a written notice of administrative dismissal to the individual(s) who has filed the matter. The notice shall:

- (1) Be sent by certified mail or commercial courier such that the date of delivery may be verified, unless the recipient has agreed in writing to receive notice by electronic means.
- (2) State that the matter was provided to the county board of elections members, but will not be heard by the county board.
- (3) State that the matter has been dismissed administratively, citing this rule and all applicable bases listed in Paragraph (b) of this Rule.
- (4) Enclose an appeal form required under Paragraph (d) of this Rule.

If within two calendar days, any county board member or the executive director of the State Board of Elections raises any oral or written objection to the recommendation for administrative dismissal by the county director, the county board of elections shall proceed to hear the matter. An objection raised under this Subparagraph shall in no way affect or limit the county board of election's authority to dismiss the matter under Paragraph (b) of this Rule or any other basis permitted by law.

(d) Individuals subject to an administrative dismissal entered by the director of elections may appeal the decision to the executive director of the State Board of Elections. All appeals brought under this Paragraph shall be in writing on a form prescribed under this Paragraph and must be received by the State Board of Elections office no later than five business days after receipt of the written notice of administrative dismissal from the county director. The State Board of Elections shall be deemed to have received the written appeal when it receives the physical form required under this Paragraph either by U.S. mail, courier service, or hand delivery. All appeals shall be made on a form that includes the following statements:

- (1) I am appealing from an administrative dismissal of a matter that I filed at the [county name] Board of Elections on [date].
- (2) I received an administrative notice of dismissal on [date].
- (3) I have enclosed a copy of my original materials filed with the county board of elections.  
YES      NO
- (4) I have enclosed a copy of the written notice of administrative dismissal.  
YES      NO
- (5) This matter should be heard for the following reasons:

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(6) I request notice of any action on this appeal at the following address:  
Mailing Address:

Phone Number:

Email Address:

(e) The executive director of the State Board of Elections shall immediately inspect all appeals filed under Paragraph (d) of this Rule. Within two business days after the receipt of an appeal, the executive director shall transmit a copy of the appeal to the State Board of Elections members along with a written statement indicating the executive director's administrative determination either to grant or to deny the appeal. If the executive director's administrative determination is to grant the appeal, the executive director shall issue written notice to the county board of elections and to the appealing party indicating that the matter is remanded to the county board of elections for a hearing. The executive director's administrative determination under this Subparagraph shall in no way affect the county board of election's authority to dismiss the matter under Paragraph (b) of this Rule or any other basis permitted by law. If the executive director's administrative determination is to deny the appeal, but any State Board of Elections member raises any oral or written objection within three calendar days, the executive director shall grant the appeal, issue written notice, and remand the matter to the county board of elections. If no State Board of Elections member raises any oral or written objection within three calendar days, the executive director shall issue a written notice to the appealing party and to the county board of elections stating that the appeal is denied. Dismissal under this Subparagraph shall be considered a final agency action for purposes of seeking judicial review.

(f) If the matter is filed directly with the State Board of Elections, the executive director of the State Board of Elections shall proceed in a manner substantially similar to that process outlined in Paragraph (b) of this Rule, including distribution to the State Board of Elections members, the opportunity to interpose an objection, and the issuance of notice, except that there shall be no right of appeal under Paragraph (d) of this Rule and that the executive director may administratively remand the matter for hearing by the county board of elections in the manner prescribed under Paragraph (e) of this Rule.

(g) The executive director of the State Board of Elections may delegate to counsel responsibilities under this Section.

Authority G.S. 163-22; 163-182.12.

### CHAPTER 03 - CHARGES AGAINST COUNTY ELECTION OFFICIALS

#### SECTION .0100 - MEMBERS OF COUNTY BOARD OF ELECTIONS

**08 NCAC 03 .0101      VOTER COMPLAINTS  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 03 .0102 CHARGES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 03 .0103 HEARING (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 03 .0104 RIGHTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 03 .0105 SCOPE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 03 .0106 WITNESSES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .0200 - PRECINCT ELECTION OFFICIALS**

**08 NCAC 03 .0201 FILING CHARGES: ADOPTION OF PROCEDURES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 03 .0202 HEARING DATE AND DISPOSITION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .0300 - INVESTIGATION AND REPORTS OF CRIMINAL VIOLATION**

**08 NCAC 03 .0301 SUMMARY INVESTIGATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 03 .0302 REPORTS OF EVIDENCE OF CRIMINAL VIOLATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**CHAPTER 04 – VOTING EQUIPMENT**

**SECTION .0300 – APPROVAL AND OPERATION OF VOTING SYSTEMS**

**08 NCAC 04 .0301 REQUIREMENTS OF VOTING SYSTEMS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 04 .0302 APPROVAL OF VOTING SYSTEMS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 04 .0304 OPERATION AND MATTER OF VOTING ON VOTING SYSTEMS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 04 .0305 INSTRUCTION OF PRECINCT OFFICIALS AND VOTERS IN THE USE OF VOTING SYSTEMS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 04 .0306 DUTIES OF CUSTODIANS OF VOTING SYSTEMS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 04 .0307 TESTING OF VOTING SYSTEM BEFORE USE IN AN ELECTION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**CHAPTER 05 - MODIFIED FULL TIME REGISTRATION SYSTEM**

**08 NCAC 05 .0111 MODIFIED FULL-TIME OFFICES**

County board of elections offices in counties with fewer than 6,501 registered voters shall be permitted, with the approval of the county board, to operate office hours on Mondays, Wednesdays, and Fridays instead of a five-day week.

*Authority G.S. 163-36.*

**SUBCHAPTER 06B – BALLOTS**

**08 NCAC 06B .0103 ARRANGEMENT OF OFFICIAL BALLOTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 06B .0104 LATE CHANGES IN BALLOTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 06B .0105 COUNTING OF OFFICIAL BALLOTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**CHAPTER 08 - COMPLIANCE WITH FEDERAL P.L. 98-435: THE VOTING ACCESSIBILITY FOR THE ELDERLY AND HANDICAPPED ACT**

**08 NCAC 08 .0104 HANDICAPPED TRANSFER PRIOR TO ELECTION DAY (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**CHAPTER 09 - CONDUCT OF VOTE RECOUNTS BY COUNTY BOARDS OF ELECTIONS**

**08 NCAC 09 .0106 GENERAL GUIDELINES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 09 .0107 RECOUNT OF OPTICAL SCAN/MARKSENSE/PUNCHCARD BALLOTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 09 .0108 DIRECT RECORD ELECTRONIC AND LEVER (DIRECT RECORD MECHANICAL) VOTING MACHINES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 09 .0109      MANUAL HAND TO EYE  
RECOUNTS (READOPTION WITHOUT SUBSTANTIVE  
CHANGES)**

**CHAPTER 10 - BALLOT ROTATION RULES FOR  
PRIMARY ELECTION BALLOTS**

**SUBCHAPTER 10B - VOTING, VOTING PLACES AND  
PRECINCT OFFICIALS' DUTIES AND TASKS**

**08 NCAC 10B .0101      TASKS AND DUTIES OF  
PRECINCT OFFICIALS AT VOTING PLACES  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 10B .0102      SETTING UP POLLING PLACE  
PRIOR TO VOTING (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)**

**08 NCAC 10B .0103      VOTING PROCEDURES  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 10B .0104      LEAVING THE VOTING  
ENCLOSURE, SPOILED OR INCOMPLETE BALLOTS  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 10B .0105      PROCEDURES AT THE CLOSE  
OF VOTING (READOPTION WITHOUT SUBSTANTIVE  
CHANGES)**

**08 NCAC 10B .0106      ELECTION SUPPLIES RETURN  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 10B .0107      ASSISTANCE TO VOTERS IN  
PRIMARIES AND GENERAL ELECTIONS  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 10B .0108      CURBSIDE VOTING  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**08 NCAC 10B .0109      VOTING SITE UNIFORMITY**

(a) Station Set-Up. All equipment and furniture in the voting enclosure shall be arranged so that it can be seen from the public space of the voting enclosure. Each voting enclosure shall contain at a minimum:

- (1) Check-in station, where voters may provide any required identification information and declare their intent to vote. The check-in station shall include the following:
  - (A) Voter lists or pollbooks. If the voting site utilizes an electronic pollbook, the site must also maintain a backup hardcopy for use in the event of technical difficulty or disruption;
  - (B) Authorization to Vote Forms and labels on Election Day or One-Stop Absentee Applications during the one-stop early voting period, and all such other supplies as may be required by

the Executive Director of the State Board of Elections; and

(C) Guides, signage, and all other materials as may be required by the Executive Director of the State Board of Elections, displayed in the manner specified.

(2) Ballot station, where elections officials distribute official ballots and provide ballot-marking instructions to voters who have completed required vote-authorization document(s).

(3) Help station, where voters can receive assistance if there is any issue checking in the voter, pursue provisional voting, and where voter challenges shall be heard.

(4) Voting stations (or "booths") shall be situated in a manner that ensures the privacy of the voter's selections and shall be maintained in an orderly manner clear of electioneering materials and sample ballots. The number of booths shall not be fewer than a minimum number determined by the county board of elections, unless a greater number is specified by the Executive Director of the State Board of Elections.

(5) Exit station, where an election official ensures ballots are appropriately placed in the tabulator or ballot box.

(6) Curbside station, where qualified voters may vote curbside in accordance with Rule .0108 of this Section.

(b) Technology and Connectivity. Every voting enclosure must have access to a phone or other device, including a cell phone when service is available in the building, that facilitates communication with the county board of elections office and emergency services. The county board of elections office shall keep a record of contact information for each voting enclosure within the county and ensure all elections officials have contact information for the county board of elections office and emergency services. Elections officials shall monitor the phone or device.

(c) Check-in Station. Persons seeking to vote shall enter the voting enclosure through the appropriate entrance and present at the Check-in Station. The election official at the check-in station shall:

(1) Ask the voter to state their current name. If, due to disability, a voter is unable to state his or her name, he or she may otherwise signal to the elections official, including by way of a person providing assistance or through documents. The election official shall indicate that state law requires that the voter state his or her name, subject to any applicable disability exceptions.

(2) Ask the voter to state the address where he or she resided for at least 30 days as of Election Day. The election official shall indicate that state law requires that the voter state his or her

address, subject to any applicable disability exceptions.

- (3) Announce the name and address of the voter and inform the voter they are required by state law to do so.
- (4) If the election is a partisan primary: Ask the voter to indicate his or her party affiliation or, if the voter is unaffiliated, to state which of the available primary ballot he or she prefers;
- (5) If required under State or Federal law, ask the voter to provide acceptable identification. Examine identification document presented by the voter.
- (6) Search and correctly identify the voter in the pollbook or its equivalent.
- (7) Make any updates or corrections to the voter's name in the voter record.
- (8) Update the voter's address in the voter record (or alternately, complete documentation to make that change if the process is not automatic), if the voter has moved to a new address in the county and will have lived at the address for at least 30 days as of the date of the election
- (9) If the voter does not present acceptable identification necessary to verify the identity of a previously unverified voter:
  - (A) Provide the help referral form provided by the State Board of Elections
  - (B) Direct the voter to the Help Station
- (10) Provide the voter with an authorization to vote document or one-stop application and ask the voter to confirm the information and sign the document. The vote-authorizing documents should be numbered sequentially to aid in the voting site's required ballot reconciliation process.
- (11) Sign the authorization to vote document or one-stop application before directing the voter to the ballot station where, provided the voter is duly registered and has not been successfully challenged, the official assigned to distribute the official ballots shall hand the voter the official ballot that voter is entitled to vote, or that voter shall be directed to the voting equipment that produces the official ballot.
- (12) Refer a voter who is not found to be registered or cannot be directed to the ballot station to the help station for the purpose of receiving alternate voting options.

(d) Ballot Station. The ballot station official shall accept the vote-authorizing document from the voter and review the form carefully and ensure that it is signed by the voter. For counties using paper ballots, the official shall retrieve the ballot style listed on the vote-authorizing document. If the voting site has more than one ballot style, the official must scan the barcode on the ballot style retrieved and then scan the barcode on the vote-authorizing document to ensure that the voter is issued the correct ballot.

During one-stop absentee voting, before issuing the ballot to the voter, the precinct official shall record the absentee application number on the ballot. For counties whose paper ballots are coded by style the official must record the precinct/voter tabulation district number on the ballot. The official shall sequentially number the authorization to vote document or one-stop application. Next, the precinct official shall:

- (1) Direct the voter to the voting equipment and provide instructions as necessary;
- (2) Instruct the voter to mark the ballot before placing the ballot into the tabulator;
- (3) Provide the voter with any technical information the voter desires as necessary to enable voting; and
- (4) If a voter makes a mistake and asks for a new ballot, the ballot station official shall follow procedures pursuant to Rule .0104 of this Section.

(e) Help Station. The help station is the location in the voting enclosure for discussion with voters about irregular situations including provisional voting or precinct transfers. A voter may be sent to the help station if there is some issue with the voter's registration or the voter is unable to receive a regular ballot. Each individual help station shall have:

- (1) A Voting Site Station Guide available and on display, as directed by the State Board of Elections;
- (2) Supplies as specified by the State Board of Elections; and
- (3) At least one voting booth set up at or near the station for provisional voters to mark their ballots.

(f) Exit Station. An election official shall be posted at the exit point of a voting enclosure where paper ballots are used and shall ensure only official ballots are deposited into the tabulator or ballot box. The exit station official shall ensure that no provisional ballots are placed in the ballot box and that voters do not leave the voting enclosure with a ballot.

(g) Curbside Station. Every voting site in the state shall have an area where qualified voters may vote curbside in accordance with Rule .0108 of this Section.

*Authority G.S. 163-22; 163-166.7; 163-182.1B.*

## **CHAPTER 16 - MULTIPARTISAN ASSISTANCE TEAMS**

### **08 NCAC 16 .0101 MULTIPARTISAN ASSISTANCE TEAMS**

(a) Each ~~County~~ county ~~Board~~ board of Elections elections shall assemble and provide training to a Multipartisan Assistance Team ("Team") to respond to requests for voter assistance for any primary, general election, referendum, or special election.

(b) For every primary or election listed in Paragraph (a) of this Rule, the Team shall be made available in each county to assist patients and residents in every covered facility in that county in requesting or casting absentee ballots as provided by Subchapter VII of Chapter 163 of the General Statutes. For the purposes of this Chapter Rule, a "covered facility" is any ~~facility hospital, clinic, nursing home, or rest home~~ that provides residential or in-

patient healthcare in the State that is licensed or operated pursuant to Chapter 122C, Chapter 131D, or Chapter 131E of the General Statutes; Statutes, including but not limited to a hospital, clinic, nursing home, or adult care home; or by the federal government or an Indian tribe.

(c) The Team may assist voters in requesting mail-in absentee ballots, serve as witnesses to mail-in absentee voting, and otherwise assist in the process of mail-in absentee voting as provided by Subchapter VII of Chapter 163 of the General Statutes. Upon the voter's request, the Team shall assist voters who have affirmatively communicated, either verbally or nonverbally, a request for assistance.

*Authority G.S. 163-226.3(a)(4); S.L. 2013-381, s. 4.6(b).*

#### **08 NCAC 16 .0102 TEAM MEMBERS**

(a) For purposes of this Chapter, the ~~County county Board board~~ of ~~Elections elections~~ shall compose the Team as follows:

- (1) At least two registered voters shall be on each Team. The two political parties having the highest number of affiliated voters in the State, as reflected by the registration statistics published by the State Board of Elections on January 1 of the current year, shall each be represented by at least one Team member of the party's affiliation. If the Team consists of more than two members, voters who are unaffiliated or affiliated with other political parties recognized by the State of North Carolina may be Team members.
- (2) If a ~~County county Board board~~ of ~~Elections elections~~ finds an insufficient number of voters available to comply with Subparagraph (a)(1) of this Rule, the County Board, upon a unanimous vote of all of its sworn members, may appoint an unaffiliated voter to serve instead of the Team member representing one of the two political parties as set out in Subparagraph (a)(1) of this Rule.

(b) Team members shall not be paid or provided travel reimbursement by any political party or candidate for work as Team members. Team members shall not be employees or members of the county board of elections.

*Authority G.S. 163-226.3(a)(4); S.L. 2013-381, s. 4.6(b).*

#### **08 NCAC 16 .0104 VISITS BY MULTIPARTISAN ASSISTANCE TEAMS**

(a) The State Board of Elections shall provide annual notice regarding availability of Teams in each county. The notice shall provide information for covered facilities, or patients or residents of the facilities, to contact the County Board of Elections to arrange a Team visit.

(b) If a facility, or a patient or resident of a facility, requests a visit by the Team, the ~~County county Board board~~ of ~~Elections elections~~ shall notify the Team and schedule the visit(s) within seven calendar days if it is able to do so. If the ~~county Board board~~ of ~~Elections elections~~ is unable to schedule the visit within seven

calendar days, the voter may obtain such assistance from any person other than:

- (1) an owner, manager, director, employee of the hospital, clinic, nursing home, or rest home in which the voter is a patient or resident;
- (2) an individual who holds any elective office under the United States, this State, or any political subdivision of this State;
- (3) an individual who is a candidate for nomination or election to such office; or
- (4) an individual who holds any office in a State, congressional district, county, or precinct political party or organization, or who is a campaign manager or treasurer for any candidate or political party; provided that a delegate to a convention shall not be considered a party office.

None of the persons listed in Subparagraphs (1) through (4) of this Paragraph may sign the application or certificate as a witness for the patient.

(c) On a facility visit, the composition of the visiting Team members shall comply with the requirements of Rule .0102(a)(1) or (a)(2) of this Section.

(d) All Team members shall remain within the immediate presence of each other while visiting or assisting patients or residents.

(e) At each facility visit, the Team shall provide the following assistance to patients or residents who request it:

- (1) Assistance in requesting a mail-in absentee ballot: The Team shall collect any request forms submitted by voters and deliver those request forms immediately to the ~~County county Board board~~ of ~~Elections elections~~ office upon leaving the facility. Upon the voter's request, the Team may also:
  - (A) Assist the voter in completing the request form, provided that the voter signs or, if unable to sign, makes his or her mark or directs that his or her mark to be placed on the form; and
  - (B) Coordinate a return visit to assist the voter in completing the absentee ballot.

- (2) Assistance in casting a mail-in absentee ballot: Before providing assistance in voting by mail-in absentee ballot, a Team member shall be in the immediate presence of another Team member whose registration is not affiliated with the same political party. Team members shall sign the return envelope as witnesses to the marking of the mail-in absentee ballot. If the Team members provide assistance in marking the mail-in absentee ballot, the Team members shall also sign the voter's return envelope to indicate that they provided assistance in marking the ballot.

(f) The Team shall make and keep a record containing the names of all voters who received assistance or cast an absentee ballot during a visit as directed by the ~~County county Board board~~ of

Elections, elections, and submit that record to the County county Board board of Elections, elections.

(g) The Team shall assist patients or residents physically located in the Team's county, regardless of the voter's county of registration. If a patient or resident is registered to vote in another county, the county board of elections in the county where the voter is registered shall communicate any request for assistance to the County Board of Elections in the county where the voter is physically located.

*Authority G.S. 163-226.3(a)(4); S.L. 2013-381, s. 4.6(b).*

## **CHAPTER 18 – ABSENTEE BALLOTS**

### **08 NCAC 18 .0101 ABSENTEE BALLOT DELIVERY**

If, due to a disability, a voter requires assistance mailing his or her return envelope containing an executed absentee ballot, the sealed envelope may be taken directly and without delay to the closest U.S. mail depository or mailbox by a person selected by the voter, so long as the individual is also qualified to assist the voter. Any individual who assists in the manner described in this Rule shall indicate that he or she assisted the voter by marking the space provided for assistants on the return envelope containing the executed absentee ballot. Reliance on this Rule shall be limited to cases in which a voter is unable to place the ballot into the mail due to his or her disability. This Rule is adopted in accord with Title II of the Americans with Disabilities Act of 1990, which provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

*Authority G.S. 163-22; 163-230.1(e); 163-231(b)(1); 42 U.S.C. 12132; Nat'l Federation of the Blind v. Lamone, 813 F.3d 494 (4th Cir. 2016).*

### **08 NCAC 18 .0102 IN-PERSON RETURN OF ABSENTEE BALLOTS**

A ballot issued under the provisions of Article 20 or Article 21 of Chapter 163 of the General Statutes may be delivered in person to the county board of elections by the voter or the voter's near relative or verifiable legal guardian. It is unlawful for any other person to take into that person's possession for delivery to a voter or for return to a county board of elections the absentee ballot of any voter, with the exception of delivery by agents of the U.S. Postal System or commercial carrier service. Any person who returns an absentee ballot in person to a county board of elections office shall, upon delivery, provide the following information in writing:

- (1) Name of voter;
- (2) Name of person delivering ballot;
- (3) Relationship to voter;
- (4) Phone number (if available) and current address of person delivering ballot;
- (5) Date and time of delivery of ballot; and
- (6) Signature or mark of person delivering ballot certifying that the information provided is true

and correct and that the person is the voter or the voter's near relative or verifiable guardian.

At the absentee meeting held under G.S. 163-230.1(c), the county board of elections may consider the improper delivery of a ballot in conjunction with other evidence in determining whether the container-return envelope has been properly executed. The improper delivery of a ballot does not constitute evidence sufficient to establish that the voter did not lawfully vote his or her ballot.

*Authority G.S. 163-22; 163-226.3(a)(6); 163-231(b)(1).*

## **CHAPTER 20 – ELECTION OBSERVERS**

### **08 NCAC 20 .0101 ELECTION OBSERVERS**

(a) Observer Lists. The chair of each political party in a county may designate two precinct-specific observers to attend each voting place on Election Day and each one-stop site during a primary or general election. The party chair may designate 10 additional at-large observers who may attend any voting place in the county. The list of observers for one-stop must designate the names of the observers who will be present on each day of early voting and, for precinct-specific observers, at each one-stop site. At-large observers may serve at any one-stop site.

(b) Submission of Lists. The party chair shall submit a written, signed list of at-large observers to the county director of elections, with two copies provided to the chair of the county board of elections, prior to 10:00 a.m. on the fifth day prior to Election Day. The party chair shall submit a written, signed list of the observers appointed for each precinct to the chief judge of each precinct, with two copies provided to the chair of the county board of elections, prior to 10:00 a.m. on the fifth day prior to Election Day; the list may be delivered in care of the county director of elections. The party chair shall submit the list of observers for one-stop before 10:00 a.m. on the fifth day before the observer is to observe. It is permissible for submissions to be made by facsimile or email provided the letters are signed. The list of at-large observers to serve on Election Day may be amended prior to Election Day to substitute one or all of at-large observers. The list of at-large observers who serve during early voting and the list of precinct-specific observers may not be amended after the submission deadline.

(c) Number of Observers at Voting Place. No more than two precinct-specific observers from each political party may be in the voting enclosure at any time. Only one at-large observer from each political party may be in the voting enclosure at any time, even if no precinct-specific observers are present. All observers, whether precinct-specific or at-large, may be relieved after serving no less than four hours. An observer may leave the voting place without having served for four hours, but the observer cannot be replaced by a new observer until at least four hours have passed since the first observer began serving. An observer who leaves the voting place for any reason may be prohibited by the chief judge from returning if the observer's return would cause a disruption in the voting enclosure.

(d) Observer Conduct. Observers in the voting enclosure are prohibited from engaging in certain activities. Observers who engage in prohibited conduct after receiving a warning may be

required by the chief judge to leave by the voting enclosure. Prohibited activities by observers includes:

- (1) Wearing or distributing campaign material or electioneering;
- (2) Impeding or disrupting the voting process or speaking with voters or election assistants;
- (3) Interfering with the privacy of the voter, including positioning themselves in such a way that they can view confidential voter information on poll books or laptops or standing in such a way that they can view the contents of ballots inserted into a tabulator;
- (4) Using an electronic device to film or take photographs inside the voting enclosure;
- (5) Taking photographs, videos, or recording a voter without the consent of the voter and the chief judge;
- (6) Entering the voting booth area or attempting to view voted ballots;
- (7) Boarding a vehicle containing curbside voters; and
- (8) Providing voter assistance.

(e) Eligibility. Persons appointed as observers must be registered voters of the county for which appointed and must have good moral character. No person who is a candidate on the ballot in a primary or general election may serve as an observer or runner in that primary or that general election. No person who serves as an observer or runner in a primary or general election may serve as a precinct official or one-stop election official in that primary or that general election.

(f) Observers for unaffiliated candidates. An unaffiliated candidate or the candidate's campaign manager may appoint two observers at each voting place as specified herein.

(g) The use of the term "chief judge" includes one-stop site managers.

*Authority G.S. 163-22; 163-45; 166-166.6; 163-166.7.*

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rules cited as 10A NCAC 43D .0202, .0203, .0703, .0707 and .0708.*

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

**Proposed Effective Date:** *October 1, 2017*

### **Public Hearing:**

**Date:** *June 29, 2017*

**Time:** *2:00 p.m.*

**Location:** *Cardinal Room, located at: 5605 Six Forks Road, Raleigh, NC*

**Reason for Proposed Action:** *Amendments to these rules are necessary to implement in North Carolina the federally -required*

*WIC Electronic Benefit Transfer (EBT) system and to modify the minimum inventory requirements for WIC vendors.*

**Comments may be submitted to:** *Chris Hoke, 1931 Mail Service Center, Raleigh, NC 27699-1931; phone (919) 707-5006; fax (919) 870-4829; email [chris.hoke@dhhs.nc.gov](mailto:chris.hoke@dhhs.nc.gov)*

**Comment period ends:** *July 31, 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 43 - PERSONAL HEALTH**

### **SUBCHAPTER 43D – WIC/NUTRITION**

#### **SECTION .0200 - WIC PROGRAM GENERAL INFORMATION**

#### **10A NCAC 43D .0202 DEFINITIONS**

(a) For the purposes of this Subchapter, all definitions set forth in 7 C.F.R. Part 246.2 are hereby incorporated by reference, including subsequent amendments and ~~additions~~, editions, with the following additions and modifications:

- (1) An "administrative appeal" is an appeal in accordance with Section .0800 of this Subchapter through which a local WIC agency, potential local WIC agency, authorized WIC ~~vendor~~ vendor, or potential WIC applicant may appeal the adverse actions listed in 7 C.F.R. 246.18(a)(1)(i), (a)(1)(ii), and (a)(3)(i).
- (2) An "authorized store representative" includes an owner, manager, assistant manager, head cashier, or chief fiscal officer.

- (3) An "authorized WIC vendor" is a food retailer or free-standing pharmacy that has executed a currently effective North Carolina WIC Vendor Agreement.
- (4) A "chain store" is a store that is owned or operated by a corporation, partnership, cooperative association, or other business entity that has 20 or more stores owned or operated by the business entity.
- (5) Electronic Benefit Transfer (EBT) Processor: An entity contracted by a government agency for the implementation, maintenance, and operation of the state WIC agency's WIC EBT system that acts as the agent of the state WIC agency to process and settle EBT transactions.
- ~~(5)~~(6) A "fair hearing" is the informal dispute resolution process in Section .0900 of this Subchapter through which any individual may appeal a state or local agency action that results in a claim against the individual for repayment of the cash value of improperly issued benefits or results in the individual's denial of participation or disqualification from the WIC Program as set forth in Rule .0410 of this Section. This process must be complied with prior to requesting a contested case hearing in accordance with G.S. 150B as set forth in 7 CFR 246.9.
- ~~(6)~~(7) "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.
- ~~(7)~~(8) "Free-standing pharmacy" means a pharmacy that does not operate within another retail store. Free-standing pharmacy includes free-standing pharmacies that are chain stores and free-standing pharmacies participating under a WIC corporate agreement.
- ~~(8)~~(9) The "local WIC agency" is the local agency that enters into an agreement with the Division of Public Health to operate the Special Supplemental Nutrition Program for Women, Infants and Children.
- ~~(9)~~(10) A "local WIC program plan" is a written compilation of information on the local WIC agency policies concerning program operation, including administration, nutrition education, personnel functions, costs and other information prepared by the local WIC agency and submitted to the Nutrition Services Branch.
- (11) A "personal identification number" (PIN) is a numeric password selected and used by a WIC participant to authenticate the participant to the EBT system.
- (12) A "point of sale terminal" (POS) is an electronic device used to process EBT card payments at authorized vendor locations.
- ~~(10)~~(13) A "predominantly WIC vendor" is an "above-50-percent vendor" as defined in 7 C.F.R. 246.2.
- ~~(14)~~ A "product look-up (PLU) code" is an identification number placed on produce sold at authorized vendor locations.
- ~~(14)~~(15) "Redemption" is the process by which a vendor deposits for payment a food instrument or cash-value voucher transacted at that vendor and the state agency (or its financial agent) makes payment to the vendor for the food instrument or cash-value voucher.
- ~~(12)~~(16) "Shelf price" is the price a vendor charges a non-WIC customer for a WIC supplemental food.
- ~~(13)~~(17) "SNAP-eligible food sales" means "food sales" as defined in 7 C.F.R. 246.2, which are those foods that can be purchased with Supplemental Nutrition Assistance Program ("SNAP") benefits.
- ~~(14)~~(18) The "state agency" is the Nutrition Services Branch, Women's and Children's Health Section, Division of Public Health, North Carolina Department of Health and Human Services.
- ~~(15)~~(19) "Store" means a food retailer or free-standing pharmacy operating at a single, fixed location.
- (20) "Supplemental food" or "WIC supplemental food" is a food that satisfies the requirements of 10A NCAC 43D .0501.
- ~~(16)~~(21) "Support costs" are clinic costs, administrative costs, and nutrition education costs.
- ~~(17)~~(22) "Transaction" is the process by which a WIC customer tenders a food instrument or a cash-value voucher to a vendor in exchange for authorized supplemental foods.
- (23) "Universal Product Code (UPC)" means an identification code printed on the packaging of WIC approved foods sold at WIC authorized vendor locations.
- ~~(19)~~(24) "Vendor applicant" is a store that has submitted an application to become an authorized WIC vendor but is not yet authorized.
- ~~(20)~~(25) A "vendor overcharge" is intentionally or unintentionally charging more for supplemental food provided to a WIC customer than to a non-WIC customer or charging more than the current shelf price for supplemental food provided to a WIC customer.
- ~~(24)~~(26) A "WIC corporate agreement" is a single WIC Vendor Agreement with a corporate entity that has 20 or more stores authorized as WIC vendors under the Agreement.
- ~~(22)~~(27) "WIC customer" means a WIC participant, parent or caretaker of an infant or child participant, proxy or compliance investigator who tenders a food instrument or a cash-value voucher to a vendor in exchange for WIC supplemental food.
- ~~(23)~~(28) "WIC program" means the Special Supplemental Nutrition Program for Women, Infants, and Children authorized by 42 U.S.C.

1786 of the Child Nutrition Act of 1966 as amended.

(b) A copy of 7 C.F.R. Part 246 is available for inspection at the Department of Health and Human Services, Division of Public Health, Women's and Children's Health Section, Nutrition Services Branch, 5601 Six Forks Road, Raleigh, North Carolina. Copies are available at no cost from the Supplemental Nutrition Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302 by calling (703) 305-2730 or access <http://www.fns.usda.gov/wic/lawsandregulations/WICRegulations-7CFR246.pdf>.

*Authority G.S. 130A-361; 7 C.F.R. 246; 7 C.F.R. 246.12(g)(3); 7 C.F.R. 246.12(g)(3)(ii); 7 C.F.R. 246.12(h)(3)(xix); 7 C.F.R. 246.12(t); 42 U.S.C. 1786.*

#### **10A NCAC 43D .0203 REFERENCES**

(a) The state agency shall administer the WIC program in accordance with:

- (1) 42 U.S.C. 1786; and
- (2) 7 C.F.R. 246.1 through 246.28, United States Department of Agriculture, Food and Nutrition Service, Special Supplemental Nutrition Program for Women, Infants and Children.

(b) The documents listed in Paragraph (a) of this Rule are available for inspection at the Division of Public Health, Women's and Children's Section, Nutrition Services Branch at 5601 Six Forks Road, Raleigh, NC 27609 ~~the state agency~~ during regular business hours.

*Authority G.S. 130A-361.*

### **SECTION .0700 - WIC PROGRAM FOOD DELIVERY SYSTEM**

#### **10A NCAC 43D .0703 USE OF FOOD INSTRUMENTS AND CASH-VALUE VOUCHERS**

(a) Participants may transact food instruments and cash-value vouchers on any day on or between the ~~"date of issue"~~ "First Date to Spend" and ~~"participant must use by date"~~ "Last Date to Spend" printed on the food instrument or cash-value voucher. ~~The "participant must use by date" shall be 30 days from the "date of issue"~~

(b) ~~North Carolina WIC program food~~ Food instruments and cash-value vouchers shall be transacted only at authorized WIC vendors in accordance with the terms of the signed WIC Vendor Agreement and WIC program rules, regulations, and statutes. ~~Vendors are responsible for food instruments and cash value vouchers not properly transacted. Authorized WIC vendors shall not be reimbursed for food instruments and cash-value vouchers that are not properly transacted as set forth in Rule .0708 of this Section. Stores that are not authorized WIC vendors shall not be reimbursed for food instruments and cash-value vouchers transacted at their store. Neither an agency of the United States government, the State of North Carolina, the local WIC agency nor a past or present WIC participant, parent or caretaker of an infant or child participant, or proxy is under any obligation to pay for food instruments or cash value vouchers accepted by a store~~

~~that was not an authorized WIC vendor on the date of transaction of the food instrument or cash value voucher.~~

(c) ~~North Carolina WIC~~ Printed food instruments and cash-value vouchers shall be deposited at the vendor's bank. Vendors that use EBT shall have their bank account credited with payments for completed EBT transactions. ~~These food~~ Food instruments and cash-value vouchers shall not be assigned, transferred, sold, or otherwise negotiated.

*Authority G.S. 130A-361; 7 C.F.R. 246; 7 C.F.R. 246.12(g)(3); 7 C.F.R. 246.12(g)(3)(ii); 7 C.F.R. 246.12(h)(3)(xix); 7 C.F.R. 246.12(t); 42 U.S.C. 1786.*

#### **10A NCAC 43D .0707 VENDOR APPLICANTS**

To become authorized as a WIC vendor, a vendor applicant shall comply with the following vendor selection criteria:

- (1) A vendor applicant shall ~~accurately~~ complete a WIC Vendor Application, a WIC Price ~~List~~ List, as set forth in Item (4) of this Rule, and a WIC Vendor ~~Agreement~~ Agreement as set forth in 7 C.F.R. 246.12(h)(3). A vendor applicant shall submit its current highest shelf price for each WIC supplemental food listed on the WIC Price ~~List~~ List, as set forth in Item (4) of this Rule.
- (2) A vendor applicant, at the time of application and throughout the term of authorization, shall submit all completed forms to the local WIC agency, except that a corporate entity operating under a WIC corporate agreement shall submit one completed WIC corporate agreement and the WIC Price Lists to the state agency and a separate WIC Vendor Application for each store to the local WIC agency. A corporate entity operating under a WIC corporate agreement may submit a single WIC Price List for those stores that have the same prices for WIC supplemental foods in each store, rather than submitting a separate WIC Price List for each store.
- (3) A vendor applicant shall purchase all infant formula, exempt infant formula, and WIC-eligible ~~medical food~~ nutritionals directly from:
  - (a) the sources specified in 42 U.S.C 1786(h)(8)(A)(ix), which is incorporated by reference with all subsequent amendments and editions;
  - (b) Retail food stores that purchase directly from the sources referenced in Sub-item (3)(a) of this Item; or
  - (c) A source on another state's list of approved infant formula sources as verified by that state's agency.

A vendor applicant shall make available to the state or local WIC agency invoices or receipts documenting purchases of all infant formula, exempt infant formula, and WIC-eligible medical foods. Receipts and invoices must satisfy the requirements of Sub-items (30)(a)

through (30)(c) of Rule ~~.0708~~. .0708 of this Section. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for failure to purchase infant formula, exempt infant formula, or WIC-eligible medical food from the sources specified in this Item. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for providing infant formula, exempt infant formula, or WIC eligible medical food to WIC customers that was not purchased from the sources specified in this Item.

- (4) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC Price List ~~must~~ shall not exceed the maximum price set by the state agency for each supplemental food within that vendor applicant's peer group, except as provided in Sub-item (4)(b) of this Item. The maximum price for each supplemental food shall be established as follows:

(a) The most recent WIC Price Lists submitted by authorized vendors within the same peer group shall be used to determine the maximum price for each supplemental food. The maximum price shall be the 97th percentile of the current highest shelf prices for each supplemental food within a vendor peer group. The state agency shall reassess the maximum price set for each supplemental food at least four times a year. For two of its price assessments, the state agency shall use the WIC Price Lists which must be submitted by all vendors by April 1 and October 1 each year in accordance with Item (32) of Rule .0708. The other two price assessments shall be based on WIC Price Lists requested from a sample of vendors within each peer group in January and July of each year.

(b) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum price(s) set by the state agency for that applicant's peer group, the agency shall send the applicant written notice. ~~applicant shall be notified in writing.~~ Within 30 days of the date of the written notice, the vendor applicant may resubmit price(s) that it will charge the state WIC Program for those foods that exceeded the maximum price(s). If none of the vendor applicant's

resubmitted prices exceed the maximum prices set by the state agency, the vendor applicant shall be deemed to have met the requirements of Item (4) of this Rule. If any of the vendor applicant's resubmitted prices still exceed the maximum prices set by the state agency, or the vendor applicant does not resubmit prices within 30 days of the date of written notice, ~~the application shall be denied in writing.~~ the agency shall send the applicant a written notice of denial. The vendor applicant ~~must~~ shall wait 90 days from the date of receipt of the written denial to reapply for authorization.

- (5) ~~An~~ A vendor applicant shall pass a an announced monitoring review by the local WIC agency to determine whether the store has minimum inventory of supplemental foods as specified in Item (24) of Rule ~~.0708~~ .0708 of this Section. A vendor applicant that fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days. If the applicant fails both reviews, the application shall be denied in writing and the applicant shall wait 90 days from the date of the second monitoring review before submitting a new application.
- (6) A vendor applicant shall either attend, or cause a manager or ~~other~~ another authorized store representative to attend, WIC Vendor Training provided by the local WIC agency prior to vendor authorization and ensure that the vendor applicant's employees receive instruction in WIC program procedures and requirements.
- (7) An applicant shall mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case at all times.
- (8) The store shall be at a single, fixed location within ~~the State of~~ North Carolina. The store shall be located at the address indicated on the WIC vendor application and shall be the site ~~at which~~ where WIC supplemental foods are selected by the WIC customer.
- (9) A vendor applicant shall use point of sale (POS) terminals to support the WIC Program which are deployed in accordance with the minimum lane coverage provisions of 7 C.F.R. 246.12(z)(2)(ii).
- ~~(9)(10)~~ (10) The store shall be open throughout the year for business with the public at least six days a week for at least 40 hours per week between 8:00 a.m. and 11:00 p.m.
- ~~(40)(11)~~ (11) The store shall not use the acronym "WIC" or the WIC logo, including facsimiles, in total or in part, in the official name in which the

business is registered or in the name under which it does business.

~~(11)~~(12) A vendor applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local WIC agency. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for submitting false, erroneous, or misleading information.

~~(12)~~(13) The owner(s), officer(s) or manager(s) of a vendor applicant shall not be employed, or have a spouse, child, or parent who is employed by the state WIC program, or the local WIC program serving the county where in which the vendor applicant conducts business. A vendor applicant shall not have an employee who handles, transacts, deposits, or stores WIC food instruments or cash-value vouchers who is employed, or has a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county where in which the vendor applicant conducts business. Such situations present a conflict of interest.

~~(13)~~(14) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity, including fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of ~~justice~~ justice, as set out in 7 C.F.R. 246.12(g)(3)(ii). For purposes of this Item, "convicted" or "conviction" means: ~~includes plea of guilty; a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, adjudicating body, tribunal, or official, either civilian or military; or a plea of no contest, nolo contendere, or the equivalent.~~

(a) a plea of guilty;

(b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, adjudicating body, tribunal, or official, either civilian or military;

(c) a plea of no contest, nolo contendere, or the equivalent;  
or;

(d) entry of a prayer for judgment continued following a conviction as defined in this Item is the same as a conviction for purposes of this Item.

~~(14)~~(15) A vendor applicant shall not be authorized if it is currently disqualified from the Supplemental Nutrition Assistance Program ("SNAP") or it has been assessed a SNAP civil money penalty for hardship and the disqualification period that otherwise would have been imposed has not expired.

~~(15)~~(16) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, shall not have an owner who holds a financial interest in any of the following:

- (a) a SNAP vendor which is disqualified from participation in the SNAP or has been assessed a civil money penalty for hardship in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, is continuing; or
- (b) another WIC vendor ~~that~~ which is disqualified from participation in the WIC Program or which has been assessed a monetary or civil money penalty pursuant to G.S. 130A-22(c1), Paragraph (e) or Paragraph (f) of Rule .0710 of this Section as the result of violation of Paragraphs (a) or (b) of Rule ~~.0710~~, .0710 of this Section and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, is continuing.

The requirements of this Item shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of this Item shall not be met even if such transfer or conveyance of financial interest in a SNAP vendor under Sub-item (16)(a) of this Item prematurely ends the disqualification period applicable to that SNAP vendor. The requirements of this Item shall apply until the time the SNAP vendor disqualification otherwise would have expired.

~~(16)~~(17) A vendor applicant, excluding free-standing pharmacies, ~~must~~ shall have SNAP authorization for the store as a prerequisite for WIC vendor authorization and ~~must~~ shall provide its SNAP authorization number to the state agency.

~~(17)~~(18) A vendor applicant shall not become authorized as a WIC vendor if the store has been disqualified from participation in the WIC Program and the disqualification period has not expired. A vendor applicant shall not be authorized as a WIC vendor if any of the vendor applicant's owner(s), officer(s) or manager(s) currently has or previously had a financial interest in a WIC vendor that was assessed a

claim by the WIC Program and the claim has not been paid in full.

~~(18)~~(19) A vendor applicant shall enter into contract with the state WIC Program's EBT processor or a third party processor certified by the state WIC Program's EBT processor prior to WIC authorization and comply with all applicable requirements detailed in the EBT or third party processor's Vendor Agreement.

~~(19)~~(20) For a food retailer or free-standing pharmacy to participate in the WIC Program, a current WIC Vendor Agreement must be signed by the vendor, the local WIC agency, and the state agency.

~~(19)~~(21) If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.

*Authority G.S. 130A-361; 7 C.F.R. 246; 7 C.F.R. 246.12(g)(3); 7 C.F.R. 246.12(g)(3)(ii); 7 C.F.R. 246.12(h)(3)(xix); 7 C.F.R. 246.12(t); 42 U.S.C. 1786.*

#### **10A NCAC 43D .0708 AUTHORIZED VENDORS**

By signing the WIC Vendor Agreement, the vendor agrees to:

- (1) Process WIC ~~program~~ Program food instruments and cash-value vouchers in accordance with the terms of the Vendor Agreement and state and federal WIC program, regulations and applicable law; as set forth 42 U.S.C. 1786, 7 C.F.R. 246.1-246.28, and 10A NCAC. 43D .0101-0911 and other applicable law;
- (2) Accept WIC ~~program~~ Program food instruments and printed cash-value vouchers in exchange for WIC supplemental foods. Supplemental foods are those foods ~~which that~~ satisfy the requirements of 10A NCAC 43D ~~.0501~~; 0501 of this Section;
- (3) Provide only the authorized supplemental foods listed on the printed food instrument, or authorized fruits and vegetables with a printed cash-value ~~voucher~~, voucher, ~~accurately determine~~ Determine the charges to the WIC ~~program~~ Program and complete the "Pay Exactly" box on the printed food ~~instrument~~ instrument, or printed cash-value voucher, as set forth in Item (4) of this Rule, prior to obtaining the signature of the WIC customer. When transacting EBT, the vendor shall provide to the WIC customer only the approved supplemental foods, fruits, and vegetables contained in the authorized product list (APL) after it has been determined that the WIC customer has an available balance on the date of the transaction. The WIC customer is not required to get all of the supplemental foods listed on the printed food instrument or the full dollar value of the printed cash-value voucher.

However, a WIC customer may obtain more fruits and vegetables than the full dollar value of a cash-value voucher if the WIC customer pays the ~~difference~~; difference, as set forth in 7 C.F.R. 246.12(h)(3)(xi);

- (4) Enter in the "Pay Exactly" box on the printed food instrument or printed cash-value voucher only the total amount of the current shelf prices, or less than the current shelf prices, for the supplemental food ~~actually~~ provided and shall not charge or collect sales taxes for the supplemental food ~~provided~~; provided. Vendors that utilize EBT shall only transmit the current shelf price of all WIC-approved supplemental foods purchased in the correct sizes, quantities and the total dollar amount of all WIC-approved supplemental foods purchased in the EBT system;
- (5) Charge no more for supplemental food provided to a WIC customer than to a non-WIC customer or no more than the current shelf price, whichever is less;
- (6) Accept payment from the state WIC Program only up to the maximum price set by the state agency for each supplemental food ~~instrument~~ within that vendor's peer group. The maximum price for each supplemental food ~~instrument~~ shall be based on the maximum prices set by the state agency for each supplemental food, as described in Sub-item (4)(a) of Rule ~~.0707~~, .0707 of this Section, listed on the food instrument. A request for payment submitted over the maximum price allowed by the State agency will only be paid up to the maximum price for that supplemental food;
- (7) Accept payment from the state WIC Program only up to the full dollar value of the cash-value voucher;
- (8) Not charge the state WIC Program more than the maximum price set by the state agency under Item (4)(a) of Rule .0707 of this Section for each supplemental food within the vendor's peer group;
- (9) Provide to WIC customers infant formula, exempt infant formula, and WIC eligible ~~medical food~~ nutritionals purchased only from the sources specified in Item (3) of Rule .0707. Providing infant formula, exempt infant formula, or WIC eligible ~~medical food~~ nutritionals that has not been purchased from the sources specified in Item (3) of Rule .0707 of this Section shall result in termination of the WIC Vendor Agreement;
- (10) For free-standing pharmacies, provide only exempt infant formula and WIC-eligible ~~medical foods~~; nutritionals;
- (11) Excluding free-standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales. Failure to

- redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The store must wait 180 days to reapply for authorization;
- (12) Accept WIC ~~program~~ Program food instruments and cash-value vouchers only on or between the ~~"Issue Date"~~ "First Date to Spend" and the ~~"Participant Must Use By"~~ "Last Date to Spend" dates;
- (13) Prior to obtaining the WIC customer's signature, on the printed food instrument and cash-value voucher, enter in the "Date Transacted" box the month, day and year the WIC food instrument or cash-value voucher is exchanged for supplemental food;
- (14) Ensure that the WIC customer signs the food instrument or cash-value voucher in the presence of the ~~cashier~~, cashier. Vendors that utilize EBT shall ensure that a personal identification number (PIN) is used by the WIC customer to complete the EBT transaction in lieu of a signature;
- (15) Ensure that the WIC customer enters the PIN to initiate the EBT transaction. The vendor shall not enter the PIN for the WIC customer;
- ~~(15)~~(16) Refuse to transact any food instrument or cash-value voucher that has been altered;
- ~~(16)~~(17) Not transact food instruments or cash-value vouchers in whole or in part for cash, credit, unauthorized foods, or non-food items;
- ~~(17)~~(18) Not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments or cash-value vouchers, except for exchanges of an identical authorized supplemental food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food. An identical authorized supplemental food means the exact brand, type and size as the original authorized supplemental food obtained and returned by the WIC customer;
- ~~(18)~~(19) Imprint the authorized WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the printed food instrument or cash-value voucher to enable the vendor number to be read during the ~~Program~~ WIC Program's editing process;
- ~~(19)~~(20) Imprint the vendor's bank deposit stamp or the vendor's name, address and bank account number in the "Authorized WIC Vendor Stamp" box in the ~~endorsement~~, endorsement on the printed food instrument or cash-value voucher;
- ~~(20)~~(21) Deposit WIC ~~program~~ printed food instruments and cash-value vouchers in the vendor's bank. ~~All North Carolina WIC program food~~ Food instruments and cash-value vouchers must be

- deposited in the vendor's bank within 60 days of the ~~"Issue Date"~~ "First Date to Spend" on the printed food instrument or cash-value voucher;
- ~~(21)~~(22) Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner authorized by the Agreement and be responsible for the unauthorized use of the authorized WIC vendor stamp;
- ~~(22)~~(23) Maintain storage of the authorized WIC vendor stamp so only the staff designated by the vendor owner or manager have access to the stamp and report loss of this stamp within two business days to the local WIC agency;
- ~~(23)~~(24) Notify the local WIC agency of misuse (attempted or actual) of WIC ~~program~~ Program food instruments or cash-value vouchers;
- ~~(24)~~(25) Maintain a minimum inventory of supplemental foods in the store for purchase. Supplemental foods that are outside of the manufacturer's expiration date do not count towards meeting the minimum inventory requirement. The following items and sizes constitute the minimum inventory of supplemental foods for vendors in Peer Groups I through III of Item (1) of Rule .0706, vendors in Peer Groups I through IV of Item (2) of Rule .0706 and vendors in Peer Group IV of Item (3) of Rule .0706 of this Section:

Food Item	Type of Inventory	Quantities Required
Milk	Whole fluid: gallon -and- Skim/lowfat fluid: gallon	2 gallons  <del>4</del> 6 gallons
Cheese	1 pound package	2 <del>pounds</del> packages
Cereals	2 types: whole grain (minimum package size 12 ounce)	6 packages total
Eggs	Grade A, large, white: <del>one</del> 1 dozen size carton	2 dozen
Juices	Single strength: 48 ounce container 64 ounce container	4 containers 4 containers
Dried Peas and Beans	<del>one</del> 1 pound package	2 packages
Peanut Butter	16 to 18 ounce container	2 containers
<u>Tuna</u>	<u>5 to 6 ounce can</u>	<u>6 cans</u>
<u>Bread/ Tortillas</u>	<u>16 ounce loaf of bread or package of tortillas</u>	<u>2 loaves and/or or 2 packages OR 1 loaf and 1 package</u>
<u>Rice</u>	<u>14 to 16 ounce package</u>	<u>2 packages</u>

Infant Cereal	8 ounce box	6 boxes
Infant Fruits and Vegetables	<u>3.5 to 4 ounce container</u> <u>1 type of fruit and 1 type of vegetable</u>	<u>64 ounces</u>
Infant Formula	<del>milk-based concentrate; 12 to 13 ounce</del> <del>-and-</del> <del>soy-based concentrate; 12.0 to 13 ounce</del> <del>-and-</del> milk-based powder; 11.0 to 14.0 ounce <del>-and-</del> soy-based powder; 11.0 to 14.0 ounce Brands must be the primary contract infant formulas	34 cans  17 cans <del>(10)(8)</del> cans  (4) cans
Fruits	14 to 16 ounce can: 2 varieties	<del>(6)(10)</del> cans total
Vegetables (Excludes foods in Dried Peas and Beans category)	14 to 16 ounce can: 2 varieties	(10) cans total

All vendors in Peer Groups I through III of Item (1) of Rule .0706, Peer Groups I through IV of Item (2) of Rule .0706 of this Section and Peer Groups IV and V of Item (3) of Rule .0706 of this Section shall supply milk, soy-based or lactose-free infant formula in 32 ounce ready-to-feed or lactose-free powder within 48 hours of request by the state or local WIC agency;

~~(25)(26)~~ Ensure that all supplemental foods in the store for purchase are within the manufacturer's expiration date;

~~(26)(27)~~ Permit the purchase of supplemental food without requiring other purchases;

~~(28)~~ Comply with the following EBT provisions:

(a) Sign the WIC Vendor Agreement of the EBT Processor selected by the state WIC Program or a third-party processor that has been certified by the EBT Processor selected by the state WIC Program. Failure by a vendor to sign and retain a WIC Vendor Agreement with the state WIC Program's EBT Processor or a third-party processor that has been certified by the state WIC Program's EBT Processor shall result in termination of the WIC Vendor Agreement. Vendors shall notify the WIC Agreement within 24 hours of any periods of time during

which they do not maintain an Agreement with the state WIC Program's EBT Processor or a third-party processor that has been certified by the state WIC Program's EBT Processor.

