

# ***NORTH CAROLINA REGISTER***

**VOLUME 32 • ISSUE 12 • Pages 1172 – 1249**

**December 15, 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.

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**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2017 – December 2017

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 <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
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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.



# State of North Carolina

**ROY COOPER**  
GOVERNOR

November 9, 2017

**EXECUTIVE ORDER NO. 26**

**ALBEMARLE-PAMLICO NATIONAL ESTUARY PARTNERSHIP**

**WHEREAS**, the Albemarle-Pamlico region includes one of the nation's largest estuarine systems; and

**WHEREAS**, the Albemarle-Pamlico estuarine system possesses incredible natural diversity, natural resources, and history, and bestows extensive economic benefits on the State; and

**WHEREAS**, the United States Congress designated the Albemarle-Pamlico Sounds as an "estuary of national significance" in 1987; and

**WHEREAS**, the protection and restoration of the Albemarle-Pamlico estuarine system supports its ecological integrity, the regional economy, and local communities; and

**WHEREAS**, the Albemarle-Pamlico National Estuary Partnership ("APNEP") excels as a science-based cooperative among the State of North Carolina, the Commonwealth of Virginia, the United States Environmental Protection Agency ("EPA"), and many other federal, state, and local agencies and organizations; and

**WHEREAS**, APNEP requires a legal framework specifying its governance structure and organizational processes and establishing an APNEP Office ("Office"); and

**WHEREAS**, APNEP's thirty-year legacy of supporting and synthesizing scientific research and monitoring continues to provide extensive information that addresses natural resource and environmental issues; and

**WHEREAS**, scientific information from the Albemarle-Pamlico Estuarine Study (1987-1994) was combined with extraordinary citizen involvement to develop a Comprehensive Conservation and Management Plan ("CCMP") that was first adopted in 1994 and later revised in 2012; and

**WHEREAS**, APNEP solicits and fosters citizen involvement to implement the CCMP, which guides efforts to identify, protect, and restore the region's significant resources; and

**WHEREAS**, the State of North Carolina is committed to protecting and restoring our natural resources and supports APNEP's mission by encouraging and supporting cooperation and collaborative partnerships among diverse stakeholders.

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

**Section 1. Office and Host**

The Office is established in the Department of Environmental Quality ("Department") to coordinate and facilitate CCMP implementation and support APNEP's mission. The Office shall serve as a conduit for information, collaboration, and coordination among the state and federal agencies, local governments, tribes, academia, and the public.

The Office shall consist of the Director of the Office ("Director") along with the requisite staff necessary to meet the needs identified by the Management Conference, which is described in Section 2 of this Executive Order.

The Department shall serve as the host for the Office, and the Office will be housed within the Department's Office of the Secretary. The Department shall efficiently assist in the operation and support of the Management Conference. The Department shall only be responsible for assisting with administrative and fiscal management of the APNEP-EPA cooperative agreement, which provides federal funds for APNEP, and for assisting with the management of other funding sources.

**Section 2. Management Conference****A. Purpose**

1. A Management Conference consistent with Section 320 of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 – 1376, shall be established to advise, support, and guide CCMP implementation, and to assist the Office in fulfilling its mission.
2. The Management Conference shall advise APNEP on APNEP's overall policy, budget, and community engagement direction.
3. The Management Conference shall review and revise the CCMP as necessary in response to changes in the environment or resource management actions. Unless otherwise authorized by the Governor of the State of North Carolina or the Governor's designee, the Management Conference shall have no authority other than to provide direction to APNEP.

**B. Membership**

1. The Management Conference shall consist of diverse stakeholders with interests in the Albemarle-Pamlico estuarine system and utilize a collaborative, consensus-building approach to implement the CCMP.
2. The Management Conference shall consist of a Leadership Council, an Implementation Advisory Committee, and a Science and Technical Advisory Committee.
3. The Director shall appoint the initial membership of the Management Conference and, to the greatest extent possible, shall ensure geographic and demographic diversity as well as a willingness to serve. The addition and replacement of members to the Leadership Council and each of the advisory committees shall be determined under each entity's individual bylaws.

**C. Leadership Council****1. Purpose**

The Leadership Council shall work with the Office, advisory committees, and other groups to advise, support, evaluate, update, advocate for, and guide CCMP implementation. The Leadership Council is the Office's primary guidance body.

**2. Membership**

- a. The Leadership Council shall include the following voting members:

- i. The Secretary of the Department or designee;
  - ii. The Secretary of the North Carolina Department of Natural and Cultural Resources or designee;
  - iii. Director of North Carolina Sea Grant or designee;
  - iv. Two members of the Implementation Advisory Committee;
  - v. Two members of the Science and Technical Advisory Committee;
  - vi. A representative of a local government or regional council of governments;
  - vii. A representative of a local, state, or national conservation organization; and
  - viii. Three at-large members who have vested interests in the region, with at least one being a resident of the Commonwealth of Virginia.
- b. The Secretary of Natural Resources of the Commonwealth of Virginia, or designee, shall be invited to participate as a voting member.
  - c. A representative of the EPA's National Estuary Program shall be invited to participate as a non-voting, ex-officio member.
  - d. The Leadership Council may expand its membership, as it deems necessary, upon a two-thirds affirmative vote.