(b) Process EBT transactions in accordance with the terms of the North Carolina WIC Vendor Agreement, WIC Program Rules, and state and federal regulations, and statutes;

(c) Maintain Point of Sale (POS) terminals used to support the WIC Program in accordance with the minimum lane provisions of 7 C.F.R. 246.12(z)(2);

(d) Maintain a North Carolina EBT Processor certified in-store EBT system that is available for WIC redemption processing during all hours the store is open;

(e) Request the North Carolina EBT Processor re-certify its in-store system if the vendor alters or revises the system in any manner that impacts the EBT redemption or claims processing system after initial certification is completed.

(f) For vendors with integrated systems, obtain EBT card readers to support EBT transactions within their store(s). The vendor shall ensure that the EBT card readers they obtain meets all EBT and North Carolina EBT Processor requirements.

(g) Require an owner, manager or other authorized store representative to complete training approved by the state WIC Program on EBT procedures. The vendor shall ensure that all cashiers and staff are fully trained on EBT requirements, including training in the acceptance and processing of EBT transactions;

(h) Require the WIC customer to approve the WIC transaction. Vendors shall ensure that the vendors' staff does not approve the WIC transactions for WIC customers under any circumstances;

(i) Release supplemental food to WIC customers when the transaction has been completed to include receipt of transaction approval by the EBT processing system, printing of the receipt and updated balance;

(j) Scan or manually enter Universal Product Codes (UPC) only from approved supplemental foods being purchased by the WIC customer in the

- types, sizes and quantities available on the WIC customer's EBT account. The vendor shall not scan codes from UPC codebooks or reference sheets;
- (k) Return any EBT card found on the vendor's property and unclaimed for 24 hours to the WIC Program. The vendor shall not hold or use a WIC customer's EBT card and PIN for any purpose whatsoever;
- (l) Connect the vendor's in-store system for each outlet covered by the WIC Vendor agreement to the State's WIC EBT system at least once each 24-hour period to download reconciliation files and the WIC Authorized Product UPC/Product Look-Up (PLU) list.
- ~~(27)~~(29) Attend, or cause a manager or other authorized store representative to attend, annual vendor training upon notification by the local WIC agency. Failure to attend annual vendor training by September 30 of each year shall result in termination of the WIC Vendor Agreement;
- ~~(28)~~(30) Inform and train vendor's cashiers and other staff on WIC Program requirements;
- ~~(29)~~(31) Be accountable for the actions of its owners, officers, managers, agents, and employees who commit vendor violations;
- ~~(30)~~(32) Allow monitoring and inspection by state and local WIC Program staff of the store premises and procedures to ensure compliance with the agreement and state and federal WIC Program rules, regulations and applicable law. This includes providing access to all program-related records, including access to all WIC food instruments and cash-value vouchers at the store; vendor records pertinent to the purchase and sale of WIC supplemental foods, including invoices, receipts, copies of purchase orders, and any other proofs of purchase; federal and state corporate and individual income tax and sales and use tax returns and all records pertinent to these returns; and books and records of all financial and business transactions. These records must be retained by the vendor for a period of three years or until any audit pertaining to these records is resolved, whichever is later. Notwithstanding any other provision of this Rule and Rules .0707 and ~~.0740~~, .0710 of this Section, failure or inability to provide these records for an inventory audit or providing false records for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Subparagraph (a)(1) of Rule ~~.0740~~, .0710 of this Section. Invoices, receipts, purchase orders, and any other proofs of purchase for WIC supplemental foods shall include:
- (a) the name of the seller and be prepared entirely by the seller without alteration by the vendor or on the seller's business letterhead;
- (b) the date of purchase and the date the authorized vendor received the WIC supplemental food at the store if different from the date of purchase; and
- (c) a description of each WIC supplemental food item purchased, including brand name, unit size, type or form, and quantity;
- ~~(34)~~(33) Maintain a record of all SNAP-eligible food sales and provide to the State agency upon request a statement of the total amount of revenue derived from SNAP-eligible food sales and written documentation to support the amount of sales claimed by the vendor, such as sales records, financial statements, reports, tax documents or other verifiable documentation;
- ~~(32)~~(34) Submit a current ~~accurately~~ completed WIC Price List when signing this agreement, and by April 1 and October 1 of each year. The vendor also agrees to submit a WIC Price List within one week of any written request by the state or local WIC agency;
- ~~(33)~~(35) Reimburse the state agency in full or agree to a repayment schedule with the state agency within 30 days of written notification of a claim assessed due to a vendor violation that affects payment to the vendor or a claim assessed due to the unauthorized use of the WIC vendor stamp. Failure to reimburse the state agency in full or agree to a repayment schedule within 30 days of written notification of a claim shall result in termination of the WIC Vendor Agreement. The state agency shall deny payment or assess a claim in the amount of the full purchase price of each food instrument or cash-value voucher invalid under Subparagraphs (a)(2), (a)(5), (a)(6) or (a)(7) of Rule .0704 of this Section. Denial of payment by the state agency or payment of a claim by the vendor for a vendor violation(s) shall not absolve the vendor of the violation(s). The vendor shall also be subject to any vendor sanctions authorized under Rule .0710 of this Section for the vendor violation(s);
- ~~(34)~~(36) Not seek restitution from the WIC customer for reimbursement paid by the vendor to the state agency or for WIC food instruments or cash-value vouchers not paid or partially paid by the state agency. Additionally, the vendor shall not charge the WIC customer for authorized supplemental foods obtained with food instruments or cash-value vouchers;

- ~~(35)~~(37) Not contact a WIC customer outside the store regarding the transaction or redemption of WIC food instruments or cash-value vouchers;
- ~~(36)~~(38) Notify the local WIC agency in writing at least 30 days prior to a change of ownership, change in store location, cessation of operations, or withdrawal from the WIC Program. Change of ownership, change in store location of more than three miles from the store's previous location, cessation of operations, withdrawal from the WIC Program or disqualification from the WIC Program shall result in termination of the WIC Vendor Agreement by the state agency. Change of ownership, change in store location, ceasing operations, withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement shall not stop a disqualification period applicable to the store;
- ~~(37)~~(39) Return the authorized WIC vendor stamp to the local WIC agency upon termination of the Agreement or disqualification from the WIC Program;
- ~~(38)~~(40) Not discriminate on the basis of WIC participation, such as failing to offer WIC customers the same ~~courtesies~~ courtesies, as set forth in 7 C.F.R. 246.12(g)(3)(iii), offered to other customers or requiring separate WIC lines;
- ~~(39)~~(41) Reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store ~~must~~ shall reapply to become authorized following the expiration of a disqualification period or termination of the Agreement. In all cases, the vendor applicant is subject to the vendor peer group criteria of Rule .0706 of this Section and the vendor selection criteria of Rule ~~.0707~~; .0707 of this Section; and
- ~~(40)~~(42) Comply with all the requirements for vendor applicants of Items (3), (4) ~~and~~ , (7) through (16), (17) and (19) of Rule .0707 of this Section throughout the term of authorization. The state agency may reassess a vendor at any time during the vendor's period of authorization to determine compliance with these requirements. The state agency shall terminate the WIC Vendor Agreement of any vendor that fails to comply with Items (3), (4), (8), (9), (10), (11), (12), ~~(13), (14), (15), (16), (17) or (19)~~ of Rule .0707 of this Section during the vendor's period of authorization, and terminate the agreement of or sanction or both any vendor that fails to comply with Items (7), ~~(14), (15), (16), (17), or (19)~~ of Rule .0707 of this Section during the vendor's period of authorization.

Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786.

## TITLE 11 – DEPARTMENT OF INSURANCE

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Code Officials Qualification Board intends to amend the rules cited as 11 NCAC 08 .0602 and .0708.*

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

**Proposed Effective Date:** *October 1, 2017*

**Public Hearing:**

**Date:** *July 25, 2017*

**Time:** *9:00 a.m.-10:00 a.m.*

**Location:** *1<sup>st</sup> Floor Hearing Room, Room 131 (Albemarle Building) located at 325 N. Salisbury Street, Raleigh, NC 20603*

**Reason for Proposed Action:** *The current rule only allows issuance of certificates upon Board approval at regularly scheduled quarterly meetings. State certification exams have been administered by contracted vendors since 2009 in a computer based format at a number of locations throughout North Carolina rather than as a paper based exam administered by NCDOT staff on a quarterly basis. The current rule delays the issuance of certifications unnecessarily once the applicant passes in the State exam and impedes local governments form recruiting, retaining and promoting needed workforce.*

*The construction industry's rapid resurgence and increased permitting activity requires increased inspections and plan review by local government jurisdictions. Current statute allows the Board to issue Probationary certificates for up to three years. The current board rule is unnecessarily restrictive at two years to meet the demand for more multi-trade inspectors for the disciplines of Building, Mechanical, Electrical and Plumbing required for typical single-family home series of inspection.*

**Comments may be submitted to:** *Loretta Peace-Bunch, 1201 Mail Service Center, Raleigh, NC 27699-1201; phone (919) 807-6004; email Loretta.peace-bunch@ncdoi.gov*

**Comment period ends:** *July 31, 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 08 - ENGINEERING AND BUILDING CODES  
DIVISION**

**SECTION .0600 - QUALIFICATION  
BOARD-PROBATIONARY CERTIFICATE**

**11 NCAC 08 .0602 NATURE OF PROBATIONARY  
CERTIFICATE**

(a) A probationary certificate may be issued, without examination, to any newly-employed or newly-promoted code enforcement official who lacks a standard certificate that covers the new position. A probationary certificate shall be issued for ~~two~~ three years only and ~~may~~ shall not be renewed. The official shall take whatever measures are necessary during the ~~two~~ three year period to qualify for an appropriate standard certificate. A probationary certificate authorizes the official, during the effective period of the certificate, to hold the position of the type, level, and location specified. The certificate shall be conditioned on the applicant's completion of a high school diploma or a high school equivalency certificate (GED) and meeting one of the following:

- (1) Working under supervision sufficient to protect the public health and safety;
- (2) Possessing a minimum of two years of design, construction, or inspection experience working under a certified inspector or under a licensed professional engineer, registered architect, or licensed contractor;
- (3) Possessing one of the experience qualifications listed in 11 NCAC 08 .0706 in each area of code enforcement for which the probationary certificate is issued; or
- (4) Successfully completing a probationary prequalification exam administered by the Board in each area of code enforcement for which the probationary certificate is issued.

(b) A probationary certificate shall be issued if the Board determines that the applicant may obtain the experience required by Paragraph (a)(3) of this Rule before the expiration of the probationary certificate.

*Authority G.S. 143-151.12(2); 143-151.13(d).*

**SECTION .0700 - QUALIFICATION BOARD-STANDARD  
CERTIFICATE**

**11 NCAC 08 .0708 CERTIFICATE**

(a) If an application is found to be in order and the applicant qualified for a particular type and level of certificate, ~~upon approval of the Board~~ the Board's staff shall mail a standard

certificate of that type and level to the applicant at the address specified on the application. The certificate shall be effective until the renewal date specified in G.S. 143-151.16(b).

(b) If the applicant does not meet the criteria for the certificate for which applied, the applicant shall be given written notice of the criterion that the applicant apparently fails to meet and offered a choice of:

- (1) accepting a certificate for a lower level for which the applicant is qualified;
- (2) submitting additional evidence in support of the application;
- (3) withdrawing the application; or
- (4) appealing the decision to the Board.

If an appeal is filed, the Board shall conduct a hearing and render a decision in accordance with G.S. 150B.

*Authority G.S. 143-151.12; 143-151.13; 143-151.14; 143-151.19.*

**TITLE 14B – DEPARTMENT OF PUBLIC SAFETY**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Private Protective Services Board intends to amend the rules cited as 14B NCAC 16 .0102, .0201, .0203, .0701, .0706, .0801, .0806, .0902, .0904, .1301, .1306, .1401, and .1406.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
*<https://www.ncdps.gov/About-DPS/Boards-Commissions/Private-Protective-Services-Board>*

**Proposed Effective Date:** *October 1, 2017*

**Public Hearing:**

**Date:** *June 16, 2017*

**Time:** *2:00 p.m.*

**Location:** *Private Protective Services Board, 3101 Industrial Drive, Suite 104, Raleigh, NC 27609*

**Reason for Proposed Action:** *Update Board office address; Update the e-mail address used by applicants to send photo required to accompany application; Modify requirement for applicant providing criminal background information.*

**Comments may be submitted to:** *Barry S. Echols, Director, 3101 Industrial Drive, Suite 104, Raleigh, NC 27609; phone (919) 788-5320; email barry.echols@ncdps.gov*

**Comment period ends:** *July 31, 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 16 - PRIVATE PROTECTIVE SERVICES  
BOARD**

**SECTION .0100 - ORGANIZATION AND GENERAL  
PROVISIONS**

**14B NCAC 16 .0102 LOCATION**

The administrative offices of the Private Protective Services Board are located at 4901 Glenwood Avenue, Suite 200, Raleigh, North Carolina 27612; 3101 Industrial Drive, Suite 104, Raleigh, North Carolina 27609, telephone (919) 788-5320.

*Authority G.S. 74C-4; 74C-5.*

**SECTION .0200 - LICENSES: TRAINEE PERMITS**

**14B NCAC 16 .0201 APPLICATION FOR LICENSES  
AND TRAINEE PERMITS**

(a) Each applicant for a license or trainee permit shall submit an original and one copy of the application to the Board. The application shall be accompanied by:

- (1) one set of classifiable fingerprints on an applicant fingerprint card;
- (2) one head and shoulders digital photograph of the applicant in JPG format of acceptable quality for identification, taken within six months prior to submission and submitted by e-mail to PPSASL\_Photos@ncdoj.gov PPSASL\_Photos@ncdps.gov or by compact disc;
- (3) a certified statement of the results of a criminal history records search by the ~~appropriate governmental authority housing criminal record information or clerk of superior court in each county where the applicant has resided within the immediately preceding 60 months;~~ reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for any state where the applicant has resided within the preceding 60 months;
- (4) the applicant's non-refundable application fee;
- (5) the actual cost charged to the Private Protective Services Board by the State Bureau of

Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board; and

- (6) an Equifax credit check run within 30 days of the license application submission date.

(b) Applications for trainee permits shall be accompanied by a notarized statement on a form provided by the Board and signed by the applicant and his prospective supervisor, stating that the trainee applicant shall at all times work with and under the direct supervision of that supervisor.

(c) Private investigator trainees applying for a license must make available for inspection a log of experience on a form provided by the Board.

(d) Each applicant must provide evidence of high school graduation either by diploma, G.E.D. certificate, or other proof.

(e) Each applicant for a license shall meet personally with either a Board investigator, the Screening Committee; the Director, or a Board representative designated by the Director prior to being issued a license. The applicant shall discuss the provisions of G.S. 74C and the administrative rules during the personal meeting. The applicant shall sign a form provided by the Board indicating that he or she has reviewed the information with the Board's representative and that he or she has an understanding of G.S. 74C and the administrative rules.

*Authority G.S. 74C-2; 74C-5; 74C-8; 74C-8.1; 74C-12.*

**14B NCAC 16 .0203 RENEWAL OR RE-ISSUE OF  
LICENSES AND TRAINEE PERMITS**

(a) Each applicant for a license or trainee permit renewal shall submit an original and one copy of the renewal form. This form shall be submitted to the Director not less than 30 days prior to expiration of the applicant's current license or trainee permit and shall be accompanied by:

- (1) a head and shoulders digital color photograph of the applicant in JPG format of a quality sufficient for identification, taken within six months of the application and submitted by e-mail to PPSASL\_Photos@ncdoj.gov PPSASL\_Photos@ncdps.gov or by compact disc;
- (2) ~~statements of the result of a local criminal history records search by the city county identification bureau or clerk of superior court in each county where the applicant has resided within the immediately preceding 24 months or a criminal record check from a third party criminal record check provider; reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for any state where the applicant has resided within the preceding 24 months;~~
- (3) the applicant's renewal fee; and
- (4) proof of liability insurance as set out in G.S. 74C-10(e).

(b) If a licensee has maintained a license at least two years and then allows the license to expire, the license may be re-issued if application is made within three years of the expiration date and the following documentation is submitted to the Board:

- (1) an Application For Reinstatement of an Expired License;
- (2) one set of classifiable fingerprints on an applicant fingerprint card;
- (3) one head and shoulders digital color photograph of the applicant in JPG format of a quality sufficient for identification, taken within six months of the application and submitted by e-mail to ~~PPSASL-Photos@ncdoj.gov~~ PPSASL-Photos@ncdps.gov or by compact disc;
- (4) statements of the result of a local criminal history records search by the ~~city county identification bureau or clerk of superior court in each county where the applicant has resided within the immediately preceding 60 months or a criminal record check from a third party criminal record check provider reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for any state where the applicant has resided within the preceding 60 months;~~
- (5) the applicant's non-refundable application fee;
- (6) proof of liability insurance as set out in G.S. 74C-10(e); and
- (7) a separate check or money order made payable to the State Bureau of Investigations to cover criminal record checks performed by the State Bureau of Investigations.

(c) A member of the armed forces whose license is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall receive that same extension of time to pay the license renewal fee and complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

*Authority G.S. 74C-5; 74C-8; 74C-8.1; 74C-9.*

## **SECTION .0700 - SECURITY GUARD REGISTRATION (UNARMED)**

### **14B NCAC 16 .0701 APPLICATION FOR UNARMED SECURITY GUARD REGISTRATION**

(a) Each employer or his designee shall submit and sign an application form for the registration of each employee to the Board. This form shall be accompanied by:

- (1) one set of classifiable fingerprints on an applicant fingerprint card;
- (2) two head and shoulders color digital photographs of the applicant in JPG format of acceptable quality for identification, taken within six months prior to submission and submitted by e-mail to ~~PPSASL-Photos@ncdoj.gov~~ PPSASL-Photos@ncdps.gov or by compact disc;
- (3) a certified statement of the results of a criminal records search from the ~~appropriate governmental authority housing criminal~~

~~record information or clerk of superior court in each area where the applicant has resided within the immediately preceding 48 months; reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for any state where the applicant has resided within the preceding 60 months;~~

- (4) the applicant's non-refundable registration fee; and
- (5) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.

(b) The employer of each applicant for registration shall give the applicant a copy of the application and shall retain a copy of the application in the individual's personnel file in the employers' office.

(c) The applicant's copy of the application shall serve as a temporary registration card that shall be carried by the applicant when he is within the scope of his employment and that shall be exhibited upon the request of any law enforcement officer or authorized representative of the Board.

(d) A statement signed by a certified trainer that the applicant has successfully completed the training requirements of Rule .0707 of this Section shall be submitted to the Director with the application.

(e) A copy of the statement specified in Paragraph (d) of this Rule shall be retained by the licensee in the individual applicant's personnel file in the employer's office.

*Authority G.S. 74C-5; 74C-8.1; 74C-11.*

### **14B NCAC 16 .0706 RENEWAL OR REISSUE OF UNARMED SECURITY GUARD REGISTRATION**

(a) Each applicant for renewal of a registration identification card or his employer, shall complete a form provided by the Board. This form shall be submitted not fewer than 30 days prior to the expiration of the applicant's current registration and shall be accompanied by:

- (1) two head and shoulders color digital photographs of the applicant in JPG format of acceptable quality for identification, taken within six months prior to submission and submitted by e-mail to ~~PPSASL-Photos@ncdoj.gov~~ PPSASL-Photos@ncdps.gov or by compact disc;
- (2) statements of any criminal record obtained from the ~~appropriate authority in each area where the applicant has resided within the immediate preceding 12 months or a criminal record check from a third party criminal record check provider; reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for any state where the applicant has resided within the preceding 12 months;~~
- (3) the applicant's renewal fee; and

- (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.
- (b) Each applicant for reissue of a registration identification card shall complete, and his employer shall sign, a form provided by the Board. This form shall be submitted to the Board and accompanied by:
- (1) two head and shoulders color digital photographs of the applicant in JPG format of acceptable quality for identification, taken within six months prior to submission and submitted by e-mail to ~~PPSASL-Photos@ncdoj.gov~~ PPSASL-Photos@ncdps.gov or by compact disc; and
  - (2) the applicant's reissue fee.
- (c) The employer of each applicant for a registration renewal or reissue shall give the applicant a copy of the application which will serve as a record of application for renewal or reissue and shall retain a copy of the application in the individual's personnel file in the employer's office.
- (d) Members of the armed forces whose registration is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the registration renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

*Authority G.S. 74C-5; 74C-11.*

## **SECTION .0800 - ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT**

### **14B NCAC 16 .0801 APPLICATION/ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT**

- (a) Each armed security guard employer or his designee shall submit and sign an application form for the registration of each armed security guard applicant to the Board. This form shall be accompanied by:
- (1) one set of classifiable fingerprints on an applicant fingerprint card;
  - (2) two head and shoulders color digital photographs of the applicant in JPG format of sufficient quality for identification, taken within six months prior to submission and submitted by e-mail to ~~PPSASL-Photos@ncdoj.gov~~ PPSASL-Photos@ncdps.gov or by compact disc;
  - (3) a certified statement of the results of a criminal records search from the ~~clerk of superior court in each county where the applicant has resided within the immediate preceding 48 months. If the applicant has resided out of state within the immediate preceding 48 months, the applicant~~

~~shall provide a certified statement of the result of a criminal records search from the appropriate governmental authority housing criminal record information in each area where the applicant has resided within the immediate preceding 48 months; reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for any state where the applicant has resided within the preceding 60 months;~~

- (4) the applicant's non-refundable registration fee; and
- (5) a statement signed by a certified trainer that the applicant has successfully completed the training requirements of Rule .0807 of this Section;
- (6) a certification by the applicant that he or she is at least 21 years of age.

(b) The employer of each applicant for registration shall give the applicant a copy of the application and shall retain a copy of the application in the individual's personnel file in the employer's office.

(c) The applicant's copy of the application shall serve as a temporary registration card that shall be carried by the applicant when he is within the scope of his employment and that shall be exhibited upon the request of any law enforcement officer or authorized representative of the Board.

(d) Applications submitted without proof of completion of a Board approved firearms training course shall not serve as temporary registration cards.

(e) The provisions of Paragraphs (a), (b), and (c) of this Rule also apply to any employee whose employment is terminated within 30 days of employment.

*Authority G.S. 74C-5; 74 C-9; 74C-13.*

### **14B NCAC 16 .0806 RENEWAL OF ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT**

(a) Each applicant for renewal of an armed security guard firearm registration permit identification card or his employer shall complete a form provided by the Board. This form shall be submitted not more than 90 days nor fewer than 30 days prior to expiration of the applicant's current armed registration and shall be accompanied by:

- (1) two head and shoulders color digital photographs of the applicant in JPG format of acceptable quality for identification, taken within six months prior to submission and submitted by e-mail to PPSASL-Photos@ncdoj.gov or by compact disc;
- (2) statements of any criminal record obtained from the ~~appropriate area where the applicant has resided within the immediate preceding 12 months or a criminal record check from a third party criminal record check provider; reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for any state where the applicant has resided within the preceding 12 months;~~

- (3) the applicant's renewal fee; and
- (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.

(b) The employer of each applicant for a registration renewal shall give the applicant a copy of the application that will serve as a record of application for renewal and shall retain a copy of the application in the individual's personnel file in the employer's office.

(c) Applications for renewal shall be accompanied by a statement signed by a certified trainer that the applicant has successfully completed the training requirements of Rule .0807 of this Section.

(d) Members of the armed forces whose registration is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the registration renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

*Authority G.S. 74C-5; 74C-11; 74C-13.*

## SECTION .0900 – TRAINER CERTIFICATE

### 14B NCAC 16 .0902 APPLICATION FOR FIREARMS TRAINER CERTIFICATE

Each applicant for a firearms trainer certificate shall submit an original and one copy of the application to the Board. The application shall be accompanied by:

- (1) one set of classifiable fingerprints on an applicant fingerprint card;
- (2) one head and shoulders color digital photograph of the applicant in JPG format of adequate quality for identification, taken within six months prior to submission and submitted by e-mail to [PPSASL\\_Photos@ncdps.gov](mailto:PPSASL_Photos@ncdps.gov) or by compact disc;
- (3) a certified statement of the result of a criminal history records search by the ~~appropriate governmental authority housing criminal record information or clerk of superior court in each county where the applicant has resided within the immediate preceding 60 months, and if any address history contains an out of state address, a criminal record check from the reporting service designated by the Board pursuant to G.S. 74C-8.1(a);~~ reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for any state where the applicant has resided within the preceding 60 months;
- (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of

Investigation, collected by the Private Protective Services Board;

- (5) the applicant's non-refundable registration fee;
- (6) a certificate of successful completion of the training required by Rule .0901(3) and (4) of this Section. This training shall have been completed within 60 days of the submission of the application; and
- (7) the actual cost charged to the Private Protective Services Board by the North Carolina Justice Academy to cover the cost of the firearms training course given by the N.C. Justice Academy and collected by the Private Protective Services Board.

*Authority G.S. 74C-5; 74C-8.1(a); 74C-13.*

### 14B NCAC 16 .0904 RENEWAL OF A FIREARMS TRAINER CERTIFICATE

(a) Each applicant for renewal of a firearms trainer certificate shall complete a renewal form provided by the Board and available on its website at [www.ncdps.gov/PPS](http://www.ncdps.gov/PPS). This form shall be submitted not less than 30 days prior to the expiration of the applicant's current certificate and shall be accompanied by:

- (1) certification of the successful completion of a firearms trainer refresher course approved by the Board and the Secretary of Public Safety consisting of a minimum of eight hours of classroom and practical range training in safety and maintenance of the applicable firearm (i.e. handgun, shotgun or rifle), range operations, control and safety procedures, and methods of firing. This training shall be completed within 180 days of the submission of the renewal application;
- (2) a certified statement of the result of a criminal records search from the ~~appropriate governmental authority housing criminal record information or clerk of superior court in each county where the applicant has resided within the immediate preceding 48 months, and if any address history contains an out of state address, a criminal record check from the reporting service designated by the Board pursuant to G.S. 74C-8.1(a);~~ reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for any state where the applicant has resided within the preceding 48 months;
- (3) the applicant's renewal fee; and
- (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.

(b) Members of the armed forces whose certification is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the certification renewal fee and to complete any continuing

education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be furnished to the Board.

*Authority G.S. 74C-5; 74C-8.1(a); 74C-13.*

## **SECTION .1300 – ARMORED CAR SERVICE GUARD REGISTRATION (UNARMED)**

### **14B NCAC 16 .1301 APPLICATION FOR UNARMED ARMORED CAR SERVICE GUARD REGISTRATION**

(a) Each armored car employer or his designee shall submit and sign an application form for the registration of each unarmed armored car service guard employee to the Board. This form shall be accompanied by:

- (1) one set of classifiable fingerprints on an applicant fingerprint card;
- (2) two head and shoulders color digital photographs of the applicant in JPG format of acceptable quality for identification, taken within six months prior to submission and submitted by e-mail to PPSASL-Photos@ncdoj.gov PPSASL-Photos@ncdps.gov or by compact disc;
- (3) a certified statement of the result of a criminal records search from the ~~appropriate governmental authority housing criminal record information or clerk of superior court in each county where the applicant has resided within the immediately preceding 48 months, and if any address history contains an out of state address, a criminal record check from the reporting service designated by the Board pursuant to G.S. 74C-8.1(a); reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for any state where the applicant has resided within the preceding 60 months;~~
- (4) the applicant's non-refundable registration fee; and
- (5) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.

(b) The employer of each applicant for registration shall give the applicant a copy of the application and shall retain a copy of the application in the individual's personnel file in the employer's office.

(c) The applicant's copy of the application shall serve as a temporary registration card that shall be carried by the applicant when he is within the scope of his employment and that shall be exhibited upon the request of any law enforcement officer or authorized representative of the Board.

(d) A statement signed by a certified trainer that the applicant has successfully completed the training requirements of Rule .1307 of this Section shall be submitted to the Director with the application.

(e) A copy of the statement specified in Paragraph (d) of this Rule shall be retained by the licensee in the individual applicant's personnel file in the employer's office.

*Authority G.S. 74C-3; 74C-5; 74C-8.1(a).*

### **14B NCAC 16 .1306 RENEWAL OR REISSUE OF UNARMED ARMORED CAR SERVICE GUARD REGISTRATION**

(a) Each applicant for renewal of an unarmed armored car service guard registration identification card or his employer, shall complete a form provided by the Board. This form shall be submitted not fewer than 30 days prior to the expiration of the applicant's current registration and shall be accompanied by:

- (1) ~~statements of any criminal record obtained from the appropriate authority in each area where the applicant has resided within the immediately preceding 12 months or a criminal record check from the reporting service designated by the Board pursuant to G.S. 74C-8.1(a); and~~ reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for any state where the applicant has resided within the preceding 12 months; and
- (2) the applicant's renewal fee.

(b) Each applicant for reissue of a registration identification card shall complete, and his employer shall sign a form provided by the Board. This form shall be submitted to the Board and accompanied by:

- (1) two head and shoulders color digital photographs of the applicant in JPG format of acceptable quality for identification, taken within six months prior to submission and submitted by e-mail to PPSASL-Photos@ncdoj.gov PPSASL-Photos@ncdps.gov or by compact disc; and
- (2) the applicant's reissue fee.

(c) The employer of each applicant for a registration renewal or reissue shall give the applicant a copy of the application that will serve as a record of application for renewal or reissue and shall retain a copy of the application in the individual's personnel file in the employer's office.

(d) Members of the armed forces whose registration is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the registration renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

*Authority G.S. 74C-3; 74C-5; 78C-8.1(a).*

## **SECTION .1400 - ARMED ARMORED CAR SERVICE GUARDS FIREARM REGISTRATION PERMIT**

**14B NCAC 16 .1401 APPLICATION/ARMED ARMORED CAR SERVICE GUARD FIREARM REGISTRATION PERMIT**

(a) Each armored car employer or his designee shall submit and sign an application form for the registration of each armed armored car service guard applicant to the Board. This form shall be accompanied by:

- (1) one set of classifiable fingerprints on an applicant fingerprint card;
- (2) two head and shoulders color digital photographs of the applicant in JPG format of acceptable quality for identification, taken within six months prior to submission and submitted by e-mail to ~~PPSASL-Photos@ncdoj.gov~~ PPSASL-Photos@ncdps.gov or by compact disc;
- (3) a certified statement of the result of a criminal records search from the ~~appropriate governmental authority housing criminal record information or clerk of superior court in each county where the applicant has resided within the immediately preceding 48 months, and if any address history contains an out of state address, a criminal record check from the reporting service designated by the Board pursuant to G.S. 74C-8.1(a); reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for any state where the applicant has resided within the preceding 60 months;~~
- (4) the applicant's non-refundable registration fee;
- (5) a statement signed by a certified trainer that the applicant has successfully completed the training requirements of Rule .1407 of this Section; and
- (6) a certification by the applicant that he or she is at least 18 years of age.

(b) The employer of each applicant for registration shall give the applicant a copy of the application and shall retain a copy of the application in the individual's personnel file in the employer's office.

(c) The applicant's copy of the application shall serve as a temporary registration card that shall be carried by the applicant when he is within the scope of his employment and that shall be exhibited upon the request of any law enforcement officer or authorized representative of the Board.

(d) Applications submitted without proof of completion of a Board approved firearms training course shall not serve as temporary registration cards unless the armored car employer has obtained prior approval from the Director. The Director shall grant prior approval if the armored car employer provides proof satisfactory to the Director that the applicant has received prior firearms training.

(e) The provisions of Paragraphs (a), (b), and (c) of this Rule also apply to any employee whose employment is terminated within 30 days of employment.

*Authority G.S. 74C-3; 74C-5; 74C-8.1(a); 74C-13.*

**14B NCAC 16 .1406 RENEWAL OF ARMED ARMORED CAR SERVICE GUARD FIREARM REGISTRATION PERMIT**

(a) Each applicant for renewal of an armed armored car service guard firearm registration permit identification card or his employer shall complete a form provided by the Board. This form shall be submitted not more than 90 days nor fewer than 30 days prior to expiration of the applicant's current armed registration and shall be accompanied by:

- (1) two head and shoulders color digital photographs of the applicant in JPG format of acceptable quality for identification, taken within six months prior to submission and submitted by e-mail to ~~PPSASL-Photos@ncdoj.gov~~ PPSASL-Photos@ncdps.gov or by compact disc;
- (2) a certified statement of the result of a criminal records search from the ~~appropriate governmental authority housing criminal record information or clerk of superior court in each county where the applicant has resided within the immediately preceding 12 months, and if any address history contains an out of state address, a criminal record check from the reporting service designated by the Board pursuant to G.S. 74C-8.1(a); reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for any state where the applicant has resided within the preceding 12 months;~~
- (3) the applicant's renewal fee; and
- (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.

(b) The employer of each applicant for a registration renewal shall give the applicant a copy of the application that will serve as a record of application for renewal and shall retain a copy of the application in the individual's personnel file in the employer's office.

(c) Applications for renewal shall be accompanied by a statement signed by a certified trainer that the applicant has successfully completed the training requirements of Rule .1407 of this Section.

(d) Members of the armed forces whose registration is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the registration renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

*Authority G.S. 74C-3; 74C-5; 74C-8.1(a); 74C-13.*

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**TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to adopt the rules cited as 15A NCAC 18A .1821-.1834 and repeal the rules cited as 15A NCAC 18A .1801-.1815, .1817, .1818, .2201-.2221 and .3001-.3016.*

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

**Proposed Effective Date:** October 1, 2017

**Public Hearing:**

**Date:** July 11, 2017

**Time:** 9:00 a.m.

**Location:** Cardinal Room, located at: 5605 Six Forks Road, Raleigh, NC

**Reason for Proposed Action:** *These rules govern overall sanitation requirements for lodging establishments in North Carolina. Currently, these rules are contained in three separate sections within the environmental health rules.*

- 15A NCAC 18A .1800 – SANITATION OF LODGING PLACES (Amend and Repeal)
- 15A NCAC 18A .2000 – SANITATION OF BED AND BREAKFAST HOMES (Repeal)
- 15A NCAC 18A .3000 – BED AND BREAKFAST INNS (Repeal)

*These separate rules share many requirements that are repeated separately within each section. The proposed rule-making action consolidates the separate sections into one set of rules.*

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

**Comment period ends:** July 31, 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

**NOTE:** Pursuant to G.S. 150B-21.17, the Codifier has determined that publication of the complete text of the rules proposed for repeal is impractical. The text of the repealed rules is accessible on the OAH Website: <http://www.ncoah.com>.

## CHAPTER 18 - ENVIRONMENTAL HEALTH

### SUBCHAPTER 18A - SANITATION

#### SECTION .1800 - SANITATION OF LODGING PLACES

##### 15A NCAC 18A .1801 DEFINITIONS

Authority G.S. 130A-248.

##### 15A NCAC 18A .1802 PERMITS

Authority G.S. 130A-248.

##### 15A NCAC 18A .1803 PUBLIC DISPLAY OF GRADE CARD

Authority G.S. 130A-248.

##### 15A NCAC 18A .1804 INSPECTIONS

Authority G.S. 130A-248.

##### 15A NCAC 18A .1805 INSPECTION FORMS

Authority G.S. 130A-248.

##### 15A NCAC 18A .1806 GRADING

Authority G.S. 130A-248.

##### 15A NCAC 18A .1807 APPROVED LODGING ESTABLISHMENTS

Authority G.S. 130A-248.

##### 15A NCAC 18A .1808 LOBBY: HALLS: STAIRS: AND VENDING AREAS

Authority G.S. 130A-248.

##### 15A NCAC 18A .1809 LAVATORIES AND BATHS

Authority G.S. 130A-248.

##### 15A NCAC 18A .1810 WATER SUPPLY

Authority G.S. 130A-248.

**15A NCAC 18A .1811 DRINKING WATER FACILITIES**

*Authority G.S. 130A-248.*

**15A NCAC 18A .1812 GUESTROOMS**

*Authority G.S. 130A-248.*

**15A NCAC 18A .1813 STORAGE AND LAUNDRY FACILITIES**

*Authority G.S. 130A-248.*

**15A NCAC 18A .1814 DISPOSAL OF GARBAGE AND TRASH: PREMISES**

*Authority G.S. 130A-248.*

**15A NCAC 18A .1815 SEVERABILITY**

*Authority G.S. 130A-248.*

**15A NCAC 18A .1817 APPEALS PROCEDURE**

*Authority G.S. 130A-248.*

**15A NCAC 18A .1818 PLAN REVIEW**

*Authority G.S. 130A-248.*

**15A NCAC 18A .1821 DEFINITIONS**

The following definitions shall apply throughout this Section:

(1) "Accredited Program"

(a) "Accredited program" means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals.

(b) "Accredited program" refers to the certification process and is a designation based upon an independent evaluation of factors such as the sponsor's mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, eligibility requirements, re-certification, discipline, and grievance procedures; and test development and administration.

(c) "Accredited program" does not refer to training functions or educational programs.

(2) "Adulterated" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, 402, 21 U.S.C. §342, which is hereby incorporated by reference, including subsequent amendments and editions.

<https://www.gpo.gov/fdsys/pkg/USCODE-2010-title21/html/USCODE-2010-title21-chap9-subchapIV-sec342.htm>, and may be accessed free of charge.

(3) "Approved" means acceptable to the regulatory authority based upon a determination of conformity with principles, practices, and generally recognized standards that protect public health.

(4) "Bed and Breakfast Home" means bed and breakfast home as defined in G.S. 130A-247(5a).

(5) "Bed and Breakfast Inn" means bed and breakfast inn as defined in G.S. 130A-247(6).

(6) "CFR" means Code of Federal Regulations. Citations in this Code to the CFR refer sequentially to the Title, Part, and Section numbers, such as 40 CFR 180.194 refers to Title 40, Part 180, Section 194.

(7) "Clean" means free from being visibly soiled.

(8) "Department" means the North Carolina Department of Health and Human Services.

(9) "Employee" means the permit holder, person in charge, food employee, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a lodging establishment.

(10) "Equipment" means an article that is used in the operation of a lodging establishment such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.

(11) "Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(12) "Food-contact surface" means:

(a) A surface of equipment or a utensil with which food normally comes into contact; or

(b) A surface of equipment or a utensil from which food may drain, drip, or splash:

(i) Into a food product; or

(ii) Onto a surface normally in contact with food.

(13) "Food employee" means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

(14) "Furnishings" means furniture, fittings, window coverings, and other accessories, including decorative accessories.

(15) "Good Repair" means equipment and utensils shall be maintained in a state of repair and

- condition that meets the requirements specified under Parts 4-1 and 4-2 of the Food Code as incorporated by reference in Rule 15A NCAC 18A .2650.
- (16) "Guest Rooms" means the accommodations or designated areas for persons who pay for the services of the lodging establishment, such as bedrooms, suite areas, and bathrooms.
- (17) "Handwashing sink" means a lavatory, basin, or vessel for washing, a washbasin, or a plumbing fixture placed for use in personal hygiene and designed for the washing of the hands. This includes an automatic handwashing facility.
- (18) "Hazard" means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.
- (19) "Kitchenware" means food preparation and storage utensils.
- (20) "Linen" means fabric items such as bedding, towels, cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.
- (21) "Lodging establishment" means all hotels, motels, inns, tourist homes, and other places providing lodging accommodations for pay. Facilities described in G.S. 130A-250 (1) through (5) shall not be regulated as "lodging establishment." For the purposes of this Section, the term lodging establishment also includes bed and breakfast homes and bed and breakfast inns, unless otherwise described.
- (22) "mg/L" means milligrams per liter, which is the metric equivalent of parts per million (ppm).
- (23) "Packaged" means bottled, canned, cartoned, bagged, or wrapped, whether packaged in a food establishment or a food processing plant.
- (24) "Permit" means the document issued by the regulatory authority that authorizes a person to operate a lodging establishment.
- (25) "Permit Holder" means:
- (a) The person in charge who resides in and owns or rents the bed and breakfast home or bed and breakfast inn.
- (b) The legal entity responsible for the operation of the lodging establishment, such as the owner, the owner's agent, or other person.
- (26) "Person" means person as defined in G.S. 130A-2(7).
- (27) "Person in charge" means the individual present at a lodging establishment who is responsible for the operation at the time of inspection.
- (28) "Physical facilities" means the structure and interior surfaces of a lodging establishment, including furnishings and accessories such as soap and towel dispensers and attachments, such as light fixtures and heating or air conditioning system vents.
- (29) "Poisonous or toxic materials" means substances that are not intended for ingestion and are included in four categories:
- (a) Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;
- (b) Pesticides, except sanitizers, which include substances such as insecticides and rodenticides;
- (c) Substances that are necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and
- (d) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.
- (30) "Potentially Hazardous Food" means potentially hazardous food (time/temperature control for safety food) as defined in 15A NCAC 18A .2651.
- (31) "Premises" means the physical facility, its contents, and the contiguous land or property under the control of the permit holder.
- (32) "Proper" means right, correct, or accepted.
- (33) "Refuse" means solid waste not carried by water through the sewage system.
- (34) "Registered Environmental Health Specialist" means a Registered Environmental Health Specialist as defined in G.S. 90A-51(2b) and G.S. 90A-51(4) and authorized agent of the Department.
- (35) "Regulatory Authority" means the Department or authorized agent of the Department.
- (36) "Sanitization" means the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999% reduction, of representative disease microorganisms.
- (37) "Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.
- (38) "Single-use articles" means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use after which they are intended for discard. It also includes utensils and bulk food containers designed and constructed to be used once and discarded, such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread

- wrappers, pickle barrels, ketchup bottles, and number 10 cans.
- (39) "Tableware" means eating, drinking, and serving utensils for table use such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, and tumblers; and plates.
- (40) "Temperature measuring device" means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.
- (41) "Transitional Permit" means a permit issued by the regulatory authority upon the transfer of ownership or lease of an existing lodging establishment to allow the correction of construction and equipment problems that do not represent an immediate threat to public health.
- (42) "Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in contact with food; temperature sensing probes of food temperature measuring devices; and probe-type price or identification tags used in contact with food.
- (43) "Warewashing" means the cleaning and sanitizing of utensils and food-contact surfaces of equipment.

*Authority G.S. 130A-248.*

#### **15A NCAC 18A .1822 MANAGEMENT AND PERSONNEL**

Bed and breakfast homes or bed and breakfast inns shall comply with Parts 2-1 through 2-4 of the Food Code as amended by Rule 15A NCAC 18A .2652, with the following exceptions:

- (1) Food preparation shall not be prohibited in a bed and breakfast home or bed and breakfast inn.
- (2) Nothing shall prohibit family style dining or return to self-service areas such as buffets in a bed and breakfast home or bed and breakfast inn.
- (3) The requirements of this section shall be effective on July 1, 2018.

*Authority G.S. 130A-248.*

#### **15A NCAC 18A .1823 FOOD**

- (a) Except as required by G.S. 130A-247 through 130A-250, food services at lodging establishments shall not be required to obtain food establishment permits.
- (b) Food prepared in a bed and breakfast home or a bed and breakfast inn shall comply with Chapter 3 of the Food Code as amended by Rule 15A NCAC 18A .2653. The rules in this Section shall not prohibit family style service in bed and breakfast homes and bed and breakfast inns, and no additional protection or

labeling of food shall be required during display and service in these establishments.

- (c) In lodging establishments, ice used for room service shall be manufactured from an approved water supply that complies with Law and shall be stored and handled in a sanitary manner. All ice machines for use by guests shall dispense ice without exposing stored ice to guests.

*Authority G.S. 130A-248.*

#### **15A NCAC 18A .1824 EQUIPMENT AND UTENSILS**

- (a) Food-contact surfaces shall comply with Parts 4-1 and 4-2 of the Food Code as amended by Rule 15A NCAC 18A .2654. This shall not prohibit the use of domestic equipment.
- (b) Equipment and utensils shall be kept clean and in good repair.
- (c) All kitchenware and food-contact surfaces of equipment, excluding cooking surfaces of equipment, used in the preparation or serving of food or drink, and all food storage utensils, in a bed and breakfast home or bed and breakfast inn shall be cleaned and sanitized, as required in Parts 4-6 and 4-7 of the Food Code as amended by Rule 15A NCAC 18A .2654 after each use, air dried, and stored in a manner to prevent contamination.
- (d) Cooking surfaces of equipment in a bed and breakfast home or bed and breakfast inn shall be cleaned at minimum once each day.
- (e) Nonfood-contact surfaces of equipment shall be clean.
- (f) Sanitizers used for sanitization of kitchenware and food-contact surfaces shall be maintained at proper concentrations as required in Part 4-5 of the Food Code as amended by Section .2654 of the "Rules Governing the Food Protection and Sanitation of Food Establishments."
- (g) Nothing in this Rule shall require sanitization as exempted in guest rooms per G.S. 130A-248(3).
- (h) Single-use articles may be used if discarded after each use. Single-use articles must be stored and handled to prevent contamination.
- (i) A food temperature measuring device with a small diameter probe shall be provided and accessible for use by employees in ensuring attainment and maintenance of food temperatures.
- (j) A test kit or other device that accurately measures the concentration in mg/L of sanitizing solutions shall be provided by the lodging establishment.
- (k) Equipment for preparing coffee and tea shall be kept clean, but is exempt from sanitization required by Paragraph (c) of this Rule.

*Authority G.S. 130A-248.*

#### **15A NCAC 18A .1825 WATER, PLUMBING, AND WASTE**

- (a) Water, plumbing, and waste shall comply with Chapter 5 of the Food Code as amended by Rule 15A NCAC 18A .2655. The requirements of Sections 5-202.12, 5-203.11, 5-203.12, 5-203.13, 5-204.11, and 5-205.11 of the Food Code as amended by Rule 15A NCAC 18A .2655 shall be effective one year after the effective date of this Rule. Bed and Breakfast Homes that are permitted prior to April 2017 and only serve the breakfast meal shall not be required to provide a separate handwashing sink in the kitchen.

(b) A handwashing sink, located to allow use by employees handling clean and soiled linen, shall be provided. This requirement shall be effective one year after the effective date of these rules. Facilities that do not have handwashing lavatories in soiled linen areas as required shall not be required to install additional lavatories if an approved hand hygiene program is used.

(c) All refuse shall be collected and stored in covered receptacles. Refuse receptacles shall be kept clean and in good repair.

(d) Where dumpsters are used, a contract for off-site cleaning shall constitute compliance with the provision for cleaning.

(e) Refuse, recyclables, and returnables shall be removed from the premises at a frequency that will keep development of objectionable odors and other conditions that attract or harbor insects and rodents.

*Authority G.S. 130A-248.*

#### **15A NCAC 18A .1826 PHYSICAL FACILITIES**

(a) Handwashing sinks as required in Rule .1825 in this Section shall be supplied with hand soap, and either individual, disposable towels or an approved hand drying device.

(b) Toilets or urinals shall be provided as in Rule .1825 in this Subchapter and shall have a supply of toilet tissues available at each toilet.

(c) The light intensity shall be at least 215 lux/30 foot candles at a distance of 75 cm/30 inches above the floor in areas used for handwashing, warewashing, and equipment and utensil storage, and in toilet rooms.

(d) Where natural ventilation only is provided, outside openings shall be screened and in good repair. Windows and doors shall be kept clean and in good repair.

(e) Physical facilities shall be kept clean and in good repair.

(f) Perimeter walls and roofs shall protect the lodging establishment from the weather and the entry of insects, rodents, and other pests.

(g) Furnishings, bathroom fixtures, carpets, and other accessories in guest rooms, shall be kept clean and in good repair.

(h) The premises and guest rooms shall be maintained free of insects, rodents, and other pests. The presence of insects, rodents, and other pests shall be controlled to eliminate their presence on the premises by: inspecting incoming shipments of food and supplies; inspecting the premises for evidence of pests; and eliminating harborage conditions.

(i) Live animals shall be prohibited from entering areas of food preparation, storage, sales, display, or dining.

*Authority G.S. 130A-248.*

#### **15A NCAC 18A .1827 PREMISES, STORAGE, POISONOUS OR TOXIC MATERIALS**

(a) There shall be no fly or mosquito breeding places, rodent harborages, or undrained areas on the premises. The premises shall free of litter and items unnecessary to the operation or maintenance of the lodging establishment, such as equipment that is nonfunctional or no longer used.

(b) Only pesticides that have been registered with the EPA and with the N.C. Department of Agriculture and Consumer Services shall be used and only for the specific use for which they have been approved. Such pesticides shall be used as directed on the

label and shall be handled and stored to avoid health hazards. Pesticides shall not be accessible to guests.

(c) Household cleaning agents such as bleaches, detergents, and polishes shall be used and stored according to manufacturer's recommendations.

(d) Sanitizing solutions shall not be stored in or dispensed from containers previously containing other poisonous or toxic materials.

(e) Chemical sanitizers and other chemical antimicrobials applied to food-contact surfaces shall meet the requirements specified in "40 CFR 180.940," tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (food-contact surface sanitizing solutions). 40 CFR 180.940 is hereby incorporated by reference, including all subsequent editions and amendments.

(f) Medications under the control of the permit holder shall be stored in a cabinet, closet, or box not accessible to children and in a manner to avoid contamination of food and food contact surfaces.

(g) A storage area shall be provided for building and ground maintenance tools and supplies and stored in a manner to avoid contamination of food and food contact surfaces.

*Authority G.S. 130A-248.*

#### **15A NCAC 18A .1828 LAUNDRY AND LINENS**

(a) Clean bed and bath linen in good repair shall be provided for each guest who is provided accommodations and shall be changed between successive guests.

(b) Two sheets shall be provided for each bed. The lower sheet shall be folded under both ends of the mattress. The upper sheet shall be folded under the mattress at the lower end and folded over the bedding or blankets for a at least six inches at the top end.

(c) Clean linen and supplies shall be stored in cabinets, or on shelves in linen and supply storage rooms. Cabinets, shelves, and storage rooms shall be in good repair and kept clean.

(d) Items on housekeeping carts shall be arranged in a manner to prevent cross-contamination between soiled and cleaned items. Housekeeping carts shall be kept clean and stored to protect items from contamination.

(e) Soiled laundry shall be handled and stored separately from clean laundry using separate cleanable carts or bags. Carts used for soiled laundry shall be labeled or identified for soiled laundry use only.

*Authority G.S. 130A-248.*

#### **15A NCAC 18A .1829 PERMITS**

(a) No permit for a lodging establishment shall be issued to a person until an evaluation by the regulatory authority shows that the establishment complies with this Section. However, for bed and breakfast homes and inns, the regulatory authority shall allow a period of 210 days after the date of issuance to comply with the certified food protection manager requirements in Rule 1822(3) of this Section.

(b) Upon transfer of ownership of an existing lodging establishment, the regulatory authority shall complete an evaluation. If the lodging establishment satisfies all the requirements of the rules, a permit shall be issued. If the lodging

establishment does not satisfy all the requirements of the rules, a permit shall not be issued. A transitional permit shall be issued if the regulatory authority determines that the noncompliant items are construction or equipment problems that do not represent an immediate threat to public health. The transitional permit shall expire 180 days after the date of issuance, unless suspended or revoked before that date, and shall not be renewed. Upon expiration of a transitional permit, the permit holder shall have corrected the noncompliant items and obtained a permit, or the lodging establishment shall not continue to operate.

(c) The regulatory authority shall impose conditions on the issuance of a permit or a transitional permit if necessary to ensure that a lodging establishment remains in compliance with this Section. Conditions may be specified for one or more of the following areas:

of the following areas:

- (1) The number of bedrooms or persons housed;
- (2) The amount of laundry or kitchen and warewashing equipment on the premises;
- (3) Time schedules in completing minor construction items;
- (4) Modification or maintenance of water supplies, water use fixtures, and sanitary sewage systems;
- (5) Use of facilities for more than one purpose;
- (6) Continuation of contractual arrangements upon which basis the permit was issued;
- (7) Submission and approval of plans for renovation; or
- (8) Any other conditions necessary for a lodging place to remain in compliance with this Section.

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

*Authority G.S. 130A-248.*

#### **15A NCAC 18A .1830 PUBLIC DISPLAY OF GRADE CARD**

(a) Upon initial inspection of a lodging establishment or if a renovation or other change in the establishment makes the grade card not visible, the regulatory authority shall designate the location for posting the grade card. The grade card shall be located in a conspicuous place where it may be readily observed by the public upon entering the lodging establishment. If the person in charge of the lodging establishment objects to the location designated by the regulatory authority, then the person in charge may suggest an alternative location that meets the criteria of this Rule.

(b) When an inspection of a lodging establishment is made, the regulatory authority shall remove the existing grade card, issue a new grade card, and post the new grade card in the same location where the grade card was previously posted as long as that

location remains conspicuous. The person in charge of the lodging establishment shall keep the grade card posted at the designated location at all times. The grade card may be posted in another location that meets the criteria of this Rule if agreed upon by the person in charge and the regulatory authority.

*Authority G.S. 130A-248; G.S. 130A-249.*

#### **15A NCAC 18A .1831 INSPECTIONS AND REINSPECTIONS**

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

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

- (1) The name and mailing address of the lodging establishment;
- (2) The name of the permit holder;
- (3) The permit status and score given;
- (4) Standards of construction and operation as listed in Rules .1821 through .1834 of this Section.
- (5) An explanation for all points deducted;
- (6) The signature of the regulatory authority; and
- (7) The date.

(c) The grading of lodging establishments shall be based on the standards of operation and construction as set forth in Rules .1821 through .1834 of this Section.

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

- (1) Violation of Rule .1822 of this Section related to person in charge present, certification by accredited program or performs duties shall equal no more than 2 points.
- (2) Violation of Rule .1822 of this Section related to management awareness, policy present, and allergy awareness shall equal no more than 2 points.
- (3) Violation of Rule .1822 of this Section related to proper use of reporting, restriction, and exclusion shall equal no more than 2 points.
- (4) Violation of Rule .1822 of this Section related to proper eating, tasting, drinking, or tobacco use shall equal no more than 1 point.
- (5) Violation of Rule .1822 of this Section related to personal cleanliness and hair restraints shall equal no more than 1 point.
- (6) Violation of Rule .1822 of this Section related to hands clean and washed shall equal no more than 4 points.

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| <p>(7) <u>Violation of Rule .1823 of this Section related to food obtained from approved source, good condition, safe, and unadulterated shall equal no more than 3 points.</u></p> <p>(8) <u>Violation of Rule .1823 of this Section related to food separated, protected from contamination shall equal no more than 3 points.</u></p> <p>(9) <u>Violation of Rule .1823 of this Section related to food protected from environmental or other sources of contamination, including proper dispensing of ice, shall equal no more than 3 points.</u></p> <p>(10) <u>Violation of Rule .1823 of this Section related to cooking/reheating temperatures shall equal no more than 3 points.</u></p> <p>(11) <u>Violation of Rule .1823 of this Section related to proper cooling and approved methods shall equal no more than 3 points.</u></p> <p>(12) <u>Violation of Rule .1823 of this Section related to cold/hot holding temperatures shall equal no more than 3 points.</u></p> <p>(13) <u>Violation of Rule .1823 of this Section related to date marking shall equal no more than 3 points.</u></p> <p>(14) <u>Violation of Rule .1824 of this Section related to equipment, food and nonfood-contact surfaces approved, cleanable, properly designed, constructed and used shall equal no more than 1 point.</u></p> <p>(15) <u>Violation of Rule .1824 of this Section related to utensils, equipment properly stored, dried and handled shall equal no more than 1 point.</u></p> <p>(16) <u>Violation of Rule .1824 of this Section related to warewashing facilities installed, maintained and used shall equal no more than 2 points.</u></p> <p>(17) <u>Violation of Rule 1824 of this Section related to food-contact surfaces cleaned and sanitized where required shall equal no more than 3 points.</u></p> <p>(18) <u>Violation of Rule .1824 of this Section related to nonfood-contact surfaces clean shall equal no more than 1 point.</u></p> <p>(19) <u>Violation of Rule .1824 of this Section related to single-use articles properly stored and used shall equal no more than 1 point.</u></p> <p>(20) <u>Violation of Rule 1824 of this Section related to temperature measuring devices provided shall equal no more than 2 points.</u></p> <p>(21) <u>Violation of Rules .1825 and .1826 of this Section related to handwashing sinks supplied and accessible shall equal no more than 2 points.</u></p> <p>(22) <u>Violation of Rule .1825 of this Section related to water from approved source, backflow prevention, plumbing in good repair shall equal no more than 4 points.</u></p> | <p>(23) <u>Violation of Rule .1825 related to service sink or other approved method and mop storage shall equal no more than 2 points.</u></p> <p>(24) <u>Violation of Rule .1825 of this Section related to sewage and waste water properly disposed shall equal no more than 4 points.</u></p> <p>(25) <u>Violation of Rule .1826 of this Section related to ventilation and lighting requirements shall equal no more than 2 points.</u></p> <p>(26) <u>Violation of Rule .1826 of this Section related to furnishings clean and in good repair shall equal no more than 4 points.</u></p> <p>(27) <u>Violation of Rule .1826 of this Section related to physical facilities installed, maintained and clean shall equal no more than 4 points.</u></p> <p>(28) <u>Violation of Rule .1826 of this Section related to insects and rodents not present shall equal no more than 4 points.</u></p> <p>(29) <u>Violation of Rule .1828 of this Section related to linens changed as required shall equal no more than 3 points.</u></p> <p>(30) <u>Violation of Rule .1828 of this Section related to linen clean and in good repair shall equal no more than 4 points.</u></p> <p>(31) <u>Violation of Rule .1828 of this Section related to linen properly handled and stored shall equal no more than 3 points.</u></p> <p>(32) <u>Violation of Rule .1828 of this Section related to housekeeping carts shall equal no more than 4 points.</u></p> <p>(33) <u>Violation of Rule .1825 of this Section related to garbage and refuse properly disposed shall equal no more than 2 points.</u></p> <p>(34) <u>Violation of Rule .1827 of this Section related to premises maintained to prevent breeding and harborages shall equal no more than 3 points.</u></p> <p>(35) <u>Violation of Rule .1827 of this Section related to storage areas maintained clean, provided for maintenance equipment shall equal no more than 3 points.</u></p> <p>(36) <u>Violation of Rule .1827 of this Section related to approved pesticide use shall equal no more than 3 points.</u></p> <p>(37) <u>Violation of Rule .1827 of this Section related to household cleaning agents, sanitizers, and medicines properly stored and handled shall equal no more than 3 points.</u></p> <p>(38) <u>Violation of Rule .1827 of this Section related to premises kept neat and clean shall equal no more than 2 points.</u></p> <p>(e) <u>Upon request of the permit holder or his or her representative a reinspection shall be made. In the case of establishments that request an inspection for the purpose of raising the alphabetical grade, and that hold unrevoked permits, the regulatory authority shall make an unannounced inspection within 15 days from the date of the request.</u></p> |
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*Authority G.S. 130A-248; 130A-249.*

**15A NCAC 18A .1832 GRADING**

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

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

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

(b) The posted grade card shall be black on a white background. All graphics, letters, and numbers for the grade card shall be approved by the State. The alphabetical and numerical rating shall be 1.5 inches in height.

*Authority G.S. 130A-248; 130A-249.*

**15A NCAC 18A .1833 APPLICATION AND PLAN REVIEW**

(a) Plans drawn to scale for new lodging establishments shall be submitted for review and approval to the local health department prior to initiating construction, or prior to construction of additions or renovations, excluding cosmetic or nonstructural changes to existing lodging establishments.

(b) An applicant shall submit an application for a permit or transitional permit at least 30 days before the date planned for opening the lodging establishment. The applicant shall submit to the regulatory authority a written application for a permit on a form provided by the regulatory authority.

(c) The application form shall include:

- (1) The name, mailing address, telephone number, and signature of the person applying for the permit and the name, mailing address, and location of the lodging establishment;
- (2) Information specifying whether the lodging establishment is owned by an association, corporation, individual, partnership, or other legal entity;
- (3) The name, title, address, and telephone number of the person directly responsible for the lodging establishment;
- (4) A statement specifying the number of guest rooms or units and whether the lodging establishment is an operation that includes one or more of the following:
  - (A) Prepares, or serves potentially hazardous food (time/temperature control for safety food) for guests;
  - (B) Prepares only food that is not potentially hazardous (time/temperature control for safety food) for guests;
  - (C) Does not prepare, but serves only prepackaged food that is not potentially hazardous (time/temperature control for safety food) for guests;

- (5) Number and type of meals served, and the menu;
- (6) Source of water supply and wastewater disposal; and
- (7) A statement signed by the applicant that attests to the accuracy of the information provided in the application.

*Authority G.S. 130A-248.*

**15A NCAC 18A .1834 INFORMAL REVIEW PROCESS AND APPEALS PROCEDURE**

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

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

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

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

(d) If the permit holder requests an informal review, the request shall be in writing and shall be postmarked or hand delivered to the local health department within seven days of notice of the decision giving rise to the review. The request shall state the issues in dispute. If the inspection giving rise to the informal review was conducted by the Environmental Health Supervisor in the county or area where the lodging establishment is located, or when the county or area has only one Registered Environmental Health Specialist assigned to inspect lodging establishments, the Environmental Health Regional Specialist assigned to that county or area shall conduct the local informal review. As soon as possible, but no later than 30 days of receipt of the request, the person conducting the review shall:

- (1) Contact the permit holder;
- (2) Provide that permit holder an opportunity to be heard on the issues in dispute; and
- (3) Issue a written decision addressing the issues raised in the appeal.

Copies of the decision shall be mailed by the local health department to the permit holder and to the State Health Director. That decision shall be binding for the purposes of future inspections of the establishment in question unless modified pursuant to Paragraph (e) of this Rule or by the State Health Director.

(e) Following receipt of the written decision of the Environmental Health Supervisor or his or her representative issued pursuant to Paragraph (d) of this Rule, the permit holder who initiated the informal review may appeal the resulting decision to an Informal Review Officer designated by the Department as responsible for final decisions on appeals from throughout the State. Notice of the appeal shall be in writing, shall include a copy of the Environmental Health Supervisor's or his or her representative's decision, and shall be postmarked or hand-delivered to the local health department and to the Department within seven days of receipt of the written decision issued pursuant to Paragraph (d) of

this Rule. Within 35 days of receipt of this appeal, the designated Informal Review Officer shall hold a conference in Wake County. At least 10 days prior to the conference, the Informal Review Officer shall provide notice of the time and place of this conference to the permit holder and the Environmental Health Supervisor for the county or area where the issue arose. Within 10 days following the date of the conference, the Informal Review Officer shall issue a written decision addressing the issues raised in the appeal and that decision shall be binding for purposes of future inspections of the establishment in question unless modified pursuant to Paragraph (g) of this Rule or by the State Health Director.

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

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

(h) Nothing in this Rule shall impact the right of a permit holder to a reinspection pursuant to Rule .1831 of this Section.

*Authority G.S. 130A-4; 130A-6; 130A-248.*

#### **SECTION .2200 - SANITATION OF BED AND BREAKFAST HOMES**

##### **15A NCAC 18A .2201    DEFINITIONS**

*Authority G.S. 130A-250.*

##### **15A NCAC 18A .2202    PERMITS**

*Authority G.S. 130A-250.*

##### **15A NCAC 18A .2203    INSPECTIONS: VISITS: POSTING OF GRADE CARD**

*Authority G.S. 130A-250.*

##### **15A NCAC 18A .2204    INSPECTION FORMS**

*Authority G.S. 130A-250.*

##### **15A NCAC 18A .2205    GRADING**

*Authority G.S. 130A-250.*

##### **15A NCAC 18A .2206    FLOORS**

*Authority G.S. 130A-250.*

##### **15A NCAC 18A .2207    WALLS AND CEILINGS**

*Authority G.S. 130A-250.*

##### **15A NCAC 18A .2208    LIGHTING AND VENTILATION**

*Authority G.S. 130A-250.*

##### **15A NCAC 18A .2209    TOILET: HANDWASHING: LAUNDRY: AND BATHING FACILITIES**

*Authority G.S. 130A-250.*

##### **15A NCAC 18A .2210    WATER SUPPLY**

*Authority G.S. 130A-250.*

##### **15A NCAC 18A .2211    DRINKING WATER FACILITIES: ICE HANDLING**

*Authority G.S. 130A-250.*

##### **15A NCAC 18A .2212    DISPOSAL OF WASTES**

*Authority G.S. 130A-250.*

##### **15A NCAC 18A .2213    VERMIN CONTROL: PREMISES**

*Authority G.S. 130A-250.*

##### **15A NCAC 18A .2214    STORAGE: MISCELLANEOUS**

*Authority G.S. 130A-250.*

##### **15A NCAC 18A .2215    BEDS: LINEN: FURNITURE**

*Authority G.S. 130A-250.*

##### **15A NCAC 18A .2216    FOOD SERVICE UTENSILS AND EQUIPMENT**

*Authority G.S. 130A-250.*

##### **15A NCAC 18A .2217    FOOD SUPPLIES**

*Authority G.S. 130A-250.*

##### **15A NCAC 18A .2218    FOOD PROTECTION**

*Authority G.S. 130A-250.*

##### **15A NCAC 18A .2219    FOOD SERVICE PERSONS**

*Authority G.S. 130A-250.*

##### **15A NCAC 18A .2220    SEVERABILITY**

*Authority G.S. 130A-250.*

##### **15A NCAC 18A .2221    APPEALS PROCEDURE**

*Authority G.S. 130A-250.*

#### **SECTION .3000 - BED AND BREAKFAST INNS**

##### **15A NCAC 18A .3001    DEFINITIONS**

*Authority G.S. 130A-248.*

**15A NCAC 18A .3002 PERMITS**

*Authority G.S. 130A-248.*

**15A NCAC 18A .3003 INSPECTIONS: VISITS:  
POSTING OF GRADE CARDS**

*Authority G.S. 130A-248.*

**15A NCAC 18A .3004 INSPECTION FORMS**

*Authority G.S. 130A-248.*

**15A NCAC 18A .3005 GRADING**

*Authority G.S. 130A-248.*

**15A NCAC 18A .3006 FOOD SOURCES AND  
PROTECTION**

*Authority G.S. 130A-248.*

**15A NCAC 18A .3007 FOOD SERVICE PERSONS**

*Authority G.S. 130A-248.*

**15A NCAC 18A .3008 FOOD SERVICE UTENSILS AND  
EQUIPMENT AND THEIR CLEANING**

*Authority G.S. 130A-248.*

**15A NCAC 18A .3009 LAVATORIES AND  
BATHROOMS**

*Authority G.S. 130A-248.*

**15A NCAC 18A .3010 WATER SUPPLY**

*Authority G.S. 130A-248.*

**15A NCAC 18A .3011 DRINKING WATER FACILITIES**

*Authority G.S. 130A-248.*

**15A NCAC 18A .3012 BEDS: LINEN**

*Authority G.S. 130A-248.*

**15A NCAC 18A .3013 VERMIN CONTROL: PREMISES**

*Authority G.S. 130A-248.*

**15A NCAC 18A .3014 STORAGE: MISCELLANEOUS**

*Authority G.S. 130A-248.*

**15A NCAC 18A .3015 FLOORS: WALLS: CEILINGS:  
LIGHTING: VENTILATION**

*Authority G.S. 130A-248.*

**15A NCAC 18A .3016 DISPOSAL OF GARBAGE AND  
TRASH**

*Authority G.S. 130A-248.*

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**TITLE 21– OCCUPATIONAL LICENSING BOARDS AND  
COMMISSIONS**

**CHAPTER 02 – BOARD OF ARCHITECTURE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Architecture intends to amend the rules cited as 21 NCAC 02 .0108, .0206, .0209, .0213, .0217, .0302 and repeal the rule cited as 21 NCAC 02 .0301.*

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

**Proposed Effective Date:** *October 1, 2017*

**Public Hearing:**

**Date:** *July 14, 2017*

**Time:** *9:00 a.m.*

**Location:** *127 W. Hargett Street, #304, Raleigh, NC 27601*

**Reason for Proposed Action:** *To clarify the name of an application based on an updated process for licensure. Improve flow of text for seal specifications, update wording as used in current practice, update specifications for use of digital seal/electronic signatures. Adding two statutes that were amended by HB 255 to include architects, to clarify that failing to renew a license and continuing to practice is considered unprofessional conduct. To clarify the administrative process of license renewals. To update rule based to be consistent with national standards for emeritus status architects. To update the rule to accurately reflect the administrative processes in place now that the National Council of Architecture Registration Boards have updated their experience program and submission process.*

**Comments may be submitted to:** *Cathe Evans, Executive Director, 127 W. Hargett Street, #304, Raleigh, NC 27601; phone (919) 733-9544; email cathe@ncbarch.org*

**Comment period ends:** *July 31, 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

**SECTION .0100 - GENERAL PROVISIONS**

**21 NCAC 02 .0108 FEES**

Fees required by the Board, are payable in advance and are set forth below:

Initial Registration Application by Exam

Residents and Non-Residents	\$ 50.00
Firm Registration	\$ 75.00
Application to take the Architectural Registration for Exam Candidate Record Review	\$ 50.00
Annual license renewal	
Individual	\$ 50.00
Firm	\$100.00
Late renewal Penalty	\$ 50.00
Reciprocal registration	\$150.00
Individual or Firm Reinstatement shall be the fee as set forth in G.S. 83A-11 and G.S. 55B-10.	

All fees paid to the Board are non-refundable.

Other publications and services provided by the Board are available on the Board web site at [www.ncbarch.org](http://www.ncbarch.org).

*Authority G.S. 83A-4; 83A-11; 55B-10.*

**SECTION .0200 - PRACTICE OF ARCHITECTURE**

**21 NCAC 02 .0206 REQUIREMENT FOR AND USE OF PROFESSIONAL SEAL**

(a) As more fully set out in this Rule, an architect must seal his/her work whether or not the work is for an exempt project as defined in North Carolina General Statute 83A-13. An architect shall not sign nor seal drawings, specifications, reports or other professional work which were not prepared by the architect or under his/her responsible control. Documents shall be sealed as follows:

- (1) An architect may ~~sign or~~ seal those portions of the professional work that:
  - (A) were prepared by or under the responsible control of persons who are registered architects in this state if the

architect has reviewed in whole or in part such portions and has either coordinated their preparation or integrated them into his or her work; and

- (B) are not required by law to be prepared by or under the responsible control of an architect if the architect has reviewed and adopted in whole or in part such portions and has integrated them into his or her work.

- (2) Individual Seal Design shall be as follows:  
Design.

~~Every licensed architect shall have an individual seal which shall be composed of two concentric circles with outer and inner circle diameters of approximately 1.5 inches and 1 inch respectively. The architect's name and primary place of business shall be between the inner and outer circles. The words "Registered Architect, North Carolina" shall be along the inside perimeter of the inner circle. The architect's North Carolina registration number shall be in the center of the inner circle. The original signature of the individual named on the seal and date is a required part of an individual seal and a seal image lacking said signature and date is incomplete and shall not be considered a "seal" for purposes of these Rules. (See facsimile on Board web site.)~~

- (A) The seal may be a rubber stamp, embossed seal, computer-generated seal, or other facsimile that becomes a permanent addition to original drawings or sets of specifications for use in this State. For the purposes of this Rule, the term "for use in this State" means drawings and sets of specifications prepared for bidding, procurement, permitting or for construction. For purposes of this Rule, "original" means the version of drawings and sets of specifications from which all lawful copies can be made.

- (B) The standard design of the seal shall be two concentric circles in which "North Carolina" and the name of the licensee are placed within the outermost circle and in which the license number of the licensee and "Registered Architect" placed within the innermost circle. The size shall be 1 ½ to 1 ¾ inches in diameter.

- (C) The original, handwritten, signature of the individual named on the seal shall be considered part of an individual seal and shall appear across the face of

- each original seal imprint along with the date of affixation.
- (3) Firm Seal Design shall be as follows: Design. Every firm shall have a firm seal, which shall be composed of two concentric circles with outer and inner circle diameters of approximately 1.5 inches and 1 inch respectively. ~~The Architectural Firm's approved North Carolina name and place of business shall be between the inner and outer circles. Seals shall be made as follows:~~
- (A) The seal may be a rubber stamp, embossed seal, computer-generated seal, or other facsimile that becomes a permanent addition to drawings or sets of specifications. The design of the seal shall be two concentric circles in which the Architectural Firm's approved name and "North Carolina" shall be between the inner and outer circles and the firm's license registration number is placed within the innermost circle. The size shall be 1 1/2 to 1 3/4 inches in diameter. For a Professional Corporation the words "Registered Architectural Corporation, North Carolina" shall be along the inside perimeter of the inner circle. The firm's North Carolina registration number shall be in the center of the inner circle. (See facsimile on Board web site.)
- (B) For a Professional Corporation the words "Registered Architectural Corporation, North Carolina" shall be along the inside perimeter of the inner circle. (See facsimile on Board web site.) For a Professional Limited Liability Company the words "Registered Architectural Company" shall be along the inside perimeter of the inner circle. ~~The firm's North Carolina registration number shall be in the center of the inner circle. (See facsimile on the Board web site.)~~
- A sole proprietorship is not required to have firm seal and shall seal all work with the individual seal as set forth in Subparagraph (2) of this Paragraph.
- (4) Seal Types. The seal required for use on original technical submissions not intended for duplication shall be of a type which will produce an impression facsimile of the seal, or a rubber stamp which will produce an ink facsimile of the seal. The seal required for use on original technical submissions intended for duplication shall be of a type which will produce an ink facsimile of the seal such as a rubber stamp, or a substantially similar
- ~~electronic or digital representation of the design.~~ The use of pre-printed documents bearing a pre-printed facsimile of the signed and dated seal is prohibited.
- (5) ~~Individual Seal, Signature and Date Required.~~ Architects shall affix their seal on one original of all their drawings and sets of specifications prepared by them for use in this State as follows:
- (A) on the cover sheet of each design and on each drawing prepared by the architect for the design;
- (B) on the index page identifying each set of specifications; and
- (C) on the index page of all other technical submissions. For the purposes of this Rule, technical submissions refer to plans, drawings, specifications, studies, addenda and other technical reports prepared for use in this state in the course of practicing architecture.
- ~~The original signature of the individual named on the seal shall be considered part of an individual seal and shall appear across the face of each original seal imprint along with the date of affixation. For the purposes of this Rule, the term "for use in this State" means drawings and sets of specifications prepared for bidding, procurement, permitting or for construction. For purposes of this Rule, "original" means the version of drawings and sets of specifications from which all lawful copies can be made.~~
- (6) Presentation documents (renderings, drawings used to communicate conceptual information only) shall not be sealed or signed.
- (7) Documents considered incomplete by the architect may be released for interim review without the architect's seal or signature affixed, but shall be dated, bear the architect's name and be conspicuously marked to indicate the documents are for interim review and not intended for bidding, procurement, permit, or construction purposes.
- (8) Sheets or Pages Prepared By Licensed Professional Consultants. Those sheets or pages prepared by licensed professional consultants (for example, structural, mechanical or electrical engineers) retained by the architect shall bear the seal and registration number of the consultant responsible therefore and shall not be sealed by the architect.
- (9) Original Signature. The use of signature reproductions such as rubber stamps, computer generated or other facsimiles are not permitted in lieu of actual handwritten and hand dated signatures; provided, however, a digital signature as defined in Paragraph (e) of this Rule may be used in lieu of a handwritten signature and handwritten date.

- (10) ~~Authorized~~ The use of the prescribed seal is an individual act whereby the architect must personally sign over the imprint of the seal. By sealing documents for use in this State an architect is representing that he/she as in responsible control over the content of such documents and has applied the required professional standard of care. The architect is responsible for security of the seal when not in use.

- (11) Use of Firm Seal. The use of the firm seal does not replace the statutory requirement for an architect's individual seal as required in Paragraph (d). The firm seal must be affixed in addition to the individual seal on the cover sheet.

(b) ~~Standard design~~ Prototypical Building design documents prepared by architects who are registered in this state or in their state of origin may be sealed by a succeeding licensed architect registered in North Carolina provided:

- (1) the seal of the original architect appears on the documents to authenticate authorship;
- (2) the words ~~"standard design document"~~ "Prototypical Design Documents/Not for Construction" ~~be placed appear~~ appear on each sheet of the documents by the original architect;
- (3) the succeeding North Carolina architect identifies all modifications to the standard design documents;
- (4) the succeeding North Carolina architect assumes responsibility for the adequacy of the design for the specific application in North Carolina and for the design conforming with applicable building codes; codes, local conditions, site condition; and
- (5) the succeeding North Carolina architect affixes his/her seal to the ~~standard design~~ prototypical design documents ~~and with~~ with a statement substantially as follows: "These documents have been properly examined by the undersigned. I have determined that they comply with existing local North Carolina codes, and I assume responsibility for the adequacy of the design for the specific application in North Carolina."

(c) Post Construction record drawings prepared by an architect, but based upon representations of contractors, are not plans that are for "bidding, procurement, permit or construction purposes" and therefore shall not be sealed by the architect as long as the documents bear the name of the architect and include language stating "these drawings are based in part upon the representations of others and are not for bidding, procurement, permit or construction purposes".

(d) Responsible Control. No architect shall affix his/her seal and signature to contract documents developed by others not under his responsible control. Responsible control includes that amount of control over and detailed professional knowledge of the content of technical submissions during their preparation as is ordinarily

exercised by an architect applying the required professional standard of care, including:

- (1) Dissemination of programmatic requirements;
- (2) Ongoing coordination and correlation of services with other aspects of the total design of the project;
- (3) Verification with consultant that owner's requirements are being met;
- (4) Authority over the services of those who assisted in the preparation of the documents;
- (5) Assumption of responsibility for the services;
- (6) Incorporation of services and technical submissions into design documents to be issued for permitting purposes; and
- (7) Incorporation and integration of information from manufacturers, suppliers, installers, the architect's consultants, owners, contractors, or other sources the architect reasonably trusts that is incidental to and intended to be incorporated into the architect's technical submissions if the architect has coordinated and reviewed such information

(e) Procedure for digitally signing and electronically sealing electronically transmitted plans, specifications, reports or other documents prepared for use in this State in the course of practicing architecture is as follows: For purposes of this Rule the term "Signature" shall mean handwritten or digital as follows:

- (1) Information stored in electronic files representing plans or specifications which must be sealed under the provisions of G.S. 83A, shall be signed, dated and sealed by the architect in responsible control. A handwritten message identification containing the name of the person who applied it; or

(A) A scanned image of an original signature shall not be used in lieu of a digital or electronic signature.

(B) The date that the electronic signature file was created or the digital signature was placed in to the document must appear on the document in the same manner as date is required to be applied when a licensee uses the manual sealing procedure set out in Parts (a)(5)(A),(B),(C) of this Rule.

- (2) ~~A digital signature that is an electronic authentication process attached to or logically associated with an electronic document. The digital signature must be:~~ An architect utilizing a digital signature to seal electronic documents for use in this State shall assure that the digital signature is:

- (A) Unique to the person using it;
- (B) Capable of verification;
- (C) Under the sole control of the person using it; and
- (D) Linked to a document in such a manner that the digital signature is

invalidated if any data in the document is changed.

~~A digital signature that uses a process approved by the Board is presumed to meet the criteria set forth in Parts (e)(2)(A) through (e)(2)(D) of this Rule. The architect is responsible for the security of the digital signature.~~

(3) Each electronically signed file shall have an authentication code defined as a message digest described in Federal Information Processing Standards (FIPS) Publication 180-4 "Secure Hash Standard," March 2012, amended, which is hereby adopted and incorporated by reference by the Board and can be obtained from the Internet  
<http://csrc.nist.gov/publications/fips/fips180-4/fips-180-4.pdf>.

(4) The architect is responsible for the security of the digital seal.

~~(f) For the purposes of this Rule, technical submissions refer to plans, drawings, specifications, studies, addenda and other technical reports prepared for use in this state in the course of practicing architecture.~~

*Authority G.S. 83A-6; 83A-10; 83A-12.*

## **21 NCAC 02 .0209 UNPROFESSIONAL CONDUCT**

In addition to those grounds as stated in G.S. 83A-15(3) the following acts or omissions, among others, may be deemed to be "unprofessional conduct" and to be cause for the levy of a civil penalty or for denial, suspension, or revocation of a license or certificate of registration to practice architecture:

- (1) **Compliance With Laws.** It is unprofessional conduct for an architect, in the conduct of his or her professional practice, to knowingly violate any state or federal criminal law. A criminal conviction shall be deemed prima facie evidence of knowingly violating the law.
- (2) **Compliance With Foreign Registration.** It is unprofessional conduct for an architect to knowingly violate the laws governing the practice of architecture or the rules promulgated by any other architectural licensing board in any United States jurisdiction. A finding by a foreign architectural registration board that an architect has violated a law or rule governing the practice of architecture shall be deemed prima facie evidence of knowingly violating the law or rule.
- (3) **Product Specification.** It is unprofessional conduct for an architect to solicit or accept financial or other valuable consideration from material or equipment suppliers for specifying their products.
- (4) **Advertising.** It is unprofessional conduct for an architect to engage in any false, deceptive, fraudulent, or misleading advertising.
- (5) **False Statements.** It is unprofessional conduct for an architect to knowingly make false statements about the professional work of; or to

maliciously injure the prospects, practice, or employment position of others active in the design and construction of the physical environment.

Evasion is:

- (6)
  - (a) It is unprofessional conduct for an architect, through employment by contractors (whether or not the contractors are licensed under G.S. 89), or by another individual or entity not holding an individual or firm registration from the Board, to enable the employer to offer or perform architectural services, except as provided in G.S. 83A-13. In design/build arrangements, the architect shall not be an employee of a person or firm not holding a registration to practice architecture in North Carolina.
  - (b) It is unprofessional conduct for an architect to furnish limited services in such manner as to enable owners, draftsmen, or others to evade the public health and safety requirements of Chapter 83A, G.S. 133-2, G.S. 153A-352, G.S. 160A-412(c), G.S. 153A-357, or G.S. 160A-417.
  - (c) When building plans are begun or contracted for by persons not licensed and qualified, it is unprofessional conduct for an architect to take over, review, revise, or sign or seal such drawings or revisions thereof for such persons, or do any act to enable either such persons or the project owners, directly or indirectly, to evade the requirements of Chapter 83A, G.S. 133-2, G.S. 153A-357, or G.S. 160A-417.
- (7) **Branch Office.** It is unprofessional conduct for an individual architect or firm to maintain or represent by sign, listing, or other manner that he/she maintains an architectural office or branch office in North Carolina unless such office has a registered resident architect in North Carolina whose principle place of business is in that office. This item does not apply to on-site project offices during construction of a project.
- (8) **Misrepresentation Regarding Prior Experience.** An architect shall accurately represent to a prospective or existing client or employer his/her qualifications and the scope of his/her responsibility in connection with work for which he is claiming credit. Misrepresentation shall be as follows:
  - (a) Each architect shall state his or her prior professional experience and the

firm the architect is representing while presenting qualifications to prospective clients, both public and private. If an architect uses visual representations of prior projects or experience, all architects-of-record must be identified. Architect-of-record means persons or entities whose seals appear on plans, specifications and contract documents.

- (b) An architect who has been an employee of another architectural practice may not claim credit for projects contracted for in the name of the previous employer. The architect shall indicate, next to the listing for each project, that individual experience gained in connection with the project was acquired as an employee, and identify the previous architectural firm. The architect shall also describe the nature and extent of his/her participation in the project.
- (c) An architect who was formerly a principal in a firm may make additional claims provided he/she discloses the nature of ownership in the previous architectural firm (e.g. stockholder or junior partner) and identifies with specificity his/her responsibilities for that project.
- (d) An architect who presents a project that has received awards or public recognition must comply with the requirements in Item (8) of this Rule with regard to project presentation to the public and prospective clients.
- (e) Projects which remain unconstructed and which are listed as credits shall be listed as "unbuilt" or a similar designation.
- (9) Fee Bidding on Public Projects. An architect shall not knowingly cooperate in a violation of any provisions of G.S. 143-64.31.
- (10) An architect shall cooperate with the Board in connection with any inquiry it shall make. Cooperation includes responding in a timely manner to all inquiries of the Board or its representative which is mailed in accordance with 21 NCAC 02 .0201.
- (11) Copyright Infringement. It is unprofessional conduct for an architect to be found by a court to have infringed upon the copyrighted works of other architects or design professionals.
- (12) It is unprofessional conduct for an individual to continue offering and rendering architectural services as set forth in G.S. 83A after his/her

license expires, is placed on delinquent status or revoked for failure to renew.

*Authority G.S. 83A-6; 83A-14; 83A-15.*

## 21 NCAC 02 .0213 INDIVIDUAL LICENSES

(a) Renewal. License registration must be renewed on or before the first day in July each year. No less than 30 days prior to the renewal date, the Board shall send a notice of renewal to each individual licensee via electronic mail. The licensee shall complete the current license renewal documentation required by the Board. The licensee shall submit to the Board the completed license renewal documentation, along with the annual license renewal fee. The Board shall not accept incomplete renewal documentation. If the accompanying ~~draft or check~~ payment in the amount of the renewal fee is dishonored by the architect's drawee bank for any reason, the Board shall suspend the license until the renewal fees and check charges are paid. When the annual renewal has been completed according to the provisions of G.S. 83A-11, as well as Section .0900 of these Rules, the Executive Director shall approve renewal of the license for the current license year. Renewal fees are non-refundable.

(b) ~~Late Renewal and Reinstatement.~~ If the Board has not received the annual renewal fee and completed renewal documentation, on or before the first day of July each year the license shall expire and be placed on delinquent status. An individual who continues to practice architecture as defined in G.S. 83A after their license has been placed on delinquent status shall be considered a non-licensed individual and may be deemed in violation of G.S. 83A and subject to disciplinary action. The license may be renewed at any time within one year of being deemed delinquent, upon the return of the completed renewal documentation, the annual renewal fee and the late renewal ~~fee~~ penalty and demonstration of compliance with Section .0900 of the rules in this Chapter. ~~After one year from the date of delinquency the license may no longer be renewed, but the licensee must seek reinstatement. Reinstatement shall occur according to the directives of G.S. 83A-11 and Section .0900 of the rules in this Chapter.~~

(c) After one year from the date of expiration the license will be revoked for failure to renew. Reinstatement shall occur according to the directives of G.S. 83A-11 and Section .0900 and Section .0300 of this Chapter.

~~(e)(d)~~ Any individual who is currently licensed by and in good standing with the Board who is serving in the armed forces of the United States shall not be subject to late fees, suspension or revocation for failure to renew licensure on or before the first day July each year, provided that the individual has been granted an extension of time to file a tax return as set forth in G.S. 105-249.2.

*Authority G.S. 83A-6; 83A-11.*

## 21 NCAC 02 .0217 ARCHITECT EMERITUS

The Board shall approve an application for Architect Emeritus status for a person who meets the following criteria:

- (1) the individual has been continuously licensed as an architect by the Board for a minimum of 10 years;

- (2) the individual agrees to permanently relinquish their license; and
- (3) the individual has no pending disciplinary action or history of criminal convictions that would support a determination that the licensee is not of good character and reputation.

~~Resident architects who have been registered in this state who are retired from active practice or other related professional activities in any jurisdictions whatsoever, may apply for "Emeritus Status" by submitting a form provided by the Board showing compliance with the requirements of this Section. "Retired" means that the architect no longer practices architecture in that he/she no longer seals and certifies documents with his/her seal or otherwise offers to practice or practices architecture as defined in G.S. 83A-1 as amended. Nonresident architects who have been continuously certified by NCARB who are retired from active practice [or other related professional activities] in any jurisdictions whatsoever, and who are "emeritus", inactive or retired in every other jurisdiction in which they are licensed may also apply for "Emeritus Status" by submitting a form provided by the Board showing compliance with the requirements of this Section. Any such "architect emeritus" must renew that status on forms provided by the Board on or before the first day of July in each year. Any reference to an architect An individual on who has been granted "Emeritus Status" may use the designation "Architect Emeritus" on any letter, title, sign, card or other device. device shall list such architect as "Architect Emeritus".~~

*Authority G.S. 83A-4; 83A-6; 83A-11; 83A-12.*

## SECTION .0300 - EXAMINATION PROCEDURES

### 21 NCAC 02 .0301 APPLICATION FOR REGISTRATION BY EXAM

~~(a) All persons desiring to submit an application to take the Architectural Registration Exam (ARE) shall complete the application for licensure by exam and submit the non-refundable application fee as established in Rule .0108. If an application is complete and the applicant is otherwise qualified by statute and the rules of the Board to sit for the examination, the Board shall send notice of ARE eligibility to the applicant.~~

~~(b) The fees for examination, or parts thereof, are set by the National Council of Architecture Registration Boards. Fee information will be made available to all applicants for examination on the Board web site and may be obtained from the National Council of Architecture Registration Boards.~~

*Authority G.S. 83A-4; 83A-6; 83A-7.*

### 21 NCAC 02 .0302 EXAMINATION

(a) As of July 25, 2016, the North Carolina Board of Architecture is a Direct Registration State with the National Council of Architecture Registration Boards (NCARB). Those individuals who wish to take the Architectural Registration Exam (ARE) must contact NCARB directly to obtain exam eligibility to take the ARE. Upon completion of all requirements set forth in the NCARB Architecture Experience Program (AXP), a candidate who wishes to obtain license registration by exam in North

Carolina should direct NCARB to transmit a completed AXP record to the North Carolina Board of Architecture.

~~(a) Licensure by Examination.~~

(b) Upon successful completion of all sections of the Architectural Registration Exam (ARE) as prepared by the National Council of Architecture Registration Boards (NCARB), fulfillment of all NCARB Intern Development Program (IDP)(AXP) requirements and completion of the National Architectural Accrediting Board (NAAB) accredited degree, NCARB, as directed by the candidate, will transmit a completed AXP file to the North Carolina Board of Architecture for review. Upon notification of receipt of a completed AXP file from the Board, an individual may submit the application and fee for Candidate Record Review to determine compliance with G.S. 83A-7(a)(1)a. and fee for licensure by exam and may then be granted a license to practice architecture. G.S. 83A-7(a)(1)a. shall be deemed satisfied through completion of the requirements set forth in Subparagraphs (1) through (4) of this Paragraph. The Board shall grant eligibility to take the ARE for licensure by exam to those individuals who:

- (1) are of good moral character as defined in G.S. 83A-1(5);
- (2) are at least 18 years of age;
- (3) have completed a NAAB accredited professional degree in architecture or who ~~are~~ actively enrolled in have completed a NAAB accredited degree program that is identified ~~by the college or university~~ as an NCARB endorsed Integrated Path To Architectural Licensure Degree Program;
- (4) ~~are actively enrolled in~~ have completed the NCARB ~~IDP AXP~~ or a program approved as equivalent by the North Carolina Board of Architecture as set forth in ~~G.S. 83A-7(a)(2);~~ G.S. 83A-7(a)(2); and
- (5) submits the Application for Licensure by Exam and fee.

~~(b)(c)~~ Retention of credit for purposes of licensure by examination in North Carolina.

- (1) Passing scores received after July 1, 2006 on any part of the ARE remain valid for a period of time established by the exam provider, NCARB.
- (2) Scores received on any part of the ARE prior to July 1, 2006 are invalid.

~~(e)(d)~~ Practical training pursuant to G.S. 83A-7(a)(2) means practical experience and diversified training as defined by the ~~Intern Development Program~~ Architectural Experience Program through the NCARB.

~~(d)(e)~~ During the application process, the applicant may be interviewed by the Board members. The purpose of the interview is to augment the evidence submitted in an application with regard to qualifications required in Paragraph ~~(a)(b)~~ of this Rule.

~~(e)(f)~~ The ARE shall be graded in accordance with the methods and procedures recommended by NCARB. To successfully complete the ARE, an exam candidate shall receive a passing grade in each division of the ARE. Information regarding NCARB grading methods and procedures is found on their web site at [www.ncarb.org](http://www.ncarb.org).

~~(f)~~(g) A person currently employed under the responsible control of an architect, who holds a Professional Degree from a NAAB accredited program, and who maintains an active NCARB ~~IDP~~ AXP record or has successfully completed the NCARB ~~IDP~~ AXP may use the title "Architectural Intern" or "Intern Architect" in conjunction with his or her current employment.

(h) The fees for examination, or parts thereof, are set and collected by the NCARB. Fee information will be made available to all applicants for examination on NCARB web site [www.ncarb.org](http://www.ncarb.org).

Authority G.S. 83A-1; 83A-6; 83A-7.

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## CHAPTER 66 – VETERINARY MEDICAL BOARD

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Veterinary Medical Board intends to amend the rule cited as 21 NCAC 66 .0206.*

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

**Proposed Effective Date:** *October 1, 2017*

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): Written request to the office of the North Carolina Veterinary Medical Board mailed to NCVMB, 1611 Jones Franklin Road, Suite 106, Raleigh, NC 27606*

**Reason for Proposed Action:** *Add the American Association of Veterinary State Boards to the list of continuing education providers. To increase the number of continuing education hours allowed by computer. Allow veterinarians or technicians in the armed forces an extension to comply with continuing education requirements.*

**Comments may be submitted to:** *Thomas Mickey, North Carolina Veterinary Medical Board, 1611 Jones Franklin Road, Suite 106, Raleigh, NC 27606; phone (919) 854-5601; fax 9919) 854-5606; email [tmickey@ncvmb.org](mailto:tmickey@ncvmb.org)*

**Comment period ends:** *July 31, 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

## SECTION .0200 - PRACTICE OF VETERINARY MEDICINE

### 21 NCAC 66 .0206 MINIMUM STANDARDS FOR CONTINUING EDUCATION

Each person holding a veterinary license, limited license, a faculty certificate, or a zoo veterinary certificate (collectively referred to herein as "veterinarian") or a veterinary technician registration issued by the Board shall comply with the standards in this ~~Rule,~~ Rule, which ~~The~~ standards shall be a condition precedent to the renewal of a license certificate or registration, respectively. ~~Except as otherwise qualified, the criteria with respect to continuing veterinary medical education of a person holding a certificate of registration as a veterinary technician shall be the same as that for a licensed veterinarian.~~ The standards are as follows:

- (1) Continuing education credit hours shall relate to veterinary medicine.
- ~~(1)(2)~~ A ~~Veterinarians~~ veterinarian shall earn 20 continuing education credit hours each calendar year for the calendar year license renewal period.
- ~~(2)(3)~~ A ~~Veterinary~~ veterinarian technician registered with the Board shall earn 12 credit hours every for the two calendar years year registration renewal period.
- ~~(3)(4)~~ A ~~Veterinarians~~ veterinarian or veterinary technician may request and be granted an extension of time, not to exceed six months, to satisfy the continuing education requirement if the veterinarian or veterinary technician provides evidence of an incapacitating illness or evidence of other circumstance which constituted constitutes a severe and verifiable hardship such that to comply with the continuing education requirement would have been is or was impossible or unreasonably burdensome. If the incapacitating illness or circumstance is likely to result in loss of life of the veterinarian the Board shall exempt the veterinarian from the unearned portion of the continuing education requirement for that renewal period. If the evidence shows that the incapacitating illness or other circumstance is or was so severe that it is or was impractical or impossible, or unreasonably burdensome to

- comply with the continuing education requirement, the Board shall exempt the veterinarian or veterinary technician from any unearned portion of the continuing education requirement for that renewal period.
- (4) Credit hours may be earned as follows: one hour credit for each hour of attendance at in-depth seminars such as seminars sponsored by the American Veterinary Medical Association (AVMA), the American Animal Hospital Association (AAHA), the North Carolina Veterinary Medical Association (NCVMA), and academies and schools of veterinary medicine. Only one hour credit may be acquired for attendance at a local sectional association meeting. The Board shall consider additional course offerings for approval for continuing education credit, provided that the Board is furnished sufficient information to establish that the course content and quality is substantially comparable to the course offerings by those seminars sponsored by the organizations or institutions listed in this Subparagraph. Approval for continuing education credit for courses other than those specified herein shall be obtained prior to attendance at a course; however, the Board may waive the requirement of approval prior to attendance at the course if circumstances beyond the veterinarian's or registrant's control prevented obtaining the prior approval. Only three four hours credit per year may be acquired from review of an audio or video cassette or computer based training.
- (5) Continuing education credits hours may be earned only from courses, programs, or materials presented or approved by the following providers: American Veterinary Medical Association (AVMA); the American Animal Hospital Association; (AAHA), the North Carolina Veterinary Medical Association (NCVMA); the American Association of Veterinary State Boards' (AAVSB) Registry of Approved Continuing Education (RACE); and academies or schools or colleges of veterinary medicine. These providers are designated herein as "approved continuing education credit providers." The Board shall consider additional courses, presentations or materials eligible for approval for continuing education credit hours provided that the individual seeking the credit furnish the Board sufficient information to establish that the content and quality of the course, presentation or material are substantially comparable to that offered or approved by the approved continuing education credit providers. Board approval for continuing education credits for such additional courses, presentations or materials shall be obtained
- prior to attendance or participation; however, the Board may waive the requirement of prior approval if circumstances beyond the control of the veterinarian or veterinary technician prevent obtaining the prior approval.
- (6) Subject to the limitations in this Rule, continuing education credit hours may be earned by attendance at in-depth courses or presentations; or by completion of independent self-study courses or non-interactive on-line presentations, courses or materials; or by completion of live interactive on-line presentations or courses.
- (7) One continuing education credit hour may be earned for each hour of attendance at courses presented or approved by approved continuing education credit providers. Up to five credit hours may be obtained from independent self-study courses or materials, approved by approved continuing education credit providers, with content transmitted through videos, DVDs, CDs, prerecorded webinars, audio conferences, and non-interactive on-line presentations. Up to 10 credit hours may be obtained from live interactive on-line presentations or courses approved by approved continuing education credit providers; provided, however, the number of credit hours earned from live interactive on-line presentations or courses shall be reduced by the number of credit hours earned from independent self-study courses or materials and non-interactive on-line presentations or courses. A live interactive on-line presentation or course must:
- (a) include instant or asynchronous two-way communication; and
  - (b) provide timely access to both technical personnel and professional faculty, as well as interactivity among participants for the exchange of questions and answers via instant messaging or a moderated teleconference; and
  - (c) document the level of participation.
- (5)(8) Each veterinarian and veterinary technician shall keep a record of for the three most recent renewal periods of the content of courses submitted to the Board for continuing education credit hours hours, earned. Each year he or she shall certify on a form provided by the Board the number of credit hours earned. The Board shall mail the form to each veterinarian at the time of annual renewal.
- (6)(9) During the calendar year in which a veterinarian graduates from veterinary college or during the calendar year in which a veterinary technician graduates from veterinary technician school, a veterinarian or veterinary

~~technician, respectively, shall not be required to earn continuing education credits for that portion of the calendar year remaining from the date when the license or registration was issued to the end of the calendar year.~~

(7)(10) A veterinarian licensed in the year of graduation from a veterinary medical college is not required to earn continuing education credit hours to be eligible for license renewal for the next renewal period.

(8)(11) A veterinary technician registered in the year of graduation from a veterinary medical technology program is not required to earn

continuing education credit hours to be eligible for registration renewal for the next renewal period.

(9)(12) A veterinarian or veterinary technician serving in the armed forces of the United States and to whom an extension of time to file a tax return is granted pursuant to G.S. 105-249.2 is granted the same extension of time to comply with the continuing education requirement of this rule.

*Authority G.S. 90-185(6); 90-186(1).*

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**APPROVED RULES**

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*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 April 20, 2017 Meeting.*

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

<u>Processes and Controls</u>	02 NCAC 09C .0507*	31:05 NCR
<u>Source Approval</u>	02 NCAC 09C .0703*	31:05 NCR
<u>Issuance of Permit</u>	02 NCAC 09G .2005*	31:05 NCR
<u>Severability</u>	02 NCAC 09G .2008	31:06 NCR
<u>Cornmeal Testing</u>	02 NCAC 09J .0101*	31:05 NCR
<u>Records Maintained</u>	02 NCAC 09J .0102*	31:05 NCR
<u>Definitions</u>	02 NCAC 09K .0101*	31:05 NCR
<u>Approval of Testing Procedure Used</u>	02 NCAC 09K .0103*	31:05 NCR
<u>Responsibility for Test</u>	02 NCAC 09K .0105*	31:05 NCR
<u>Test Reading</u>	02 NCAC 09K .0106*	31:05 NCR
<u>Test Reporting</u>	02 NCAC 09K .0107*	31:05 NCR
<u>Incorrect Tests</u>	02 NCAC 09K .0108*	31:05 NCR
<u>Sampling and Testing for Fresh Milk Samples</u>	02 NCAC 09K .0109*	31:05 NCR
<u>Procedure for Testing Cream</u>	02 NCAC 09K .0113*	31:05 NCR
<u>Reference Method</u>	02 NCAC 09K .0114*	31:05 NCR
<u>Inspection Certificates</u>	02 NCAC 09K .0203*	31:05 NCR
<u>Suspension of Inspection Certificate/Penalties</u>	02 NCAC 09K .0204*	31:05 NCR
<u>Standards for Mobile Frozen Dessert Units</u>	02 NCAC 09K .0205*	31:05 NCR
<u>Frozen Dessert Mix/Standards for Use</u>	02 NCAC 09K .0206*	31:05 NCR
<u>Frozen Dessert Mix/Standard of Identity</u>	02 NCAC 09K .0207*	31:05 NCR
<u>Dietary Frozen Dessert Standards</u>	02 NCAC 09K .0208*	31:05 NCR
<u>Quiescently Frozen Dairy Confections</u>	02 NCAC 09K .0209	31:05 NCR
<u>Quiescently Frozen Confections</u>	02 NCAC 09K .0210	31:05 NCR
<u>Imitation Frozen Dessert Standards</u>	02 NCAC 09K .0211	31:05 NCR
<u>Bacterial Plate Count and Coliform Counts</u>	02 NCAC 09K .0212*	31:05 NCR
<u>Standards of Identity for Milkshake and Related Products</u>	02 NCAC 09K .0213*	31:05 NCR
<u>Standards of Identity for Frozen Yogurt</u>	02 NCAC 09K .0214*	31:05 NCR
<u>Definitions</u>	02 NCAC 09O .0101*	31:05 NCR
<u>Special Requirements</u>	02 NCAC 09O .0107*	31:05 NCR

**PUBLIC HEALTH, COMMISSION FOR**

<u>Sale of Turtles Restricted</u>	10A NCAC 41A .0302*	31:13 NCR
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**INSURANCE, DEPARTMENT OF**

<u>Training Operations</u>	11 NCAC 05A .0105	31:04 NCR
<u>Administration of State Volunteer Fire Department</u>	11 NCAC 05A .0201	31:04 NCR
<u>Eligible Members</u>	11 NCAC 05A .0301	31:04 NCR
<u>Requirements</u>	11 NCAC 05A .0603*	31:04 NCR

<u>Requirements for Units Required to Match Grants</u>	11 NCAC 05A .0703*	31:04 NCR
<u>Requirements for Units not Required to Match Grants</u>	11 NCAC 05A .0704	31:04 NCR
<b>ENVIRONMENTAL MANAGEMENT COMMISSION</b>		
<u>General</u>	15A NCAC 02N .0101	31:09 NCR
<u>Copies of Referenced Federal Regulations</u>	15A NCAC 02N .0102*	31:09 NCR
<u>Adoption by Reference Updates</u>	15A NCAC 02N .0103	31:09 NCR
<u>Identification of Tanks</u>	15A NCAC 02N .0104	31:09 NCR
<u>Applicability</u>	15A NCAC 02N .0201*	31:09 NCR
<u>Installation Requirements for Partially Excluded UST Systems</u>	15A NCAC 02N .0202*	31:09 NCR
<u>Definitions</u>	15A NCAC 02N .0203*	31:09 NCR
<u>Performance Standards for New UST System Installations or...</u>	15A NCAC 02N .0301*	31:09 NCR
<u>Upgrading of Existing UST Systems After December 22, 1988...</u>	15A NCAC 02N .0302*	31:09 NCR
<u>Notification Requirements</u>	15A NCAC 02N .0303*	31:09 NCR
<u>Implementation Schedule for Performance Standards for New...</u>	15A NCAC 02N .0304	31:09 NCR
<u>Spill and Overfill Control</u>	15A NCAC 02N .0401*	31:09 NCR
<u>Operation and Maintenance of Corrosion Protection</u>	15A NCAC 02N .0402*	31:09 NCR
<u>Compatibility</u>	15A NCAC 02N .0403*	31:09 NCR
<u>Repairs Allowed</u>	15A NCAC 02N .0404*	31:09 NCR
<u>Reporting and Recordkeeping</u>	15A NCAC 02N .0405*	31:09 NCR
<u>Periodic Testing of Spill Prevention Equipment and Contai...</u>	15A NCAC 02N .0406*	31:09 NCR
<u>Periodic Operation and Maintenance Walkthrough Inspections</u>	15A NCAC 02N .0407*	31:09 NCR
<u>General Requirements for All UST Systems</u>	15A NCAC 02N .0501*	31:09 NCR
<u>Requirements for Petroleum UST Systems</u>	15A NCAC 02N .0502*	31:09 NCR
<u>Requirements for Hazardous Substance UST Systems</u>	15A NCAC 02N .0503*	31:09 NCR
<u>Methods of Release Detection for Tanks</u>	15A NCAC 02N .0504*	31:09 NCR
<u>Methods of Release Detection for Piping</u>	15A NCAC 02N .0505*	31:09 NCR
<u>Release Detection Recordkeeping</u>	15A NCAC 02N .0506*	31:09 NCR
<u>Reporting of Suspected Releases</u>	15A NCAC 02N .0601*	31:09 NCR
<u>Investigation Due to Site Impacts</u>	15A NCAC 02N .0602*	31:09 NCR
<u>Release Investigation and Confirmation Steps</u>	15A NCAC 02N .0603*	31:09 NCR
<u>Reporting and Cleanup of Spills and Overfills</u>	15A NCAC 02N .0604*	31:09 NCR
<u>General</u>	15A NCAC 02N .0701*	31:09 NCR
<u>Initial Response</u>	15A NCAC 02N .0702*	31:09 NCR
<u>Initial Abatement Measures and Site Check</u>	15A NCAC 02N .0703*	31:09 NCR
<u>Initial Site Characterization</u>	15A NCAC 02N .0704*	31:09 NCR
<u>Free Product Removal</u>	15A NCAC 02N .0705*	31:09 NCR
<u>Investigations for Soil and Groundwater Cleanup</u>	15A NCAC 02N .0706*	31:09 NCR
<u>Corrective Action Plan</u>	15A NCAC 02N .0707*	31:09 NCR
<u>Public Participation</u>	15A NCAC 02N .0708*	31:09 NCR
<u>Temporary Closure</u>	15A NCAC 02N .0801*	31:09 NCR
<u>Permanent Closure and Changes-In-Service</u>	15A NCAC 02N .0802*	31:09 NCR
<u>Assessing the Site at Closure or Change-In-Services</u>	15A NCAC 02N .0803*	31:09 NCR
<u>Applicability to Previously Closed UST Systems</u>	15A NCAC 02N .0804*	31:09 NCR
<u>Closure Records</u>	15A NCAC 02N .0805*	31:09 NCR
<u>Definitions</u>	15A NCAC 02N .1001*	31:09 NCR
<u>General Requirements</u>	15A NCAC 02N .1002*	31:09 NCR
<u>Additions, Exceptions, and Alternatives for UST Systems w...</u>	15A NCAC 02N .1003*	31:09 NCR

<u>Substitution of Financial Assurance Mechanisms</u>	15A NCAC 02O .0309	31:09 NCR
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<u>Local Government Bond Rating Test</u>	15A NCAC 02O .0311*	31:09 NCR
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<u>Trawl Nets</u>	15A NCAC 03J .0104*	31:07 NCR
<u>Public Health and Control of Oysters, Clams, Scallops and...</u>	15A NCAC 03K .0110*	31:07 NCR
<u>Oyster Harvest Management</u>	15A NCAC 03K .0201*	31:07 NCR
<u>Culling Requirements for Oysters</u>	15A NCAC 03K .0202*	31:07 NCR
<u>Mechanical Harvest of Clams from Public Bottom</u>	15A NCAC 03K .0302*	31:07 NCR
<u>Weekend Shrimping Prohibited</u>	15A NCAC 03L .0102*	31:07 NCR
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<u>Sampling and Analysis</u>	15A NCAC 13B .0840*	31:12 NCR
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#### **CERTIFIED PUBLIC ACCOUNTANT EXAMINERS, BOARD OF**

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**TITLE 02 - DEPARTMENT OF AGRICULTURE AND  
CONSUMER SERVICES**

**02 NCAC 09C .0507 PROCESSES AND CONTROLS**

**(a) Raw materials**

- (1) Upon receipt, fresh fish shall be inspected and washed before processing. Only fish free from adulteration and organoleptically detectable spoilage shall be processed.
- (2) Upon receipt, every lot of fish that has been partially processed in another plant, including frozen fish, shall be inspected, and only fish free from adulteration and organoleptically detectable spoilage shall be processed.
- (3) Fresh or partially processed fish, except those to be immediately processed, shall be iced or otherwise refrigerated to an internal temperature of 38 degrees fahrenheit or below upon receipt and shall be maintained at 38 degrees fahrenheit until the fish are to be processed.
- (4) All fish received in a frozen state shall be either thawed promptly and processed, or stored at a temperature that will maintain it in a frozen state.