**D. Implementation Advisory Committee**

1. Purpose

The Implementation Advisory Committee shall work with the Leadership Council on CCMP implementation activities. Committee members shall serve as liaisons to citizens, agencies, and relevant parties regarding environmental and natural resource management relevant to CCMP implementation.

2. Membership

The membership of the Implementation Advisory Committee shall be broad based and may include the following natural resource management interests within the Albemarle-Pamlico estuarine system: local governments; local or regional planning; commerce and industry; education; recreation; tourism; fishing or seafood industry; agriculture; forestry; military; tribal organizations; local, state, or national conservation organizations; soil and water conservation districts; finance; communications and media; state agencies; and federal agencies.

**E. Science and Technical Advisory Committee**

1. Purpose

The Science and Technical Advisory Committee shall provide independent advice to the Leadership Council and the Implementation Advisory Committee on scientific and technical issues, including ecosystem assessment and monitoring in support of CCMP implementation.

2. Membership

- a. The membership of the Science and Technical Advisory Committee shall be broad based and should include scientists and researchers from local colleges, universities, and research institutes as well as technical staff from federal and local agencies, industry, and environmental

organizations, with expertise in science and technology relevant to environment and natural resource management in the Albemarle-Pamlico estuarine system.

- b. All members shall have substantive and extensive expertise in scientific and technical fields germane to APNEP's mission and relevant to environment and natural resource management, including, but not limited to, landscape ecology, terrestrial ecology, wetlands ecology, submerged aquatic ecology, marine biology, fisheries, hydrology, remote sensing, ecological assessment, engineering, agricultural technologies, forest technologies, soil conservation, water quality modeling, environmental policy, economics, public policy, planning, spatial statistics, education, and law.

**F. Administration and Expenses**

1. Each standing body within the Management Conference shall be responsible for determining its own meeting schedules, rules of order, terms of service, bylaws, chairmanship, attendance requirements, ad hoc committees, and other matters of protocol.
2. Members shall serve voluntarily and without compensation or per diems. Extraordinary expenses may be reimbursed subject to approval by the Director and in accordance with EPA cooperative agreement requirements, the Department's travel policies, state law, and the policies and regulations of the Office of State Budget and Management.


**Section 3. State Programmatic Support**

1. Executive Branch agencies of the State of North Carolina shall work cooperatively with the Management Conference and the Office to implement the CCMP.
2. Council of State agencies of the State of North Carolina are invited to work cooperatively with the Management Conference and the Office on CCMP implementation.
3. Campuses and institutes of the University of North Carolina system are invited to work cooperatively with the Management Conference and the Office on CCMP implementation.

**Section 4. Effect and Duration**

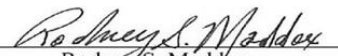
Unless otherwise provided, this Executive Order supersedes and rescinds any previous executive orders to the extent that they conflict with this Executive Order. This Executive Order is effective immediately and shall remain in effect until November 9, 2025, pursuant to N.C. Gen. Stat. § 147-16.2(b), or until earlier rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 9<sup>th</sup> day of November in the year of our Lord two thousand and seventeen.



Roy Cooper  
Governor

ATTEST:



Rodney S. Maddox  
Chief Deputy Secretary of State







# State of North Carolina

**ROY COOPER**  
GOVERNOR

November 15, 2017

**EXECUTIVE ORDER NO. 27**

**AMENDING THE GOVERNOR'S COMMISSION ON ACCESS TO SOUND BASIC  
EDUCATION**

**WHEREAS**, "[t]he people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right," N.C. CONST. ART. I, § 15; and

**WHEREAS**, the State of North Carolina is invested in meeting the diverse needs of the State's children and students; and

**WHEREAS**, *Leandro v. North Carolina*, 346 N.C. 336 (1997) recognizes and reaffirms the State's constitutional duty to provide all North Carolina children the opportunity to receive a sound basic education; and

**WHEREAS**, in accordance with the requirements of the North Carolina State Constitution: (1) every classroom must be staffed by a competent, well-trained teacher and (2) every school must be staffed by a competent, well-trained principal; and

**WHEREAS**, in accordance with the requirements of the North Carolina State Constitution, the State of North Carolina must also identify additional, specific resources necessary to ensure that all children, including those at risk, have an opportunity to receive a sound basic education, no matter where they live in our state; and

**WHEREAS**, rural and underserved communities across North Carolina require a particular commitment from the State to maintain an education system that produces an educated and skilled workforce ready to compete for jobs and opportunity; and

**WHEREAS**, providing all North Carolina children the opportunity to obtain a sound basic education will spur economic growth and development, strengthen our workforce, increase employee wages, increase worker productivity, foster job readiness, improve health outcomes, reduce racial and gender inequality, and improve civic engagement; and

**WHEREAS**, the State of North Carolina has an ongoing obligation under the North Carolina State Constitution to provide all children enrolled in public schools in the State the opportunity to receive a sound basic education; and

**WHEREAS**, the costs of the State's inability to meet its constitutional duty are especially significant for at-risk children; and

**WHEREAS**, certain matters involving the *Leandro* parties in *Hoke County Board of Education v. North Carolina* remain pending before the North Carolina Superior Court Division in the General Court of Justice for Wake County; and

**WHEREAS**, it is far past time for the State to implement comprehensive, inter-disciplinary measures that allocate the resources necessary to ensure that the promise of *Leandro* is realized.