**(b) Defrosting of frozen fish**

- (1) Defrosting shall be carried out in a sanitary manner and by such methods that the wholesomeness of the fish is not adversely affected. Frozen fish shall be defrosted:
  - (A) in air at 45 degrees fahrenheit or below until other than hard frozen; or
  - (B) in air so that the temperature in any part of the fish does not exceed 45 degrees fahrenheit; or
  - (C) in a continuous water-overflow thaw tank or spray system in such a manner that the temperature in any part of the fish does not exceed 45 degrees fahrenheit.
- (2) When a thaw tank is used, fish shall not remain in the tank longer than one-half hour after they are completely defrosted.
- (3) Fish entering the thaw tanks shall be free of exterior packaging material and free of liner material.
- (4) After thawing, fish shall be washed with a water spray or a continuous waterflow system.

**(c) Presmoking operation**

- (1) Evisceration of fish shall be performed with minimum disturbance of intestinal tract contents.
- (2) After evisceration, the fish (including the body cavity) shall be washed with a water spray or a continuous waterflow system.
- (3) All fish shall be dry-salted at a temperature not to exceed 38 degrees fahrenheit throughout the

fish, or shall be brined in such a manner that the temperature of the fish and the brine:

- (A) does not exceed 60 degrees fahrenheit at the start of brining;
- (B) if between 38 degrees fahrenheit and 50 degrees fahrenheit at the start of brining, is continuously lowered to 38 degrees fahrenheit or below within 12 hours;
- (C) if between 50 degrees fahrenheit and 60 degrees fahrenheit at the start of brining, is continuously lowered to 50 degrees fahrenheit or below within 2 hours and to 38 degrees fahrenheit or below within the following 10 hours; and
- (D) does not rise above 38 degrees fahrenheit after reaching that temperature or below either prior to or during the brining operation.

- (4) Fish shall be rinsed with fresh water after brining.

**(d) Heating, cooking, smoking operation**

- (1) A point-sensitive, continuous temperature-recording device shall be used to monitor both the internal temperature of the fish and the ambient temperature within the oven. Each recording-device record shall be identified as to the specific oven load and date processed.
- (2) Hot-process smoked or hot-process smoke-flavored fish shall be heated by a controlled heat process that provides a monitoring system positioned in as many locations in the oven as necessary to assure a continuous temperature throughout each fish.
- (3) The process selected by the processor shall be at least equivalent to a process established by a competent processing authority to achieve a safe product.

**(e) Packing**

- (1) The finished product shall be handled only with clean, sanitized hands, gloves, or utensils.
- (2) Manual manipulation of the finished product shall be kept to a minimum.
- (3) The finished product shall be cooled to a temperature of 50 degrees fahrenheit or below within three hours after cooking and further cooled to a temperature of 38 degrees fahrenheit or below within 12 hours after cooking, and 38 degrees fahrenheit shall be maintained during all subsequent storage and distribution.
- (4) The shipping containers, retail packages, and shipping records shall indicate by appropriate labeling the perishable nature of the product and shall specify that the product shall be

shipped, stored, and held for sale at 38 degrees fahrenheit or below until consumed.

- (5) Permanently legible code marks shall be placed on the outer layer of every finished product package and master carton. Such marks shall identify the plant where packed, the date of packing, and the oven load. Records shall be so maintained as to provide positive identification;
- (A) of the process procedures used for the manufacture of hot-process smoked or hot-process smoke-flavored fish; and
  - (B) of the distribution of the finished product.

(f) Testing. Microbiological and chemical examination of in-line and finished product samples shall be conducted with sufficient frequency to assure that processing steps and sanitary procedures are adequate.

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

**02 NCAC 09C .0703 SOURCE APPROVAL**

(a) If the proposed source is from an existing approved public water supply system, the provisions of Paragraphs (b), (c), and (d) of this Rule shall not apply.

(b) If the proposed source is a well, the provisions of 15A NCAC 18C, Rules Governing Public Water Supplies, shall apply. Copies are available upon request from the Public Water Supply Section.

(c) If the proposed source is a spring, source approval is reviewed in a two step process. The first step is approval of the spring site. A representative of the Department of Environmental Quality shall conduct an initial site investigation. Consideration shall be given to spring location, potential for surface water influence, hydrological and geological features, proximity of potential sources of pollution, and site ownership and control.

- (1) If the investigation reveals influence by surface water or other factors which render the site unsuitable for development as a safe water source, the investigation shall be terminated.
- (2) If the investigation does not reveal influence by surface waters, and all other factors as set forth in this Rule are considered satisfactory for site development, the provisions of Paragraph (d) of this Rule shall apply.
- (3) If the investigation reveals factors set forth in this Rule which warrant further investigation, the Department of Environmental Quality may require, as a condition for continued investigation, evaluation of the site or specific factors influencing the site by a geologist or engineer licensed to practice in North Carolina. If the Department of Environmental Quality determines that the investigation and report illustrate that the questionable factors do not hinder the suitability of the site to produce a safe water source, the provisions of Paragraph (d) of this Rule shall apply.

(d) In the second step of the spring investigation, spring water shall be sampled and data collected to determine the capability of source water to meet current North Carolina drinking water quality standards under the most severe anticipated environmental conditions. The following requirements shall apply to the water sampling and data collection process:

- (1) Sampling and data collection shall be conducted by the spring owner or his representative for the following parameters:
  - (A) Flow in gallons per minute (on-site measurement);
  - (B) Precipitation in inches (on-site measurement);
  - (C) Temperature (on-site measurement);
  - (D) pH;
  - (E) Conductivity;
  - (F) Turbidity;
  - (G) Coliform bacteria; and
  - (H) Microscopic analysis for organic debris, larvae, animal or insect parts, algae, diatoms, rotifers, coccidia and giardia cysts.
- (2) The minimum sampling and data collection period shall be six consecutive months. The period shall also include a minimum of two storm events (two or more inches of rainfall in a 24-hour period). It is the owner's responsibility to monitor rainfall in the vicinity of the spring site.
- (3) Water samples for parameters (1)(A) through (1)(F) of this Paragraph shall be collected and analyzed at least weekly on the same day of the week before a storm event occurs. After a storm event occurs, water samples for parameters (1)(A) through (1)(F) of this Paragraph shall be collected and analyzed within 24 hours and then twice a week for two weeks. Water samples for parameter (1)(G) of this Paragraph shall be collected and analyzed at least monthly and an additional sample shall be collected and analyzed within 24 hours after each storm event. Water samples for parameter (1)(H) of this Paragraph shall be measured at least two times during the sampling period. The first analysis of water samples for parameter (1)(H) of this Paragraph shall be conducted during the first month of the sampling period, and at least one of the samples shall be collected within 24 hours of a storm event.
- (4) The owner may develop or begin to develop a spring before beginning the process of sample collection and analysis. Unfavorable sample results shall not be discounted on the basis of inadequate spring development at the time of sample collection. If the owner intends to develop the spring in its final form before monitoring, he shall complete the requirements of Paragraph (e) of this Rule prior to construction.

- (5) Water sample collection and analysis shall be conducted in accordance with the recommendations of the current edition of "Standard Methods for the Examination of Water and Wastewater" which is adopted by reference at 02 NCAC 09B .0116(n), including subsequent amendments and editions. Water sample analyses for parameters (1)(D) through (1)(H) of this paragraph shall be conducted by a laboratory certified by the State of North Carolina. All measurements and sample results (with attached laboratory analysis reports) shall be kept in a tabular form and submitted to the Department of Environmental Quality at the end of the monitoring period. Upon review of the data, sample results and sample analysis, the Department of Environmental Quality shall determine the capability of the source to meet current North Carolina drinking water quality standards. If the water source is determined to be unsatisfactory, the investigation shall be terminated. If the source is determined to be satisfactory, the provisions of Paragraph (e) of this Rule shall apply.

(e) Plans and specifications for construction of the source, protective covering, piping, and storage facilities shall be submitted to the Department of Environmental Quality by an engineer licensed to practice in the State of North Carolina for review and approval prior to beginning construction or letting a contract for construction. For spring sources, the plans and specifications may be presented by the licensed engineer at any point during the process outlined in Paragraph (d) of this Rule. Springs shall not be developed in their final form until plans and specifications for the spring have been approved.

(f) Neither the bottling of water nor the selling of water for bottling shall begin until compliance with this Section has been completed and the Department of Environmental Quality receives certification from an engineer licensed to practice in North Carolina that the project has been constructed in accordance with the approved plans and specifications.

*History Note: Authority G.S. 106-139;  
Eff. April 1, 1992;  
Readopted Eff. May 1, 2017.*

#### **02 NCAC 09G .2005 ISSUANCE OF PERMIT**

- (a) Permits shall be issued pursuant to the administrative procedures set forth in the Pasteurized Milk Ordinance.
- (b) Prior to operating in this State, independent milk distributors, out-of-state milk plants and milk distributors, and milk haulers shall have been issued a permit by the North Carolina Department of Agriculture and Consumer Services.

*History Note: Authority G.S. 106-266.31;  
Eff. January 1, 1985;  
Amended Eff. April 1, 1994; December 1, 1990;  
Transferred from 15A NCAC 18A .1205 Eff. May 1, 2012;  
Readopted Eff. May 1, 2017.*

#### **02 NCAC 09G .2008 SEVERABILITY**

If a provision of this Section or the application of a provision to any person or circumstance is held invalid, the remainder of the provisions of this Section or the application of the provisions to other persons or circumstances shall not be affected.

*History Note: Authority G.S. 106-266.31;  
Eff. January 1, 1985;  
Transferred from 15A NCAC 18A .1208 Eff. May 1, 2012;  
Readopted Eff. May 1, 2017.*

#### **02 NCAC 09J .0101 CORNMEAL TESTING**

(a) All corn shall be tested for aflatoxin no more than 30 days prior to use in products for human consumption. Only those sampling and laboratory procedures that meet the standards set forth in the Official Methods of Analysis of the AOAC, incorporated by reference in 02 NCAC 09B .0116(a) shall be used.

(b) No corn containing unlawful levels of aflatoxin shall be used in any product for human consumption.

(c) The Commissioner or his or her agent may require cornmeal products to be tested for aflatoxin whenever he deems it necessary to prevent the sale of adulterated cornmeal.

*History Note: Authority G.S. 106-139;  
Emergency Rule Eff. January 23, 1981, for a Period of 120 Days to Expire on May 23, 1981;  
Eff. March 23, 1981;  
Readopted Eff. May 1, 2017.*

#### **02 NCAC 09J .0102 RECORDS MAINTAINED**

Records of all tests required by this Regulation shall be maintained for 12 months at the location where such products are produced and shall be available for inspection by the Commissioner or his or her agent during regular business hours.

*History Note: Authority G.S. 106-139;  
Emergency Rule Eff. January 23, 1981, for a Period of 120 Days to Expire on May 23, 1981;  
Eff. March 23, 1981;  
Readopted Eff. May 1, 2017.*

#### **02 NCAC 09K .0101 DEFINITIONS**

(a) "Automated Method" means the test for determining the percent of butterfat in raw, un-homogenized milk using an automated method set forth in either the Official Methods of Analysis of the AOAC, incorporated by reference in 02 NCAC 09B .0116(a), or the Standard Methods for the Examination of Dairy Products, incorporated by reference in 02 NCAC 09B .0116(j).

(b) "Tester" means a person conducting the Babcock test, Automated Method, or other methods approved by the Commissioner for testing butterfat, whether such test is to be used as a basis for payment or for the purpose of an official dairy inspection.

(c) "Bulk milk hauler/sampler" means any person who meets the definition of a bulk milk hauler/sampler in the PMO.

(d) "Producer Payment Period" means the interval between payments made to a producer by a buyer for milk or other dairy product.

(e) "Officially designated laboratory" means a commercial laboratory authorized to do official work by the Regulatory Agency, or a milk industry laboratory officially designated by the Regulatory Agency for the examination of producer samples of Grade "A" raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging and commingled milk tank truck samples of raw milk for drug residues and bacterial limits.

*History Note:* Authority G.S. 106-139; 106-267; 106-267.2;  
Eff. February 1, 1982;  
Amended Eff. January 1, 1985; December 31, 1983;  
Readopted Eff. May 1, 2017.

**02 NCAC 09K .0103 APPROVAL OF TESTING  
PROCEDURE USED**

(a) A person shall request approval from the North Carolina Department of Agriculture and Consumer Services, Food and Drug Protection Division, prior to using any method for determining the percent of butterfat in milk or cream other than methods outlined in Rule .0101(b) of this Section.

(b) Approval for use of any method other than those outlined in Rule .0101(b) of this Section shall be obtained in writing 30 days prior to its use.

*History Note:* Authority G.S. 106-267; 106-267.2;  
Eff. February 1, 1982;  
Readopted Eff. May 1, 2017.

**02 NCAC 09K .0105 RESPONSIBILITY FOR TEST**

The tester, sampler, producer, and buyer of milk or cream shall be jointly responsible for the integrity of all test reports, including, the proper care, handling, and storage of all samples, and for proper recording of all test results.

*History Note:* Authority G.S. 106-267; 106-267.2;  
Eff. February 1, 1982;  
Readopted Eff. May 1, 2017.

**02 NCAC 09K .0106 TEST READING**

The test reading of milk shall be either conducted as set forth in the Official Methods of Analysis of the AOAC, incorporated by reference in 02 NCAC 09B .0116(a), or the Standard Methods for the Examination of Dairy Products, incorporated by reference in 02 NCAC 09B .0116(j).

*History Note:* Authority G.S. 106-139; 106-267; 106-267.2;  
Eff. February 1, 1982;  
Amended Eff. January 1, 1985;  
Readopted Eff. May 1, 2017.

**02 NCAC 09K .0107 TEST REPORTING**

(a) A tester shall report all tests conducted on milk or cream for each producer payment period and shall maintain a permanent record, in duplicate, of the test results.

(b) A tester shall supply both individual sample butterfat test results and monthly average butter fat results to the persons responsible for making butter fat premium payments to each individual producer.

(c) The payee of the butterfat premium payments to each individual milk producer shall submit the monthly averages for each individual milk producer to the North Carolina Department of Agriculture and Consumer Services, Food and Drug Protection Division, no later than the 15<sup>th</sup> day of the following month.

*History Note:* Authority G.S. 106-267; 106-267.2;  
Eff. February 1, 1982;  
Readopted Eff. May 1, 2017.

**02 NCAC 09K .0108 INCORRECT TESTS**

(a) If the Commissioner determines that tests of milk or cream have been made erroneously by a tester, he shall notify in writing the manager of the plant from which the samples were collected that the test results are in error and inform the manager of the correct test results.

(b) A manager of a plant shall cause payments to be made to all producers on the basis of the corrected test.

*History Note:* Authority G.S. 106-267; 106-267.2; 106-267.5;  
Eff. February 1, 1982;  
Readopted Eff. May 1, 2017.

**02 NCAC 09K .0109 SAMPLING AND TESTING FOR  
FRESH MILK SAMPLES**

(a) The fresh sampling method shall be utilized as the exclusive method for sampling milk and cream.

(b) Fresh samples shall be collected from every producer's shipment of milk and delivered to the buyer.

(c) Fresh samples shall be tested within 48 hours after collection.

(d) Fresh samples shall be at least two ounces in volume.

(e) Fresh samples shall be held for 24 hours after testing.

*History Note:* Authority G.S. 106-267; 106-267.2;  
Eff. February 1, 1982;  
Amended Eff. June 1, 1984; December 31, 1983;  
Readopted Eff. May 1, 2017.

**02 NCAC 09K .0113 PROCEDURE FOR TESTING  
CREAM**

Cream shall be tested as set forth in either the Official Methods of Analysis of the AOAC, incorporated by reference in 02 NCAC 09B .0116(a), or the Standard Methods for the Examination of Dairy Products, incorporated by reference in 02 NCAC 09B .0116(j).

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

**02 NCAC 09K .0114 REFERENCE METHOD**

The automated method shall be calibrated as set forth in the Official Methods of Analysis of the AOAC, incorporated by reference in 02 NCAC 09B .0116(a), or the Standard Methods for

the Examination of Dairy Products, incorporated by reference in 02 NCAC 09B .0116(j). Other methods may be used as a reference upon approval by the Commissioner of Agriculture. Written notification of the reference method shall be sent to the Commissioner of Agriculture prior to the installation or the first use of an automated tester. A subsequent change in the reference method used shall be made only with specific approval from the Commissioner.

*History Note:* Authority G.S. 106-267; 106-267.2;  
*Eff. February 1, 1982;*  
*Amended Eff. April 1, 1985; January 1, 1985;*  
*Readopted Eff. May 1, 2017.*

**02 NCAC 09K .0203 INSPECTION CERTIFICATES**

(a) A person shall not operate as a wholesale or retail frozen dessert manufacturer, a wholesale or retail cheese manufacturer, or a wholesale butter processing manufacturer without first obtaining an inspection certificate issued by the Commissioner of the North Carolina Department of Agriculture.

(b) Inspection certificates shall be issued upon:

- (1) a determination by the Commissioner that the manufacturer is operating in a clean and sanitary manner in compliance with statutory requirements and these Rules and is producing a product that is pure, wholesome, and non-deleterious to health; and
- (2) payment of the appropriate fee as set out in G.S. 106-254.

(c) All inspection certificates shall expire on June 30 of each year and shall be non-transferable.

*History Note:* Authority G.S. 106-253; 106-254; 106-267;  
*Eff. February 1, 1982;*  
*Readopted Eff. May 1, 2017.*

**02 NCAC 09K .0204 SUSPENSION OF INSPECTION CERTIFICATE/PENALTIES**

(a) If, during the period for which an inspection certificate is in effect, the Commissioner determines that a retail frozen dessert freezer, dispenser milk machine, or mobile frozen dessert unit does not comply with G.S. 106, Article 26 or these Rules, he shall summarily suspend the inspection certificate.

(b) Any person, firm, or corporation operating any of the equipment listed in Paragraph (a) of this Rule without a valid inspection certificate shall be guilty of a misdemeanor.

*History Note:* Authority G.S. 106-252; 106-253; 106-254; 106-267;  
*Eff. February 1, 1982;*  
*Readopted Eff. May 1, 2017.*

**02 NCAC 09K .0205 STANDARDS FOR MOBILE FROZEN DESSERT UNITS**

(a) Mobile frozen dessert units shall operate out of a stationary depot, which shall provide storage, cleaning, and toilet facilities.

(b) Floors, walls, and ceilings of mobile frozen dessert units shall be constructed of impervious material.

(c) Openings for serving shall not be larger than necessary for their intended purpose.

(d) Machinery shall be constructed to facilitate cleaning and avoid contamination of the product. All valves, piping and fitting shall be constructed of sanitary milk piping and shall be dismantled and thoroughly washed after each day's use.

*History Note:* Authority G.S. 106-253; 106-267;  
*Eff. February 1, 1982;*  
*Readopted Eff. May 1, 2017.*

**02 NCAC 09K .0206 FROZEN DESSERT MIX/STANDARDS FOR USE**

(a) No person shall use rerun in any retail frozen dessert dispenser.

(b) Dry frozen dessert mixes shall be reconstituted with potable water or a pasteurized Grade A product and the resulting product shall be cooled to a temperature of between 33 degrees F and 45 degrees F within four hours of reconstitution.

(c) Liquid frozen dessert mixes shall be stored at a temperature between 33 degrees F and 45 degrees F.

(d) Frozen dessert mixes may be frozen at the point of manufacture. Prior to transferring a frozen mix to a retail outlet, the distributor shall thaw the frozen mix under refrigeration temperatures of 35 degrees F to 40 degrees F. Nothing herein shall be deemed to prohibit the department from considering a retail outlet to be a distributor if such outlet has sufficient and adequate refrigeration equipment to properly thaw the frozen mixes as required by this Section.

*History Note:* Authority G.S. 106-253; 106-267;  
*Eff. February 1, 1982;*  
*Amended Eff. April 1, 1987; May 1, 1986;*  
*Readopted Eff. May 1, 2017.*

**02 NCAC 09K .0207 FROZEN DESSERT MIX/STANDARD OF IDENTITY**

A product shall not be labeled as "frozen dessert mix" unless the product resulting from the frozen dessert mix conforms to the standards of identity established for that product.

*History Note:* Authority G.S. 106-253; 106-267;  
*Eff. February 1, 1982;*  
*Readopted Eff. May 1, 2017.*

**02 NCAC 09K .0208 DIETARY FROZEN DESSERT STANDARDS**

(a) Dietary frozen dessert is the food prepared by freezing while stirring a pasteurized mix containing one or more of the following ingredients:

- (1) optional dairy ingredients permitted by 21 CFR 135;
- (2) safe, suitable stabilizers;
- (3) emulsifiers;
- (4) non-nutritive sweeteners; or
- (5) any optional, non-adulterated ingredients.

(b) The finished dietary frozen dessert product shall:

- (1) contain less than two percent by weight of milk fat;

- (2) contain not less than seven percent by weight of total milk solids;
- (3) contain not less than 1.1 pounds nor more than 1.45 pounds of food solids per gallon; and
- (4) weigh not less than 4 1/2 pounds per gallon.

(c) Notwithstanding the provisions of Subparagraph (b)(3) of this Rule, if the optional ingredient micro-crystalline cellulose is used, the quantity of food solids shall not be less than 1.1 pounds per gallon exclusive of the weight of the micro-crystalline cellulose.

*History Note: Authority G.S. 106-253; 106-267;  
Eff. February 1, 1982;  
Readopted Eff. May 1, 2017.*

**02 NCAC 09K .0209 QUIESCENTLY FROZEN DAIRY CONFECTIONS**

(a) Quiescently frozen dairy confections shall contain:

- (1) water;
- (2) not less than 13 percent by weight of total milk solids;
- (3) not less than 33 percent by weight of total food solids;
- (4) not more than one-half of one percent by weight of stabilizers;
- (5) not more than one-fifth of one percent by weight of emulsifier;
- (6) sugar; and
- (7) flavoring.

(b) Quiescently frozen dairy confections may contain coloring.

(c) Quiescently frozen dairy confections shall be manufactured in the form of servings, individually packaged, bagged or otherwise wrapped, and purveyed to the consumer in its original factory-fill packages.

(d) In the production of these frozen confections, no processing or mixing prior to the complete freezing shall be used that develops in the finished confection mix any physical expansion or overrun in excess of 10 percent.

*History Note: Authority G.S. 106-253; 106-267;  
Eff. February 1, 1982;  
Readopted Eff. May 1, 2017.*

**02 NCAC 09K .0210 QUIESCENTLY FROZEN CONFECTIONS**

(a) Quiescently frozen confections shall contain:

- (1) water;
- (2) sugar;
- (3) flavoring; and
- (4) not less than 17 percent by weight of total food solids.

(b) Quiescently frozen confections may contain:

- (1) milk solids;
- (2) coloring;
- (3) harmless organic acid; and
- (4) not more than one-half of one percent by weight of stabilizer composed of wholesome, edible material.

(c) The quiescently frozen confections shall be manufactured in the form of servings bagged or otherwise wrapped, and purveyed to the consumer in its original factory-filled package.

(d) In the production of quiescently frozen confections, no processing or mixing prior to complete freezing shall be used that develops in the finished confections mix any physical expansion or overrun in excess of 10 percent.

*History Note: Authority G.S. 106-253; 106-267;  
Eff. February 1, 1982;  
Readopted Eff. May 1, 2017.*

**02 NCAC 09K .0211 IMITATION FROZEN DESSERT STANDARDS**

(a) A person who sells or offers for sale any imitation frozen dessert at the retail level, shall make this fact clear to the public by posting a sign near the product.

(b) A person shall display all signs and notices required in Paragraph (a) of this Rule in a manner conspicuous to the public and in letters easily read under normal conditions of purchase.

(c) A person shall not sell any imitation frozen dessert by dipping or scooping the imitation frozen dessert from packages or containers.

(d) A person shall not sell or offer for sale any frozen dessert containing any ingredient(s) not recognized as safe by the Federal Food and Drug Administration.

*History Note: Authority G.S. 106-253; 106-267; 106-138;  
Eff. February 1, 1982;  
Readopted Eff. May 1, 2017.*

**02 NCAC 09K .0212 BACTERIAL PLATE COUNT AND COLIFORM COUNTS**

Ice cream, other frozen milk products, water ices, and all mixes in dry form shall at no time after pasteurization and until delivery for consumption show a bacterial plate count in excess of 50,000 bacteria per gram; provided that frozen yogurt mix products are not subject to the 50,000 bacteria per gram. Coliform counts shall not exceed 10 colonies per gram for plain or 20 colonies per gram for chocolate, fruit, nut, or other flavors; and coliform count for all sherbet shall not exceed 10 colonies per gram.

*History Note: Authority G.S. 106-253; 106-267;  
Eff. February 1, 1982;  
Amended Eff. January 1, 1987; May 1, 1986;  
Readopted Eff. May 1, 2017.*

**02 NCAC 09K .0213 STANDARDS OF IDENTITY FOR MILKSHAKES AND RELATED PRODUCTS**

(a) A person shall label a product milkshake, milkshake mix, or milkshake base only if the product complies with the criteria established in these Rules.

(b) Milkshake is a food product which consists of Grade A pasteurized whole milk with the addition of:

- (1) flavoring;
- (2) ice cream;
- (3) milkshake base; or
- (4) ice milk, except as provided in Paragraph (c) of this Rule.

(c) Milkshakes may be made entirely from milkshake mix or ice milk mix as provided in these Rules.

(d) Milkshake mix is a food product which:

- (1) consists of a combination of two or more of the following ingredients:
  - (A) milk products;
  - (B) flavoring;
  - (C) sugar;
  - (D) stabilizer; or
  - (E) water.
- (2) contains not less than two percent milk fat;
- (3) contains not less than 11 percent by weight of total milk solids; and
- (4) contains not more than one-half of one percent stabilizer.

(e) Milkshake base is a frozen product which:

- (1) consists of a combination of two or more of the following ingredients:
  - (A) milk products;
  - (B) eggs;
  - (C) water; and
  - (D) sugar;
- (2) contains not less than two percent nor more than five percent, by weight, of milk fat;
- (3) contains not less than 30 percent by weight of total solids;
- (4) contains no flavoring or coloring; and
- (5) contains not more than one-half of one percent by weight of stabilizer.

*History Note: Authority G.S. 106-253; 106-267;  
Eff. February 1, 1982;  
Amended Eff. August 1, 1982;  
Readopted Eff. May 1, 2017.*

## **02 NCAC 09K .0214 STANDARDS OF IDENTITY FOR FROZEN YOGURT**

Frozen yogurt means a food that is prepared by freezing while stirring a pasteurized mix of the ingredients provided for in ice cream and which may contain other ingredients permitted under the Federal Food, Drug, and Cosmetic Act (21 USC 321 et seq.). All dairy ingredients in frozen yogurt shall be cultured after pasteurization by one or more strains of *Lactobacillus bulgaricus* and *Streptococcus thermophilus*, provided; however, fruits, nuts, or other flavoring materials may be added before or after the mix is pasteurized or cultured. Frozen yogurt, exclusive of any flavoring, shall contain not less than 3.25 percent milk fat and not less than 8.25 percent non-fat milk solids, except that when bulky characterizing ingredients are used the percentage of milk fat shall not be less than 2.5 percent. The finished frozen yogurt shall weigh not less than five pounds per gallon. The titratable acidity of frozen yogurt shall not be less than 0.5 percent, calculated as lactic acid, unless the frozen yogurt primary flavor is a non-fruit characterizing ingredient. This characteristic acidity is developed by the bacterial activity and no heat or bacteriostatic treatment, other than refrigeration, which may result in destruction or partial destruction of the organisms shall be applied to the product after culturing. The product, when in package form, shall be labeled

according to applicable sections of 21 CFR Part 101, incorporated by reference in 02 NCAC 09B .0116(o)(41).

*History Note: Authority G.S. 106-128; 106-253; 106-267;  
Eff. December 1, 1985;  
Amended Eff. July 1, 2000;  
Readopted Eff. May 1, 2017.*

## **02 NCAC 09O .0101 DEFINITIONS**

Words used in this Section in the singular form shall be deemed to impart the plural and vice versa as the case may demand:

- (1) "Inedible" means eggs of the following descriptions: black rots, yellow rots, white rots, mixed rots, sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, and eggs containing embryo chicks (at or beyond the blood ring stage).
- (2) "Leaker" means an individual egg that has a crack or break in the shell.
- (3) "Loss" means an egg:
  - (a) that is inedible, cooked, frozen, contaminated, musty, or moldy;
  - (b) that contains a large blood spot, large meat spot, bloody white, green white, rot, sour eggs, stuck yolk, blood ring, embryo chick (at or beyond the blood ring state), free yolk in the white, or other foreign material; or
  - (c) that is adulterated as such term is defined pursuant to the federal Food, Drug, and Cosmetic Act, 21 U.S.C. 342.
- (4) "Ungraded Eggs" means eggs as collected from the production unit and placed into retail channels without being graded or segregated for quality, soundness of shell, or size; except that checks, dirties, or other obvious defects may have been removed at time of collection.
- (5) "Baluts" means eggs that are fertile and incubated beyond the blood ring stage.
- (6) "Fertile" means an egg capable of developing into an embryo.
- (7) "Organic" means eggs produced in accordance with applicable federal standards for organic product, according to the United States Department of Agriculture's National Organic Program.
- (8) "Free Range" means eggs produced from laying chickens that are "cage free" or have access to a outdoors environment.

*History Note: Authority G.S. 106-245.16; 106-245.21;  
Eff. August 1, 1982;  
Amended Eff. July 1, 1998; December 1, 1987;  
Transferred from 02 NCAC 43H .0101 Eff. May 1, 2012;  
Readopted Eff. May 1, 2017.*

**02 NCAC 090 .0107 SPECIAL REQUIREMENTS**

(a) Baluts are exempt from the standards for shell eggs set forth in Rules .0103 and .0105 of this Section. After incubation, eggs suited for use as baluts shall be labeled with the word "embryo" or "balut" preceded by the name of the kind of poultry, or labeled as "Incubated Fertile Eggs." Labeling must include the complete name and address of the hatchery with letters no less than three-eighths of one inch high.

(b) In addition to all other applicable labeling requirements, eggs marketed and labeled as organically produced shall be certified by a State or federal agency or an accrediting organization recognized by a State or Federal agency, and shall be identified on primary container.

(c) In addition to all other marketing requirements, eggs labeled and marketed as free range eggs shall be identified and otherwise handled to maintain their identity through processing and packaging. Satisfactory evidence that the eggs are from production locations with cage-free birds or that have access to an outdoors range shall be furnished by any person marketing these eggs to a retailer, institutional consumer, or other person and shall be kept on file by both the person selling and the purchaser at their respective places of business for a period of at least 30 days.

(d) Eggs of a specific nature such as "Fertile" or "Brown" and eggs produced in accordance with applicable federal or State standards may be labeled as such if these eggs meet all other applicable requirements.

*History Note: Authority G.S. 106-245.16; 106-245.21; Eff. July 1, 1998; Transferred from 02 NCAC 43H .0107 Eff. May 1, 2012; Readopted Eff. May 1, 2017.*

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

**10A NCAC 41A .0302 SALE OF TURTLES RESTRICTED**

(a) To prevent the spread of salmonellosis from pet turtles to humans, no turtle with a carapace length of less than four inches shall be sold, offered for sale, or bartered by any retail or wholesale establishments except as follows:

- (1) the sale of turtles shall be allowed to institutions for scientific or educational purposes;
- (2) the sale of turtles shall be allowed for food purposes; and
- (3) wholesale establishments dealing in the sale of turtles shall be allowed to sell turtles to other wholesale or retail establishments outside of the State of North Carolina, subject to the applicable state and federal laws.

(b) For establishments selling turtles in accordance with Paragraph (a) of this Rule, the following information, or words having similar meaning, shall be posted at every display of turtles for retail sale, printed on the sales receipt issued by the seller at the time of the sale, or printed on an information sheet accompanying the sales receipt issued by the seller:

"CAUTION: Children under 5 years old and people with weak immune systems (such as chemotherapy patients

or those with HIV/AIDS) should avoid contact with reptiles. These people can get very sick from a germ called Salmonella that reptiles carry. Reptiles include lizards, snakes, alligators, and turtles. Wash hands thoroughly after handling turtles or material that had contact with turtles. Do not allow water or any other substance that had contact with turtles to come in contact with food or areas where food is prepared. Do not bathe turtles or clean their tanks in your kitchen or bathroom and do not have close contact with turtles which could allow direct contamination of the mouth (e.g., kissing, etc.)."

(c) The seller shall keep a record of all purchases, losses, and other dispositions of turtles for at least one year.

*History Note: Authority G.S. 130A-144; Eff. February 1, 1976; Readopted Eff. December 5, 1977; Amended Eff. May 1, 2017; February 3, 1992.*

**TITLE 11 - DEPARTMENT OF INSURANCE**

**11 NCAC 05A .0105 TRAINING OPERATIONS**

*History Note: Authority G.S. 58-2-40; 58-78-10; Eff. February 1, 1976; Readopted Eff. May 12, 1978; Amended Eff. October 1, 1988; Repealed Eff. May 1, 2017.*

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

*History Note: Authority G.S. 58-2-40; 58-80-1 thru 58-80-60; Eff. February 1, 1976; Readopted Eff. May 12, 1978; Amended Eff. April 8, 2002; July 1, 1986; Repealed Eff. May 1, 2017.*

**11 NCAC 05A .0301 ELIGIBLE MEMBERS**

*History Note: Authority G.S. 58-2-40(1); 58-84-40; Eff. February 1, 1976; Readopted Eff. May 12, 1978; Amended Eff. September 1, 2010; October 1, 2006; February 1, 1993; July 1, 1986; Repealed Eff. May 1, 2017.*

**11 NCAC 05A .0603 REQUIREMENTS**

(a) A department shall apply for a grant by using an online application made available by OSFM. This application shall contain the following information:

- (1) general contact information for the applicant;
- (2) a description of the department, including the names and total number of active members, services provided, the number of volunteers and paid personnel and the total annual salary;

- (3) a list of current vehicles owned by the department;
- (4) total county and city funding received by the department;
- (5) contract information for each city and county; and
- (6) a list of equipment requested by the department.

(b) Online applications shall be submitted to OSFM and be electronic date stamped no later than March 1. Applications bearing electronic date stamps later than March 1 shall be disqualified.

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

(d) Any department listed on the Office of State Budget and Management Suspension of Funding List for Non State Entities available at <http://www.osbm.state.nc.us/> shall be ineligible to participate in the grant program until the department is removed from the Suspension of Funding List pursuant to G.S. 143C-6-23. If a department is awarded a grant and becomes ineligible to receive funding due to being listed on Suspension of Funding List, the department may be required to forfeit the grant pursuant to 09 NCAC 03M .0801.

(e) If the application includes a request for a motor vehicle, the vehicle specifications shall accompany the application. If a used vehicle is requested, then the previous year's maintenance records shall accompany the application. Maintenance records shall consist of items such as weekly or monthly vehicle checks that would include annual inspections, oil changes, fuel level, tire pressure, mileage, hour meter, and other pertinent fluid levels and service test records, if applicable.

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

- (1) A contract verification form showing an agreement between the department and a county for the department to provide fire protection to a district;
- (2) A current roster comprising a list of "eligible firefighters" as defined in G.S. 58-86-2;
- (3) A financial statement of the department; and
- (4) A statement verifying that the department is financially able to match the grant in accordance with G.S. 58-87-1(a1)(2).

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

department on or before September 30 shall not be funded by grants from the Fund.

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

- (1) new vehicles;
- (2) self-contained breathing apparatus;
- (3) personal protective equipment; or
- (4) capital improvements.

(i) In order for the deadline to be extended pursuant to Paragraph (h) of this Rule, the department shall notify OSFM in writing by August 31. OSFM shall review the grant extension request and may approve an extension of up to 90 days. If an extension greater than the initial 90 days is needed by the department, another written request shall be submitted to OSFM no later than 30 days prior to the end of the first extension. The first extension shall be for 90 days, any subsequent extension and its length shall be determined by OSFM based on the information provided, but shall not exceed 90 days. Extensions may be granted for the following reasons: manufacturing delays, state declared disasters, shipping delays, and supply shortages.

*History Note:* Authority G.S. 58-2-40(1); 58-87-1;

*Eff. February 1, 1993;*

*Amended Eff. May 1, 2017; September 1, 2010; January 1, 2007.*

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

(a) A unit shall apply for a grant by using an online application made available by OSFM. This application shall contain the following information:

- (1) general contact information for the applicant;
- (2) a description of the unit, including the names and total number of active members, services provided, the number of volunteers and paid personnel and the total annual salary;
- (3) a list of current vehicles owned by the unit;
- (4) total county and city funding received by the unit;
- (5) contract information for each city and county; and
- (6) a list of equipment requested by the unit.

(b) Online applications shall be submitted to OSFM and be electronic date stamped no later than October 1. Applications bearing electronic date stamps later than October 1 shall be disqualified.

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

(d) Any unit listed on the Office of State Budget and Management Suspension of Funding List for Non State Entities available at <http://www.osbm.state.nc.us/> shall be ineligible to participate in the grant program until the unit is removed from the Suspension of Funding List pursuant to G.S. 143C-6-23. If a unit is awarded a grant and becomes ineligible to receive funding due to being

listed on the Suspension of Funding List, the unit may be required to forfeit the grant pursuant to 09 NCAC 03M .0801.

(e) If the application includes a request for a motor vehicle, the vehicle specifications shall accompany the application. If a used vehicle is requested, then the previous year's maintenance records shall accompany the application. Maintenance records shall consist of items such as weekly or monthly vehicle checks that would include annual inspections, oil changes, fuel level, tire pressure, mileage, hour meter, and other pertinent fluid levels and service test records, if applicable.

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

- (1) A Rescue Provider Statement showing that a county recognizes the unit as providing rescue or rescue/EMS services to a specified district. As used in this Subparagraph, "rescue provider statement" means a statement, signed by representatives of a unit and the county in which the rescue or rescue/EMS services are provided, that the unit provides rescue or rescue/EMS services within the county;
- (2) A current roster of unit members;
- (3) A statement verifying that the unit is financially able to match the amount of the grant in accordance with G.S. 58-87-5(a)(2); and
- (4) A financial statement of the unit.

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

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

- (1) new vehicles;
- (2) self-contained breathing apparatus;
- (3) personal protective equipment; or
- (4) capital improvements.

(i) In order for the deadline to be extended pursuant to Paragraph (h) of this Rule, the unit shall notify OSFM in writing by March 31. OSFM shall review the grant extension request and may approve an extension of up to 90 days. If an extension greater than the initial 90 days is needed by the unit, another written request shall be submitted to OSFM no later than 30 days prior to the end of the first extension. The first extension shall be for 90 days, any subsequent extension and its length shall be determined by OSFM based on the information provided, but shall not exceed 90 days. Extensions may be granted for the following reasons: manufacturing delays, state declared disasters, shipping delays, and supply shortages.

*History Note: Authority G.S. 58-2-40(1); 58-87-5; Eff. February 1, 1993;*

*Amended Eff. May 1, 2017; September 1, 2010; January 1, 2007.*

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

*History Note: Authority G.S. 58-2-40(1); 58-87-5; Eff. February 1, 1993; Repealed Eff. May 1, 2017.*

## **TITLE 15A - DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **15A NCAC 02N .0101 GENERAL**

(a) The purpose of this Subchapter is to establish the technical standards and corrective action requirements for owners and operators of underground storage tanks.

(b) The UST Section of the Division of Waste Management shall administer the underground storage tank program for the State of North Carolina.

*History Note: Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); Eff. January 1, 1991; Amended Eff. June 1, 2017.*

### **15A NCAC 02N .0102 COPIES OF REFERENCED FEDERAL REGULATIONS**

Copies of the Code of Federal Regulations, Sections 40 CFR 280.10-280.252 and Appendices Part 280 (80 FR 41624 – 41625, October 13, 2015) for this Subchapter, may be obtained at [www.ecfr.gov/cgi-bin/ECFR?page=browse](http://www.ecfr.gov/cgi-bin/ECFR?page=browse) at no cost.

*History Note: Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); Eff. January 1, 1991; Amended Eff. June 1, 2017.*

### **15A NCAC 02N .0103 ADOPTION BY REFERENCE UPDATES**

*History Note: Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); Eff. January 1, 1991; Repealed Eff. June 1, 2017.*

### **15A NCAC 02N .0104 IDENTIFICATION OF TANKS**

(a) Owners and operators shall maintain at each underground storage tank location a current diagram that indicates, for each underground storage tank:

- (1) location with respect to property boundaries and any permanent on-site structures;
- (2) total storage capacity, in gallons;
- (3) the exact type of petroleum product (such as unleaded gasoline, No. 2 fuel oil, diesel) or hazardous substance stored; and
- (4) the year the tank was installed.

(b) The diagram shall be made available for inspection to authorized representatives of the Division.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h);  
Eff. January 1, 1991;  
Amended Eff. June 1, 2017.

**15A NCAC 02N .0201 APPLICABILITY**

The regulations governing "Applicability" set forth in 40 CFR 280.10 (Subpart A) are hereby incorporated by reference, except that:

- (1) Underground storage tanks (UST) containing de minimis concentrations of regulated substances are also subject to the requirements for permanent closure in Rules .0802 and .0803 of this Subchapter; and
- (2) UST systems that store fuel solely for use by emergency power generators installed on or after November 1, 2007 shall also meet the requirements of Section .0900 of this Subchapter.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
Eff. January 1, 1991;  
Amended Eff. June 1, 2017; November 1, 2007.

**15A NCAC 02N .0202 INSTALLATION REQUIREMENTS FOR PARTIALLY EXCLUDED UST SYSTEMS**

The regulations governing "Installation requirements for partially excluded UST systems" set forth in 40 CFR 280.11 (Subpart A) are hereby incorporated by reference.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
Eff. January 1, 1991;  
Amended Eff. June 1, 2017.

**15A NCAC 02N .0203 DEFINITIONS**

(a) The regulations governing "Definitions" set forth in 40 CFR 280.12 (Subpart A) are hereby incorporated by reference, except that:

- (1) 40 CFR 280.12 "UST system" shall be changed to read "'UST system' or 'Tank system' means an underground storage tank, connected underground piping, underground ancillary equipment, dispenser, and containment system, if any";
- (2) 40 CFR 280.12 "Class A operator" shall not be incorporated by reference;
- (3) 40 CFR 280.12 "Class B operator" shall not be incorporated by reference;
- (4) 40 CFR 280.12 "Class C operator" shall not be incorporated by reference;
- (5) 40 CFR 280.12 "Replaced" shall not be incorporated by reference; and
- (6) 40 CFR 280.12 "Secondary containment or secondarily contained" shall not be incorporated by reference.

(b) This Rule shall apply throughout this Subchapter except that:

- (1) "Implementing agency" shall mean the "Division of Waste Management."
- (2) "Division" shall mean the "Division of Waste Management."
- (3) "Director" and "Director of the Implementing Agency" shall mean the "Director of the Division of Waste Management."

(c) The following definitions shall apply throughout this Subchapter:

- (1) "De minimis concentration" means the amount of a regulated substance that does not exceed one percent (1%) of the capacity of a tank, excluding piping and vent lines.
- (2) "Expediently emptied after use" means the removal of a regulated substance from an emergency spill or overflow containment UST system within 48 hours after use of the UST system has ceased.
- (3) "Previously closed" means:
  - (A) An UST system from which all regulated substances had been removed, the tank had been filled with a solid inert material, and tank openings had been sealed or capped prior to December 22, 1988; or
  - (B) An UST system removed from the ground prior to December 22, 1988.
- (4) "Temporarily closed" means:
  - (A) An UST system from which the product has been removed such that not more than one inch of product and residue are present in any portion of the tank; or
  - (B) Any UST system in use as of December 22, 1988 that complies with the provisions of 15A NCAC 02N .0801.
- (5) "Secondary containment" means a method or combination of methods of release detection for UST systems that includes:
  - (A) For tank installations or replacements completed prior to November 1, 2007, double-walled construction and external liners (including vaults);
  - (B) For underground piping installations or replacements completed prior to November 1, 2007, trench liners and double-walled construction;
  - (C) For tank installations or replacements completed on or after November 1, 2007, double-walled construction and interstitial release detection monitoring that meet the requirements of Section .0900 of this Subchapter; and
  - (D) For all other UST system component installations or replacements completed on or after November 1,

2007, double-walled construction or containment within a liquid-tight sump and interstitial release detection monitoring that meet the requirements of Section .0900 of this Subchapter. Upon written request, the Division shall approve other methods of secondary containment for connected piping that it determines are capable of meeting the requirements of Section .0900 of this Subchapter.

- (6) "Interstitial space" means the opening formed between the inner and outer wall of an UST system with double-walled construction or the opening formed between the inner wall of a containment sump and the UST system component that it contains.
- (7) "Replace" means to remove an UST system or UST system component and to install another UST system or UST system component in its place.
- (8) "UST system component or tank system component" means any part of an UST system.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
*Eff. January 1, 1991;*  
*Temporary Amendment Eff. January 7, 1991 For a Period of 180 Days to Expire on July 6, 1991;*  
*Temporary Amendment Expired July 6, 1991;*  
*Amended Eff. June 1, 2017; November 1, 2007.*

**15A NCAC 02N .0301 PERFORMANCE STANDARDS FOR UST SYSTEM INSTALLATIONS OR REPLACEMENTS COMPLETED AFTER DECEMBER 22, 1988 AND BEFORE NOVEMBER 1, 2007**

(a) The regulations governing "Performance standards for new UST systems" set forth in 40 CFR 280.20 (Subpart B) are hereby incorporated by reference, except that:

- (1) 40 CFR 280.20(a)(4) shall not be incorporated by reference;
- (2) 40 CFR 280.20(b)(3) shall not be incorporated by reference; and
- (3) UST system or UST system component installations or replacements completed on or after November 1, 2007, shall also meet the requirements of Section .0900 of this Subchapter.

(b) No UST system shall be installed within 100 feet of a well serving a public water system, as defined in G.S. 130A-313(10), or within 50 feet of any other well supplying water for human consumption.

(c) An UST system existing on January 1, 1991, and located within the area described in Paragraph (b) of this Rule may be replaced with a new tank meeting the performance standards of 40 CFR 280.20 and the secondary containment provisions of 40 CFR 280.42(a) through (d). The replacement UST system shall not be located nearer to the water supply source than the UST system being replaced.

(d) Except as prohibited in Paragraph (b) of this Rule, an UST system shall meet the requirements for secondary containment described at 40 CFR 280.42(a) through (d):

- (1) Within 500 feet of a well serving a public water supply or within 100 feet of any other well supplying water for human consumption; or
- (2) Within 500 feet of any surface water classified as High Quality Water (HQW), Outstanding Resource water (ORW), WS-I, WS-II or SA.

(e) An UST system or UST system component installation completed on or after November 1, 2007, to replace an UST system or UST system component located within the areas described in Paragraphs (b), (c), or (d) of this Rule shall meet the requirements of Section .0900 of this Subchapter.

(f) 40 CFR 280.20 Note to paragraph (d) is amended to include Petroleum Equipment Institute Publication RP1000, "Recommended Practices for the Installation of Marina Fueling Systems."

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
*Eff. January 1, 1991;*  
*Amended Eff. June 1, 2017; November 1, 2007.*

**15A NCAC 02N .0302 UPGRADING OF EXISTING UST SYSTEMS AFTER DECEMBER 22, 1998 AND BEFORE NOVEMBER 1, 2007**

(a) The regulations governing "Upgrading of existing UST systems" set forth in 40 CFR 280.21 (Subpart B) are hereby incorporated by reference, except that:

- (1) existing UST systems located within the areas described in Rule .0301(b) and (d) of this Section shall be upgraded in accordance with the provisions of 40 CFR 280.21(b) through (d) and shall be provided with secondary containment as described in 40 CFR 280.42(a) through (d). An UST system upgraded shall not be located nearer to a source of drinking water supply than its location prior to being upgraded; and
- (2) 40 CFR 280.21 Note to paragraph b(1)(ii)(C) shall not be incorporated by reference.

(b) Owners and operators shall submit notice of the upgrading of any UST system conducted in accordance with the requirements of 40 CFR 280.21 to the Division, within 30 days following completion of the upgrading activity. The notice shall include form "UST-8 Notification of Activities Involving Underground Storage Tank Systems," which is set forth in Rule .0303(1)(b) of this Section.

(c) UST systems upgraded in accordance with 40 CFR 280.21 prior to January 1, 1991, are in compliance with this Rule.

(d) An UST system or UST system component installation completed on or after November 1, 2007, to upgrade or replace an UST system or UST system component described in Paragraph (a) of this Rule shall meet the performance standards of Section .0900 of this Subchapter.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;

*Eff. January 1, 1991;*  
*Amended Eff. June 1, 2017; November 1, 2007.*

### **15A NCAC 02N .0303 NOTIFICATION REQUIREMENTS**

The regulations governing "Notification requirements" set forth in 40 CFR 280.22 (Subpart B) are hereby incorporated by reference, except that:

- (1) Owners and operators of an UST system shall submit to the Division, on forms provided by the Division, a notice of intent to conduct any of the following activities:
  - (a) notice of installation of a new UST system or UST system component shall be in accordance with Rule .0902 of this Subchapter;
  - (b) notice of installation of a leak detection device installed outside of the outermost wall of the tank and piping, such as vapor detection or groundwater monitoring devices, shall be given at least 30 days before the activity begins. The notice shall be provided on form "UST-8 Notification of Activities Involving Underground Storage Tank Systems," which may be accessed free of charge at <http://deq.nc.gov/about/divisions/wast-e-management/underground-storage-tanks-section/forms>. Form "UST-8 Notification of Activities Involving Underground Storage Tank Systems" shall include:
    - (i) the same information provided in Appendix I to 40 CFR 280, except that Sections X (2) and (3), and Section XI shall not be included on the form;
    - (ii) operator identification and contact information;
    - (iii) number of tank compartments and tank compartment identity, capacity, and product stored;
    - (iv) identity of tanks that are manifold together with piping;
    - (v) stage I Vapor Recovery equipment type and installation date;
    - (vi) corrosion protection methods for metal flexible connectors, submersible pumps, and riser pipes;
    - (vii) UST system and UST system component installation date, manufacturer, model, and

- leak detection monitoring method;
- (viii) spill containment equipment installation date, manufacturer, model, and leak detection monitoring method;
- (ix) overfill prevention equipment installation date, manufacturer, and model; and
- (x) leak detection equipment manufacturer and model;
- (c) notice of permanent closure or change-in-service of an UST system shall be given at least 30 days before the activity begins, unless a North Carolina Professional Engineer or North Carolina Licensed Geologist retained by the owner or operator to provide professional services for the tank closure or change-in-service submits the notice. A North Carolina Professional Engineer or North Carolina Licensed Geologist may submit the notice at least five business days before the activity begins. The notice shall be provided on form "UST-3 Notice of Intent: UST Permanent Closure or Change-in-Service," which may be accessed free of charge at <http://deq.nc.gov/about/divisions/wast-e-management/underground-storage-tanks-section/forms>. Form "UST-3 Notice of Intent: UST Permanent Closure or Change-in-Service" shall include:
  - (i) owner identification and contact information;
  - (ii) site location information;
  - (iii) site contact information;
  - (iv) contractor and consultant identification and contact information;
  - (v) identity of UST systems to be permanently closed or that will undergo a change-in-service;
  - (vi) for permanent closure, the proposed method of UST System closure – removal or fill in-place;
  - (vii) for a change-in-service, the new contents to be stored;
  - (viii) proposed UST system closure or change-in-service date; and

- (ix) signature of UST system owner;
- (d) notice of a change of ownership of a UST system pursuant to 40 CFR 280.22(b) shall be provided on form "UST-15 Change of Ownership of UST System(s)," which may be accessed free of charge at <http://deq.nc.gov/about/divisions/waste-management/underground-storage-tanks-section/forms>. Form "UST-15 Change of Ownership of UST System(s)" shall include:
  - (i) the same information provided in Appendix II to 40 CFR 280;
  - (ii) site location information;
  - (iii) notarized signature of the new owner of an UST system;
  - (iv) name and notarized signature of the previous owner of an UST system; and
  - (v) appended information shall include documentation of an UST system ownership transfer such as a property deed or bill of sale and for a person signing the form on behalf of another, such as an officer of a corporation, administrator of an estate, representative of a public agency, or as having power of attorney, documentation showing that the person can legally sign in such capacity.
- (2) Owners and operators of UST systems that were in the ground on or after May 8, 1986, were required to notify the Division in accordance with the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, on a form published by the Environmental Protection Agency on November 8, 1985 (50-FR 46602) 46602), unless notice was given pursuant to Section 103(c) of CERCLA. Owners or operators who have not complied with the notification requirements shall complete the appropriate form "UST-8 Notification of Activities Involving Underground Storage Tank Systems" and submit the form to the Division.
- (3) Beginning October 24, 1988, any person who sells a tank intended to be used as an UST shall notify the purchaser of such tank of the owner's notification obligations under Item (1) of this Rule.
- (4) Any reference in 40 CFR Part 280 to the notification form in Appendix I shall refer to the

North Carolina notification form "UST-8 Notification of Activities Involving Underground Storage Tank Systems".

*History Note: Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6; Eff. January 1, 1991; Amended Eff. June 1, 2017.*

**15A NCAC 02N .0304 IMPLEMENTATION SCHEDULE FOR PERFORMANCE STANDARDS FOR NEW UST SYSTEMS AND UPGRADING REQUIREMENTS FOR EXISTING UST SYSTEMS LOCATED IN AREAS DEFINED IN RULE .0301(d)**

(a) The following implementation schedule shall apply only to owners and operators of UST systems located within areas described in Rule .0301(d) of this Section. This implementation schedule shall govern tank owners and operators in complying with the secondary containment requirements set forth in Rule .0301(d) for new UST systems and the secondary containment requirements set forth in Rule .0302(a) for existing UST systems.

- (1) All new UST systems and replacements to an UST system shall be provided with secondary containment as of April 1, 2001.
- (2) All steel or metal connected piping and ancillary equipment of an UST, regardless of date of installation, shall be provided with secondary containment as of January 1, 2005.
- (3) All fiberglass or non-metal connected piping and ancillary equipment of an UST, regardless of date of installation, shall be provided with secondary containment as of January 1, 2008.
- (4) All UST systems installed on or before January 1, 1991 shall be provided with secondary containment as of January 1, 2008.
- (5) All USTs installed after January 1, 1991, and prior to April 1, 2001, shall be provided with secondary containment as of January 1, 2020. Owners of USTs located within 100 to 500 feet of a public water supply well, if the well serves only a single facility and is not a community water system, may seek a variance in accordance with Paragraphs (d) through (i) of this Rule.

(b) All owners and operators of UST systems shall implement the following enhanced leak detection monitoring as of April 1, 2001. The enhanced leak detection monitoring shall consist of the following:

- (1) An automatic tank gauging system for each UST;
- (2) An electronic line leak detector for each pressurized piping system;
- (3) One 0.1 gallon per hour (gph) test per month or one 0.2 gph test per week on each UST system;
- (4) A line tightness test capable of detecting a leak rate of 0.1 gph, once per year for each suction piping system. No release detection shall be required for suction piping that is designed and

constructed in accordance with 40 CFR 280.41(b)(1)(ii)(A) through (E);

- (5) If the UST system is located within 500 feet of a public water supply well or within 100 feet of any other well supplying water for human consumption, owners or operators shall sample the water supply well at least once per year. The sample collected from the well shall be characterized in accordance with:

(A) Standard Method 6200B, Volatile Organic Compounds Purge and Trap Capillary-Column Gas Chromatographic/Mass Spectrometric Method, which is incorporated by reference including subsequent amendments and editions, and may be obtained at <http://www.standardmethods.org/> at a cost of sixty-nine dollars (\$69.00);

(B) EPA Method 625, Base/Neutrals and Acids, which is incorporated by reference including subsequent amendments and editions, and may be accessed free of charge at [http://water.epa.gov/scitech/methods/cwa/organics/upload/2007\\_07\\_10\\_methods\\_method\\_organics\\_625.pdf](http://water.epa.gov/scitech/methods/cwa/organics/upload/2007_07_10_methods_method_organics_625.pdf); and

(C) If a waste oil UST system is present that does not meet the requirements for secondary containment in accordance with 40 CFR 280.42(b)(1) through (4), the sample shall also be analyzed for lead and chromium using Method 6010C, Inductively Coupled Plasma-Atomic Emission Spectrometry, which is incorporated by reference including subsequent amendments and editions, and may be accessed free of charge at <http://www.epa.gov/epawaste/hazard/testmethods/sw846/pdfs/6010c.pdf> or Method 6020A, Inductively Coupled Plasma-Mass Spectrometry, which is incorporated by reference including subsequent amendments and editions, and may be accessed free of charge at <http://www.epa.gov/epawaste/hazard/testmethods/sw846/pdfs/6020a.pdf>; and

- (6) The first sample collected in accordance with Subparagraph (b)(5) of this Rule shall be collected and the results received by the Division by October 1, 2000, and yearly thereafter.

(c) An UST system or UST system component installation completed on or after November 1, 2007, to upgrade or replace an UST system or UST system component as required in Paragraph

(a) of this Rule shall meet the performance standards of Section .0900 of this Subchapter.

(d) The Environmental Management Commission may grant a variance from the secondary containment requirements in Subparagraph (a)(5) of this Rule for USTs located within 100 to 500 feet of a public water supply well if the well serves only a single facility and is not a community water system. Any request for a variance shall be in writing by the owner of the UST for which the variance is sought. The request for variance shall be submitted to the Director, Division of Waste Management, 1646 Mail Service Center, Raleigh, NC 27699-1646. The Environmental Management Commission shall grant the variance if the Environmental Management Commission finds facts to support the following conclusions:

- (1) The variance will not endanger human health and welfare or groundwater; and
- (2) UST systems are operated and maintained in compliance with 40 CFR Part 280, Article 21A of G.S. 143B, and the rules in this Subchapter.

(e) The Environmental Management Commission may require the variance applicant to submit such information as the Environmental Management Commission deems necessary to make a decision to grant or deny the variance. Information that may be requested includes the following:

- (1) Water supply well location, depth, construction specifications, and sampling results;
- (2) Groundwater depth and flow direction; and
- (3) Leak detection monitoring and testing results.

(f) The Environmental Management Commission may impose such conditions on a variance as the Environmental Management Commission deems necessary to protect human health and welfare and groundwater. Conditions for a variance may include the following:

- (1) Increased frequency of leak detection and leak prevention monitoring and testing;
- (2) Periodic water supply well sampling; and
- (3) Increased reporting and recordkeeping.

(g) The findings of fact supporting any variance under this Rule shall be in writing and made part of the variance.

(h) The Environmental Management Commission may rescind a variance that was previously granted if the Environmental Management Commission discovers through inspection or reporting that the conditions of the variance are not met or that the facts no longer support the conclusions in Subparagraphs (d)(1) and (2) of this Rule.

(i) An owner of an UST system who is aggrieved by a decision of the Environmental Management Commission to deny or rescind a variance or to conditionally grant a variance may commence a contested case by filing a petition pursuant to G.S. 150B-23 within 60 days after receipt of the decision.

*History Note: Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h);*

*Temporary Adoption Eff. May 1, 2000;*

*Eff. April 1, 2001;*

*Amended Eff. June 1, 2017; June 1, 2015; November 1, 2007.*

**15A NCAC 02N .0401 SPILL AND OVERFILL CONTROL**

The regulations governing "Spill and overfill control" set forth in 40 CFR 280.30 (Subpart C) are hereby incorporated by reference.

*History Note: Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6; Eff. January 1, 1991; Amended Eff. June 1, 2017.*

**15A NCAC 02N .0402 OPERATION AND MAINTENANCE OF CORROSION PROTECTION**

The regulations governing "Operation and maintenance of corrosion protection" set forth in 40 CFR 280.31 (Subpart C) are hereby incorporated by reference.

*History Note: Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6; Eff. January 1, 1991; Amended Eff. June 1, 2017.*

**15A NCAC 02N .0403 COMPATIBILITY**

The regulations governing "Compatibility" set forth in 40 CFR 280.32 (Subpart C) are hereby incorporated by reference.

*History Note: Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6; Eff. January 1, 1991; Amended Eff. June 1, 2017.*

**15A NCAC 02N .0404 REPAIRS ALLOWED**

The regulations governing "Repairs Allowed" set forth in 40 CFR 280.33 (Subpart C) are hereby incorporated by reference, except that the first sentence of 40 CFR 280.33(d) shall be read: "Repairs to secondary containment areas of tanks and piping used for interstitial monitoring and to containment sumps used for interstitial monitoring of piping shall have the secondary containment tested for tightness as directed by the Division within 30 days following the date of completion of the repair." When determining the required test method, the Division may consider the following:

- (1) installation date of the repaired UST system component;
- (2) test methods that are third-party certified as being capable of detecting a 0.10 gallon per hour leak rate with a probability of detection (Pd) of at least 95 percent and a probability of false alarm (Pfa) of no more than 5 percent;
- (3) codes of practice developed by a nationally recognized association;
- (4) written manufacturer's guidelines for installation testing and testing after repairs are conducted; and
- (5) test methods developed by an independent laboratory.

*History Note: Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6; Eff. January 1, 1991;*

*Amended Eff. June 1, 2017.*

**15A NCAC 02N .0405 REPORTING AND RECORDKEEPING**

(a) The regulations governing "Reporting and recordkeeping" set forth in 40 CFR 280.34 (Subpart C) are hereby incorporated by reference.

(b) Owners and operators shall submit to the Division, within 30 days following completion, results of the site investigation conducted:

- (1) at permanent closure or change-in-service. The results of the site investigation for permanent closure or change-in-service shall be reported in a format that includes the following:
  - (A) site location information;
  - (B) identification and contact information for the owner, operator, property owner, consultant, contractor, and analytical laboratory;
  - (C) the same information provided in Appendix I to 40 CFR Part 280, Section X;
  - (D) information about any release discovered, including discovery date, estimated quantity of petroleum or hazardous substance released, and the cause and source;
  - (E) information about any previous releases at the site, including owner or operator at the time of the release, source, cause, and location relative to the current release;
  - (F) description of site characteristics, such as use of the site and surrounding area, drinking water supplies, presence and location of water supply wells and surface water, depth to and nature of bedrock, depth to groundwater, and direction of groundwater flow;
  - (G) date of permanent closure or change-in-service of an UST system and last contents stored;
  - (H) procedures and methods used to clean an UST system prior to permanent closure or change-in-service;
  - (I) procedures and methods used to permanently close an UST system;
  - (J) description of condition of tank, piping, and dispenser;
  - (K) documentation of disposal of tank and its contents;
  - (L) description of condition of excavation, volume of soil excavation, soil type encountered, type and source of backfill used, and any groundwater, free product, or bedrock encountered in the excavation;

- (M) method of temporary storage, sampling, and treatment or disposal of excavated soil;
  - (N) procedures and methods used for sample collection, field screening, and laboratory analysis;
  - (O) quality assurance and quality control procedures and methods for decontamination of field and sampling equipment and for sample handling, preservation, and transportation;
  - (P) field screening results and analytical results for samples collected, comparison of analytical results to standards set forth in 15A NCAC 02L, and the presence and quantity of any free product; and
  - (Q) maps and figures showing the site and surrounding topography, current and former UST system locations, surface water, water supply wells, monitoring wells, types and locations of samples, analytical results for samples, ground water flow direction, geologic boring logs, and monitoring well construction specifications; or
- (2) to insure compliance with the requirements for installation of vapor monitoring and groundwater monitoring devices, as specified in 40 CFR 280.43(e)(1) through (e)(4) and 280.43(f)(1) through (f)(5), respectively. The site investigation shall be conducted in accordance with Rule .0504 of this Subchapter.
- (c) Owners shall submit to the Division, on forms provided by the Division and within 30 days following completion:
- (1) A description of the upgrading of any UST system conducted in accordance with requirements of 40 CFR 280.21. The description of upgrading shall be provided on form "UST-8 Notification of Activities Involving Underground Storage Tank Systems," which is set forth in Rule .0303(1)(b) of this Section;
  - (2) Certification of the proper operation of a corrosion protection system upon completion of testing in compliance with 40 CFR 280.31; and
- (A) Certification of proper operation and testing of a galvanic corrosion protection system shall be provided on form "UST-7A Cathodic Protection System Evaluation for Galvanic (Sacrificial Anode) Systems," which may be accessed free of charge at <http://deq.nc.gov/about/divisions/waste-management/underground-storage-tanks-section/forms>. Form "UST-7A Cathodic Protection System Evaluation for Galvanic (Sacrificial Anode) Systems" shall include:
    - (i) owner identification and contact information;
    - (ii) site location information;
    - (iii) reason that a corrosion protection system was evaluated, including a routine test within six months of corrosion protection system installation, a routine test every three years following corrosion protection system installation, or a test following a repair or modification;
    - (iv) corrosion protection tester's name, contact information, corrosion protection tester certification number, certifying organization, and certification type;
    - (v) corrosion protection tester's evaluation, including pass, fail, or inconclusive;
    - (vi) corrosion expert's name, address, contact information, National Association of Corrosion Engineers certification number, and certification type or Professional Engineer number, state, and specialty;
    - (vii) corrosion expert's evaluation, including pass or fail;
    - (viii) criteria for evaluation, including 850 millivolt on, 850 millivolt instant off, or 100 millivolt polarization;
    - (ix) action required as a result of the evaluation, including none, or repair and retest;
    - (x) description of UST system, including tank identity, product stored, tank capacity, tank and piping construction material, and presence of metal flexible connectors;
    - (xi) description of any repair or modification made to the corrosion protection system;
    - (xii) site drawing, including the UST systems, on-site buildings, adjacent streets, anodes and wires, reference electrode placement, and test stations;
    - (xiii) corrosion protection continuity survey, including location of fixed remote reference electrode

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|       | placement, structures evaluated using fixed remote instant-off voltages or point-to-point voltage differences, and if structures are continuous or isolated; and   | (vii)  | Professional Engineer number, state, and specialty; corrosion expert's evaluation, including pass or fail;   |
| (xiv) | corrosion protection system survey, including locations of remote reference electrode, structure evaluated, structure contact point, local reference cell placement, local voltage, remote voltage, and if tested structure passed, failed, or was inconclusive relative to the criteria for evaluation.   | (viii) | criteria for evaluation, including 850 millivolt instant off or 100 millivolt polarization;  |
|       |  | (ix)   | action required as a result of the evaluation, including none or repair and retest;  |
|       |  | (x)    | description of UST system, including tank identity, product stored, tank capacity, tank and piping construction material, and presence of metal flexible connectors;   |
| (B)   | Certification of proper operation and testing of an impressed current corrosion protection system shall be provided on form "UST-7B Cathodic Protection System Evaluation for Impressed Current Systems," which may be accessed free of charge at <a href="http://deq.nc.gov/about/divisions/wast-e-management/underground-storage-tanks-section/forms">http://deq.nc.gov/about/divisions/wast-e-management/underground-storage-tanks-section/forms</a> . Form "UST-7B Cathodic Protection System Evaluation for Impressed Current Systems" shall include: | (xi)   | impressed current rectifier data, including rectifier manufacturer, model, serial number rated DC output, shunt size, shunt factor, hour meter, tap settings, DC output (gauge), and DC output (multimeter);   |
|       | (i) owner identification and contact information;  | (xii)  | impressed current positive and negative circuit measurements;  |
|       | (ii) site location information;  | (xiii) | description of any repair or modifications made to the corrosion protection system;  |
|       | (iii) reason that a corrosion protection system was evaluated, including a routine test within six months of corrosion protection system installation, a routine test every three years following corrosion protection system installation, or a test following a repair or modification;  | (xiv)  | site drawing, including the UST systems, on-site buildings, adjacent streets, anodes and wires, reference electrode placement, and test stations;  |
|       | (iv) corrosion protection tester's name, contact information, corrosion protection tester certification number, certifying organization, and certification type;   | (xv)   | corrosion protection continuity survey, including location of fixed remote reference electrode placement, structures evaluated using fixed remote instant-off voltages or point-to-point voltage differences, and if structures are continuous or isolated; and  |
|       | (v) corrosion protection tester's evaluation, including pass, fail, or inconclusive;   | (xvi)  | corrosion protection system survey, including structure evaluated, structure contact point, reference cell placement, on voltage, instant off voltage, 100 millivolt polarization ending voltage and voltage change, and if the tested structure passed or failed relative to the criteria for evaluation. |
|       | (vi) corrosion expert's name, address, contact information, National Association of Corrosion Engineers certification number, and certification type or  |        |  |

- (3) Certification of compliance with the requirements for leak detection specified in 40 CFR 280.40, 40 CFR 280.41, 40 CFR 280.42, 40 CFR 280.43, and 40 CFR 280.44. The certification shall specify the leak detection method and date of compliance for each UST. The certification of compliance with leak detection requirements shall be provided on form "UST-8 Notification of Activities Involving Underground Storage Tank Systems," which is set forth in Rule .0303(1)(b) of this Section.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
Eff. January 1, 1991;  
Amended Eff. June 1, 2017.

**15A NCAC 02N .0406 PERIODIC TESTING OF SPILL PREVENTION EQUIPMENT AND CONTAINMENT SUMPS USED FOR INTERSTITIAL MONITORING OF PIPING AND PERIODIC INSPECTION OF OVERFILL PREVENTION EQUIPMENT**

The regulations governing "Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment" set forth in 40 CFR 280.35 (Subpart C) are hereby incorporated by reference, except that UST system or UST system component installations or replacements completed on or after November 1, 2007, shall meet the requirements of Section .0900 of this Subchapter.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
Eff. June 1, 2017.

**15A NCAC 02N .0407 PERIODIC OPERATION AND MAINTENANCE WALKTHROUGH INSPECTIONS**

The regulations governing "Periodic operation and maintenance walkthrough inspections" set forth in 40 CFR 280.36 (Subpart C) are hereby incorporated by reference.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
Eff. June 1, 2017.

**15A NCAC 02N .0501 GENERAL REQUIREMENTS FOR ALL UST SYSTEMS**

The regulations governing "General requirements for all UST systems" set forth in 40 CFR 280.40 (Subpart D) are hereby incorporated by reference.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
Eff. January 1, 1991;  
Amended Eff. June 1, 2017.

**15A NCAC 02N .0502 REQUIREMENTS FOR PETROLEUM UST SYSTEMS**

The regulations governing "Requirements for petroleum UST systems" set forth in 40 CFR 280.41 (Subpart D) are hereby incorporated by reference, except that UST systems located within areas described in Rule .0301(d) of this Subchapter shall meet the requirements for secondary containment described at 40 CFR 280.42(a) through (d) if the UST system installation or replacement was completed before November 1, 2007. UST system or UST system component installations or replacements completed on or after November 1, 2007, shall meet the secondary containment requirements of Section .0900 of this Subchapter.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
Eff. January 1, 1991;  
Amended Eff. June 1, 2017; November 1, 2007.

**15A NCAC 02N .0503 REQUIREMENTS FOR HAZARDOUS SUBSTANCE UST SYSTEMS**

The regulations governing "Requirements for hazardous substance UST systems" set forth in 40 CFR 280.42 (Subpart D) are hereby incorporated by reference, except that hazardous substance UST systems or UST system components installed or replacements completed on or after November 1, 2007, shall meet the secondary containment requirements of Section .0900 of this Subchapter.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
Eff. January 1, 1991;  
Amended Eff. June 1, 2017; November 1, 2007.

**15A NCAC 02N .0504 METHODS OF RELEASE DETECTION FOR TANKS**

(a) The regulations governing "Methods of release detection for tanks" set forth in 40 CFR 280.43 (Subpart D) are hereby incorporated by reference, except that 40 CFR 280.43(f)(3), (f)(4), and (f)(5) shall not be adopted by reference.

(b) Wells used for monitoring or testing for free product in the groundwater shall be:

- (1) Located as follows:
  - (A) for new installations, within and at the end of the excavation having the lowest elevation and along piping at intervals not exceeding 50 feet; or
  - (B) for existing installations, in the excavation zone or as near to it as technically feasible and installed in a borehole at least four inches larger than the diameter of the casing;
- (2) A minimum of two inches in diameter. The number of wells installed shall be sufficient to detect releases from the UST system;
- (3) Equipped with a screen that extends from two feet below land surface to a depth of 20 feet below land surface or two feet below the seasonal low water level, whichever is shallower. The screen shall be designed and

installed to prevent the migration of natural soils or filter pack into the well while allowing the entry of regulated substances into the well under both high and low groundwater level conditions;

- (4) Surrounded with clean sand or gravel to the top of the screen, plugged and grouted the remaining distance to finished grade with cement grout;
- (5) Constructed of a permanent casing and screen material that is inert to the stored substance and is corrosion resistant;
- (6) Developed upon completion of installation until the water is clear and sediment free;
- (7) Protected with a water-tight cover and lockable cap;
- (8) Labeled as a liquid monitor well; and
- (9) Equipped with a liquid leak detection device continuously operating on an uninterrupted basis; or
  - (A) For tanks storing petroleum products, tested at least once every 14 days with a device or hydrocarbon-sensitive paste capable of detecting the liquid stored; or
  - (B) For tanks storing hazardous substances, sampled and tested at least once every 14 days for the presence of the stored substance.

(c) Wells used for monitoring or testing for free product in the groundwater at new installations and constructed in accordance with Paragraph (b) of this Rule shall be deemed to be permitted in accordance with the requirements of 15A NCAC 02C .0105.

(d) Any person completing or abandoning any well used for testing of vapors or monitoring for free product in the groundwater shall submit the record required by 15A NCAC 02C .0114(b).

(e) Wells used for monitoring for the presence of vapors in the soil gas of the excavation zone shall be equipped with a continuously operating vapor detection device or tested at least once every 14 days for vapors of the substance stored.

*History Note: Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6; Eff. January 1, 1991; Amended Eff. June 1, 2017.*

#### **15A NCAC 02N .0505 METHODS OF RELEASE DETECTION FOR PIPING**

The regulations governing "Methods of release detection for piping" set forth in 40 CFR 280.44 (Subpart D) are hereby incorporated by reference.

*History Note: Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6; Eff. January 1, 1991; Amended Eff. June 1, 2017.*

#### **15A NCAC 02N .0506 RELEASE DETECTION RECORDKEEPING**

The regulations governing "Release detection recordkeeping" set forth in 40 CFR 280.45 (Subpart D) are hereby incorporated by reference.

*History Note: Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6; Eff. January 1, 1991; Amended Eff. June 1, 2017.*

#### **15A NCAC 02N .0601 REPORTING OF SUSPECTED RELEASES**

The regulations governing "Reporting of suspected releases" set forth in 40 CFR 280.50 (Subpart E) are hereby incorporated by reference, except that the words "or another reasonable period specified by the implementing agency," shall be deleted from the first sentence.

*History Note: Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6; Eff. January 1, 1991; Amended Eff. June 1, 2017.*

#### **15A NCAC 02N .0602 INVESTIGATION DUE TO OFF-SITE IMPACTS**

The regulations governing "Investigation due to off-site impacts" set forth in 40 CFR 280.51 (Subpart E) are hereby incorporated by reference.

*History Note: Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6; Eff. January 1, 1991; Amended Eff. June 1, 2017.*

#### **15A NCAC 02N .0603 RELEASE INVESTIGATION AND CONFIRMATION STEPS**

The regulations governing "Release investigation and confirmation steps" set forth in 40 CFR 280.52 (Subpart E) are hereby incorporated by reference, except that in 40 CFR 280.52 the words "or another reasonable time period specified by the implementing agency" shall not be adopted by reference. Upon written request, the Division may grant additional time to investigate and confirm suspected releases as specified in 40 CFR 280.53. The request shall be made to the Division prior to the expiration of the required time period. When considering such a request, the Division may consider factors as follows:

- (1) the extent to which the request for additional time is due to factors outside of the control of the tank owner or operator;
- (2) the previous history of the tank owner or operator submitting the report in complying with deadlines established under the Commission's rules;
- (3) the technical complications associated with investigating and confirming suspected releases; and

- (4) the necessity for action to eliminate an imminent threat to public health or the environment.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
*Eff. January 1, 1991;*  
*Amended Eff. June 1, 2017.*

#### **15A NCAC 02N .0604 REPORTING AND CLEANUP OF SPILLS AND OVERFILLS**

The regulations governing "Reporting and cleanup of spills and overfills" set forth in 40 CFR 280.53 (Subpart E) are hereby incorporated by reference, except that:

- (1) In 40 CFR 280.53(a) the words "or another reasonable time period specified by the implementing agency" shall not be adopted by reference;
- (2) In 40 CFR 280.53(b) the words "or another reasonable time period established by the implementing agency" shall not be adopted by reference;
- (3) In 40 CFR 280.53(a)(1) and (b), the words, "or another reasonable amount specified by the implementing agency" shall not be adopted by reference; and
- (4) Upon written request, the Division may grant additional time to submit the reports specified in 40 CFR 280.53. The request shall be made to the Division prior to the expiration of the required time period. When considering such a request, the Division may consider factors as follows:
  - (a) the extent to which the request for additional time is due to factors outside of the control of the tank owner or operator;
  - (b) the previous history of the tank owner or operator submitting the report in complying with deadlines established under the Commission's rules;
  - (c) the technical complications associated with reporting and cleanup of spills and overfills; and
  - (d) the necessity for action to eliminate an imminent threat to public health or the environment.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
*Eff. January 1, 1991;*  
*Amended Eff. June 1, 2017.*

#### **15A NCAC 02N .0701 GENERAL**

- (a) The regulations governing "General" set forth in 40 CFR 280.60 (Subpart F) are hereby incorporated by reference.
- (b) Any corrective action undertaken in accordance with this Section shall meet the requirements and standards specified in 15A NCAC 02L.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
*Eff. January 1, 1991;*  
*Amended Eff. September 1, 1992;*  
*Temporary Amendment Eff. January 2, 1998;*  
*Amended Eff. June 1, 2017; October 29, 1998.*

#### **15A NCAC 02N .0702 INITIAL RESPONSE**

The regulations governing "Initial response" set forth in 40 CFR 280.61 (Subpart F) are hereby incorporated by reference, except that the words "or within another reasonable period of time determined by the implementing agency" in the first sentence shall not be adopted by reference.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
*Eff. January 1, 1991;*  
*Amended Eff. June 1, 2017.*

#### **15A NCAC 02N .0703 INITIAL ABATEMENT MEASURES AND SITE CHECK**

The regulations governing "Initial abatement measures and site check" set forth in 40 CFR 280.62 (Subpart F) are hereby incorporated by reference, except that:

- (1) 40 CFR 280.62(a)(6) shall read, "Investigate to determine the possible presence of free product and begin free product removal within 14 days in accordance with 40 CFR 280.64." Upon written request, the Division may grant additional time to begin free product removal. The request shall be made to the Division prior to the expiration of the required time period. When considering such a request, the Division may consider factors as follows:
  - (a) the extent to which the request for additional time is due to factors outside of the control of the tank owner or operator;
  - (b) the previous history of the tank owner or operator submitting the report in complying with deadlines established under the Commission's rules;
  - (c) the technical complications associated with free product removal; and
  - (d) the necessity for action to eliminate an imminent threat to public health or the environment; and
- (2) In 40 CFR 280.62(b) the words, "or within another reasonable period of time determined by the implementing agency," shall not be adopted by reference.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
*Eff. January 1, 1991;*  
*Amended Eff. June 1, 2017.*

**15A NCAC 02N .0704 INITIAL SITE CHARACTERIZATION**

The regulations governing "Initial site characterization" set forth in 40 CFR 280.63 (Subpart F) are hereby incorporated by reference, except that in 40 CFR 280.63(b) the words "or another reasonable period of time determined by the implementing agency" shall not be adopted by reference. Upon written request, the Division may grant additional time to submit the information collected in compliance with 40 CFR 280.63(a). The request shall be made to the Division prior to the expiration of the required time period. When considering such a request, the Division may consider factors as follows:

- (1) the extent to which the request for additional time is due to factors outside of the control of the tank owner or operator;
- (2) the previous history of the tank owner or operator submitting the report in complying with deadlines established under the Commission's rules;
- (3) the technical complications associated with an initial site characterization; and
- (4) the necessity for action to eliminate an imminent threat to public health or the environment.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
Eff. January 1, 1991;  
Amended Eff. June 1, 2017.

**15A NCAC 02N .0705 FREE PRODUCT REMOVAL**  
The regulations governing "Free product removal" set forth in 40 CFR 280.64 (Subpart F) are hereby incorporated by reference.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
Eff. January 1, 1991;  
Amended Eff. June 1, 2017.

**15A NCAC 02N .0706 INVESTIGATIONS FOR SOIL AND GROUNDWATER CLEANUP**

The regulations governing "Investigations for soil and groundwater cleanup" set forth in 40 CFR 280.65 (Subpart F) are hereby incorporated by reference.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
Eff. January 1, 1991;  
Amended Eff. June 1, 2017.

**15A NCAC 02N .0707 CORRECTIVE ACTION PLAN**

The regulations governing "Corrective action plan" set forth in 40 CFR 280.66 (Subpart F) are hereby incorporated by reference, except that 40 CFR 280.66(a) shall read: "After reviewing the information submitted in compliance with 40 CFR 280.61 through 40 CFR 280.63, the Division may require owners and operators to submit additional information or to develop and submit a corrective action plan for responding to contaminated soils and groundwater. If a plan is required, owners and operators must

prepare a plan in accordance with the requirements specified in 15A NCAC 02L."

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h);  
Eff. January 1, 1991;  
Amended Eff. September 1, 1992;  
Temporary Amendment Eff. January 2, 1998;  
Amended Eff. June 1, 2017; October 29, 1998.

**15A NCAC 02N .0708 PUBLIC PARTICIPATION**

The regulations governing "Public participation" set forth in 40 CFR 280.67 (Subpart F) are hereby incorporated by reference.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
Eff. January 1, 1991;  
Amended Eff. June 1, 2017.

**15A NCAC 02N .0801 TEMPORARY CLOSURE**

The regulations governing "Temporary closure" set forth in 40 CFR 280.70 (Subpart G) are hereby incorporated by reference.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
Eff. January 1, 1991;  
Amended Eff. June 1, 2017.

**15A NCAC 02N .0802 PERMANENT CLOSURE AND CHANGES-IN-SERVICE**

The regulations governing "Permanent closure and changes-in-service" set forth in 40 CFR 280.71 (Subpart G) are hereby incorporated by reference, except that an UST system containing de minimis concentrations of a regulated substance shall meet the closure requirements of this Rule within 12 months of the effective date of this Subchapter.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
Eff. January 1, 1991;  
Amended Eff. June 1, 2017.

**15A NCAC 02N .0803 ASSESSING THE SITE AT CLOSURE OR CHANGE-IN-SERVICE**

The regulations governing "Assessing the site at closure or change-in-service" set forth in 40 CFR 280.72 (Subpart G) are hereby incorporated by reference, except that:

- (1) references to methods and requirements shall include all applicable references and methods listed in 15A NCAC 02N .0504; and
- (2) the number and location of samples and method of their collection shall be determined in accordance with procedures established by the Division. In establishing procedures, the Division may consider factors such as:
  - (a) dimensions of the USTs;
  - (b) type of products stored in the USTs;
  - (c) method of closure;

- (d) type of and length of associated product lines;
- (e) number of associated dispensers;
- (f) number of associated containment sumps;
- (g) methods of field sample analysis and laboratory sample analysis;
- (h) potential for vapor intrusion;
- (i) proximity to surface waters; and
- (j) site conditions such as site geology and hydrology.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
Eff. January 1, 1991;  
Amended Eff. June 1, 2017.

**15A NCAC 02N .0804 APPLICABILITY TO PREVIOUSLY CLOSED UST SYSTEMS**

The regulations governing "Applicability to previously closed UST systems" set forth in 40 CFR 280.73 (Subpart G) are hereby incorporated by reference.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
Eff. January 1, 1991;  
Amended Eff. June 1, 2017.

**15A NCAC 02N .0805 CLOSURE RECORDS**

The regulations governing "Closure records" set forth in 40 CFR 280.74 (Subpart G) are hereby incorporated by reference.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
Eff. January 1, 1991;  
Amended Eff. June 1, 2017.

**15A NCAC 02N .1001 DEFINITIONS**

The regulations governing "UST systems with field-constructed tanks and airport hydrant fuel distribution systems" set forth in 40 CFR 280.250 (Subpart K) are hereby incorporated by reference.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
Eff. June 1, 2017.

**15A NCAC 02N .1002 GENERAL REQUIREMENTS**

The regulations governing "General Requirements" set forth in 40 CFR 280.251 (Subpart K) are hereby incorporated by reference.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
Eff. June 1, 2017.

**15A NCAC 02N .1003 ADDITIONS, EXCEPTIONS, AND ALTERNATIVES FOR UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS AND AIRPORT HYDRANT SYSTEMS**

The regulations governing "Additions, exceptions, and alternatives for UST systems with field-constructed tanks and airport hydrant systems" set forth in 40 CFR 280.252 (Subpart K) are hereby incorporated by reference, except that:

- (1) piping associated with UST systems with field-constructed tanks less than or equal to 50,000 gallons not part of an airport hydrant fueling system shall comply with the requirements of Section .0900 of this Subchapter; and
- (2) UST systems with field-constructed tanks and airport hydrant systems shall comply with the spill and overfill prevention requirements of Section .0900 of this Subchapter.

*History Note:* Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21.6;  
Eff. June 1, 2017.

**15A NCAC 02O .0309 SUBSTITUTION OF FINANCIAL ASSURANCE MECHANISMS  
15A NCAC 02O .0310 CANCELLATION OR NONRENEWAL BY A PROVIDER OF ASSURANCE**

*History Note:* Authority G.S. 143-215.94H; 150B-21.6;  
Eff. July 1, 1992;  
Repealed Eff. June 1, 2017.

**15A NCAC 02O .0311 LOCAL GOVERNMENT BOND RATING TEST**

The regulations governing "Local Government Bond Rating Test" set forth in 40 CFR 280.104 (Subpart H) are hereby incorporated by reference.

*History Note:* Authority G.S. 143-215.94H; 150B-21.6;  
Eff. June 1, 2017.

**15A NCAC 02O .0312 LOCAL GOVERNMENT FINANCIAL TEST**

The regulations governing "Local Government Financial Test" set forth in 40 CFR 280.105 (Subpart H) are hereby incorporated by reference.

*History Note:* Authority G.S. 143-215.94H; 150B-21.6;  
Eff. June 1, 2017.

**15A NCAC 02O .0313 LOCAL GOVERNMENT GUARANTEE**

The regulations governing "Local Government Guarantee" set forth in 40 CFR 280.106 (Subpart H) are hereby incorporated by reference.

*History Note:* Authority G.S. 143-215.94H; 150B-21.6;  
Eff. June 1, 2017.

**15A NCAC 02O .0314 LOCAL GOVERNMENT FUND**

The regulations governing "Local Government Fund" set forth in 40 CFR 280.107 (Subpart H) are hereby incorporated by reference.

*History Note: Authority G.S. 143-215.94H; 150B-21.6; Eff. June 1, 2017.*

**15A NCAC 02O .0315 SUBSTITUTION OF FINANCIAL ASSURANCE MECHANISMS**

The regulations governing "Substitution of Financial Assurance Mechanisms by Owners or Operators" set forth in 40 CFR 280.108 (Subpart H) are hereby incorporated by reference.

*History Note: Authority G.S. 143-21 5.94H; 150B-21.6; Eff. June 1, 2017.*

**15A NCAC 02O .0316 CANCELLATION OR RENEWAL BY A PROVIDER OF ASSURANCE**

The regulations governing "Cancellation or Non-renewal by a Provider of Financial Assurance " set forth in 40 CFR 280.109 (Subpart H) are hereby incorporated by reference.

*History Note: Authority G.S. 143-21 5.94H; 150B-21.6; Eff. June 1, 2017.*

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**15A NCAC 03H .0103 PROCLAMATIONS, GENERAL**

(a) It is unlawful to violate the provisions of a proclamation issued pursuant to a rule of the Marine Fisheries Commission, as provided in G.S. 113-221.1.

(b) If specific variable conditions are not set forth in a rule of the Marine Fisheries Commission that grants proclamation authority to the Fisheries Director, the Fisheries Director shall consider the following variable conditions in exercising proclamation authority:

- (1) compliance with changes mandated by the Fisheries Reform Act and its amendments;
- (2) biological impacts;
- (3) environmental conditions;
- (4) compliance with Fishery Management Plans;
- (5) user conflicts;
- (6) bycatch issues;
- (7) variable spatial distributions; and
- (8) protection of public health related to the public health programs that fall under the authority of the Marine Fisheries Commission.

*History Note: Authority G.S. 113-134; 113-135; 113-182; 113-221.1; 113-221.2; 113-221.3; 143B-289.52; Eff. January 1, 1991; Amended Eff. March 1, 1994; September 1, 1991; Temporary Amendment Eff. July 1, 1999; Amended Eff. May 1, 2017; April 1, 2011; August 1, 2000.*

**15A NCAC 03J .0104 TRAWL NETS**

(a) It is unlawful to possess aboard a vessel while using a trawl net in Internal Coastal Waters more than 500 pounds of finfish

from December 1 through March 1, and 1,000 pounds of finfish from March 2 through November 30.

(b) It is unlawful to use trawl nets:

- (1) in Internal Coastal Waters from 9:00 p.m. on Friday through 5:00 p.m. on Sunday, except:
  - (A) from December 1 through March 1 from one hour after sunset on Friday to one hour before sunrise on Monday in the areas listed in Subparagraph (b)(5) of this Rule; or
  - (B) for a holder of a Permit for Weekend Trawling for Live Shrimp in accordance with 15A NCAC 03O .0503;
- (2) for the taking of oysters;
- (3) in Albemarle Sound, Currituck Sound, and their tributaries, west of a line beginning on the south shore of Long Point at a point 36° 02.4910' N – 75° 44.2140' W; running southerly to the north shore on Roanoke Island to a point 35° 56.3302' N – 75° 43.1409' W; running northwesterly to Caroon Point to a point 35° 57.2255' N – 75° 48.3324' W;
- (4) in the areas described in 15A NCAC 03R .0106, except that the Fisheries Director may, by proclamation, open the area designated in Item (1) of 15A NCAC 03R .0106 to peeler crab trawling;
- (5) from December 1 through March 1 from one hour after sunset to one hour before sunrise in the following areas:
  - (A) in Pungo River, north of a line beginning on Currituck Point at a point 35° 24.5833' N – 76° 32.3166' W; running southwesterly to Wades Point to a point 35° 23.3062' N – 76° 34.5135' W;
  - (B) in Pamlico River, west of a line beginning on Wades Point at a point 35° 23.3062' N – 76° 34.5135' W; running southwesterly to Fulford Point to a point 35° 19.8667' N – 76° 35.9333' W;
  - (C) in Bay River, west of a line beginning on Bay Point at a point 35° 11.0858' N – 76° 31.6155' W; running southerly to Maw Point to a point 35° 09.0214' N – 76° 32.2593' W;
  - (D) in Neuse River, west of a line beginning on the Minnesott side of the Neuse River Ferry at a point 34° 57.9116' N – 76° 48.2240' W; running southerly to the Cherry Branch side of the Neuse River Ferry to a point 34° 56.3658' N – 76° 48.7110' W; and
  - (E) in New River, all waters upstream of the N.C. Highway 172 Bridge when opened by proclamation; and

- (6) in designated pot areas opened to the use of pots by 15A NCAC 03J .0301(a)(2) and described in 15A NCAC 03R .0107(a)(5), (a)(6), (a)(7), (a)(8), and (a)(9) within an area bound by the shoreline to the depth of six feet.
- (c) Mesh sizes for shrimp and crab trawl nets shall meet the requirements of 15A NCAC 03L .0103 and .0202.
- (d) The Fisheries Director may, with prior consent of the Marine Fisheries Commission, by proclamation, require bycatch reduction devices or codend modifications in trawl nets to reduce the catch of finfish that do not meet size limits or are unmarketable as individual foodfish by reason of size.
- (e) It is unlawful to use shrimp trawl nets for recreational purposes unless the trawl net is marked by attaching to the codend (tailbag) one floating buoy, any shade of hot pink in color, which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The owner shall be identified on the buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. Such identification shall include owner's last name and initials and, if a vessel is used, one of the following:
- (1) gear owner's current motor boat registration number; or
  - (2) owner's U.S. vessel documentation name.
- (f) It is unlawful to use shrimp trawl nets for the taking of blue crabs in Internal Coastal Waters, except that it shall be permissible to take or possess blue crabs incidental to shrimp trawling in accordance with the following limitations:
- (1) for individuals using shrimp trawl nets authorized by a Recreational Commercial Gear License, 50 blue crabs per day, not to exceed 100 blue crabs if two or more Recreational Commercial Gear License holders are on board the same vessel; and
  - (2) for commercial operations, crabs may be taken incidental to lawful shrimp trawl net operations provided that the weight of the crabs shall not exceed the greater of:
    - (A) 50 percent of the total weight of the combined crab and shrimp catch; or
    - (B) 300 pounds.
- (g) The Fisheries Director may, by proclamation, close any area to trawling for specific time periods in order to secure compliance with this Rule.

*History Note: Authority G.S. 113-134; 113-173; 113-182; 113-221.1; 143B-289.52;*  
*Eff. February 1, 1991;*  
*Amended Eff. August 1, 1998; May 1, 1997; March 1, 1994; February 1, 1992;*  
*Temporary Amendment Eff. July 1, 1999;*  
*Amended Eff. May 1, 2017; April 1, 2014; April 1, 2009; September 1, 2005; August 1, 2004; August 1, 2000.*

**15A NCAC 03K .0110 PUBLIC HEALTH AND CONTROL OF OYSTERS, CLAMS, SCALLOPS, AND MUSSELS**

(a) The National Shellfish Sanitation Program Guide for Control of Molluscan Shellfish, Section II: Model Ordinance (Model

Ordinance) includes requirements for the sale or distribution of shellfish from approved areas or shellstock dealers, as defined in 15A NCAC 18A .0301, and to ensure that shellfish have not been adulterated or mislabeled during cultivation, harvesting, processing, storage, or transport. To protect public health, the Fisheries Director may, by proclamation, impose requirements of the Model Ordinance as set forth in Paragraph (b) of this Rule on any of the following:

- (1) the cultivation, distribution, harvesting, processing, sale, storage, or transport of
    - (A) oysters;
    - (B) clams;
    - (C) scallops; or
    - (D) mussels;
  - (2) areas used to store shellfish;
  - (3) means and methods to take shellfish;
  - (4) vessels used to take shellfish; or
  - (5) shellstock conveyances as defined in 15A NCAC 18A .0301.
- (b) Proclamations issued under this Rule may impose any of the following requirements:
- (1) specify time and temperature controls;
  - (2) specify sanitation requirements to prevent a food safety hazard, as defined in 15A NCAC 18A .0301, or cross-contamination or adulteration of shellfish;
  - (3) specify sanitation control procedures set forth in 21 Code of Federal Regulations (CFR) Part 123.11;
  - (4) specify Hazard Analysis Critical Control Point (HACCP) requirements set forth in 21 CFR Part:
    - (A) 123.3 Definitions;
    - (B) 123.6 HACCP Plan;
    - (C) 123.7 Corrective Actions;
    - (D) 123.8 Verification;
    - (E) 123.9 Records; and
    - (F) 123.28 Source Controls;
  - (5) specify tagging and labeling requirements;
  - (6) implement the National Shellfish Sanitation Program's training requirements for shellfish harvesters and certified shellfish dealers;
  - (7) require sales records and collection and submission of information to provide a mechanism for tracing shellfish product back to the water body of origin; and
  - (8) require product recall and specify recall procedures.

21 CFR 123.3, 123.6-9, 123.11, and 123.28 are hereby incorporated by reference, including subsequent amendments and editions. A copy of the reference materials can be found at [http://www.ecfr.gov/cgi-bin/text-idx?SID=f4cdd666e75f54ccda1d9938f4edd9ab&mc=true&tpl=/ecfrbrowse/Title21/21tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=f4cdd666e75f54ccda1d9938f4edd9ab&mc=true&tpl=/ecfrbrowse/Title21/21tab_02.tpl), free of charge.

(c) Proclamations issued under this Rule shall suspend appropriate rules or portions of rules under the authority of the Marine Fisheries Commission as specified in the proclamation. The provisions of 15A NCAC 03I .0102 terminating suspension of a rule pending the next Marine Fisheries Commission meeting

and requiring review by the Marine Fisheries Commission at the next meeting shall not apply to proclamations issued under this Rule.

*History Note:* Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 113-221.2; 143B-289.52;  
*Eff.* April 1, 2014;  
*Amended Eff.* May 1, 2017.

**15A NCAC 03K .0201 OYSTER HARVEST MANAGEMENT**

- (a) It is unlawful to take or possess oysters from public bottom except from October 15 through March 31.
- (b) The Fisheries Director may, by proclamation, impose any of the following restrictions on the taking of oysters:
- (1) specify time;
  - (2) specify area;
  - (3) specify means and methods;
  - (4) specify season within the period set forth in Paragraph (a) of this Rule;
  - (5) specify size, but the minimum size limit specified shall not be less than three inches, except the minimum size limit specified shall not be less than two and one-half inches to prevent loss of oysters due to predators, pests, or infectious oyster diseases; and
  - (6) specify quantity, but the quantity shall not exceed possession of more than 20 standard U.S. bushels in a commercial fishing operation per day.

*History Note:* Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 143B-289.52;  
*Eff.* January 1, 1991;  
*Amended Eff.* May 1, 2017; October 1, 2008; March 1, 1996; September 1, 1991.

**15A NCAC 03K .0202 CULLING REQUIREMENTS FOR OYSTERS**

- (a) It is unlawful to possess oysters which have accumulated dead shell, accumulated oyster cultch material, a shell length less than that specified by proclamation issued under the authority of Rule .0201 of this Section, or any combination thereof that exceeds a five-percent tolerance limit by volume. In determining whether the tolerance limit is exceeded, the Fisheries Director or his agents may grade all, any portion, or any combination of portions of the entire quantity being graded and, in cases of violations, may seize and return to public bottom or otherwise dispose of the oysters as authorized by law.
- (b) All oysters shall be culled where harvested and all oysters of less than legal size, accumulated dead shell, and cultch material shall be immediately returned to the bottom from which it was taken.
- (c) This Rule shall not apply to oysters imported from out-of-state solely for shucking by shucking and packing plants permitted by the Division of Marine Fisheries.

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

*Eff.* January 1, 1991;  
*Amended Eff.* March 1, 1996; September 1, 1991;  
*Temporary Amendment Eff.* July 1, 1999;  
*Amended Eff.* May 1, 2017; August 1, 2000.

**15A NCAC 03K .0302 MECHANICAL HARVEST OF CLAMS FROM PUBLIC BOTTOM**

- (a) It is unlawful to take, buy, sell, or possess any clams taken by mechanical methods as defined in 15A NCAC 03I .0101, "mechanical methods for clamming," from public bottom unless the season is open.
- (b) The Fisheries Director may, by proclamation, open and close the season for the taking of clams by mechanical methods from public bottom at any time in the Atlantic Ocean and only from December 1 through March 31 in Internal Coastal Waters.
- (c) The Fisheries Director may, by proclamation, open to the taking of clams by mechanical methods from public bottom during open seasons only areas that were opened at any time from January 1979 through September 1988 in:
- (1) Newport, North, White Oak, and New rivers;
  - (2) Core and Bogue sounds;
  - (3) the Intracoastal Waterway north of "BC" Marker at Topsail Beach; and
  - (4) the Atlantic Ocean.

Other areas opened for purposes as set out in 15A NCAC 03K .0301(b) shall open only for those purposes. A list of areas as described in this Paragraph is available upon request at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557.

- (d) The Fisheries Director may, by proclamation, impose any of the following additional restrictions for the taking of clams by mechanical methods from public bottom during open seasons:
- (1) specify time;
  - (2) specify means and methods;
  - (3) specify size; and
  - (4) specify quantity.

*History Note:* Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;  
*Eff.* January 1, 1991;  
*Temporary Amendment Eff.* October 1, 2001;  
*Amended Eff.* May 1, 2017; April 1, 2003.

**15A NCAC 03L .0102 WEEKEND SHRIMPING PROHIBITED**

It is unlawful to take shrimp by any method from 9:00 p.m. on Friday through 5:00 p.m. on Sunday, except:

- (1) in the Atlantic Ocean;
- (2) with the use of fixed and channel nets, hand seines, shrimp pots, or cast nets; or
- (3) for a holder of a Permit for Weekend Trawling for Live Shrimp in accordance with 15A NCAC 03O .0503.

*History Note:* Authority G.S. 113-134; 113-182; 143B-289.52;  
*Eff.* January 1, 1991;  
*Amended Eff.* May 1, 2017; August 1, 2004; March 1, 1994.

**15A NCAC 03M .0522 SPOTTED SEATROUT**

The Fisheries Director may, by proclamation, impose any of the following requirements on the taking of spotted seatrout:

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

*History Note:* Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;  
Eff. May 1, 2017.

**15A NCAC 03O .0114 SUSPENSION, REVOCATION, AND REISSUANCE OF LICENSES**

(a) All commercial and recreational licenses issued under Article 14A, Article 14B, and Article 25A of Chapter 113 shall be subject to suspension and revocation.

(b) A conviction resulting from being charged by an inspector under G.S. 14-32, 14-33, 14-72, or 14-399 shall be deemed a conviction for the purposes of license suspension or revocation.

(c) Upon receipt of notice of a licensee's conviction as specified in G.S. 113-171 or a conviction as specified in Paragraph (b) of this Rule, the Fisheries Director shall determine whether it is a first, second, third, fourth, or subsequent conviction. Where several convictions result from a single transaction or occurrence, the convictions shall be treated as a single conviction for the purposes of license suspension or revocation. For a second conviction, the Fisheries Director shall suspend all licenses issued to the licensee for a period of 30 days; for a third conviction, the Fisheries Director shall suspend all licenses issued to the licensee for a period of 90 days; for a fourth or subsequent conviction, the Fisheries Director shall revoke all licenses issued to the licensee, except:

- (1) for a felony conviction under G.S. 14-399, the Fisheries Director shall suspend all licenses issued to the licensee for a period of one year;
- (2) for a first conviction under G.S. 113-187(d)(1), the Fisheries Director shall suspend all licenses issued to the licensee for a period of one year; for a second or subsequent conviction under G.S. 113-187(d)(1), the Fisheries Director shall revoke all licenses issued to the licensee;
- (3) for a conviction under G.S. 14-72, 113-208, 113-209, 113-268, or 113-269, the Fisheries Director shall revoke all licenses issued to the licensee; and
- (4) for a conviction under G.S. 14-32 or 14-33, if the offense was committed against a marine fisheries inspector, the Fisheries Director shall revoke all licenses issued to the licensee and the former licensee shall not be eligible to apply for reinstatement of a revoked license or for any additional license authorized in Article 14A, Article 14B, or Article 25A of Chapter 113 for a period of two years.

(d) After the Fisheries Director determines that a conviction requires a suspension or revocation of the licenses of a licensee,

the Fisheries Director shall cause the licensee to be served with written notice of suspension or revocation. If the licensee is not an individual, the written notice shall be served upon any responsible individual affiliated with the corporation, partnership, or association. The notice of suspension or revocation shall be served by an inspector or other agent of the Department or by certified mail, shall state the ground upon which it is based, and shall take effect immediately upon service. The agent of the Fisheries Director making service shall collect all license certificates and plates and other forms or records relating to the license as directed by the Fisheries Director.

(e) If a license has been suspended, the former licensee shall not be eligible to apply for reissuance of license or for any additional license authorized in Article 14A, Article 14B, or Article 25A of Chapter 113 during the suspension period. Licenses shall be returned to the licensee by the Fisheries Director or the Director's agents at the end of a period of suspension.

(f) Where a license has been revoked, the former licensee shall not be eligible to apply for reinstatement of a revoked license or for any additional license authorized in Article 14A, Article 14B and Article 25A of Chapter 113 for a period of one year, except as provided in Subparagraph (c)(4) of this Rule. For a request for reinstatement following revocation, the former licensee shall demonstrate in the request that the licensee will conduct the operations for which the license is sought in accord with all applicable laws and rules, shall submit the request in writing, and shall send the request to the Fisheries Director, Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557. Upon the application of an eligible former licensee after revocation, the Fisheries Director may issue one license sought but not another, as necessary to prevent the hazard of recurring violations of the law.

(g) A licensee shall not willfully evade the service prescribed in this Rule.

*History Note:* Authority G.S. 113-168.1; 113-171; S.L. 2010-145;

Eff. October 1, 2012;

Amended Eff. May 1, 2017.

**15A NCAC 03O .0201 STANDARDS AND REQUIREMENTS FOR SHELLFISH BOTTOM LEASES AND FRANCHISES AND WATER COLUMN LEASES**

(a) All areas of the public bottom underlying Coastal Fishing Waters shall meet the following standards and requirements, in addition to the standards in G.S. 113-202, in order to be deemed suitable for leasing for shellfish cultivation purposes:

- (1) the proposed lease area shall not contain a "natural shellfish bed," as defined in G.S. 113-201.1, or have 10 bushels or more of shellfish per acre;
- (2) the proposed lease area shall not be closer than 100 feet to a developed shoreline, except no minimum setback is required when the area to be leased borders the applicant's property, the property of "riparian owners" as defined in G.S. 113-201.1 who have consented in a notarized statement, or is in an area bordered by undeveloped shoreline; and

- (3) the proposed lease area shall not be less than one-half acre and shall not exceed 10 acres.
- (b) To be suitable for leasing for aquaculture purposes, water columns superjacent to leased bottom shall meet the standards in G.S. 113-202.1 and water columns superjacent to franchises recognized pursuant to G.S. 113-206 shall meet the standards in G.S. 113-202.2.
- (c) Franchises recognized pursuant to G.S. 113-206 and shellfish bottom leases shall be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S. 113-202:
  - (1) they produce and market 10 bushels of shellfish per acre per year; and
  - (2) they are planted with 25 bushels of seed shellfish per acre per year or 50 bushels of cultch per acre per year, or a combination of cultch and seed shellfish where the percentage of required cultch planted and the percentage of required seed shellfish planted totals at least 100 percent.
- (d) Water column leases be terminated unless they meet the following requirements, in addition to the standards in and as allowed by G.S. 113-202.1 and 113-202.2:
  - (1) they produce and market 40 bushels of shellfish per acre per year; or
  - (2) the underlying bottom is planted with 100 bushels of cultch or seed shellfish per acre per year.
- (e) The following standards shall be applied to determine compliance with Paragraphs (c) and (d) of this Rule:
  - (1) Only shellfish marketed, planted, or produced as defined in 15A NCAC 03I .0101 as the fishing activities "shellfish marketing from leases and franchises," "shellfish planting effort on leases and franchises," or "shellfish production on leases and franchises" shall be included in the lease and franchise reports required by Rule .0207 of this Section.
  - (2) If more than one lease or franchise is used in the production of shellfish, one of the leases or franchises used in the production of the shellfish shall be designated as the producing lease or franchise for those shellfish. Each bushel of shellfish shall be produced by only one lease or franchise. Shellfish transplanted between leases or franchises shall be credited as planting effort on only one lease or franchise.
  - (3) Production and marketing information and planting effort information shall be compiled and averaged separately to assess compliance with the requirements of this Rule. The lease or franchise shall meet both the production requirement and the planting effort requirement within the dates set forth in G.S. 113-202.1 and G.S. 202.2 to be deemed in compliance for shellfish bottom leases. The lease or franchise shall meet either the production requirement or the planting effort requirement within the dates set forth in G.S. 113-202.1 and G.S. 202.2 to be deemed in compliance for water column leases.
- (4) All bushel measurements shall be in standard U.S. bushels.
- (5) In determining production and marketing averages and planting effort averages for information not reported in bushel measurements, the following conversion factors shall be used:
  - (A) 300 oysters, 400 clams, or 400 scallops equal one bushel; and
  - (B) 40 pounds of scallop shell, 60 pounds of oyster shell, 75 pounds of clam shell, or 90 pounds of fossil stone equal one bushel.
- (6) Production and marketing rate averages shall be computed irrespective of transfer of the lease or franchise. The production and marketing rates shall be averaged for the following situations using the time periods described:
  - (A) for an initial bottom lease or franchise, over the consecutive full calendar years remaining on the bottom lease or franchise contract after December 31 following the second anniversary of the initial bottom lease or franchise;
  - (B) for a renewal bottom lease or franchise, over the consecutive full calendar years beginning January 1 of the final year of the previous bottom lease or franchise term and ending December 31 of the final year of the current bottom lease or franchise contract;
  - (C) for a water column lease, over the first five-year period for an initial water column lease and over the most recent five-year period thereafter for a renewal water column lease; or
  - (D) for a bottom lease or franchise issued an extension period under Rule .0208 of this Section, over the most recent five-year period.
- (7) In the event that a portion of an existing lease or franchise is obtained by a new owner, the production history for the portion obtained shall be a percentage of the originating lease or franchise production equal to the percentage of the area of lease or franchise site obtained to the area of the originating lease or franchise.
- (f) Persons holding five or more acres under all shellfish bottom leases and franchises combined shall meet the requirements established in Paragraph (c) of this Rule before submitting an application for additional shellfish lease acreage to the Division of Marine Fisheries.

*History Note: Authority G.S. 113-134; 113-201; 113-202; 113-202.1; 113-202.2; 113-206; 143B-289.52; Eff. January 1, 1991;*

*Amended Eff. May 1, 1997; March 1, 1995; March 1, 1994; September 1, 1991;*  
*Temporary Amendment Eff. October 1, 2001;*  
*Amended Eff. May 1, 2017; October 1, 2008; April 1, 2003.*

**15A NCAC 030 .0208 TERMINATION OF SHELLFISH BOTTOM LEASES AND FRANCHISES AND WATER COLUMN LEASES**

(a) Procedures for termination of shellfish leaseholds are provided in G.S. 113-202. An appeal of the Secretary's decision to terminate a leasehold is governed by G.S. 150B-23.

(b) Substantial breach of compliance with the provisions of rules of the Marine Fisheries Commission governing use of the leasehold includes the following, except as provided in Paragraph (c) of this Rule:

- (1) failure to meet shellfish production and marketing requirements for bottom leases or franchises in accordance with Rule .0201 of this Section;
- (2) failure to maintain a planting effort of cultch or seed shellfish for bottom leases or franchises in accordance with Rule .0201 of this Section;
- (3) failure either to meet shellfish production and marketing requirements or to maintain a planting effort of cultch or seed shellfish for water column leases in accordance with Rule .0201 of this Section;
- (4) the Fisheries Director has cause to believe the holder of private shellfish bottom or franchise rights has encroached or usurped the legal rights of the public to access public trust resources in navigable waters, in accordance with G.S. 113-205 and Rule .0204 of this Section; and
- (5) the Attorney General initiates action for the purpose of vacating or annulling letters patent granted by the State, in accordance with G.S. 146-63.

(c) Consistent with G.S. 113-202(11) and G.S. 113-201(b), a leaseholder that failed to meet requirements in G.S. 113-202, Rule .0201 of this Section or this Rule may be granted a single extension period of no more than two years per contract period upon a showing of hardship by written notice to the Fisheries Director prior to the expiration of the lease term that one of the following occurrences caused or will cause the leaseholder to fail to meet lease requirements:

- (1) death, illness, or incapacity of the leaseholder or his immediate family as defined in G.S. 113-168 that prevented or will prevent the leaseholder from working the lease;
- (2) damage to the lease from hurricanes, tropical storms, or other severe weather events recognized by the National Weather Service;
- (3) shellfish mortality caused by disease, natural predators, or parasites; or
- (4) damage to the lease from a manmade disaster that triggers a state emergency declaration or federal emergency declaration.

(d) In the case of hardship as described in Subparagraph (c)(1) of this Rule, the notice shall state the name of the leaseholder or immediate family member and either the date of death or the date and nature of the illness or incapacity. Written notice and supporting documentation shall be addressed to the Director of the Division of Marine Fisheries, 3441 Arendell St., P.O. Box 769, Morehead City, NC 28557.

*History Note: Authority G.S. 113-134; 113-201; 113-202; 113-202.1; 113-202.2; 113-205; 143B-289.52;*  
*Eff. January 1, 1991;*  
*Amended Eff. May 1, 1997; March 1, 1995; March 1, 1994; October 1, 1992; September 1, 1991;*  
*Temporary Amendment Eff. January 1, 2002; October 1, 2001;*  
*Amended Eff. May 1, 2017; April 1, 2003.*

**15A NCAC 030 .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS**

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

- (1) the full name, physical address, mailing address, date of birth, and signature of the applicant on the application and, if the applicant is not appearing before a license agent or the designated Division contact, the applicant's signature on the application shall be notarized;
- (2) a current picture identification of applicant, responsible party, or person holding a power of attorney. Acceptable forms of picture identification are driver's license, North Carolina Identification card issued by the North Carolina Division of Motor Vehicles, military identification card, resident alien card (green card), or passport, or if applying by mail, a copy thereof;
- (3) for permits that require a list of designees, the full names and dates of birth of designees of the applicant who will be acting under the requested permit;
- (4) certification that the applicant and his designees do not have four or more marine or estuarine resource convictions during the previous three years;
- (5) for permit applications from business entities:
  - (A) the business name;
  - (B) the type of business entity: corporation, "educational institution" as defined in 15A NCAC 03I .0101, limited liability company (LLC), partnership, or sole proprietorship;
  - (C) the name, address, and phone number of responsible party and other identifying information required by this Subchapter or rules related to a specific permit;
  - (D) for a corporation applying for a permit in a corporate name, the current

- articles of incorporation and a current list of corporate officers;
  - (E) for a partnership that is established by a written partnership agreement, a current copy of such agreement shall be provided when applying for a permit; and
  - (F) for business entities other than corporations, copies of current assumed name statements if filed with the Register of Deeds office for the corresponding county and copies of current business privilege tax certificates, if applicable; and
- (6) additional information as required for specific permits.
- (b) A permittee shall hold a valid Standard or Retired Standard Commercial Fishing License in order to hold a:
  - (1) Pound Net Permit;
  - (2) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean;
  - (3) Atlantic Ocean Striped Bass Commercial Gear Permit; or
  - (4) Permit for Weekend Trawling for Live Shrimp.
    - (A) An individual who is assigned a Standard Commercial Fishing License is the individual required to hold a Permit for Weekend Trawling for Live Shrimp.
    - (B) The master designated on the single vessel corporation Standard Commercial Fishing License is the individual required to hold the Permit for Weekend Trawling for Live Shrimp.
- (c) If mechanical methods to take shellfish are used, a permittee and his designees shall hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement in order for a permittee to hold a:
  - (1) Permit to Transplant Prohibited (Polluted) Shellfish;
  - (2) Permit to Transplant Oysters from Seed Oyster Management Areas;
  - (3) Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises, except as provided in G.S. 113-169.2;
  - (4) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas; or
  - (5) Depuration Permit.
- (d) If mechanical methods to take shellfish are not used, a permittee and his designees shall hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order for a permittee to hold a:
  - (1) Permit to Transplant Prohibited (Polluted) Shellfish;
  - (2) Permit to Transplant Oysters from Seed Oyster Management Areas;
  - (3) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas; or
  - (4) Depuration Permit.
- (e) A permittee shall hold a valid:
  - (1) Fish Dealer License in the proper category in order to hold Dealer Permits for Monitoring Fisheries Under a Quota/Allocation for that category; and
  - (2) Standard Commercial Fishing License with a Shellfish Endorsement, Retired Standard Commercial Fishing License with a Shellfish Endorsement, or a Shellfish License in order to harvest clams or oysters for depuration.
- (f) Aquaculture Operations/Collection Permits:
  - (1) A permittee shall hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold an Aquaculture Collection Permit.
  - (2) The permittee or designees shall hold appropriate licenses from the Division of Marine Fisheries for the species harvested and the gear used under the Aquaculture Collection Permit.
- (g) Atlantic Ocean Striped Bass Commercial Gear Permit:
  - (1) An applicant for an Atlantic Ocean Striped Bass Commercial Gear Permit shall declare one of the following types of gear for an initial permit and at intervals of three consecutive license years thereafter:
    - (A) a gill net;
    - (B) a trawl net; or
    - (C) a beach seine.

For the purpose of this Rule, a "beach seine" is defined as a swipe net constructed of multi-filament or multi-fiber webbing fished from the ocean beach that is deployed from a vessel launched from the ocean beach where the fishing operation takes place. Gear declarations shall be binding on the permittee for three consecutive license years without regard to subsequent annual permit issuance.
  - (2) A person is not eligible for more than one Atlantic Ocean Striped Bass Commercial Gear Permit regardless of the number of Standard Commercial Fishing Licenses, Retired Standard Commercial Fishing Licenses, or assignments held by the person.
- (h) Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with the deficiency in the application noted.
- (i) A permit shall be issued only after the application has been deemed complete by the Division of Marine Fisheries and the applicant certifies to abide by the permit general and specific conditions established under 15A NCAC 03J .0501, .0505, 03K .0103, .0104, .0107, .0111, .0401, 03O .0502, and .0503, as applicable to the requested permit.

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

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

(k) The Division of Marine Fisheries shall notify the applicant in writing of the denial or modification of any permit request and the reasons therefor. The applicant may submit further information or reasons why the permit should not be denied or modified.

(l) Permits are valid from the date of issuance through the expiration date printed on the permit. Unless otherwise established by rule, the Fisheries Director may establish the issuance timeframe for specific types and categories of permits based on season, calendar year, or other period based upon the nature of the activity permitted, the duration of the activity, compliance with federal or state fishery management plans or implementing rules, conflicts with other fisheries or gear usage, or seasons for the species involved. The expiration date shall be specified on the permit.

(m) For permit renewals, the permittee's signature on the application shall certify all information as true and accurate. Notarized signatures on renewal applications shall not be required.

(n) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address, in accordance with G.S. 113-169.2.

(o) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee prior to use of the permit by that designee.

(p) Permit applications are available at all Division Offices.

*History Note: Authority G.S. 113-134; 113-169.1; 113-169.2; 113-169.3; 113-182; 113-210; 143B-289.52;*

*Temporary Adoption Eff. September 1, 2000; May 1, 2000; Eff. April 1, 2001;*

*Temporary Amendment Eff. October 1, 2001;*

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

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

(a) Horseshoe Crab Biomedical Use Permit:

- (1) It is unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.
- (2) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit an annual report on the use of horseshoe crabs to the Division of Marine Fisheries due on February 1 of each year. Such reports shall be filed on forms provided by the

Division and shall include a monthly account of the number of crabs harvested, statement of percent mortality up to the point of release, harvest method, number or percent of males and females, and disposition of bled crabs prior to release.

- (3) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to comply with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe Crab. The Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe Crab is incorporated by reference including subsequent amendments and editions. Copies of this plan are available via the Internet from the Atlantic States Marine Fisheries Commission at <http://www.asmfrc.org/fisheries-management/program-overview> and at the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557 at no cost.

(b) Dealers Permits for Monitoring Fisheries under a Quota/Allocation:

- (1) During the commercial season opened by proclamation or rule for the fishery for which a Dealers Permit for Monitoring Fisheries under a Quota/Allocation permit is issued, it is unlawful for the fish dealers issued such permit to fail to:
  - (A) fax or send via electronic mail by noon daily, on forms provided by the Division, the previous day's landings for the permitted fishery to the dealer contact designated on the permit. Landings for Fridays or Saturdays shall be submitted on the following Monday. If the dealer is unable to fax or electronic mail the required information, the permittee shall call in the previous day's landings to the dealer contact designated on the permit.
  - (B) submit the required form set forth in Part (b)(1)(A) of this Rule to the Division upon request or no later than five days after the close of the season for the fishery permitted;
  - (C) maintain faxes and other related documentation in accordance with 15A NCAC 03I .0114;
  - (D) contact the dealer contact designated on the permit daily regardless of whether or not a transaction for the fishery for which a dealer is permitted occurred; and
  - (E) record the permanent dealer identification number on the bill of

- loading or receipt for each transaction or shipment from the permitted fishery.
- (2) Striped Bass Dealer Permit:
- (A) It is unlawful for a fish dealer to possess, buy, sell, or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:
- (i) Atlantic Ocean;
- (ii) Albemarle Sound Management Area as designated in 15A NCAC 03R .0201; and
- (iii) the Joint and Coastal Fishing Waters of the Central/Southern Management Area as designated in 15A NCAC 03R .0201.
- (B) No permittee shall possess, buy, sell, or offer for sale striped bass taken from the harvest areas opened by proclamation without having a North Carolina Division of Marine Fisheries issued valid tag for the applicable area affixed through the mouth and gill cover, or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. North Carolina Division of Marine Fisheries striped bass tags shall not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the North Carolina Division of Marine Fisheries Offices. The Division of Marine Fisheries shall specify the quantity of tags to be issued based on historical striped bass landings. It is unlawful for the permittee to fail to surrender unused tags to the Division upon request.
- (3) Albemarle Sound Management Area for River Herring Dealer Permit: It is unlawful to possess, buy, sell, or offer for sale river herring taken from the Albemarle Sound Management Area for River Herring as defined in 15A NCAC 03R .0202 without first obtaining an Albemarle Sound Management Area for River Herring Dealer Permit.
- (4) Atlantic Ocean Flounder Dealer Permit:
- (A) It is unlawful for a fish dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first obtaining an Atlantic Ocean Flounder Dealer Permit. The licensed location shall be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.
- (B) It is unlawful for a fish dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first obtaining an Atlantic Ocean Flounder Dealer Permit.
- (5) Black Sea Bass North of Cape Hatteras Dealer Permit: It is unlawful for a fish dealer to purchase or possess more than 100 pounds of black sea bass taken from the Atlantic Ocean north of Cape Hatteras (35° 15.0321' N) per day per commercial fishing operation during the open season unless the dealer has a Black Sea Bass North of Cape Hatteras Dealer Permit.
- (6) Spiny Dogfish Dealer Permit: It is unlawful for a fish dealer to purchase or possess more than 100 pounds of spiny dogfish per day per commercial fishing operation unless the dealer has a Spiny Dogfish Dealer Permit.
- (c) Blue Crab Shedding Permit: It is unlawful to possess more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.
- (d) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean:
- (1) It is unlawful to trawl for shrimp in the Atlantic Ocean without Turtle Excluder Devices installed in trawls within one nautical mile of the shore from Browns Inlet (34° 35.7000' N latitude) to Rich's Inlet (34° 17.6000' N latitude) without a valid Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean when allowed by proclamation as set forth in 15A NCAC 03I .0107 from April 1 through November 30.
- (2) It is unlawful to tow a shrimp trawl net for more than 55 minutes from April 1 through October 31 and 75 minutes from November 1 through November 30 in the area described in Subparagraph (d)(1) of this Rule when working under this permit. Tow time begins when the doors enter the water and ends when the doors exit the water.
- (3) It is unlawful to fail to empty the contents of each net at the end of each tow.
- (4) It is unlawful to refuse to take observers upon request by the Division of Marine Fisheries or the National Oceanic and Atmospheric Administration Fisheries.
- (5) It is unlawful to fail to report any sea turtle captured. Reports shall be made within 24 hours of the capture to the Marine Patrol Communications Center by phone. All turtles

taken incidental to trawling shall be handled and resuscitated in accordance with requirements specified in 50 Code of Federal Regulations (CFR) 223.206. 50 CFR 223.206 is hereby incorporated by reference, including subsequent amendments and editions. A copy of the reference materials can be found at [http://www.ecfr.gov/cgi-bin/text-id?SID=9088932317c242b91d6a87a47b6bda54&mc=true&tpl=/ecfrbrowse/Title50/50tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-id?SID=9088932317c242b91d6a87a47b6bda54&mc=true&tpl=/ecfrbrowse/Title50/50tab_02.tpl) free of charge.

(e) Pound Net Set Permit: Rule 15A NCAC 03J .0505 sets forth the specific conditions for pound net set permits.

(f) Aquaculture Operation Permit and Aquaculture Collection Permit:

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

(g) Scientific or Educational Activity Permit:

- (1) It is unlawful for institutions or agencies seeking exemptions from license, rule, proclamation, or statutory requirements to collect, hold, culture, or exhibit for scientific or educational purposes any marine or estuarine species without first obtaining a Scientific or Educational Activity Permit.

- (2) The Scientific or Educational Activity Permit shall only be issued for collection methods and possession allowances approved by the Division of Marine Fisheries.
- (3) The Scientific or Educational Activity Permit shall only be issued for approved activities conducted by or under the direction of Scientific or Educational institutions as defined in Rule 15A NCAC 03I .0101.
- (4) It is unlawful for the responsible party issued a Scientific or Educational Activity Permit to fail to submit an annual report on collections and, if authorized, sales to the Division of Marine Fisheries due on December 1 of each year unless otherwise specified on the permit. The reports shall be filed on forms provided by the Division. Scientific or Educational Activity permits shall be issued on a calendar year basis.
- (5) It is unlawful to sell marine or estuarine species taken under a Scientific or Educational Activity Permit without:
  - (A) the required license for such sale;
  - (B) an authorization stated on the permit for such sale; and
  - (C) providing the information required in Rule 15A NCAC 03I .0114 if the sale is to a licensed fish dealer.
- (6) It is unlawful to fail to provide the Division of Marine Fisheries a listing of all designees acting under a Scientific or Educational Activity Permit at the time of application.
- (7) The permittee or designees utilizing the permit shall call the Division of Marine Fisheries Communications Center at 800-682-2632 or 252-726-7021 not later than 24 hours prior to use of the permit, specifying activities and location.

(h) Under Dock Oyster Culture Permit:

- (1) It is unlawful to cultivate oysters in containers under docks for personal consumption without first obtaining an Under Dock Oyster Culture Permit.
- (2) An Under Dock Oyster Culture Permit shall be issued only in accordance with provisions set forth in G.S. 113-210(c).
- (3) The applicant shall complete and submit an examination, with a minimum of 70 percent correct answers, based on an educational package provided by the Division of Marine Fisheries pursuant to G.S. 113-210(j). The examination demonstrates the applicant's knowledge of:
  - (A) the application process;
  - (B) permit criteria;
  - (C) basic oyster biology and culture techniques;
  - (D) shellfish harvest area closures due to pollution;
  - (E) safe handling practices;

- (F) permit conditions; and
- (G) permit revocation criteria.
- (4) Action by an Under Dock Oyster Culture Permit holder to encroach on or usurp the legal rights of the public to access public trust resources in Coastal Fishing Waters shall result in permit revocation.

(i) Atlantic Ocean Striped Bass Commercial Gear Permit:

- (1) It is unlawful to take striped bass from the Atlantic Ocean in a commercial fishing operation without first obtaining an Atlantic Ocean Striped Bass Commercial Gear Permit.
- (2) It is unlawful to use a single Standard Commercial Fishing License, including assignments, to obtain more than one Atlantic Ocean Striped Bass Commercial Gear Permit during a license year.

(j) Coastal Recreational Fishing License Exemption Permit:

- (1) It is unlawful for the responsible party seeking exemption from recreational fishing license requirements for eligible individuals to conduct an organized fishing event held in Joint or Coastal Fishing Waters without first obtaining a Coastal Recreational Fishing License Exemption Permit.
- (2) The Coastal Recreational Fishing License Exemption Permit shall only be issued for recreational fishing activity conducted solely for the participation and benefit of one of the following groups of eligible individuals:
  - (A) individuals with physical or mental limitations;
  - (B) members of the United States Armed Forces and their dependents, upon presentation of a valid military identification card;
  - (C) individuals receiving instruction on recreational fishing techniques and conservation practices from employees of state or federal marine or estuarine resource management agencies, or instructors affiliated with educational institutions; and
  - (D) disadvantaged youths as set forth in U.S. Code 42 12511.

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

- (3) The Coastal Recreational Fishing License Exemption Permit is valid for the date, time, and physical location of the organized fishing event for which the exemption is granted and the duration of the permit shall not exceed one year from the date of issuance.
- (4) The Coastal Recreational Fishing License Exemption Permit shall only be issued when all of the following, in addition to the information required in 15A NCAC 03O .0501, is submitted

to the Fisheries Director, in writing, at least 30 days prior to the event:

- (A) the name, date, time, and physical location of the event;
- (B) documentation that substantiates local, state, or federal involvement in the organized fishing event, if applicable;
- (C) the cost or requirements, if any, for an individual to participate in the event; and
- (D) an estimate of the number of participants.

(k) Permit for Weekend Trawling for Live Shrimp:

- (1) It is unlawful to take shrimp with trawls from 9:00 p.m. on Friday through 12:00 p.m. (noon) on Saturday without first obtaining a Permit for Weekend Trawling for Live Shrimp.
- (2) It is unlawful for a holder of a Permit for Weekend Trawling for Live Shrimp to use trawls from 12:01 p.m. on Saturday through 4:59 p.m. on Sunday.
- (3) It is unlawful for a permit holder during the timeframe specified in Subparagraph (k)(1) of this Rule to:
  - (A) use trawl nets to take live shrimp except from areas open to the harvest of shrimp with trawls;
  - (B) take shrimp with trawls that have a combined headrope length of greater than 40 feet in Internal Coastal Waters;
  - (C) possess more than one gallon of dead shrimp (heads on) per trip;
  - (D) fail to have a functioning live bait tank or a combination of multiple functioning live bait tanks with aerator(s) and/or circulating water, with a minimum combined tank capacity of 50 gallons; and
  - (E) fail to call the Division of Marine Fisheries Communications Center at 800-682-2632 or 252-726-7021 prior to each weekend use of the permit, specifying activities and location.

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

**15A NCAC 03P .0101 LICENSE, PERMIT, OR  
CERTIFICATE DENIAL: REQUEST FOR REVIEW**

(a) For the purpose of this Rule and in accordance with G.S. 150B-2, "license" includes "permit" as well as "certification" and "certificate of compliance."

(b) Except in cases where G.S. 113-171 is applicable, before the Division may commence proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license, notice shall be given to the license holder that:

- (1) the license holder has a right, through filing a request for a contested case hearing in the Office of Administrative Hearings, to a hearing before an administrative law judge and a final agency decision by the Marine Fisheries Commission; and
- (2) the license holder may request an opportunity to show compliance with all requirements for retention of the license by submitting a statement in writing to the personnel designated in the notice to commence proceedings.

(c) Any statements submitted by the license holder to show compliance with all requirements for retention of the license shall be postmarked within 15 days of receipt of the notice to commence proceedings. Statements and any supporting documentation shall be addressed to the personnel designated in the notice and mailed to the Division of Marine Fisheries, 3441 Arendell Street, P.O. Box 769, Morehead City, NC 28557.

(d) Upon receipt of a statement and any supporting documentation from the license holder, the Division shall review the statement and, within 15 days, shall notify the license holder in writing with the Division's determination whether the license holder demonstrated compliance with all requirements for retention of the license. In making this determination, the Division may consider criteria including material changes made enabling the license holder to conduct the operations for which the license is held in accord with all applicable laws and rules and processing errors made by the Division.

(e) The Division shall order summary suspension of a license if it finds that the public health, safety, or welfare requires emergency action. Upon such determination, the Fisheries Director shall issue an order giving the reasons for the emergency action. The effective date of the order shall be the date specified on the order or the date of service of a certified copy of the order at the last known address of the license holder, whichever is later.

*History Note: Authority G.S. 113-134; 113-171; 113-221.2; 150B-3; 150B-23;  
Eff. January 1, 1991;  
Amended Eff. May 1, 2017; August 1, 1999.*

**15A NCAC 03R .0103 PRIMARY NURSERY AREAS**

The primary nursery areas referenced in 15A NCAC 03N .0104 are delineated in the following coastal water areas:

- (1) In the Roanoke Sound Area:
  - (a) Shallowbag Bay:
    - (i) Dough Creek - northeast of a line beginning on the west shore at a point 35° 54.5396' N - 75° 39.9681' W; running

northeasterly to the east shore to a point 35° 54.4615' N - 75° 40.1598' W; and west of a line that crosses a canal on the east side of Dough Creek beginning on the north shore at a point 35° 54.7103' N - 75° 40.0951' W; running southerly to the south shore to a point 35° 54.6847' N - 75° 40.0882' W; and

- (ii) Scarborough Creek - south of a line beginning on the west shore at a point 35° 53.9801' N - 75° 39.5985' W; running northeasterly to the east shore to a point 35° 54.0372' N - 75° 39.5558' W; and

- (b) Broad Creek - all waters north of a line beginning on the west shore at a point 35° 51.9287' N - 75° 38.3377' W; running northeasterly to the east shore to a point 35° 52.0115' N - 75° 38.1792' W; and west and south of a line beginning on the north shore at a point 35° 53.3655' N - 75° 38.0254' W; running southeasterly to the south shore to a point 35° 53.3474' N - 75° 37.9430' W;

- (2) In the Northern Pamlico Sound Area:

- (a) Long Shoal River:
  - (i) Long Shoal River - northwest of a line beginning on the north shore at a point 35° 38.0175' N - 75° 52.9270' W; running southwesterly to the south shore to a point 35° 37.8369' N - 75° 53.1060' W;
  - (ii) Deep Creek - southeast of a line beginning on the north shore at a point 35° 37.7346' N - 75° 52.1383' W; running southwesterly to the south shore to a point 35° 37.6673' N - 75° 52.2997' W;
  - (iii) Broad Creek - west of a line beginning on the north shore at a point 35° 35.9820' N - 75° 53.6789' W; running southerly to the south shore to a point 35° 35.7093' N - 75° 53.7335' W;
  - (iv) Muddy Creek - east of a line beginning on the north shore at a point 35° 36.4566' N - 75° 52.1460' W; running southerly to the south shore to a point 35° 36.2828' N - 75° 52.1640' W;

- (v) Pains Bay - north of a line beginning on the west shore at a point 35° 35.4517' N - 75° 49.1414' W; running easterly to the east shore to a point 35° 35.4261' N - 75° 48.8029' W;
- (vi) Otter Creek - southwest of a line beginning on the west shore at a point 35° 33.2597' N - 75° 55.2129' W; running easterly to the east shore to a point 35° 33.1995' N - 75° 54.8949' W; and
- (vii) Clark Creek - northeast of a line beginning on the north shore at a point 35° 35.7776' N - 75° 51.4652' W; running southeasterly to the south shore to a point 35° 35.7128' N - 75° 51.4188' W;
- (b) Far Creek - west of a line beginning on the north shore at a point 35° 30.9782' N - 75° 57.7611' W; running southerly to Gibbs Point to a point 35° 30.1375' N - 75° 57.8108' W;
- (c) Middletown Creek - west of a line beginning on the north shore at a point 35° 28.4868' N - 75° 59.8186' W; running southwesterly to the south shore to a point 35° 28.1919' N - 76° 00.0216' W;
- (d) Wysocking Bay:
  - (i) Lone Tree Creek - east of a line beginning on the north shore at a point 35° 25.6048' N - 76° 02.3577' W; running southeasterly to the south shore to a point 35° 25.1189' N - 76° 02.0499' W;
  - (ii) Wysocking Bay - north of a line beginning on the west shore at a point 35° 25.7793' N - 76° 03.5773' W; running northeasterly to the east shore to a point 35° 25.9585' N - 76° 02.9055' W;
  - (iii) Douglas Bay - northwest of a line beginning on Mackey Point at a point 35° 25.2627' N - 76° 03.1702' W; running southwesterly to the south shore to a point 35° 24.8225' N - 76° 03.6353' W; and
  - (iv) Tributaries west of Brown Island - west of a line beginning on Brown Island at a point 35° 24.3606' N - 76° 04.4557' W; running southerly to the north shore of Brown Island to a point 35° 24.2081' N - 76° 04.4622' W; and northwest of a line beginning on the south shore of Brown Island at a point 35° 23.8255' N - 76° 04.4761' W; running southwesterly to a point 35° 23.6543' N - 76° 04.8630' W;
- (e) East Bluff Bay - Harbor Creek east of a line beginning on the north shore at a point 35° 21.5762' N - 76° 07.8755' W; running southerly to a point 35° 21.4640' N - 76° 07.8750' W; running easterly to the south shore to a point 35° 21.4332' N - 76° 07.7211' W;
- (f) Cunning Harbor tributaries - north of a line beginning on the west shore at a point 35° 20.7567' N - 76° 12.6379' W; running easterly to the east shore to a point 35° 20.7281' N - 76° 12.2292' W;
- (g) Juniper Bay:
  - (i) Upper Juniper Bay - north of a line beginning on the west shore at a point 35° 23.1687' N - 76° 15.1921' W; running easterly to the east shore to a point 35° 23.1640' N - 76° 14.9892' W;
  - (ii) Rattlesnake Creek - west of a line beginning on the north shore at a point 35° 22.9453' N - 76° 15.2748' W; running southerly to the south shore to a point 35° 22.8638' N - 76° 15.3461' W;
  - (iii) Buck Creek - north of a line beginning on the west shore at a point 35° 21.5220' N - 76° 13.8865' W; running southeasterly to the east shore to a point 35° 21.3593' N - 76° 13.7039' W;
  - (iv) Laurel Creek - east of a line beginning on the north shore at a point 35° 20.6693' N - 76° 13.3177' W; running southerly to the south shore to a point 35° 20.6082' N - 76° 13.3305' W; and
  - (v) Old Haulover - west of a line beginning on the north shore at a point 35° 22.0186' N - 76° 15.6736' W; running southerly to the south shore to a point 35° 21.9708' N - 76° 15.6825' W;

- (h) Swanquarter Bay:
- (i) Upper Swanquarter Bay - north of a line beginning on the west shore at a point 35° 23.5651' N - 76° 20.6715' W; running easterly to the east shore to a point 35° 23.6988' N - 76° 20.0025' W;
  - (ii) Oyster Creek - east of a line beginning on the north shore at a point 35° 23.1214' N - 76° 19.0026' W; running southeasterly to the south shore to a point 35° 23.0117' N - 76° 18.9591' W; and
  - (iii) Caffee Bay:
    - (A) Unnamed tributary - north of a line beginning on the west shore at a point 35° 22.1604' N - 76° 18.9140' W; running easterly to the east shore to a point 35° 22.1063' N - 76° 18.7500' W;
    - (B) Unnamed tributary - north of a line beginning on the west shore at a point 35° 22.1573' N - 76° 18.5101' W; running easterly to the east shore to a point 35° 22.1079' N - 76° 18.1562' W; and
    - (C) Upper Caffee Bay (Haulover) - east of a line beginning on the north shore at a point 35° 21.8499' N - 76° 17.5199' W; running southerly to the south shore to a point 35° 21.5451' N - 76° 17.4966' W;
- (i) Rose Bay:
- (i) Rose Bay - north of a line beginning on the west shore at a point 35° 26.6543' N - 76° 25.3992' W; running easterly to Channel Marker "6"; running northeasterly to Watch Point to a point 35° 26.8515' N - 76° 25.0055' W;
  - (ii) Island Point Creek - west of a line beginning on the north shore at a point 35° 26.0413' N - 76° 25.0452' W; running southeasterly to the south shore to a point 35° 25.9295' N - 76° 24.9882' W;
  - (iii) Tooley Creek - west of a line beginning on the north shore at a point 35° 25.4937' N - 76° 25.5324' W; running southerly to the south shore to a point 35° 25.1819' N - 76° 25.5776' W;
  - (iv) Broad Creek - east of a line beginning on the north shore at a point 35° 24.4620' N - 76° 23.3398' W; running southwesterly to the south shore to a point 35° 24.2352' N - 76° 23.5158' W;
  - (v) Lightwood Snag Bay - northwest of a line beginning on the north shore at a point 35° 24.3340' N - 76° 25.9680' W; running southwesterly to a point 35° 24.2610' N - 76° 26.1800' W; running southwesterly to a point on the shore 35° 23.9270' N - 76° 26.3300' W;
  - (vi) Deep Bay:
    - (A) Old Haulover - north of a line beginning on the west shore at a point 35° 23.2140' N - 76° 22.8560' W; running easterly to the east shore to a point 35° 23.2124' N - 76° 22.7340' W; and
    - (B) Drum Cove (Stinking Creek) - south of a line beginning on the west shore at a point 35° 22.5212' N - 76° 24.7321' W; running southeasterly to the east shore to a point 35° 22.4282' N - 76° 24.5147' W; and
  - (vii) Eastern tributaries (Cedar Hammock and Long Creek) - east of a line beginning on the north shore at a point 35° 24.9119' N - 76° 23.1587' W; running southerly to the

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|     | south shore to a point 35° 24.6700' N - 76° 23.2171' W;  |       | N - 76° 28.5681' W; running southerly to the south shore to a point 35° 23.0209' N - 76° 28.5060' W;   |
| (j) | Spencer Bay:   |       |  |
|     | (i) Germantown Bay:  |       |  |
|     | (A) Ditch Creek - northwest of a line beginning on the north shore at a point 35° 24.1874' N - 76° 27.8527' W; running southwesterly to the south shore to a point 35° 24.0937' N - 76° 27.9348' W;                | (iv)  | Unnamed tributary - southwest of a line beginning on the north shore at a point 35° 23.3775' N - 76° 28.7332' W; running southeasterly to the south shore to a point 35° 23.3297' N - 76° 28.5608' W;  |
|     | (B) Jenette Creek - northwest of a line beginning on the north shore at a point 35° 24.5054' N - 76° 27.6258' W; running southwesterly to the south shore to a point 35° 24.4642' N - 76° 27.6659' W;              | (v)   | Unnamed tributaries - northwest of a line beginning on the north shore at a point 35° 23.7207' N - 76° 28.6590' W; running southwesterly to the south shore to a point 35° 23.4738' N - 76° 28.7763' W;  |
|     | (C) Headwaters of Germantown Bay - north of a line beginning on the west shore at a point 35° 24.8345' N - 76° 27.2605' W; running southeasterly to the east shore to a point 35° 24.6210' N - 76° 26.9221' W; and | (vi)  | Upper Spencer Bay - northwest of a line beginning on the north shore at a point 35° 24.3129' N - 76° 28.5300' W; running southwesterly to the south shore to a point 35° 23.9681' N - 76° 28.7671' W; and  |
|     | (D) Swan Creek - southeast of a line beginning on the north shore at a point 35° 24.4783' N - 76° 27.1513' W; running southwesterly to the south shore to a point 35° 24.3899' N - 76° 27.2809' W;                 | (vii) | Spencer Creek - east of a line beginning on the north shore at a point 35° 23.9990' N - 76° 27.3702' W; running southerly to the south shore to a point 35° 23.8598' N - 76° 27.4037' W;   |
|     | (ii) Unnamed tributary - west of a line beginning on the north shore at a point 35° 22.9741' N - 76° 28.3469' W; running southerly to the south shore to a point 35° 22.8158' N - 76° 28.3280' W;                  | (k)   | Long Creek - north of a line beginning on the west shore at a point 35° 22.4678' N - 76° 28.7868' W; running southeasterly to the east shore to a point 35° 22.3810' N - 76° 28.7064' W;   |
|     | (iii) Unnamed tributary - west of a line beginning on the north shore at a point 35° 23.1375'  | (l)   | Willow Creek - east of a line beginning on the north shore at a point 35° 23.1370' N - 76° 29.8829' W; running southeasterly to the south shore to a point 35° 22.9353' N - 76° 29.7215' W;  |
|     |  | (m)   | Abels Bay - north and east of a line beginning on the west shore at a point 35° 24.1072' N - 76° 30.3848' W; running southeasterly to the east shore to a point 35° 23.9898' N - 76° 30.1178' W; thence running southerly to the south shore to a point 35° 23.6947' N - 76° 30.1900' W; and |

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| (n)   | Crooked Creek - north of a line beginning on the west shore at a point 35° 24.4138' N - 76° 32.2124' W; running easterly to the east shore to a point 35° 24.3842' N - 76° 32.0419' W;                        |        | shore to a point 35° 25.7374' N - 76° 30.7102' W; and  |
| (3)   | In the Pungo River Area:  | (viii) | Runway Creek - northeast of a line beginning on the west shore at a point 35° 25.6547' N - 76° 30.6637' W; running easterly to the east shore to a point 35° 25.6113' N - 76° 30.5714' W;      |
| (a)   | Fortescue Creek:  | (b)    | Slade Creek:   |
| (i)   | Headwaters of Fortescue Creek - southeast of a line beginning on the south shore at a point 35° 25.5379' N - 76° 30.6923' W; running easterly to the north shore to a point 35° 25.5008' N - 76° 30.5537' W;  | (i)    | Upper Slade Creek - south of a line beginning on the north shore at a point 35° 27.9168' N - 76° 30.5189' W; running westerly to the south shore to a point 35° 27.9532' N - 76° 30.7140' W;   |
| (ii)  | Warner Creek - north of a line beginning on the west shore at a point 35° 26.2778' N - 76° 31.5463' W; running easterly to the east shore to a point 35° 26.3215' N - 76° 31.4522' W;                         | (ii)   | Jarvis Creek - northeast of a line beginning on the west shore at a point 35° 28.2450' N - 76° 30.8921' W; running southeasterly to the east shore to a point 35° 28.2240' N - 76° 30.8200' W; |
| (iii) | Island Creek - north of a line beginning on the west shore at a point 35° 26.1342' N - 76° 32.3883' W; running easterly to the east shore to a point 35° 26.1203' N - 76° 32.2603' W;                         | (iii)  | Jones Creek - south of a line beginning on the west shore at a point 35° 28.0077' N - 76° 30.9337' W; running southeasterly to the east shore to a point 35° 27.9430' N - 76° 30.8938' W;      |
| (iv)  | Dixon Creek - south of a line beginning on the west shore at a point 35° 25.5766' N - 76° 31.8489' W; running easterly to the east shore to a point 35° 25.5865' N - 76° 31.6960' W;                          | (iv)   | Becky Creek - north of a line beginning on the west shore at a point 35° 28.6081' N - 76° 31.6886' W; running northeasterly to the east shore to a point 35° 28.6297' N - 76° 31.6073' W;      |
| (v)   | Pasture Creek - north of a line beginning on the west shore at a point 35° 25.9437' N - 76° 31.8468' W; running southwesterly to the east shore to a point 35° 25.9918' N - 76° 31.7224' W;                   | (v)    | Neal Creek - north of a line beginning on the west shore at a point 35° 28.7797' N - 76° 31.8657' W; running northeasterly to the east shore to a point 35° 28.8084' N - 76° 31.7727' W;       |
| (vi)  | Cox, Snell, and Seer Creeks - northeast of a line beginning on the west shore at a point 35° 26.0496' N - 76° 31.2087' W; running southeasterly to the east shore to a point 35° 25.8497' N - 76° 30.8828' W; | (vi)   | Wood Creek - north of a line beginning on the west shore at a point 35° 28.5788' N - 76° 32.4163' W; running northeasterly to the east shore to a point 35° 28.6464' N - 76° 32.3339' W;       |
| (vii) | Unnamed tributary on the north side of Fortescue Creek - northeast of a line beginning on the west shore at a point 35° 25.7722' N - 76° 30.7825' W; running southeasterly to the east                        | (vii)  | Spellman Creek - north of a line beginning on the east shore at a point 35° 28.2233' N - 76° 32.6827' W; running southwesterly to the west shore to a point 35° 28.2567' N - 76° 32.6533' W;   |

- (viii) Speer Creek - east of a line beginning on the north shore at a point 35° 27.9680' N - 76° 32.3593' W; running southerly to the south shore to a point 35° 27.9216' N - 76° 32.3862' W;
- (ix) Church Creek and Speer Gut - east of a line beginning on the north shore at a point 35° 27.5910' N - 76° 32.7412' W; running southwesterly to the south shore to a point 35° 27.5282' N - 76° 32.8227' W; and
- (x) Allison and Foreman Creek - south of a line beginning on Parmalee Point at a point 35° 27.2812' N - 76° 33.0634' W; running southwesterly to the west shore to a point 35° 27.2418' N - 76° 33.1451' W;
- (c) Flax Pond - west of a line beginning the north shore at a point 35° 32.0297' N - 76° 33.0389' W; running southwesterly to the south shore to a point 35° 31.9212' N - 76° 33.2061' W; and
- (d) Battalina and Tooleys creeks - northwest of a line beginning on the north shore at a point 35° 32.3914' N - 76° 36.1548' W; running southwesterly to the south shore to a point 35° 32.0627' N - 76° 36.3769' W;
- (4) In the Pamlico River Area:
  - (a) North Creek:
    - (i) North Creek - north of a line beginning on the west shore at a point 35° 25.6764' N - 76° 39.9970' W; running northeasterly to the east shore to a point 35° 25.5870' N - 76° 40.0806' W;
    - (ii) East Fork:
      - (A) Northeast of a line beginning on the west shore at a point 35° 25.8000' N - 76° 39.2679' W; running southeasterly to the east shore to a point 35° 25.6914' N - 76° 39.1374' W; and
      - (B) Unnamed tributary of East Fork - northwest of a line beginning on the north shore at a point 35° 25.6950' N - 76° 39.4337' W; running southwesterly to the south shore to a point 35° 25.6445' N - 76° 39.4698' W;
  - (iii) Frying Pan Creek - east of a line beginning on the north shore at a point 35° 24.9881' N - 76° 39.5948' W; running southwesterly to Chambers Point to a point 35° 24.8508' N - 76° 39.6811' W; and
  - (iv) Little Ease Creek - west of a line beginning on the north shore at a point 35° 25.1463' N - 76° 40.3490' W; running southwesterly to Cousin Point to a point 35° 25.0075' N - 76° 40.4159' W;
  - (b) Goose Creek:
    - (i) Hatter Creek - west of a line beginning on the north shore at a point 35° 19.9593' N - 76° 37.5992' W; running southerly to the south shore to a point 35° 19.9000' N - 76° 37.5904' W;
    - (ii) Upper Spring Creek:
      - (A) Headwaters of Upper Spring Creek - east of a line beginning on the north shore at a point 35° 16.3636' N - 76° 36.0568' W; running southeasterly to the south shore to a point 35° 16.1857' N - 76° 36.0111' W; and
      - (B) Unnamed tributary - north of a line beginning on the west shore at a point 35° 16.8386' N - 76° 36.4447' W; running easterly to the east shore to a point 35° 16.8222' N - 76° 36.3811' W;
    - (iii) Eastham Creek - east of a line beginning on the north shore at a point 35° 17.7423' N - 76° 36.5164' W; running southeasterly to the south

- shore to a point 35° 17.5444' N - 76° 36.3963' W;
  - (iv) Mud Gut - northeast of a line beginning on the north shore at a point 35° 17.8754' N - 76° 36.7704' W; running southeasterly to the south shore to a point 35° 17.8166' N - 76° 36.7468' W;
  - (v) Wilkerson Creek - east of a line beginning on the north shore at a point 35° 18.4096' N - 76° 36.7479' W; running southwesterly to the south shore to a point 35° 18.3542' N - 76° 36.7741' W; and
  - (vi) Dixon Creek - east of a line beginning on the north shore at a point 35° 18.8893' N - 76° 36.5973' W; running southerly to the south shore to a point 35° 18.5887' N - 76° 36.7142' W; and
- (c) Oyster Creek - Middle Prong:
  - (i) Oyster Creek:
    - (A) West of a line, beginning on the north shore at a point 35° 19.4780' N - 76° 34.0131' W; running southerly to the south shore to a point 35° 19.3796' N - 76° 34.0021' W; and
    - (B) Duck Creek - south of a line beginning on the west shore at a point 35° 19.0959' N - 76° 33.2998' W; running northeasterly to the east shore to a point 35° 19.1553' N - 76° 33.2027' W;
  - (ii) James Creek - southwest of a line beginning on the north shore at a point 35° 18.6045' N - 76° 32.3233' W; running southeasterly to James Creek Point at a point 35° 18.4805' N - 76° 32.0240' W;
  - (iii) Middle Prong - south of a line beginning on the west shore at a point 35° 17.8888' N - 76° 31.9379' W; running southerly to the east shore to a point 35° 17.7323' N - 76° 31.9052' W; and
- (iv) Clark Creek:
  - (A) Headwaters of Clark Creek (including Mouse Harbor Ditch) - southeast of a line beginning on the west shore at a point 35° 18.1028' N - 76° 31.1661' W; running northeasterly to the east shore to a point 35° 18.1907' N - 76° 31.0610' W; and
  - (B) Boat Creek - east of a line beginning on the north shore at a point 35° 18.5520' N - 76° 31.2927' W; running southerly to the south shore to a point 35° 18.4189' N - 76° 31.2660' W;

(5) In the Western Pamlico Sound Area:

- (a) Mouse Harbor:
  - (i) Long Creek - north of a line beginning on the west shore at a point 35° 18.4025' N - 76° 29.8139' W; running northeasterly to the east shore to a point 35° 18.4907' N - 76° 29.5652' W;
  - (ii) Lighthouse Creek - north of a line beginning on the west shore at a point 35° 18.5166' N - 76° 29.2166' W; running southeasterly to the east shore to a point 35° 18.4666' N - 76° 29.1666' W; and
  - (iii) Cedar Creek and Island creeks - south of a line beginning on the west shore at a point 35° 16.9073' N - 76° 29.8667' W; running southeasterly to the east shore to a point 35° 16.6800' N - 76° 29.4500' W;
- (b) Porpoise Creek - west of a line beginning on the north shore at a point 35° 15.7263' N - 76° 29.4897' W; running southeasterly to the south shore to a point 35° 15.6335' N - 76° 29.3346' W;
- (c) Middle Bay:
  - (i) Middle Bay - west of a line beginning on the north shore at a point 35° 14.6137' N - 76° 30.8086' W; running

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|       | southeasterly to the south shore to a point 35° 14.0631' N - 76° 30.5176' W; and  |       | easterly to the east shore to a point 35° 14.1620' N - 76° 33.0614' W;   |
| (ii)  | Little Oyster Creek - north of a line beginning on the west shore at a point 35° 14.4745' N - 76° 30.2111' W; running northeasterly to the east shore to a point 35° 14.5825' N - 76° 29.9144' W; and                 | (6)   | In the Bay River Area:   |
|       |   | (a)   | Mason Creek - southeast of a line beginning on the north shore at a point 35° 08.2531' N - 76° 41.4897' W; running southwesterly to the west shore to a point 35° 08.1720' N - 76° 41.6340' W;             |
| (d)   | Jones Bay, west of the IWW:   | (b)   | Moore Creek - southeast of a line beginning on the north shore at a point 35° 08.9671' N - 76° 40.2017' W; running southeasterly to the south shore to a point 35° 08.8629' N - 76° 40.1598' W;            |
| (i)   | Little Drum Creek and Little Eve Creek - south of a line beginning on the west shore at a point 35° 12.4380' N - 76° 31.7428' W; running southeasterly to the east shore to a point 35° 12.3499' N - 76° 31.2554' W;  | (c)   | Small tributaries from Bell Point to Ball Creek:   |
| (ii)  | Ditch Creek - south of a line beginning on the west shore at a point 35° 13.3609' N - 76° 33.6539' W; running southeasterly to the east shore to a point 35° 13.2646' N - 76° 33.1996' W;                             | (i)   | Tributary west of Bell Point - south of a line beginning on the west shore at a point 35° 09.9536' N - 76° 39.3977' W; running northeasterly to the east shore to a point 35° 09.9970' N - 76° 39.3420' W; |
| (iii) | Lambert Creek - west of a line beginning on the north shore at a point 35° 13.8980' N - 76° 34.3078' W; running southeasterly to the south shore to a point 35° 13.8354' N - 76° 34.2665' W;                          | (ii)  | Little Pasture Creek - south of a line beginning on the west shore at a point 35° 09.8944' N - 76° 39.1483' W; running southeasterly to the east shore to a point 35° 09.8417' N - 76° 39.1130' W; and     |
| (iv)  | Headwaters of Jones Bay, (west of the IWW) - west of a line beginning on the north shore at a point 35° 14.4684' N - 76° 35.4307' W; running southerly to the south shore to a point 35° 14.3947' N - 76° 35.4205' W; | (iii) | Rice Creek - south of a line beginning on the west shore at a point 35° 09.7616' N - 76° 38.9686' W; running southeasterly to the east shore to a point 35° 09.7378' N - 76° 38.8833' W;                   |
| (v)   | Bills Creek - north of a line beginning on the west shore at a point 35° 14.4162' N - 76° 34.8566' W; running northerly to the east shore to a point 35° 14.4391' N - 76° 34.7248' W;                                 | (d)   | Ball and Cabin creeks - south of a line beginning on the west shore at a point 35° 09.6479' N - 76° 37.9973' W; running southeasterly to the east shore to a point 35° 09.5589' N - 76° 37.5879' W;        |
| (vi)  | Doll Creek - north of a line beginning on the west shore at a point 35° 14.3320' N - 76° 34.2935' W; running southeasterly to the east shore to a point 35° 14.2710' N - 76° 34.0406' W; and                          | (e)   | Bonner Bay:  |
| (vii) | Drum Creek - north of a line beginning on the west shore at a point 35° 14.1764' N - 76° 33.2632' W; running  | (i)   | Riggs Creek - west of a line beginning on the north shore at a point 35° 09.4050' N - 76° 36.2205' W; running southeasterly to the south shore to a point 35° 09.2298' N - 76° 36.0949' W;                 |
|       |   | (ii)  | Spring Creek - west of a line beginning on the north shore at a point 35° 08.5149' N - 76° 36.0799' W; running southerly to the south shore  |

- to a point 35° 08.3575' N - 76° 36.0713' W;
  - (iii) Bryan and Ives creeks - south of a line beginning on the west shore at a point 35° 08.3632' N - 76° 35.8653' W; running northeasterly to the east shore to a point 35° 08.4109' N - 76° 35.7075' W;
  - (iv) Long Creek Gut - north of a line beginning on the west shore at a point 35° 09.1993' N - 76° 34.8517' W; running easterly to the east shore to a point 35° 09.1987' N - 76° 34.5373' W;
  - (v) Dipping Vat Creek - east of a line beginning on the north shore at a point 35° 09.2734' N - 76° 34.3363' W; running southerly to the south shore to a point 35° 09.1212' N - 76° 34.3667' W;
  - (vi) Long Creek - east of a line beginning on the west shore at a point 35° 08.1404' N - 76° 34.5741' W; running northeasterly to the east shore to a point 35° 08.2078' N - 76° 34.4819' W; and
  - (vii) Cow Gallus Creek - west of a line beginning on the north shore at a point 35° 08.5125' N - 76° 34.6417' W; running southerly to the south shore to a point 35° 08.4083' N - 76° 34.6131' W;
- (f) Rock Hole Bay - northeast of a line beginning on the west shore at a point 35° 11.6478' N - 76° 32.5840' W; running southeasterly to the east shore to a point 35° 11.2664' N - 76° 32.2160' W;
- (g) Dump Creek - north of a line beginning on the west shore at a point 35° 11.7105' N - 76° 33.4228' W; running easterly to the east shore to a point 35° 11.7174' N - 76° 33.1807' W;
- (h) Tributaries east of IWW at Gales Creek:
  - (i) Raccoon Creek - east of a line beginning on the north shore at a point 35° 12.9169' N - 76° 35.4930' W; running southeasterly to the south shore to a point 35° 12.6515' N - 76° 35.3368' W; and
  - (ii) Ditch Creek - east of a line beginning on the north shore at a point 35° 12.4460' N - 76° 35.0707' W; running southeasterly to the south shore to a point 35° 12.3495' N - 76° 34.9917' W;
- (i) Tributaries west of IWW at Gales Creek:
  - (i) Jumpover Creek - west of a line beginning on the north shore at a point 35° 13.2830' N - 76° 35.5843' W; running southerly to the south shore to a point 35° 13.2035' N - 76° 35.5844' W;
  - (ii) Gales Creek - west of a line beginning on the north shore at a point 35° 12.9653' N - 76° 35.6600' W; running southerly to the south shore to a point 35° 12.8032' N - 76° 35.6366' W; and
  - (iii) Whealton and Tar creeks - west of a line beginning on the north shore at a point 35° 12.7334' N - 76° 35.5430' W; running southeasterly to the south shore to a point 35° 12.4413' N - 76° 35.3594' W;
- (j) Chadwick and No Jacket creeks - north of a line beginning on the west shore at a point 35° 11.9511' N - 76° 35.8899' W; running northeasterly to the east shore to a point 35° 12.0599' N - 76° 35.3973' W;
- (k) Bear Creek - west of a line beginning on the north shore at a point 35° 11.7526' N - 76° 36.2721' W; running southwesterly to the south shore to a point 35° 11.5781' N - 76° 36.3366' W;
- (l) Little Bear Creek - north of a line beginning on the west shore at a point 35° 11.1000' N - 76° 36.3060' W; running northeasterly to the east shore to a point 35° 11.2742' N - 76° 35.9822' W;
- (m) Tributaries to Bay River from Petty Point to Sanders Point:
  - (i) Oyster Creek - north of a line beginning on the west shore at a point 35° 10.7971' N - 76° 36.7399' W; running northeasterly to the east shore to a point 35° 10.9493' N - 76° 36.4878' W;
  - (ii) Potter Creek - north of a line beginning on the west shore

- at a point 35° 10.7259' N - 76° 37.0764' W; running northeasterly to the east shore to a point 35° 10.7778' N - 76° 36.7933' W;
    - (iii) Barnes and Gascon creeks - north of a line beginning on the west shore at a point 35° 10.6396' N - 76° 37.3137' W; running northeasterly to the east shore to a point 35° 10.6929' N - 76° 37.2087' W;
    - (iv) Harris Creek - north of a line beginning on the west shore at a point 35° 10.5922' N - 76° 37.5333' W; running northeasterly to the east shore to a point 35° 10.6007' N - 76° 37.5103' W; and
    - (v) Mesic Creek - north of a line beginning on the west shore at a point 35° 10.5087' N - 76° 37.9520' W; running easterly to the east shore to a point 35° 10.4830' N - 76° 37.8477' W;
  - (n) In Vandemere Creek:
    - (i) Cedar Creek - north of a line beginning on the west shore at a point 35° 11.2495' N - 76° 39.5727' W; running northeasterly to the east shore to a point 35° 11.2657' N - 76° 39.5238' W;
    - (ii) Long Creek - east of a line beginning on the north shore at a point 35° 11.4779' N - 76° 38.7790' W; running southerly to the south shore to a point 35° 11.4220' N - 76° 38.7521' W; and
    - (iii) Little Vandemere Creek - north of a line beginning on the west shore at a point 35° 12.1449' N - 76° 39.2620' W; running southeasterly to the east shore to a point 35° 12.1182' N - 76° 39.1993' W;
  - (o) Smith Creek - north of a line beginning on the west shore to a point 35° 10.4058' N - 76° 40.2565' W; running northeasterly to the east shore to a point 35° 10.4703' N - 76° 40.1593' W;
  - (p) Harper Creek - west of a line beginning on the north shore at a point 35° 09.2767' N - 76° 41.8489' W; running southwesterly to the south shore to a point 35° 09.1449' N - 76° 41.9137' W;
  - (q) Chapel Creek - north of a line beginning on the west shore at a point 35° 08.9333' N - 76° 42.8382' W; running northeasterly to the east shore to a point 35° 08.9934' N - 76° 42.7694' W; and
  - (r) Swindell Bay - south of a line beginning on the west shore at a point 35° 08.2580' N - 76° 42.9380' W; running southeasterly to the east shore to a point 35° 08.2083' N - 76° 42.8031' W;
- (7) In the Neuse River Area North Shore:
- (a) Swan Creek - west of a line beginning on the south shore at a point 35° 06.5470' N - 76° 33.8203' W; running northeasterly to a point 35° 06.4155' N - 76° 33.9479' W; running to the south shore of Swan Island to a point 35° 06.3168' N - 76° 34.0263' W; running northeasterly to a point 35° 06.6705' N - 76° 33.7307' W, running northeasterly to the north shore to a point 35° 06.8183' N - 76° 33.5971' W;
  - (b) Broad Creek:
    - (i) Greens Creek - north of a line beginning on the west shore at a point 35° 06.0730' N - 76° 35.5110' W; running southeasterly to the east shore to a point 35° 05.9774' N - 76° 35.3704' W;
    - (ii) Pittman Creek - north of a line beginning on the west shore at a point 35° 05.8143' N - 76° 36.1475' W; running northeasterly to the east shore to a point 35° 05.8840' N - 76° 36.0144' W;
    - (iii) Burton Creek - west of a line beginning on the north shore at a point 35° 05.7174' N - 76° 36.4797' W; running southwesterly to the south shore to a point 35° 05.6278' N - 76° 36.5067' W;
    - (iv) All tributaries on the north shore of Broad Creek - north of a line beginning on the west shore of the western most tributary at a point 35° 05.5350' N - 76° 37.4058' W; running easterly to a point 35° 05.4752' N - 76° 36.9672' W; running to a point 35° 05.4868' N - 76° 36.9163' W;

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|        | north of a line beginning on the west shore of the eastern most tributary at 35° 05.4415' N - 76° 36.7869' W; running northeasterly to a point 35° 05.4664' N - 76° 36.7540' W;                               |       | 76° 35.6556' W; running southeasterly to the east shore to a point 35° 05.2867' N - 76° 35.5348' W;  |
| (v)    | Brown Creek - northwest of a line beginning on the west shore at a point 35° 05.5310' N - 76° 37.8132' W; running northeasterly to the east shore to a point 35° 05.5737' N - 76° 37.6908' W;                 | (c)   | Orchard and Old House creeks - north of a line beginning on the west shore at a point 35° 03.3302' N - 76° 38.4478' W; running northeasterly to the east shore to a point 35° 03.6712' N - 76° 37.9040' W;                         |
| (vi)   | Broad Creek including Gideon Creek - west of a line beginning on the north shore at a point 35° 05.5310' N - 76° 37.8132' W; running southerly to the south shore to a point 35° 05.3212' N - 76° 37.8398' W; | (d)   | Pierce Creek - north of a line beginning on the west shore at a point 35° 02.5030' N - 76° 40.0536' W; running northeasterly to the east shore to a point 35° 02.5264' N - 76° 39.9901' W;   |
| (vii)  | Tar Creek - south of a line beginning on the west shore at a point 35° 05.2604' N - 76° 37.5093' W; running easterly to the east shore to a point 35° 05.2728' N - 76° 37.6251' W;                            | (e)   | Whittaker Creek - north of a line beginning on the west shore at a point 35° 01.7186' N - 76° 41.1309' W; running easterly to the east shore to a point 35° 01.6702' N - 76° 40.9036' W;   |
| (viii) | Tributary east of Tar Creek - south of a line beginning on the west shore at a point 35° 05.3047' N - 76° 37.0316' W; running easterly to the east shore to a point 35° 05.2674' N - 76° 36.8086' W;          | (f)   | Oriental:  |
| (ix)   | Tributary east of Tar Creek - south of a line beginning on the west shore at a point 35° 05.2674' N - 76° 36.8086' W; running easterly to the east shore to a point 35° 05.2445' N - 76° 36.5416' W;          | (i)   | Smith and Morris creeks - north of a line beginning on the west shore at a point 35° 02.1553' N - 76° 42.2931' W; running southeasterly to the east shore to a point 35° 02.1097' N - 76° 42.1806' W;                              |
| (x)    | Parris Creek - south of a line beginning on the west shore at a point 35° 05.2445' N - 76° 36.5416' W; running southeasterly to the east shore to a point 35° 05.2031' N - 76° 36.4573' W;                    | (ii)  | Unnamed tributary west of Dewey Point - north of a line beginning on the west shore at a point 35° 01.3704' N - 76° 42.4906' W; running northeasterly to the east shore to a point 35° 01.3530' N - 76° 42.4323' W;                |
| (xi)   | Mill Creek - south of a line beginning on the west shore at a point 35° 05.4439' N - 76° 36.0260' W; running northeasterly to the east shore to a point 35° 05.4721' N - 76° 35.8835' W; and                  | (iii) | Unnamed tributary on the south shore of Greens Creek - south of a line beginning on the west shore at a point 35° 01.4340' N - 76° 42.7920' W; running southeasterly to the east shore to a point 35° 01.4040' N - 76° 42.7320' W; |
| (xii)  | Cedar Creek - south of a line beginning on the west shore at a point 35° 05.3711' N -   | (iv)  | Unnamed tributary on the south shore of Greens Creek - south of a line beginning on the west shore at a point 35° 01.3680' N - 76° 42.4920' W; running southeasterly to the east shore to a point 35° 01.3560' N - 76° 42.4320' W; |
|        |   | (v)   | Greens Creek - west of a line beginning on the north shore at a point 35° 01.5985' N - 76° 42.9959' W; running southeasterly to the south  |

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|       | shore to a point 35° 01.4759' N - 76° 42.9570' W;  |        | to a point 34° 54.0719' N - 76° 45.4888' W;   |
| (vi)  | Kershaw Creek - north of a line beginning on the west shore at a point 35° 01.5985' N - 76° 42.9959' W; running easterly to the east shore to a point 35° 01.6077' N - 76° 42.8459' W; and                                   | (b)    | Adams Creek:  |
| (vii) | Shop Gut Creek - west of a line beginning on the north shore at a point 35° 01.2720' N - 76° 42.1500' W; running southerly to the south shore to a point 35° 01.1700' N - 76° 42.1380' W;                                    | (i)    | Godfrey Creek - south of a line beginning on the west shore at a point 34° 57.3104' N - 76° 41.1292' W; running easterly to the east shore to a point 34° 57.2655' N - 76° 41.1187' W;  |
| (g)   | Dawson Creek:  | (ii)   | Delamar Creek - south of a line beginning on the west shore at a point 34° 57.0475' N - 76° 40.7230' W; running southeasterly to the east shore to a point 34° 57.0313' N - 76° 40.7015' W;                                       |
| (i)   | Unnamed eastern tributary of Dawson Creek - east of a line beginning on the north shore at a point 35° 00.2064' N - 76° 45.2652' W; running southeasterly to the south shore to a point 35° 00.1790' N - 76° 45.2289' W; and | (iii)  | Kellum Creek - west of a line beginning on the north shore at a point 34° 55.5240' N - 76° 39.8072' W; running southeasterly to the south shore to a point 34° 55.4356' N - 76° 39.8201' W;                                       |
| (ii)  | Unnamed tributary of Dawson Creek (at mouth) - east of a line beginning on the north shore at a point 34° 59.6620' N - 76° 45.1156' W; running southerly to the south shore to a point 34° 59.6326' N - 76° 45.1177' W; and  | (iv)   | Kearney Creek and unnamed tributary - west of a line beginning on the north shore of the north creek at a point 34° 55.1847' N - 76° 39.9686' W; running southerly to the south shore to a point 34° 54.9661' N - 76° 40.0091' W; |
| (h)   | Beard Creek tributary - southeast of a line beginning on the north shore at a point 35° 00.3176' N - 76° 51.9098' W; running southwesterly to the southwest shore to a point 35° 00.1884' N - 76° 51.9850' W;                | (v)    | Isaac Creek - south of a line beginning on the west shore at a point 34° 54.2457' N - 76° 40.1010' W; running easterly to the east shore to a point 34° 54.2630' N - 76° 40.0088' W;  |
| (8)   | In the Neuse River Area South Shore:   | (vi)   | Back Creek - southeast of a line beginning on the northeast shore at a point 34° 54.6598' N - 76° 39.5257' W; running southwesterly to the southwest shore to a point 34° 54.5366' N - 76° 39.7075' W;                            |
| (a)   | Clubfoot Creek - south of a line beginning on the west shore at a point 34° 52.4621' N - 76° 45.9256' W; running easterly to the east shore to a point 34° 52.4661' N - 76° 45.7567' W;                                      | (vii)  | Cedar Creek - southeast of a line beginning on the west shore at a point 34° 55.7759' N - 76° 38.6070' W; running easterly to the east shore to a point 34° 55.7751' N - 76° 38.4965' W;  |
| (i)   | Mitchell Creek - west of a line beginning on the north shore at a point 34° 54.4176' N - 76° 45.7680' W; running southerly to the south shore to a point 34° 54.2610' N - 76° 45.8277' W; and                                | (viii) | Jonaquin Creek - northeast of a line beginning on the west shore at a point 34° 56.1192' N - 76° 38.4997' W; running easterly to the east shore to a  |
| (ii)  | Gulden Creek - east of a line beginning on the north shore at a point 34° 54.1760' N - 76° 45.4438' W; running southerly to the south shore  |        |   |

- point 34° 56.1172' N - 76° 38.4584' W;
    - (ix) Dumpling Creek - east of a line beginning on the northwest shore at a point 34° 56.9187' N - 76° 39.5559' W; running southeasterly to the southeast shore to a point 34° 56.8421' N - 76° 39.5155' W; and
    - (x) Sandy Huss Creek - northeast of a line beginning on the west shore at a point 34° 57.2348' N - 76° 39.8457' W; running southeasterly to the east shore to a point 34° 57.1638' N - 76° 39.7169' W;
  - (c) Garbacon Creek - south of a line beginning on the west shore at a point 34° 59.0044' N - 76° 38.5758' W; running easterly to the east shore to a point 34° 59.0006' N - 76° 38.4845' W;
  - (d) South River:
    - (i) Big Creek - southwest of a line beginning on the northwest shore at a point 34° 56.9502' N - 76° 35.3498' W; running southeasterly to the southeast shore to a point 34° 56.8346' N - 76° 35.2091' W; and
    - (ii) Horton Bay - north of a line beginning on the west shore at a point 34° 59.1936' N - 76° 34.7657' W; running easterly to the east shore to a point 34° 59.2023' N - 76° 34.4586' W;
  - (e) Brown Creek - south of a line beginning on the west shore at a point 34° 59.8887' N - 76° 33.5707' W; running easterly to the east shore to a point 34° 59.9440' N - 76° 33.4180' W; and
  - (f) Turnagain Bay:
    - (i) Abraham Bay - west of a line beginning on the north shore at a point 35° 00.1780' N - 76° 30.7564' W; running southerly to the south shore to a point 34° 59.8338' N - 76° 30.7128' W;
    - (ii) Broad Creek and Persons Creek - southwest of a line beginning at a point on the north shore 34° 59.1974' N - 76° 30.4118' W; running southeasterly to the south shore to a point 34° 58.9738' N - 76° 30.1168' W;
  - (iii) Mulberry Point Creek - east of a line beginning on the north shore at a point 35° 00.4736' N - 76° 29.7538' W; running southerly to the south shore to a point 35° 00.3942' N - 76° 29.7082' W;
  - (iv) Tump Creek - east of a line beginning on the north shore at a point 35° 00.2035' N - 76° 29.5947' W; running southerly to the south shore to a point 35° 00.0500' N - 76° 29.4897' W;
  - (v) Tributary south of Tump Creek - east of a line beginning on the north shore at a point 34° 59.7784' N - 76° 29.3548' W; running southerly to the south shore to a point 34° 59.6830' N - 76° 29.3303' W;
  - (vi) Deep Gut - northeast of a line beginning on the north shore at a point 34° 59.6134' N - 76° 29.0376' W; running southeasterly to the south shore to a point 34° 59.4799' N - 76° 28.9362' W; and
  - (vii) Big Gut - east of a line beginning on the north shore at a point 34° 59.0816' N - 76° 28.7076' W; running southerly to the south shore to a point 34° 58.9300' N - 76° 28.7383' W;
- (9) West Bay - Long Bay Area:
- (a) Fur Creek and Henrys Creek - southwest of a line beginning on the northwest shore at a point 34° 56.5580' N - 76° 27.7065' W; running southeasterly to the southeast shore to a point 34° 56.3830' N - 76° 27.4563' W; and
  - (b) Cadduggen Creek - south of a line beginning on the west shore at a point 34° 56.5767' N - 76° 23.8711' W; running easterly to the east shore to a point 34° 56.2890' N - 76° 23.6626' W;
- (10) Core Sound Area:
- (a) Cedar Island Bay - northwest of a line beginning on the northeast shore at a point 34° 59.7770' N - 76° 17.3837' W; running southwesterly to the southwest shore to a point 34° 59.0100' N - 76° 17.9339' W;

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| <p>(b) Lewis Creek - north of a line beginning on the west shore at a point 34° 56.8736' N - 76° 16.8740' W; running easterly to the east shore to a point 34° 56.9455' N - 76° 16.8234' W;</p>   | <p>(iii) Broad Creek - northwest of a line beginning on the west shore at a point 34° 47.7820' N - 76° 29.2724' W; running northeasterly to the east shore to a point 34° 47.9766' N - 76° 28.9729' W;</p>   |
| <p>(c) Thorofare Bay:</p> <p>(i) Merkle Hammock Creek - southwest of a line beginning on the northwest shore at a point 34° 55.4796' N - 76° 21.4463' W; running southeasterly to the southeast shore to a point 34° 55.3915' N - 76° 21.1682' W; and</p> <p>(ii) Barry Bay - west of a line beginning on the north shore at a point 34° 54.6450' N - 76° 20.6127' W; running southerly to the south shore to a point 34° 54.4386' N - 76° 20.4912' W;</p>                            | <p>(iv) Howland Creek - northwest of a line beginning on the northeast shore at a point 34° 47.5129' N - 76° 29.6217' W; running southwesterly to the southwest shore to a point 34° 47.3372' N - 76° 29.8607' W;</p> <p>(v) Great Creek - southeast of a line beginning on the northeast shore at a point 34° 47.4279' N - 76° 28.9565' W; running southwesterly to the southwest shore to a point 34° 47.1515' N - 76° 29.2077' W;</p>                             |
| <p>(d) Nelson Bay:</p> <p>(i) Willis Creek and Fulchers Creek - west of a line beginning on the north shore of Willis Creek at a point 34° 51.1006' N - 76° 24.5996' W; running southerly to the south shore of Fulchers Creek to a point 34° 50.2861' N - 76° 24.8708' W; and</p> <p>(ii) Lewis Creek - west of a line beginning on the north shore at a point 34° 51.9362' N - 76° 24.6322' W; running southerly to the south shore to a point 34° 51.7323' N - 76° 24.6487' W;</p> | <p>(vi) Williston Creek - northwest of the Highway 70 Bridge;</p> <p>(vii) Wade Creek - west of a line beginning on the north shore at a point 34° 46.3125' N - 76° 30.2676' W; running southerly to the south shore to a point 34° 46.1915' N - 76° 30.3593' W;</p> <p>(viii) Jump Run - north of a line beginning on the west shore at a point 34° 45.5385' N - 76° 30.3974' W; running easterly to the east shore to a point 34° 45.5468' N - 76° 30.3485' W;</p> |
| <p>(e) Cedar Creek between Sea Level and Atlantic - west of a line beginning on the north shore at a point 34° 52.0126' N - 76° 22.7046' W; running southerly to the south shore to a point 34° 51.9902' N - 76° 22.7190' W;</p>  | <p>(ix) Middens Creek - west of a line beginning on the north shore at a point 34° 45.5046' N - 76° 30.9710' W; running southerly to the south shore to a point 34° 45.4093' N - 76° 30.9584' W;</p>   |
| <p>(f) Oyster Creek, northwest of the Highway 70 Bridge; and</p>  | <p>(x) Tusk Creek - northwest of a line beginning on the northwest shore at a point 34° 44.8049' N - 76° 30.6248' W; running southerly to the south shore to a point 34° 44.6074' N - 76° 30.7553' W; and</p>  |
| <p>(g) Jarretts Bay Area:</p> <p>(i) Smyrna Creek - northwest of the Highway 70 Bridge;</p> <p>(ii) Ditch Cove and adjacent tributary - east of a line beginning on the north shore at a point 34° 48.0167' N - 76° 28.4674' W; running southerly to the south shore to a point 34° 47.6143' N - 76° 28.6473' W;</p>  | <p>(xi) Creek west of Bells Island - west of a line beginning on the north shore at a point 34° 43.9531' N - 76° 30.4144' W; running southerly to the</p>  |

- (11) Straits, North River, Newport River Area:
- (a) Straits:
- (i) Sleepy Creek - north of a line beginning on the west shore at a point 34° 43.3925' N - 76° 31.4912' W; running easterly to the east shore to a point 34° 43.3651' N - 76° 31.3250' W;
- (ii) Dicks Creek - north of a line beginning on the west shore at a point 34° 43.3858' N - 76° 32.9125' W; running southeasterly to the east shore to a point 34° 43.3912' N - 76° 32.8605' W; and
- (iii) Whitehurst Creek - north of a line beginning on the west shore at a point 34° 43.5118' N - 76° 33.3392' W; running northeasterly to the east shore to a point 34° 43.5561' N - 76° 33.1869' W;
- (b) North River, north of Highway 70 Bridge:
- (i) Ward Creek - north of Highway 70 Bridge:
- (A) North Leopard Creek - southeast of a line beginning on the southwest shore at a point 34° 45.9573' N - 76° 34.4208' W; running northeasterly to the northeast shore to a point 34° 46.0511' N - 76° 34.3170' W; and
- (B) South Leopard Creek - southeast of a line beginning on the southwest shore at a point 34° 45.4930' N - 76° 34.7622' W; running northeasterly to the northeast shore to a point 34° 45.5720' N - 76° 34.6236' W; and
- (ii) Turner Creek (Gibbs Creek) - west of a line beginning on the north shore at a point 34° 43.4693' N - 76° 37.6372' W;
- (c) Newport River - west of a line beginning on the north shore at a point 34° 46.5635' N - 76° 44.3998' W; running southerly to Lawton Point to a point 34° 45.6840' N - 76° 44.0895' W;
- (i) Russel Creek - northeast of a line beginning on the north shore at a point 34° 45.5840' N - 76° 39.8020' W; running southeasterly to the south shore to a point 34° 45.5819' N - 76° 39.7895' W;
- (ii) Ware Creek - northeast of a line beginning on the north shore at a point 34° 46.4576' N - 76° 40.5020' W; running southeasterly to the south shore to a point 34° 46.4125' N - 76° 40.4460' W;
- (iii) Bell Creek - east of a line beginning on the north shore at a point 34° 47.2805' N - 76° 40.9082' W; running southerly to the south shore to a point 34° 47.0581' N - 76° 40.8854' W;
- (iv) Eastman Creek - east of a line beginning on the north shore at a point 34° 47.8640' N - 76° 41.0671' W; running southerly to the south shore to a point 34° 47.8027' N - 76° 41.0605' W;
- (v) Oyster Creek - north of a line beginning on the west shore at a point 34° 46.6610' N - 76° 42.5011' W; running easterly to the east shore to a point 34° 46.7161' N - 76° 42.3481' W;
- (vi) Harlow Creek - north of a line beginning on the west shore at a point 34° 46.7138' N - 76° 43.4838' W; running northeasterly to the east shore to a point 34° 46.8490' N - 76° 43.3296' W;
- (vii) Calico Creek - west of a line beginning on the north shore at a point 34° 43.7318' N - 76° 43.1268' W; running southerly to the south shore to a point 34° 43.6066' N - 76° 43.2040' W; and
- running southerly to the south shore to a point 34° 43.4054' N - 76° 37.6585' W; and

- (viii) Crab Point Bay - northwest of a line beginning on the northeast shore at a point 34° 44.0615' N - 76° 42.9393' W; running southwesterly to the southwest shore to a point 34° 43.9328' N - 76° 43.0721' W;
- (12) Bogue Sound - Bogue Inlet Area:
  - (a) Gales Creek - north of the Highway 24 Bridge;
  - (b) Broad Creek - north of the Highway 24 Bridge;
  - (c) Sanders Creek - north of a line beginning at a point 34° 42.4694' N - 76° 58.3754' W on the west shore; running easterly to a point 34° 42.4903' N - 76° 58.1434' W on the east shore;
  - (d) Goose Creek - north of a line beginning on the west shore at a point 34° 41.8183' N - 77° 00.7208' W; running easterly to the east shore to a point 34° 41.8600' N - 77° 00.5108' W;
  - (e) Archer Creek - west of a line beginning on the north shore at a point 34° 40.4721' N - 77° 00.7577' W; running southerly to the south shore to a point 34° 40.3521' N - 77° 00.8008' W;
  - (f) White Oak River - northwest of a line beginning on the northeast shore at a point 34° 45.6730' N - 77° 07.5960' W; running southwesterly to the southwest shore to a point 34° 45.2890' N - 77° 07.7500' W;
    - (i) Pettiford Creek - east of a line beginning on the north shore at a point 34° 42.8670' N - 77° 05.3990' W; running southerly to the south shore to a point 34° 42.6310' N - 77° 05.3180' W; and
    - (ii) Holland Mill Creek - west of a line beginning on the north shore at a point 34° 43.8390' N - 77° 08.0090' W; running southeasterly to the south shore to a point 34° 43.4800' N - 77° 07.7650' W;
  - (g) Hawkins Creek - west of a line beginning on the north shore at a point 34° 41.1210' N - 77° 07.5720' W; running southerly to the south shore to a point 34° 41.0460' N - 77° 07.5930' W;
  - (h) Queen's Creek - north of state road number 1509 bridge;
- (i) Dick's Creek - west of a line beginning on the north shore at a point 34° 39.9790' N - 77° 09.3470' W; running southeasterly to the south shore to a point 34° 39.9350' N - 77° 09.3280' W;
- (ii) Parrot Swamp - west of a line beginning on the north shore at a point 34° 40.6170' N - 77° 09.7820' W; running southeasterly to the south shore to a point 34° 40.3660' N - 77° 09.5980' W; and
- (iii) Hall's Creek - east of a line beginning on the north shore at a point 34° 41.0740' N - 77° 09.8640' W; running easterly to the south shore to a point 34° 41.0300' N - 77° 09.6740' W; and
- (i) Bear Creek - west of a line beginning at Willis Landing at a point 34° 38.7090' N - 77° 12.6860' W; running southeasterly to the south shore to a point 34° 38.4740' N - 77° 12.3810' W;
- (13) New River Area:
  - (a) Salliers Bay area - all waters north and northwest of the IWW beginning at a point on the shoreline 34° 37.0788' N - 77° 12.5350' W; running easterly to a point near Beacon "58" at a point 34° 37.9670' N - 77° 12.3060' W; running along the IWW near Cedar Point to a point 34° 33.1860' N - 77° 20.4370' W; running northerly to a point on the shoreline 34° 33.1063' N - 77° 20.4679' W; following the shoreline to the point of origin; including Howard Bay, Mile Hammock Bay, Salliers Bay, and Freeman Creek;
  - (b) New River Inlet area (including Hellgate Creek and Ward's Channel) - all waters south of the IWW from a point on the shoreline 34° 33.0486' N - 77° 18.6295' W; running northwesterly to a point near Beacon "65" 34° 33.0550' N - 77° 18.6380' W; running along the IWW to a point near Beacon "15" 34° 31.0630' N - 77° 22.2630' W; running southerly to a point on the shoreline 34° 30.9212' N - 77° 22.2257' W; following the shoreline across New River Inlet at the COLREGS demarcation line back to the point of origin excluding the marked New River Inlet Channel;
  - (c) New River:

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| (i)   | Trap's Bay - northeast of a line beginning on the west shore at a point 34° 34.0910' N - 77° 21.0010' W; running southeasterly to the east shore to a point 34° 33.8260' N - 77° 20.4060' W;                          |        | shore at a point 34° 35.2850' N - 77° 23.5500' W; running northerly to the east shore to a point 34° 35.3440' N - 77° 23.4860' W;   |
| (ii)  | Courthouse Bay:   |        |   |
|       | (A) Tributary of Courthouse Bay - southeast of a line beginning on Harvey's Point at a point 34° 35.0050' N - 77° 22.3910' W; running northeasterly to the east shore to a point 34° 35.0830' N - 77° 22.1890' W;     | (vi)   | Everette Creek - south of a line beginning on the west shore at a point 34° 34.2570' N - 77° 24.8480' W; running easterly to the east shore to a point 34° 34.2380' N - 77° 24.6970' W;                   |
|       | (B) Tributary of Courthouse Bay - northwest of a line beginning on the west shore at a point 34° 35.0970' N - 77° 22.6010' W; running northeasterly to the east shore to a point 34° 35.1630' N - 77° 22.5030' W; and | (vii)  | Stone's Creek - southwest of a line beginning on the northwest shore at a point 34° 36.6170' N - 77° 26.8670' W; running southeasterly to the southeast shore to a point 34° 36.5670' N - 77° 26.8500' W; |
|       | (C) Rufus Creek - east of a line beginning at a point on the north shore 34° 34.4630' N - 77° 21.6410' W; running southerly to a point near Wilken's Bluff 34° 34.3140' N - 77° 21.6620' W;                           | (viii) | Muddy Creek - north of a line beginning on the west shore 34° 36.8670' N - 77° 26.6340' W; running easterly to the east shore to a point 34° 36.8670' N - 77° 26.6170' W;                                 |
|       |   | (ix)   | Mill Creek - north of a line beginning on the west shore at a point 34° 37.2350' N - 77° 25.7000' W; running easterly to the east shore to a point 34° 37.2360' N - 77° 25.6890' W;                       |
|       |   | (x)    | Whitehurst Creek - west of a line beginning on the north shore at a point 34° 38.0780' N - 77° 22.6110' W; running easterly to the south shore to a point 34° 38.0720' N - 77° 22.6000' W;                |
|       |   | (xi)   | Town Creek - west of a line beginning on the north shore at a point 34° 39.6060' N - 77° 23.0690' W; running southerly to the south shore to a point 34° 39.5950' N - 77° 23.0830' W;                     |
| (iii) | Wheeler Creek - south of a line beginning on the west shore at a point 34° 34.0570' N - 77° 23.3640' W; running easterly to a point near Poverty Point 34° 34.1060' N - 77° 23.2440' W;                               | (xii)  | Lewis Creek - southwest of a line beginning on the northwest shore at a point 34° 40.9330' N - 77° 24.5290' W; running southeasterly to the southeast shore to a point 34° 40.9190' N - 77° 24.5040' W;   |
| (iv)  | Fannie Creek - south of a line beginning on the west shore at a point 34° 34.1470' N - 77° 23.6390' W; running easterly to the east shore to a point 34° 34.1300' N - 77° 23.5600' W;                                 | (xiii) | Northeast Creek - east of a line beginning at the mouth of Scale's Creek at a point 34° 43.7350' N - 77° 24.1190' W; running southeasterly to   |
| (v)   | Snead's Creek - northwest of a line beginning on the west   |        |   |

- (xiv) the south shore to a point 34° 43.3950' N - 77° 23.5450' W; Southwest Creek - southwest of a line beginning on the north shore at a point 34° 41.8500' N - 77° 25.6460' W; running southeasterly to the south shore to a point 34° 41.5540' N - 77° 25.2250' W; and

(xv) Upper New River - north of a line beginning on the west shore at a point 34° 42.9770' N - 77° 25.9070' W; running easterly through a point near Beacon "53" to a point 34° 43.2600' N - 77° 25.3800' W; to the east shore to a point 34° 43.4260' N - 77° 25.0700' W; and

(d) Chadwick Bay - all waters bounded by a line beginning on Roses Point at a point 34° 32.2240' N - 77° 22.2880' W; running easterly to a point near Marker "6" at 34° 32.4180' N - 77° 21.6080' W; then following the IWW to a point near Marker "14" at 34° 31.3220' N - 77° 22.1520' W; following the shoreline of Chadwick Bay back to the point of origin;

(i) Fullard Creek (including Charles Creek) - northwest of a line beginning on the north shore at a point 34° 32.2210' N - 77° 22.8080' W; running southeasterly to the south shore to a point 34° 32.0340' N - 77° 22.7160' W; and

(ii) Bump's Creek - north of a line beginning on the west shore at a point 34° 32.3430' N - 77° 22.4570' W; running northeasterly to the east shore to a point 34° 32.4400' N - 77° 22.3830' W;

(14) Stump Sound Area - Stump Sound - all waters north of the IWW from a point on the shoreline 34° 31.1228' N - 77° 22.3181' W; running southerly to a point across the IWW from Beacon "15" 34° 31.1040' N - 77° 22.2960' W; running along the IWW to a point near Marker "78" 34° 25.4050' N - 77° 34.2120' W; running northerly to a point on the shoreline 34° 24.5183' N - 77° 34.9833' W; running along the shoreline to the point of origin; except 100 feet north of the IWW from a point across from Beacon "49" 34° 28.1330' N - 77° 30.5170' W to a point near Marker "78" 34° 25.4050' N - 77° 34.2120' W. All waters south of IWW from a point on the shoreline 34° 31.0550' N - 77° 22.2574' W; running northerly to a point near Beacon "15" at 34° 31.0630' N - 77° 22.2630' W; running along the IWW to a point across the IWW from Marker "78" 34° 25.3110' N - 77° 34.1710' W; running southeasterly to a point on the shoreline 34° 23.9817' N - 77° 35.0367' W; running along the shoreline to the point of origin; except 100 feet on the south side of the IWW from a point near Beacon "49" 34° 28.0820' N - 77° 30.4600' W at Morris Landing to a point across the IWW from Marker "78" 34° 25.3110' N - 77° 34.1710' W and except the dredged canals at Old Settler's Beach and the dredged channel from the IWW north of Marker "57" to the Old Settler's Beach Canals; Topsail Sound Area:

(a) Virginia Creek - all waters northwest of a line beginning on the southwest shore near the mouth at a point 34° 24.8030' N - 77° 35.5960' W; running northeasterly to a point 34° 25.0333' N - 77° 35.3167' W; running easterly to intersect the nursery area line near Becky's Creek at a point 34° 25.4050' N - 77° 34.2120' W, with the exception of the natural channel as marked by the North Carolina Division of Marine Fisheries;

(b) Old Topsail Creek - all waters northwest of a line beginning on the northeast shore at a point 34° 21.7740' N - 77° 40.3870' W; running southwesterly to the southwest shore to a point 34° 21.4930' N - 77° 40.6900' W, with the exception of the dredged channel as marked by the North Carolina Division of Marine Fisheries;

(c) Topsail Sound - all waters enclosed within a line starting near Beacon "BC" at a point 34° 24.6110' N - 77° 35.7050' W; then bounded on the northeast and southeast by Bank's Channel, on the southwest by Marker "98" channel and on the northeast by the IWW; then back to the point of origin; and

(d) Mallard Bay Area - all waters northwest of the IWW beginning at a point on the shoreline 34° 24.0278' N - 77° 36.8498' W; running southerly to a point 34° 24.0167' N - 77° 36.7333' W near Beacon "93"; running southwesterly to a point 34° 23.8167' N - 77° 36.9667' W; running southwesterly along the marsh line to a point on the shoreline 34° 22.6168' N - 77° 38.8580' W near Beacon "96";

- running along the shoreline to the point of origin;
- (16) Middle Sound Area:
- (a) Howard Channel and Long Point Channel area - all waters southeast of the IWW beginning at a point on the shoreline 34° 20.4514' N - 77° 40.0183' W; running along the shorelines of Topsail Inlet Channel and Marker # 98 Channel to a point near Beacon "98" 34° 21.5670' N - 77° 40.4580' W; running along the IWW to a point on the north side of the Figure 8 Island Marina Channel to a point 34° 16.5120' N - 77° 45.4870' W; following the shoreline of Figure 8 Island Marina Channel to a point 34° 16.2628' N - 77° 44.7855' W; following the shoreline across Rich Inlet at the COLREGS demarcation line to the point of origin. [with the exception of Howard Channel from the IWW to New Topsail Inlet, Green Channel from Marker "105" to Rich's Inlet, Butler's Creek (Utley's Channel) from the IWW to Nixon's Channel, and Nixon's Channel from IWW to Rich's Inlet;]
- (b) Futch Creek - northwest of a line beginning on the north shore at Baldeagle Point at a point 34° 17.9900' N - 77° 44.4930' W; running southerly to Porter's Neck to a point 34° 18.1170' N - 77° 44.3760' W;
- (c) Page's Creek - northwest of a line beginning on the north shore at a point 34° 16.7420' N - 77° 46.6940' W; running southwesterly to the south shore to a point 34° 16.6910' N - 77° 46.8510' W; and
- (d) All waters bounded on the north by the Figure Eight Island Causeway, on the east by Mason's Channel, on the south by Mason's Inlet Channel and on the west by the Intracoastal Waterway, with the exception of Mason's Channel;
- (17) Greenville Sound Area:
- (a) Shell Island area - all waters bounded on the north by Mason's Inlet Channel, on the west by the IWW, on the south by Old Moores Inlet Channel and on the east by Wrightsville Beach;
- (b) Howe Creek (Moore's Creek) - northwest of a line beginning on the north shore at a point 34° 14.9060' N - 77° 47.2180' W; running southwesterly to the south shore to a point 34° 14.8470' N - 77° 47.3810' W;
- (c) Bradley Creek - all waters west of a line beginning on the north side of the Highway 17, 74 and 76 Bridge at a point 34° 12.9700' N - 77° 50.0260' W; running southerly to the south side of the bridge at a point 34° 12.8620' N - 77° 50.0550' W; and
- (d) Wrightsville Beach area - all waters in an area enclosed by a line beginning across the IWW from the mouth of Bradley Creek at a point 34° 12.3530' N - 77° 49.1250' W; running easterly to a point (near the Borrow Pit) 34° 12.3820' N - 77° 48.6610' W; then bounded by Bank's Channel on the east, Shinn Creek on the south and the IWW on the west, back to point of origin;
- (18) Masonboro Sound Area:
- (a) Masonboro - Myrtle Grove Sound area (west side) - all waters west and northwest of the IWW beginning at a point on the shoreline 34° 12.7423' N - 77° 49.8391' W; running southeasterly to a point at the mouth of Bradley Creek at a point 34° 12.4130' N - 77° 49.2110' W; running along the west side of the IWW to a point opposite Beacon "161" at 34° 03.5590' N - 77° 53.4550' W; running westerly to a point on the shoreline 34° 03.5715' N - 77° 53.4979' W; running along the shoreline back to the point of origin; and
- (b) Masonboro - Myrtle Grove Sound area (east side) - all waters south and southeast of a line beginning on the north end of Masonboro Island at a point 34° 10.9130' N - 77° 48.9550' W; running northwesterly to a point near the intersection of Shinn Creek and the IWW 34° 11.3840' N - 77° 49.5240' W; running along the east side of the IWW to a point near Marker "161" 34° 03.5270' N - 77° 53.3550' W; running southerly to a point on the shoreline 34° 03.3917' N - 77° 53.0423' W; running along the shoreline across Carolina Beach Inlet at the COLREGS demarcation line back to the point of origin (with the exception of Old Masonboro Channel and Carolina Beach Inlet Channel);
- (19) Cape Fear River Area:
- (a) Cape Fear River - all waters north of a line beginning on the west shore at a point 34° 10.4410' N - 77° 57.7400' W;

- W; running easterly through Beacon "59" to the east shore to a point 34° 10.4050' N - 77° 57.1310' W; with the exception of the maintained channel, and all waters north of a line beginning on the west shore at a point 34° 04.6040' N - 77° 56.4780' W; running easterly through Beacon "41" to the east shore to a point 34° 04.7920' N - 77° 55.4740' W; with the exception of 300 yards east and west of the main shipping channel up to Beacon "59" (mouth of Brunswick River);
- (b) The Basin (Ft. Fisher area) - east of a line beginning on the north shore at a point 33° 57.2950' N - 77° 56.1450' W; running southeasterly to the south shore to a point 33° 57.1120' N - 77° 56.2060' W;
- (c) Walden Creek - all waters northwest of a line beginning on the north side of county road No. 1528 bridge at a point 33° 58.2950' N - 77° 59.0280' W; running southerly to the south side of the bridge at a point 33° 58.2250' N - 77° 59.0440' W;
- (d) Baldhead Island Creeks:
- (i) Baldhead Creek - southeast of a line beginning on the north shore at a point 33° 51.7680' N - 77° 59.1700' W; running westerly to the south shore to a point 33° 51.7590' N - 77° 59.1850' W;
- (ii) Cape Creek - southeast of a line beginning on the north shore at a point 33° 51.9740' N - 77° 58.3090' W; running southwesterly to the south shore to a point 33° 51.9480' N - 77° 58.3480' W;
- (iii) Bluff Island Creek (East Beach Creek) - south of a line beginning on the west shore at a point 33° 52.6740' N - 77° 58.1530' W; running easterly to the east shore to a point 33° 52.6850' N - 77° 58.0780' W; and
- (iv) Deep Creek - south of a line on the west shore at a point 33° 52.6850' N - 77° 58.0780' W; running northeasterly to the east shore to a point 33° 52.7690' N - 77° 58.0110' W;
- (e) Dutchman Creek - north of a line beginning on the west shore at a point 33° 55.1560' N - 78° 02.7260' W;
- running southeasterly to the east shore to a point 33° 55.1130' N - 78° 02.5990' W;
- (f) Denis Creek - west of a line beginning on the north shore at a point 33° 55.0410' N - 78° 03.5180' W; running southerly to the south shore to a point 33° 55.0120' N - 78° 03.5110' W;
- (g) Piney Point Creek - west of a line beginning on the north shore at a point 33° 54.6310' N - 78° 03.5020' W; running southerly to the south shore to a point 33° 54.6040' N - 78° 03.5010' W;
- (h) Molasses, Coward and Smokehouse creeks - all waters bounded by the IWW and the Elizabeth River on the north and east, the Oak Island Coast Guard canal on the east, Oak Island on the south and the CP and L Discharge canal on the west; and
- (i) Oak Island area - all waters north of the IWW from a point on the shoreline 33° 55.2827' N - 78° 03.7681' W; running southerly to a point across the IWW from Marker # 9 33° 55.2610' N - 78° 03.7630' W; running along the IWW to a point near Beacon "18" 33° 55.7410' N - 78° 10.2760' W; running northerly to a point on the shoreline 33° 55.7718' N - 78° 10.2744' W; running along the shoreline back to the point of origin; all waters south of the IWW from a point near Marker "9" 33° 55.2060' N - 78° 03.7580' W; running along the IWW to a point across the IWW from Beacon "18" 33° 55.7199' N - 78° 10.2764' W; running southerly to a point on the shoreline 33° 55.6898' N - 78° 10.2775' W; running along the shoreline back to the point of origin;
- (20) Lockwoods Folly Inlet Area:
- (a) Davis Creek and Davis Canal - east of a line beginning on the north shore at a point 33° 55.2280' N - 78° 10.8610' W; running southerly to the south shore to a point 33° 55.1970' N - 78° 10.8390' W;
- (b) Lockwoods Folly River - north of a line beginning on the west shore at a point 33° 56.3880' N - 78° 13.2360' W; running easterly to the east shore to a point 33° 56.6560' N - 78° 12.8350' W; and
- (c) Spring Creek (Galloway Flats area) - all waters northwest of a line beginning on the north shore at a point 33° 55.7350' N - 78° 13.7090' W;

- running southwesterly to the south shore to a point 33° 55.5590' N - 78° 13.7960' W;
- (21) Shallotte Inlet Area:
- (a) Shallotte River - north of a line beginning on Bill Holden's Landing at a point 33° 55.8840' N - 78° 22.0710' W; running northeasterly to Gibbins Point to a point 33° 56.3190' N - 78° 21.8740' W;
- (b) Shallotte River (Ocean Flats) - excluding Gibbs Creek, the area enclosed by a line beginning at Long Point 33° 54.6210' N - 78° 21.7960' W; then bounded on the south by the IWW, the west by Shallotte River, the north by Gibb's Creek and the east by the shoreline of the Shallotte River back to the point of origin;
- (c) Shallotte Creek (Little Shallotte River) - east of a line beginning on Shell Landing at a point 33° 55.7390' N - 78° 21.6410' W; running southerly to Boone's Neck Point to a point 33° 55.5990' N - 78° 21.5480' W;
- (d) Saucepan Creek - northwest of a line beginning on the west shore at a point 33° 54.7007' N - 78° 23.4183' W; running northerly to the east shore (mouth of Old Mill Creek) to a point 33° 54.9140' N - 78° 23.4370' W; and
- (e) Old Channel area - all waters south of the IWW from a point near Beacon "83" 33° 54.2890' N - 78° 23.1930' W; running along the IWW to a point near Ocean Isle Beach Bridge 33° 53.7270' N - 78° 26.3760' W; running southerly to a point on the shoreline 33° 53.7082' N - 78° 26.3732' W; running southerly along the shoreline to a point on the shoreline 33° 53.3827' N - 78° 26.2118' W; running along the shoreline to the point of origin; except the dredged finger canals at Ocean Isle Beach located on the south side of the IWW between the Ocean Isle Beach Bridge and IWW Marker "89"; and
- (22) Little River Inlet Area:
- (a) Gause Landing area - all waters north of the IWW from a point on the shoreline 33° 53.9053' N - 78° 25.6064' W; running southerly to a point near Beacon "90" 33° 53.8790' N - 78° 25.5950' W; then following the IWW to a point at the intersection of the IWW and the South Carolina line; 33° 52.0003' N - 78° 33.5633' W; running northerly along the South Carolina line to a point on the shoreline 33° 52.0290' N - 78° 33.5893' W; running along the shoreline to the point of origin;
- (b) Eastern Channel Area - all waters bounded on the east and south by Eastern Channel, on the west by Jink's Creek and on the north by the IWW;
- (c) The Big Narrows Area:
- (i) Big Teague Creek - west of a line beginning on the north shore at a point 33° 52.8260' N - 78° 30.0110' W; running southerly to the south shore to a point 33° 52.8040' N - 78° 29.9940' W;
- (ii) Little Teague Creek - west of a line beginning on the north shore at a point 33° 52.9280' N - 78° 30.1500' W; running southeasterly to the south shore to a point 33° 52.9130' N - 78° 30.1220' W; and
- (iii) Big Norge Creek - south of a line beginning on the west shore at a point 33° 52.8550' N - 78° 30.6190' W; running easterly to the east shore to a point 33° 52.8620' N - 78° 30.5900' W;
- (d) Mad Inlet area - all waters south of the IWW from a point on the shoreline 33° 52.3121' N - 78° 30.4990' W; running northerly to a point near the Sunset Beach Bridge 33° 52.8450' N - 78° 30.6510' W; then following the IWW to a point at the intersection of the IWW and the South Carolina line 33° 51.9888' N - 78° 33.5458' W; running southeasterly along the South Carolina line to a point on the shoreline; running along the shoreline across Mad Inlet at the COLREGS demarcation line to the point of origin; with the exception of Bonaparte Creek; and
- (e) Calabash River - all waters east of a line beginning at a point on the north side of state road No. 1164 bridge at a point 33° 53.3850' N - 78° 32.9710' W; running southerly to the south side of the bridge at a point 33° 53.3580' N - 78° 32.9750' W.

*History Note:* Authority G.S. 113-134; 113-182; 143B-289.52;  
*Eff. January 1, 1991;*  
*Amended Eff. March 1, 1996; September 1, 1991;*  
*Recodified from 15A NCAC 03R .0003 Eff. December 17, 1996;*

*Amended Eff. May 1, 2017; April 1, 2011; December 1, 2006; September 1, 2005; August 1, 2004; May 1, 1997.*

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**15A NCAC 13B .0840 SAMPLING AND ANALYSIS**

(a) Monitoring or sample collection, handling and analysis required by this Section, and all costs involved, are the responsibility of the septage management firm permit holder.

(b) The permit holder of a septage land application site shall obtain representative soil samples once every two years from each field, as designated in permit, during the last quarter of the calendar year.

(c) Soil samples shall be analyzed for cation exchange capacity, pH, phosphorus, potassium, calcium, manganese, magnesium, zinc, and copper. If the results for zinc analysis are equal to or above 30 pounds per acre or the results for copper analysis are equal to or above 35 pounds per acre, analysis for the metals listed in Rule .0835(c)(10)(B) of this Section shall be required. Sites permitted to receive septage other than domestic septage shall be analyzed for cadmium to determine compliance with 40 CFR 257.3-5.

(d) Domestic septage and grease septage shall be monitored in accordance with 40 CFR Part 503.16(b).

(e) Domestic treatment plant septage proposed to be land applied at a permitted septage land application site shall be sampled before the initial application, and annually thereafter, prior to being removed from a treatment facility. Samples shall be analyzed for:

- (1) Metals listed in 40 CFR 503.13; and
- (2) Total solids, pH, ammonia, nitrates, total kjeldahl nitrogen (TKN), biochemical oxygen demand (BOD), chemical oxygen demand (COD), total phosphorus, potassium, sodium, and magnesium.

(f) Industrial or commercial septage proposed to be land applied at a permitted septage land application site shall be sampled prior to being removed from a wastewater system. Analytical results shall be submitted to the Division prior to the issuance of a permit or approval to land apply the septage. Samples shall be analyzed for:

- (1) Metals listed in 40 CFR 503.13;
- (2) Total solids, pH, ammonia, nitrates, TKN, BOD, COD, total phosphorus, potassium, sodium, and magnesium; and
- (3) Organic chemicals, using a complete EPA Test Method 1311 Toxicity Characteristic Leaching Procedure or other appropriate analysis, such as EPA Test Method 8260 Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry or 8270 Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry, unless an examination of the industrial process and the material used indicates less extensive analysis is acceptable.

(g) Sample analysis required by this Section shall be performed either by the North Carolina Department of Agriculture and Consumer Services laboratory or by a laboratory certified by the North Carolina Division of Water Resources for waste analysis.

Analysis for inorganic constituents shall be conducted in accordance with 40 CFR Part 503.8.

*History Note: Authority G.S. 130A-291.1;  
Eff. October 1, 2009;  
Amended Eff. May 1, 2017.*

**TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

**CHAPTER 08 – BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS**

**21 NCAC 08A .0301 DEFINITIONS**

(a) The definitions set out in G.S. 93-1(a) apply when those defined terms are used in this Chapter.

(b) In addition to the definitions set out in G.S. 93-1(a), the following definitions apply when these terms are used in this Chapter:

- (1) "Active," when used to refer to the status of a person, describes a person who possesses a North Carolina certificate of qualification and who has not otherwise been granted inactive status;
- (2) "Agreed-upon procedures" means a professional service whereby a CPA is engaged to issue a report of findings based on specific procedures performed on identified subject matter;
- (3) "AICPA" means the American Institute of Certified Public Accountants;
- (4) "Applicant" means a person who has applied to take the CPA examination or applied for a certificate of qualification;
- (5) "Attest service" means a professional service whereby a CPA in the practice of public accounting is engaged to issue or does issue:
  - (A) any audit or engagement to be performed in accordance with the Statements on Auditing Standards, Statements on Generally Accepted Governmental Auditing Standards, Public Company Accounting Oversight Board Auditing Standards, and International Standards on Auditing;
  - (B) any review engagement to be performed in accordance with the Statements on Standards for Accounting and Review Services;
  - (C) any compilation engagement to be performed in accordance with the Statements on Standards for Accounting and Review Services; or
  - (D) any engagement to be performed in accordance with the Statements on Standards for Attestation Engagements;

- (6) "Audit" means a professional service whereby a CPA is engaged to examine financial statements, items, accounts, or elements of a financial statement prepared by management, in order to express an opinion on whether the financial statements, items, accounts, or elements of a financial statement are presented in conformity with an applicable reporting framework, that enhances the degree of confidence that intended users can place on the financial statements, items, accounts, or elements of a financial statement;
- (7) "Calendar year" means the 12 months beginning January 1 and ending December 31;
- (8) "Candidate" means a person whose application to take the CPA examination has been accepted by the Board and who may sit for the CPA examination;
- (9) "Client" means a person or an entity who orally or in writing agrees with a licensee to receive any professional services performed or delivered;
- (10) "Commission" means compensation, except a referral fee, for recommending or referring any product or service to be supplied by another person;
- (11) "Compilation" means a professional service whereby a CPA is engaged to present, in the form of financial statements, information that is the representation of management without undertaking to express any assurance on the statements;
- (12) "Contingent fee" means a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service;
- (13) "CPA" means certified public accountant;
- (14) "CPA firm" means a sole proprietorship, a partnership, a professional corporation, a professional limited liability company, or a registered limited liability partnership that uses certified public accountant(s) or CPA(s) in or with its name or offers to or renders any attest services in the public practice of accountancy;
- (15) "CPE" means continuing professional education;
- (16) "Disciplinary action" means revocation, suspension of, or refusal to grant a certificate, or the imposition of a reprimand, probation, constructive comment, or any other penalty or condition;
- (17) "FASB" means the Financial Accounting Standards Board;
- (18) "Firm network" means an association of entities that includes one or more firms that cooperate for the purpose of enhancing the firms' capabilities to provide professional services and share one or more of the following characteristics:
  - (A) the use of a common brand name, including initials, as part of the firm name;
  - (B) common control among the firms through ownership, management, or other means;
  - (C) profits or costs, excluding costs of operating the association; costs of developing audit methodologies, manuals, and training courses; and other costs that are immaterial to the firm;
  - (D) common business strategy that involves ongoing collaboration amongst the firms whereby the firms are responsible for implementing the association's strategy and are accountable for performance pursuant to that strategy;
  - (E) significant part of professional resources; or
  - (F) common quality control policies and procedures that firms are required to implement and that are monitored by the association;
- (19) "GASB" means the Governmental Accounting Standards Board;
- (20) "Inactive," when used to refer to the status of a person, describes a person who has requested inactive status and has been approved by the Board and who does not use the title certified public accountant, nor does he or she allow anyone to refer to him or her as a certified public accountant, and neither he nor she nor anyone else refers to him or her in any representation as described in Rule .0308(b) of this Section;
- (21) "IRS" means the Internal Revenue Service;
- (22) "Jurisdiction" means any state or territory of the United States or the District of Columbia;
- (23) "License year" means the 12 months beginning July 1 and ending June 30;
- (24) "Member of a CPA firm" means any CPA who has an equity ownership interest in a CPA firm;
- (25) "NASBA" means the National Association of State Boards of Accountancy;
- (26) "NCACPA" means the North Carolina Association of Certified Public Accountants;
- (27) "North Carolina office" means any office physically located in North Carolina;
- (28) "Person" means any natural person, corporation, partnership, professional limited liability company, registered limited liability partnership, unincorporated association, or other entity;

- (29) "Professional" means arising out of or related to the particular knowledge or skills associated with CPAs;
- (30) "Referral fee" means compensation for recommending or referring any service of a CPA to any person;
- (31) "Revenue Department" means the North Carolina Department of Revenue;
- (32) "Review" means a professional service whereby a CPA is engaged to perform procedures, limited to analytical procedures and inquiries, to obtain a reasonable basis for expressing limited assurance on whether any material modifications should be made to the financial statements for them to be in conformity with generally accepted accounting principles or other comprehensive basis of accounting;
- (33) "Reviewer" means a member of a review team including the review team captain;
- (34) "Suspension" means a revocation of a certificate for a specified period of time. A CPA may be reinstated after a specific period of time if the CPA has met all conditions imposed by the Board at the time of suspension;
- (35) "Trade name" means a name used to designate a business enterprise;
- (36) "Work papers" mean the CPA's records of the procedures applied, the tests performed, the information obtained, and the conclusions reached in attest services, tax services, consulting services, special report services, or other engagements. Work papers include programs used to perform professional services, analyses, memoranda, letters of confirmation and representation, checklists, copies or abstracts of company documents, and schedules of commentaries prepared or obtained by the CPA. The forms include handwritten, typed, printed, word processed, photocopied, photographed, and computerized data, or in any other form of letters, words, pictures, sounds, or symbols; and
- (37) "Work product" means the end result of the engagement for the client that may include a tax return, attest or assurance report, consulting report, or financial plan. The forms include handwritten, typed, printed, word processed, photocopied, photographed, and computerized data, or in any other form of letters, words, pictures, sounds, or symbols.

(c) Any requirement to comply by a specific date to the Board that falls on a weekend or federal holiday shall be received as in compliance if postmarked by U.S. Postal Service cancellation by that date, if received by a private delivery service by that date, or received in the Board office on the next business day.

*History Note:* Authority G.S. 93-1; 93-12; 93-12(3);  
Eff. February 1, 1976;

*Readopted Eff. September 26, 1977;*  
*Amended Eff. January 1, 2014; February 1, 2011; January 1, 2006; January 1, 2004; April 1, 1999; August 1, 1998; February 1, 1996; April 1, 1994; September 1, 1992;*  
*Readopted Eff. February 1, 2016;*  
*Amended Eff. May 1, 2017.*

## **21 NCAC 08I .0101 DISCIPLINARY ACTION**

(a) Any person may file a complaint with the Board against a CPA, pursuant to G.S. 150B, Article 3A for disciplinary action against a CPA for violations of G.S. 93 and this Chapter on forms provided by the Board that are on the Board's website at [www.nccpaboard.gov](http://www.nccpaboard.gov) and may be requested from the Board.

(b) The complaint shall set forth the facts upon which the complaint is based. The complainant shall confirm that he or she believes the facts stated in the complaint are true and that he or she is prepared to prove them at a hearing.

(c) The complaint shall be filed in the office of the Board. The Board's professional standards staff shall open a case file, notify the complainant of receipt of the complaint, notify and provide a copy of the complaint to the respondent named in the complaint, and conduct an investigation of the allegations in the complaint. Based upon the investigation and the recommendation of the Professional Standards Committee of the Board appointed by the Board President, and with the approval of the Board, the professional standards staff may do any of the following:

- (1) close the case without prejudice;
- (2) close the case with prejudice;
- (3) prepare a Consent Order;
- (4) apply to the courts for injunctive relief; or
- (5) prepare a proposed Hearing Notice.

The Professional Standards Committee shall determine whether the allegations in a case warrant applying to the courts for injunctive relief and whether the allegations in the proposed Hearing Notice, if proven, warrant a contested case proceeding pursuant to G.S. 150B-38 - 150B-42. A copy of any Hearing Notice filed and application for injunctive relief applied for shall be provided to the complainant in that matter.

(d) The Board shall notify the complainant and the respondent in any complaint filed with the Board of the disposition of the case and shall publish or announce the disciplinary action against a CPA.

*History Note:* Authority G.S. 55B-12; 93-12(9);  
*Eff. February 1, 1976;*  
*Readopted Eff. September 26, 1977;*  
*Amended Eff. April 1, 1994; May 1, 1989; June 1, 1985; October 1, 1984;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014;*  
*Amended Eff. May 1, 2017.*

## **21 NCAC 08N .0203 DISCREDITABLE CONDUCT PROHIBITED**

(a) A CPA shall not engage in conduct discreditable to the accounting profession.

(b) Prohibited discreditable conduct includes:

- (1) acts that reflect adversely on the CPA's honesty, integrity, trustworthiness, good moral character, or fitness as a CPA;
- (2) stating or implying an ability to improperly influence a governmental agency or official;
- (3) failing to comply with any order issued by the Board;
- (4) failing to fulfill the terms of a peer review engagement contract;
- (5) misrepresentation in reporting CPE credits;
- (6) entering into any settlement or other resolution of a dispute that purports to keep its contents confidential from the Board; or
- (7) failing to participate in a peer review program pursuant to 21 NCAC 08M .0105.

*History Note:* Authority G.S. 55B-12; 57D-2-02; 93-12(3); 93-12(9);  
*Eff. April 1, 1994;*  
*Amended Eff. January 1, 2014; January 1, 2004; August 1, 1995;*  
*Readopted Eff. February 1, 2016;*  
*Amended Eff. May 1, 2017.*

**21 NCAC 08N .0208 REPORTING CONVICTIONS, JUDGMENTS, AND DISCIPLINARY ACTIONS**

- (a) Criminal Actions. A CPA shall notify the Board within 30 days of any conviction or finding of guilt of, pleading of nolo contendere, or receiving a prayer for judgment continued to any criminal offense.
- (b) Civil Actions. A CPA shall notify the Board within 30 days of any judgment or settlement in a civil suit, bankruptcy action, administrative proceeding, or binding arbitration that:
- (1) is grounded upon an allegation of professional negligence, gross negligence, dishonesty, fraud, misrepresentation, incompetence, or violation of any federal or state tax law and
  - (2) was brought against either the CPA or a North Carolina office of a CPA firm of which the CPA was a managing owner.
- (c) Settlements. A CPA shall notify the Board within 30 days of any written settlement in which a client or former client releases the CPA from liability that is grounded upon an allegation of professional negligence; gross negligence; dishonesty; fraud; misrepresentation; incompetence; or violation of any federal, state, or local law, regardless of whether the client or former client has filed a civil suit or criminal charge.
- (d) Investigations. A CPA shall notify the Board within 30 days of any inquiry or investigation by the criminal investigation divisions of the Internal Revenue Service (IRS) or any state department of revenue pertaining to any personal or business tax matters.
- (e) Liens. A CPA shall notify the Board within 30 days of the filing of any liens by the Internal Revenue Service (IRS) or any state department of revenue regarding the failure to pay or apparent failure to pay for any amounts due for any tax matters.

*History Note:* Authority G.S. 55B-12; 57D-2-02; 93-12(3); 93-12(9);  
*Eff. April 1, 1994;*

*Amended Eff. January 1, 2014; January 1, 2006; April 1, 2003; April 1, 1999;*  
*Readopted Eff. February 1, 2016;*  
*Amended Eff. May 1, 2017.*

**21 NCAC 08N .0305 RETENTION OF CLIENT RECORDS**

(a) A CPA shall return client-provided records in the CPA's custody or control to the client at the client's request. Client-provided records are accounting or other records, including hardcopy and electronic reproductions of such records, belonging to the client that were provided to the CPA by, or on behalf of, the client.

(b) Unless a CPA and the client have agreed to the contrary, when a client makes a request for CPA prepared records or a CPA's work products that are in the CPA's custody or control that have not previously been provided to the client, the CPA shall respond to the client's request as follows:

- (1) The CPA shall provide CPA prepared records relating to a completed and issued work product to the client, except that such records may be withheld if fees are due to the CPA for that specific work product; and
- (2) CPA's work products shall be provided to the client, except that such work products may be withheld:
  - (A) if fees are due to the CPA for the specific work product;
  - (B) if the work product is incomplete;
  - (C) if for purpose of complying with professional standards (for example, withholding an audit report due to outstanding audit issues); or
  - (D) if threatened or outstanding litigation exists concerning the engagement or CPA's work.

(c) CPA prepared records are accounting or other records that the CPA was not specifically engaged to prepare and that are not in the client's books and records or are otherwise not available to the client, thus rendering the client's financial information incomplete. Examples include adjusting, closing, combining, or consolidating journal entries (including computations supporting such entries) and supporting schedules and documents that the CPA proposed or prepared as part of an engagement, (for an example, an audit). CPA's work products are deliverables set forth in the terms of the engagement, such as tax returns.

(d) Once a CPA has complied with these requirements, he or she shall not be under any further ethical obligation to:

- (1) comply with any subsequent requests to again provide records or copies of records described in Paragraphs (a) and (b) of this Rule. If subsequent to complying with a request, a client experiences a loss of records due to a natural disaster, the CPA shall comply with an additional request to provide such records; and
- (2) retain records for periods that exceed applicable professional standards, state and federal statutes and regulations, and contractual agreements relating to the service performed.

(e) A CPA who has provided records to an individual designated or held out as the client's representative, such as the general partner, majority shareholder, or spouse, shall not be obligated to provide such records to other individuals associated with the client.

(f) Work papers shall be the CPA's property, and the CPA is not required to provide such information to the client. However, state and federal statutes and regulations and contractual agreements may impose additional requirements on the CPA.

(g) In fulfilling a request for client provided records, CPA prepared records, or a CPA's work products, the CPA may:

- (1) charge the client a fee for the time and expense incurred to retrieve and copy such records and require that the client pay the fee before the CPA provides the records to the client;
- (2) provide the requested records in any format usable by the client. The CPA is not required to convert records that are not in electronic format to electronic format. If the client requests records in a specific format and the records are available in such format within the CPA's custody and control, the client's request should be honored. In addition, the CPA is not required to provide the client with formulas, unless the formulas support the client's underlying accounting or other records or the CPA was engaged to provide such formulas as part of a completed work product; and
- (3) make and retain copies of any records that the CPA returned or provided to the client.

(h) A CPA who is required to return or provide records to the client shall comply with the client's request as soon as practicable, but no later than 45 days after the request is made.

*History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994; Amended Eff. January 1, 2006; April 1, 2003; Readopted Eff. February 1, 2016; Amended Eff. May 1, 2017.*

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## **CHAPTER 46 – BOARD OF PHARMACY**

### **21 NCAC 46 .1505 EXAMINATION**

(a) The applicant shall pass the following examinations:

- (1) the North American Pharmacist Licensure Examination ("NAPLEX"); and
- (2) the North Carolina version of the Multistate Pharmacy Jurisprudence Examination ("MPJE").

(b) In order to pass either the NAPLEX or the MPJE, the applicant shall achieve the passing score set by the National Association of Boards of Pharmacy (or any organization designated by the National Association of Boards of Pharmacy to administer the NAPLEX or the MPJE).

(c) An applicant who achieves a passing score on one examination must achieve a passing score on the remaining examination within a two calendar year period starting from the

date of the first passing score. Failure to achieve passing scores on both examinations in this two calendar year period shall result in the applicant's application for licensure being denied. The applicant may, subject to the testing attempt limitations of Paragraph (d) of this Rule, reapply for licensure and restart the examination process.

(d) The applicant shall be afforded a total of five attempts to achieve a passing score on each examination. Failure to achieve a passing score on each examination within five attempts shall result in the applicant being ineligible for licensure.

*History Note: Authority G.S. 90-85.15; 90-85.16; Eff. April 1, 1983; Amended Eff. May 1, 2017; April 1, 2004; April 1, 2003; July 1, 1996; December 31, 1985.*

### **21 NCAC 46 .1615 E-PROFILE NUMBER REQUIRED FOR LICENSE, PERMIT, OR REGISTRATION**

(a) As part of the application for issuance or renewal of any in-state or out-of-state pharmacy permit, device and medical equipment permit, license to practice pharmacy, or pharmacy technician registration issued by the Board, the permittee, licensee, or registrant must report an e-Profile number to the Board.

(b) An e-Profile number is a unique identifier for permittees, licensees, and registrants that allows for the accurate identification and collection of licensure, disciplinary, inspection, and other information in a secured electronic profile.

(c) A permittee, licensee, or registrant may obtain an e-Profile number at no cost by contacting the National Association of Boards of Pharmacy by phone at (847) 391-4406; by mail at 1600 Feehanville Drive, Mount Prospect, Illinois 60056; or electronically at [www.nabp.pharmacy](http://www.nabp.pharmacy).

(d) Any person or entity holding a permit, license, or registration as of the effective date of this rule must obtain an e-Profile number prior to renewal of the permit, license, or registration for 2018.

*History Note: Authority G.S. 90-85.6; 90-85.15; 90-85.15A; 90-85.17; 90-85.20; 90-85.21; 90-85.21A; 90-85.22; Eff. May 1, 2017.*

### **21 NCAC 46 .2102 ELIGIBILITY TO VOTE**

(a) Eligible voters for Board members shall be the pharmacists licensed in North Carolina and residing in North Carolina on October 31 of the year the election begins.

(b) Eligible voters for the device and medical equipment subcommittee shall be all device and medical equipment permit holders in North Carolina and residing in North Carolina on October 31 of the year the election begins.

*History Note: Authority G.S. 90-85.7; 90-85.22; Eff. April 1, 1983; Amended Eff. May 1, 2017; September 1, 1995; May 1, 1989.*

### **21 NCAC 46 .2104 COMMITTEE ON NOMINATIONS**

The Board may appoint an advisory committee on nominations in September of each year that an election for Board position(s)

begins. Members of this committee shall submit at least two names of eligible candidates for each position to be filled on the Board and on the device and medical equipment subcommittee by October 1 for the next election.

*History Note: Authority G.S. 90-85.7;  
Eff. April 1, 1983;  
Amended Eff. May 1, 2017; July 1, 1996; May 1, 1989.*

**21 NCAC 46 .2105 NOMINATION BY PETITION**

Nominations may also be made by the petition of 10 eligible voters from a geographic area as specified in Rule .2103 of this Section. Any petition shall be filed in the Board office or postmarked before October 1 for the next election.

*History Note: Authority G.S. 90-85.7;  
Legislative Objection Lodged Eff. March 29, 1983;  
Eff. April 1, 1983;  
Curative Eff. April 1, 1983;  
Amended Eff. May 1, 2017; May 1, 1989.*

**21 NCAC 46 .2107 BALLOTS: CASTING AND COUNTING**

- (a) The ballot casting period for each election for a Board position shall begin on the November 1 six months prior to the expiration of a Board member's five-year term of office and shall conclude the March 1 after the ballot casting period begins.
- (b) The Board shall provide access to an electronic ballot to all eligible voters on November 1 of each year that an election for Board position(s) begins.
- (c) A description of a nominee's qualifications shall be accessible to all eligible voters.
- (d) On or before the March 1 that the ballot casting period ends, all ballots shall be cast electronically.
- (e) Ballots received shall be counted and certified by the Board of Pharmacy at the next regularly scheduled Board meeting following an election or at a special Board meeting called and noticed for the purpose of counting and certifying the ballots cast. The Board of Pharmacy shall determine the validity of any challenged ballot, and electronic or mechanical devices may be used in compiling election results. No person standing for election may participate in the counting and certification of ballots for the election involving that person.
- (f) If, by operation of Rule .2108 of this Section, a candidate is eligible to request a run-off election, that candidate must provide a request for a run-off, in writing to the Board's Executive Director within one week of the date that the Board certifies the election results. The run-off election shall begin one week from the date that the eligible candidate requests the run-off election and the ballot casting period shall be open for two weeks. With the exception of ballot casting period dates, a run-off election shall follow the same procedures described in this Rule.
- (g) The Executive Director shall convey the certified election results to the Governor.

*History Note: Authority G.S. 90-85.7;  
Eff. April 1, 1983;  
Amended Eff. May 1, 2017; January 1, 2009; April 1, 2003.*

**21 NCAC 46 .2108 DETERMINATION OF ELECTION RESULTS**

The determination of election results under this Section shall be in accordance with G.S. 163-111(a)(1) and (b)(1). A copy of G.S. 163-111 is available at [www.ncleg.net](http://www.ncleg.net).

*History Note: Authority G.S. 90-85.7;  
Eff. March 1, 1991;  
Amended Eff. May 1, 2017; December 1, 2001.*

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**CHAPTER 52 – BOARD OF PODIATRY EXAMINERS**

**21 NCAC 52 .0201 APPLICATION**

(a) Any applicant for a license to practice podiatry shall submit a written application to the executive secretary of the board. Such Application for Examination or Application of Reciprocity shall be made on a form provided from the board's website (<http://www.ncbpe.org>) or from the board's office as set forth in Rule .0101 of this Chapter. The application shall require the following information:

- (1) Application type (Regular, Temporary Military, Clinical Residency);
- (2) Date of Application;
- (3) Social Security Number;
- (4) Drug Enforcement Administration License Number (DEA), if any;
- (5) National Provider Number (NPI), if any;
- (6) Last name, first name, and middle name;
- (7) Mailing address, including city, state, and zip code;
- (8) Telephone number and type (home, mobile, business);
- (9) Email address;
- (10) Whether or not a U.S. citizen;
- (11) Whether or not the applicant has or is serving in the military, awarded an MOS in podiatry and date, whether or not the applicant's spouse is currently serving in the military, and dates of service;
- (12) Education (high school, college or university, graduate or professional, residencies, internships, fellowship training), including name and location of institution, dates attended, graduation completion, major and minor, and type of degree received;
- (13) Whether or not the applicant intends to practice in North Carolina upon licensure;
- (14) Whether or not the applicant has been licensed in another state or territory and, if so, state or territory, date of issue, expiration date, disciplinary actions (if any), and how license was obtained;
- (15) Whether or not the licensee has ever had a license revoked, suspended, denied, or cancelled; denied the privilege of taking an exam; dropped, suspended, warned, placed on scholastic or disciplinary probation, expelled,

or requested to resign from any school, college, or university, or advised by any such school of institution to discontinue studies therein; been a defendant in a legal action involving professional liability (malpractice), been named in a malpractice suit, had a professional liability claim paid on the applicant's behalf or paid such a claim; been a patient for the treatment of mental illness; been addicted to drugs or alcohol; or been convicted of a felony; and any explanation regarding such information that the applicant wishes to present to the board.

- (16) Whether or not the applicant has previously taken the North Carolina exam and when;
- (17) Whether or not the applicant requires special disability accommodations to take the board's examination;
- (18) The reasons why the applicant is applying for licensure in North Carolina;
- (19) A list of three references;
- (20) Applicant's oath;
- (21) A passport-quality photograph taken within 60 days prior to the date of the application; and
- (22) Applicant's signature.

(b) Applicants shall furnish the board with proof that the applicant meets the educational and examination requirements set forth in G.S. 90-202.5(a)

(c) The application shall be accompanied by a non-refundable application fee of three hundred fifty dollars (\$350.00).

(d) Applications shall also be notarized by a Notary Public in good standing.

*History Note: Authority G.S. 90-202.5; 90-202.6; 90-202.7; Eff. February 1, 1976; Amended Eff. June 1, 2011; April 1, 2005; January 1, 2005; December 1, 1988; Readopted Eff. September 1, 2016; Amended Eff. May 1, 2017.*

## **21 NCAC 52 .0207 ANNUAL RENEWAL OF LICENSE**

(a) The executive secretary of the board shall mail to the last known address of each license holder each year a form on which to apply for renewal of his or her license. The renewal application shall be pre-populated with information contained in the board's licensee database with a space for corrections or additions with regard to the following information about the licensee:

- (1) Social security number;
- (2) National Provider Number (NPI), if any;
- (3) Drug Enforcement Administration License Number (DEA), if any;
- (4) Marital status;
- (5) Name;
- (6) NC license number;
- (7) Birthdate;
- (8) Other states licensed in and license numbers;
- (9) Home address and phone number;
- (10) Business address and phone number;
- (11) Preferred mailing address (business or home);

- (12) Email address;
- (13) Whether or not the licensee would like to receive email correspondence from the board;
- (14) Medicare provider number;
- (15) Present practice status (e.g., active, teaching, retired, residency, other);
- (16) Principal setting of practice (e.g., hospital, nursing home, free-standing clinic, group, practitioner's office, nonfederal health facility, military facility, Veteran's Administration medical facility, school, other);
- (17) Form of employment (e.g., self-employed as a solo practitioner or non-solo practitioner, or employee of individual practitioner, partnership or group, government, other);
- (18) National board certifications (American Board of Podiatric Surgery, American Board of Foot and Ankle Surgery, American Board of Lower Extremity Surgery, and American Board of Multiple Specialties in Podiatry);
- (19) Hospital staff privileges (hospital, location, date privileges began, type of privileges), any denial of such privileges, and the reason for such denial since last renewal application;
- (20) Whether or not the licensee performs amputations, ankle surgery, or clubfoot procedures;
- (21) Whether or not the licensee is granted specialty privileges by the board for amputations, ankle surgery, or clubfoot procedures;
- (22) Continuing Medical Education (CME) credits earned in the previous license year, pursuant to G.S. 90-202.11 and S.L. 2015-241, s. 12F, 16(c);
- (23) Whether or not the licensee has ever had a license revoked, suspended, denied, or cancelled; been a defendant in a legal action involving professional liability (malpractice), been named in a malpractice suit, had a professional liability claim paid on the applicant's behalf or paid such a claim; been a patient for the treatment of mental illness; been addicted to drugs or alcohol; or been convicted of a felony; and any explanation regarding such information that the applicant wishes to present to the board;
- (24) Original signature;
- (25) Date of renewal application; or
- (26) Desire not to renew license.

(b) The renewal form and accompanying documents shall be returned to the board's offices as set forth in Rule .0101 with the original signatures of the licensed podiatrist. The penalties for failure to comply with this Rule are specified in G.S. 90-202.10.

(c) If the licensee does not receive his or her renewal application from the board directly, the licensee may obtain a generic copy, without the pre-populated information, from the board's website at <http://www.ncbpe.org> or by contacting the board's office as set forth in Rule .0101 of this Chapter.

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***APPROVED RULES***

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*History Note:* Authority G.S. 90-202.4(g); 90-202.10; 90-202.11; S.L. 2015-241, s. 12F, 16(c);  
Eff. February 1, 1976;  
Amended Eff. April 1, 2013; January 1, 2005; December 1, 1988;  
Readopted Eff. September 1, 2016;  
Amended Eff. May 1, 2017.

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## **RULES REVIEW COMMISSION**

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*This Section contains information for the meeting of the Rules Review Commission June 15, 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 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

### **RULES REVIEW COMMISSION MEMBERS**

#### **Appointed by Senate**

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

#### **Appointed by House**

Garth Dunklin (Chair)  
Stephanie Simpson (2<sup>nd</sup> 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**

June 15, 2017	July 20, 2017
August 17, 2017	September 21, 2017

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### **AGENDA**

#### **RULES REVIEW COMMISSION**

**THURSDAY, JUNE 15, 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. Commission for Mental Health, Developmental Disabilities and Substance Abuse Services - 10A NCAC 27H .0202, .0203, .0204, .0205, .0206, .0207 (May)
  - B. Department of Insurance - 11 NCAC 05A .0501, .0505, .0508, .0511 (Hammond)
  - C. Manufactured Housing Board - 11 NCAC 08 .0904 (Thomas)
  - D. Commission for Public Health - 15A NCAC 18A .1801, .1802, .1803, .1804, .1805, .1806, .1807, .1808, .1809, .1810, .1811, .1812, .1813, .1814, .1815, .1817, .1818, .1821, .1822, .1823, .1824, .1825, .1826, .1827, .1828, .1829, .1830, .1831, .1832, .1833, .1834, .2201, .2202, .2203, .2204, .2205, .2206, .2207, .2208, .2209, .2210, .2211, .2212, .2213, .2214, .2215, .2216, .2217, .2218, .2219, .2220, .2221, .3001, .3002, .3003, .3004, .3005, .3006, .3007, .3008, .3009, .3010, .3011, .3012, .3013, .3014, .3015, .3016 (Reeder)
  - E. Locksmith Licensing Board - 21 NCAC 29 .0402, .0601 (Reeder)
- IV. Review of Log of Filings (Permanent Rules) for rules filed April 21, 2017 through May 22, 2017
  - Medical Care Commission (Hammond)
  - Department of Health and Human Services (Hammond)
  - Commissioner of Insurance (Reeder)
  - Criminal Justice Education and Training Standards Commission (Reeder)
  - Environmental Management Commission (Reeder)
  - Coastal Resources Commission (Reeder)
  - Department of the Secretary of State (Reeder)
  - Department of Transportation (Reeder)
  - Medical Board (Hammond)

- Real Estate Commission (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. 14B NCAC 15C – Alcoholic Beverage Control Commission (May)
      2. 15A NCAC 07O – Coastal Resources Commission (May)
      3. 17 NCAC 05 - Department of Revenue (May)
      4. 21 NCAC 26 - Board of Landscape Architects (May)
      5. 21 NCAC 34 – Board of Funeral Service (Hammond)
    - Not scheduled for review this month
      6. 18 NCAC 02, 08, 11, 12 – Department of the Secretary of State (Hammond)
  - VII. Commission Business
    - Next meeting: Thursday, July 20, 2017
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**Commission Review**  
**Log of Permanent Rule Filings**  
**April 21, 2017 through May 22, 2017**

**MEDICAL CARE COMMISSION**

The rules in Chapter 13 are from the NC Medical Care Commission.

The rules in Subchapter 13D are rules for the licensing of nursing homes including general information (.2000); licensure (.2100); general standards of administration (.2200); patient and resident care and services (.2300); medical records (.2400); physician's services (.2500); pharmaceutical services (.2600); dietary services (.2700); activities, recreation and social services (.2800); special requirements (.2900); specially designated units (.3000); design and construction (.3100); functional requirements (.3200); fire and safety requirements (.3300); and mechanical, electrical, and plumbing requirements (.3400).

Administrative Penalty Determination Process  
 Repeal/\*

10A NCAC 13D .2111

**HEALTH AND HUMAN SERVICES, DEPARTMENT OF**

The rules in Chapter 14 are from the Director of the Division of Health Service Regulation.

The rules in Subchapter 14D concern overnight respite in certified day care programs including scope and definitions (.0100); physical plant rules (.0200); program management (.0300); enrollment to overnight respite services (.0400); staffing (.0500); medication administration (.0600); nutrition and food service (.0700); and program activities (.0800).

Definitions  
 Repeal/\*

10A NCAC 14D .0102

Submission of Information to the Division of Health Servi...  
 Repeal/\*

10A NCAC 14D .0201

Capacity  
 Repeal/\*

10A NCAC 14D .0202

Design and Construction  
 Repeal/\*

10A NCAC 14D .0203

Location  
 Repeal/\*

10A NCAC 14D .0204

Living Arrangement  
 Repeal/\*

10A NCAC 14D .0205

<u>Living Room</u> Repeal/*	10A	NCAC	14D	.0206
<u>Dining Room</u> Repeal/*	10A	NCAC	14D	.0207
<u>Kitchen</u> Repeal/*	10A	NCAC	14D	.0208
<u>Bedrooms</u> Repeal/*	10A	NCAC	14D	.0209
<u>Bathroom</u> Repeal/*	10A	NCAC	14D	.0210
<u>Storage Areas</u> Repeal/*	10A	NCAC	14D	.0211
<u>Corridor</u> Repeal/*	10A	NCAC	14D	.0212
<u>Outdoor Entrance and Exits</u> Repeal/*	10A	NCAC	14D	.0213
<u>Laundry Room</u> Repeal/*	10A	NCAC	14D	.0214
<u>Floors</u> Repeal/*	10A	NCAC	14D	.0215
<u>Housekeeping and Furnishings</u> Repeal/*	10A	NCAC	14D	.0216
<u>Fire Safety and Disaster Plan</u> Repeal/*	10A	NCAC	14D	.0217
<u>Building Service Equipment</u> Repeal/*	10A	NCAC	14D	.0218
<u>Outside Premises</u> Repeal/*	10A	NCAC	14D	.0219
<u>Planning Program Activities</u> Repeal/*	10A	NCAC	14D	.0301
<u>Administrator</u> Repeal/*	10A	NCAC	14D	.0302
<u>Supervisor in Charge</u> Repeal/*	10A	NCAC	14D	.0303
<u>Enrollment of Residents</u> Repeal/*	10A	NCAC	14D	.0401
<u>Planning Services for Individual Residents</u> Repeal/*	10A	NCAC	14D	.0402
<u>Staffing</u> Repeal/*	10A	NCAC	14D	.0501
<u>Staff</u> Repeal/*	10A	NCAC	14D	.0502
<u>Medication Administration</u> Repeal/*	10A	NCAC	14D	.0601
<u>Medication Administration Competency Evaluation</u> Repeal/*	10A	NCAC	14D	.0602
<u>Medication Administration Policies and Procedures</u> Repeal/*	10A	NCAC	14D	.0603
<u>Food Procurement and Safety</u> Repeal/*	10A	NCAC	14D	.0701
<u>Food Preparation and Service</u> Repeal/*	10A	NCAC	14D	.0702

<u>Menus</u>	10A	NCAC	14D	.0703
Repeal/*				
<u>Food Requirements</u>	10A	NCAC	14D	.0704
Repeal/*				
<u>Therapeutic Diets</u>	10A	NCAC	14D	.0705
Repeal/*				
<u>Feeding Assistance</u>	10A	NCAC	14D	.0706
Repeal/*				
<u>Accommodation of Resident Needs and Preferences</u>	10A	NCAC	14D	.0707
Repeal/*				
<u>Activities Program</u>	10A	NCAC	14D	.0801
Repeal/*				

## **INSURANCE, COMMISSIONER OF**

The rules in Chapter 6 are from the Agent Services Division.

The rules in Subchapter 6A cover general provisions (.0100); forms (.0200); examinations (.0300); licensing (.0400); license renewals and cancellations (.0500); license denials (.0600); prelicensing education (.0700); continuing education (.0800); and public adjusters (.0900).

<u>Approval of Courses</u>	11	NCAC	06A	.0809
Amend/*				

## **CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION**

The rules in Chapter 9 are from the Criminal Justice Education and Training Standards Commission. This Commission has primary responsibility for setting statewide education, training, employment, and retention standards for criminal justice personnel (not including sheriffs).

The rules in Subchapter 9B cover minimum standards for: employment (.0100); schools and training programs (.0200); criminal justice instructors (.0300); completion of training (.0400); school directors (.0500); and certification of post-secondary criminal justice education programs (.0600).

<u>Basic Law Enforcement Training</u>	12	NCAC	09B	.0205
Amend/*				
<u>Basic Training - Juvenile Court Counselors and Chief Cour...</u>	12	NCAC	09B	.0235
Amend/*				
<u>Basic Training - Juvenile Justice Officers</u>	12	NCAC	09B	.0236
Amend/*				

The rules in Subchapter 9C concern the administration of criminal justice education and training standards including responsibilities of the criminal justice standards division (.0100); forms (.0200); certification of criminal justice officers (.0300); accreditation of criminal justice schools and training courses (.0400); minimum standards for accreditation of associate of applied science degree programs incorporating basic law enforcement training (.0500); and equipment and procedures (.0600).

<u>Recommendation for General Instructor Certification</u>	12	NCAC	09C	.0216
Amend/*				

## **ENVIRONMENTAL MANAGEMENT COMMISSION**

The rules in Subchapter 2B pertain to surface water standards and monitoring including procedures for assignment of water quality standards (.0100); the standards used to classify the waters of the state (.0200); stream classifications

(.0300); effluent limitations (.0400); monitoring and reporting requirements (.0500); and water quality management plans (.0600).

Catawba River Basin 15A NCAC 02B .0308  
Amend/\*

### **COASTAL RESOURCES COMMISSION**

The rules in Subchapter 7L concern local planning and management grants including purpose and authority (.0100); general standards (.0500); application process (.0600); and grant administration.

Authority 15A NCAC 07L .0101  
Amend/\*

Purpose 15A NCAC 07L .0102  
Repeal/\*

Priorities for Funding Planning and Management Projects 15A NCAC 07L .0503  
Amend/\*

### **SECRETARY OF STATE, DEPARTMENT OF THE**

The rules in Chapter 12 concern lobbying including general provisions (.0100); forms completion (.0200); submission, review, amendment, and correction of documents (.0300); fees (.0400); economic information confidentiality protection (.0500); registration requirements and ending of lobbyist-principal relationship (.0600); disclosure of lobbyist and principal identity (.0700); lobbyist reporting (.0800); reporting by principal (.0900); solicitors and the solicitation of others (.1000); liaison personnel (.1100); confidentiality and records (.1200); preservation of records by lobbyists, principals, solicitors and liaisons (.1300); and department provision of lists to designated individuals (.1400).

Signature and Execution Under Oath of an Electronically F... 18 NCAC 12 .0214  
Amend/\*

### **TRANSPORTATION, DEPARTMENT OF**

The rules in Chapter 2 are from the Division of Highways.

The rules in Subchapter 2D concern highway operations including standards for design and construction (.0100); landscape (.0200); field operations-maintenance and equipment (.0400); ferry operations (.0500); oversize-overweight permits (.0600); highway design branch (.0700); prequalification advertising and bidding regulations (.0800); regulations for informal construction and repair contracts (.0900); adopt-a-highway program (.1000); and disadvantaged business enterprise, minority business enterprise and women business enterprise programs for highway and bridge construction contracts (.1100).

Non-Collusion and Certifications 19A NCAC 02D .0818  
Amend/\*

### **MEDICAL BOARD**

The rules in Subchapter 32A concern organization of the Board.

Meetings 21 NCAC 32A .0104  
Readopt without Changes/\*

Request for Declaratory Ruling 21 NCAC 32A .0111  
Readopt without Changes/\*

The rules in Subchapter 32K are from the North Carolina physicians health program including general information (.0100); and guidelines for program elements (.0200).

<u>Definitions</u>	21	NCAC	32K	.0101
Readopt with Changes/*				
<u>Receipt and Use of Information of Potential Impairment</u>	21	NCAC	32K	.0201
Readopt with Changes/*				
<u>Assessment and Referral</u>	21	NCAC	32K	.0202
Readopt with Changes/*				
<u>Monitoring Treatment Sources</u>	21	NCAC	32K	.0203
Readopt without Changes/*				
<u>Monitoring Rehabilitation and Performance</u>	21	NCAC	32K	.0204
Readopt with Changes/*				
<u>Monitoring Post-Treatment Support</u>	21	NCAC	32K	.0205
Repeal/*				
<u>Reports of Individual Cases to the Board</u>	21	NCAC	32K	.0206
Readopt with Changes/*				
<u>Periodic Reporting of Statistical Information</u>	21	NCAC	32K	.0207
Readopt with Changes/*				
<u>Confidentiality</u>	21	NCAC	32K	.0208
Repeal/*				
<u>Review Committee</u>	21	NCAC	32K	.0209
Adopt/*				

The rules in Subchapter 32M regulate the approval, registration and practice of nurse practitioners (.0100).

<u>Method of Identification</u>	21	NCAC	32M	.0111
Readopt without Changes/*				

The rules in Subchapter 32Y concern the controlled substance reporting system.

<u>Reporting Criteria</u>	21	NCAC	32Y	.0101
Amend/*				

## **REAL ESTATE COMMISSION**

The rules in Chapter 58 are from the North Carolina Real Estate Commission.

The rules in Subchapter 58A are rules relating to real estate brokers and salesmen including rules dealing with general brokerage (.0100); application for license (.0300); examinations (.0400); licensing (.0500); real estate commission hearings (.0600); petitions for rules (.0700); rulemaking (.0800); declaratory rulings (.0900); real estate education and recovery fund (.1400); discriminatory practices prohibited (.1600); mandatory continuing education (.1700); limited nonresident commercial licensing (.1800); post-licensure education (.1900); annual reports (.2000); brokers in military service (.2100); and broker price opinions and comparative market analyses (.2200).

<u>Continuing Education for License Activation</u>	21	NCAC	58A	.1703
Amend/*				

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**CONTESTED CASE DECISIONS**

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*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

This Section contains a listing of recently issued Administrative Law Judge decisions for contested cases that are non-confidential. Published decisions are available for viewing on the OAH website at <http://www.ncoah.com/hearings/decisions/>. If you are having problems accessing the text of the decisions online or for other questions regarding contested cases or case decisions, please contact the Clerk's office by email: [oah.clerks@oah.nc.gov](mailto:oah.clerks@oah.nc.gov) or phone 919-431-3000.

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
<b><u>PUBLISHED</u></b>							
16	ABC	09933	4/5/2017	NC Alcoholic Beverage Control Commission	v.	Holmes Oil Company Inc T/A Cruizers 50	Ward
16	DHR	11785	4/18/2017	Billy James Boughman	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Brooks
17	DHR	01534	4/20/2017	Hatem M Issa	v.	Department of Health and Human Services, Division of Public Health WIC	Overby
16	DOJ	06128	4/18/2017	Leroy Kenneth Williams	v.	NC Private Protective Services Board	Elkins
16	DOJ	08400	4/24/2017	Charles Joseph Horton	v.	NC Alarm Systems Licensing Board	Elkins

**CONTESTED CASE DECISIONS**

16	DOJ	09493	4/25/2017	James Oscar Williams	v.	NC Sheriffs' Education and Training Standards Commission	Elkins	
16	DOJ	09799	4/27/2017	Jeffrey Scott Moore	v.	NC Private Protective Services Board	May	
16	DOJ	10874	4/28/2017	Kevin Windell Byrum	v.	NC Private Protective Services Board	Lassiter	
17	DOJ	00047	4/7/2017; 4/12/2017	Stephen Ricci II	v.	NC Private Protective Services Board	Ward	
17	DOJ	00048	4/7/2017; 4/12/2017	Kelly Lamar Gibson	v.	NC Private Protective Services Board	Ward	
17	DOJ	00049	4/7/2017; 4/12/2017	Armisha Nichelle McLean	v.	NC Private Protective Services Board	Ward	
17	DOJ	01536	4/12/2017	Juan Cesilio Aponte	v.	NC Private Protective Services Board	Elkins	
16	OSP	05004	12/19/2016; 4/25/2017	Wen Chiann Yeh aka Wen Yeh Glenn L	v.	Department of Public Instructions Ms. Atkinson June St.Clair/State Superintendent of Public Instruction and Ms Vanessa W Jeter Director and Mr Kenneth NC Department of Transportation	Ward	partial/full
16	OSP	10258	4/17/2017	Jessup Kerri Ann	v.	Appalachian State University	Sutton	
16	OSP	10619	4/28/2017	McCaffrey Tamara Ann	v.	Haywood County Government	Sutton	
16	OSP	10707	4/27/2017	Frizzell	v.	North Carolina Department of Labor	Brooks	
17	OSP	00432; 00805; 00905	4/10/2017	Edwin Smith Preston III	v.			
<b><u>UNPUBLISHED</u></b>								
17	ABC	00988	4/11/2017	NC Alcoholic Beverage Control Commission	v.	Jeannine Santiago T/A Baileys Tavern	May	
17	ABC	01045	4/28/2017	Authentik Inc	v.	ABC Board	Mann	
15	CSE	07986	4/19/2017	Antonio L Sanders	v.	NC Department of Health and Human Services,	Elkins	

## CONTESTED CASE DECISIONS

15	CSE	08244	4/19/2017	Kenneth B Jeffreys	v.	Division of Social Services, Child Support Services NC Department of Health and Human Services, Division of Social Services, Child Support Services NC Department of Health and Human Services, Division of Social Services, Child Support Services NC Department of Health and Human Services, Division of Social Services, Child Support	Elkins	
15	CSE	08705	11/21/2016; 4/13/2017	Kelvin Jamison	v.	Enforcement NC Department of Health and Human Services, Division of Social Services, Child Support	Overby	partial/full
16	CSE	10361	4/12/2017; 4/13/2017	Sheanna L Ramsey	v.	Enforcement NC Department of Health and Human Services, Division of Social Services, Child Support	Overby	
16	CSE	10837	4/17/2017	Nathanael I Farnham	v.	Enforcement NC Department of Health and Human Services, Division of Social Services, Child Support	Brooks	
16	CSE	11558	4/6/2017	William T Henderson	v.	Enforcement NC Department of Health and Human Services, Division of Social Services, Child Support	Sutton	
16	CSE	11567	4/5/2017	Stanley V Grace	v.	Enforcement NC Department of Health and Human Services, Division of Social Services, Child Support	Overby	
17	CSE	00050	4/18/2017	David L McNair	v.	Enforcement NC Department of Health and Human Services, Division of Social Services, Child Support	Bawtinhimer	
17	CSE	00912	4/17/2017	David Meggett	v.	Enforcement NC Department of Health and Human Services, Division of Social Services, Child Support	Bawtinhimer	
17	CSE	01030	4/6/2017	Mayo Caldwell	v.	Enforcement NC Department of Health and Human Services,	Sutton	

**CONTESTED CASE DECISIONS**

17	CSE	01252	4/3/2017	Paul T Sprouse	v.	Human Services, Division of Social Services, Child Support Enforcement NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
17	CSE	01566	4/11/2017	Charles Norwood Jr	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Overby
15	DCS	05960	4/19/2017	Michael J. Dunn	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services NC Department of Health and Human Services, Division of Social Services, Child Support Services	Elkins
15	DCS	06380	4/28/2017	Marquieta Taylor	v.	NC Department of Health and Human Services, Division of Child Development and Early Education NC Department of Health and Human Services, Environmental Health Section NC Department of Health and Human Services, Div of Health Service Regulations	Elkins
16	DHR	07809	4/3/2017	Amy Fannon	v.	NC Department of Health and Human Services, Division of Child Development and Early Education NC Department of Health and Human Services, Environmental Health Section NC Department of Health and Human Services, Div of Health Service Regulations	May
17	DHR	00367	4/4/2017	Cathy Cheek	v.	NC Department of Health and Human Services, Division of Child Development and Early Education NC Department of Health and Human Services, Environmental Health Section NC Department of Health and Human Services, Div of Health Service Regulations	Lassiter
17	DHR	00726	4/28/2017	Scott Lang McDonalds JSL & More	v.	NC Department of Health and Human Services, Division of Child Development and Early Education NC Department of Health and Human Services, Environmental Health Section NC Department of Health and Human Services, Div of Health Service Regulations	Mann
17	DHR	01507	4/28/2017	Margaretta Louise Hines Brenda L Hopkins The Elizabeth Missionary Baptist Church	v.	NC Department of Health and Human Services, Division of Child Development and Early Education NC Department of Health and Human Services, Environmental Health Section NC Department of Health and Human Services, Div of Health Service Regulations	Brooks
17	DHR	01911	4/21/2017		v.	NC Department of Health and Human Services, Division of Child Development and Early Education NC Department of Health and Human Services, Environmental Health Section NC Department of Health and Human Services, Div of Health Service Regulations	Ward

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**CONTESTED CASE DECISIONS**

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				Learning Center		Adult Care Food Program	
17	DOJ	01214	4/21/2017	Dalton Timothy Burr	v.	NC Sheriffs' Education and Training Standards Commission	Sutton
17	DOT	01506	4/6/2017	Steven Everhart	v.	NC Department of Transportation	Brooks
16	INS	12285	4/10/2017	Nichol Y Thrash	v.	North Carolina State Health Plan	Bawtinhimer
17	INS	01131	4/25/2017	Andrea Leigh Kelly	v.	North Carolina State Health Plan	Lassiter
17	INS	01504	4/27/2017	Eda K Martinez	v.	State Health Employee	Overby
17	INS	01510	4/19/2017	Charlie Oliver Wall	v.	North Carolina State Health Plan	Brooks
17	INS	01671	4/28/2017	Tracy Bussell	v.	North Carolina State Health Plan	Brooks
17	MIS	01319	4/7/2017	HGGLBT International Express Trust by and thru Trustee Board	v.	State of North Carolina, Durham County, Archie Smith Jr III, Clerk of Court, Jeff D. Rogers, Bar #14291, State Agent/Officer of the Court Case #15 SP 702	Overby
17	OSP	00479	4/12/2017	Gregory Javon Powell	v.	NC Department of Public Safety Division of Prisons	Ward