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

**Section I. Establishment**

The Governor's Commission on Access to Sound Basic Education (the "Commission") is hereby established.

**Section II. Mission Statement**

The Commission shall undertake a comprehensive review, in conjunction with a subsequently selected independent consultant, to assess the State of North Carolina's ability to staff schools with competent well-trained teachers and principals and the State's commitment of resources to public education.

**Section III. Membership**

- a. The Commission shall be composed of nineteen (19) members appointed by the Governor. Members shall represent the diverse demographic groups and geographic regions of the state. The following representatives shall serve on the Commission:
  - 1) Teacher Representative
  - 2) Principal Representative
  - 3) Superintendent Representative
  - 4) School Board Representative
  - 5) County Commissioner Representative
  - 6) Business Community Representative
  - 7) Workforce Board Representative
  - 8) Community College Representative
  - 9) University Representative
  - 10) Early Childhood Education Representative
  - 11) Healthcare Representative
  - 12) 501(c)(3) Non-Profit Representative
  - 13) Judicial Representative (To be reserved for a former member of the judiciary)
  - 14) Public Safety Representative
  - 15) Education Researcher Representative
  - 16) School Psychologist Representative
  - 17) At-Large Representative
  - 18) At-Large Representative
  - 19) At-Large Representative
- b. The Commission will work with an independent consultant to develop detailed, comprehensive, written recommendations for specific actions necessary to achieve sustained compliance with the constitutional mandates established in *Leandro*.
- c. Unless otherwise provided by subsequent Executive Order, the Commission members shall serve at least until both the independent consultant identified in Section II and the Commission file final recommendations. Commission members serve at the pleasure of the Governor.
- d. The Commission shall be led by a six (6) member executive committee (the "Executive Committee"), with members appointed by the Governor from among the Commission's membership. Executive Committee members serve at the pleasure of the Governor. The Executive Committee shall consult with the *Leandro* parties in selecting an independent consultant to assess the importance of competent, well-trained teachers in classrooms, competent, well-trained principals in schools, and dedicated resources to meet the needs of the State's students.
- e. The Department of Justice will serve as the Commission's and the Executive Committee's legal counsel.
- f. Any vacancy occurring in the Commission and the Executive Committee shall be filled by the Governor.

**Section IV. Duties**

Commission members shall have the following responsibilities:

- a. Work with the independent consultant to gather information and evidence relevant to developing a comprehensive plan to ensure compliance with the *Leandro* rulings.
- b. Formulate recommendations for achieving compliance with the *Leandro* rulings.
- c. Ensure the recommended compliance measures accomplish and address the following criteria:
  1. Staffing each classroom with a competent, well-trained teacher;
  2. Staffing each school with a competent, well-trained principal; and
  3. Identifying the resources necessary to ensure that all children, including those at risk, have an equal opportunity to obtain a sound basic education.
- d. Provide the Governor with advice when requested regarding other issues related to education and compliance with *Leandro*.

**Section V. Meetings**

- a. The Commission shall meet once a quarter and at other times at the call of a majority of the Commission. The Commission may conduct meetings using electronic conferencing or other electronic means.
- b. A simple majority of the Commission shall constitute a quorum for the purpose of transacting the business of the Commission.

**Section VI. Administration**

Except as provided by this Executive Order or other law, the Executive Committee shall adopt any rules or definitions necessary to interpret the provisions of this Executive Order and adopt any rules necessary to administer the provisions of this Executive Order.

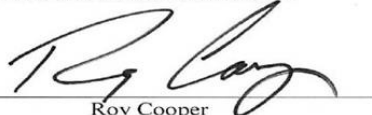
Where necessary, the Office of the Governor shall provide staff and administrative support services for the Commission in consultation with the Governor's Policy Director, Education Advisor, and Teacher Advisor, along with the North Carolina Business Committee for Education.

Commission members shall serve without compensation, but may receive necessary travel and subsistence expenses in accordance with state law and the policies and regulations of the Office of State Budget and Management.

**Section VII. Effect and Duration**

This Executive Order is effective immediately. It supersedes and replaces Executive Order No. 10, *Establishing the Governor's Commission on Access to Sound Basic Education*, signed July 21, 2017, along with all other executive orders on this subject and shall remain in effect until amended or rescinded by future Executive Order of the Governor.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 15<sup>th</sup> day of November, in the year of our Lord two thousand seventeen.

  
Roy Cooper  
Governor

**ATTEST:**

  
Elaine F. Marshall  
Secretary of State





# State of North Carolina

**ROY COOPER**  
GOVERNOR

November 15, 2017

**EXECUTIVE ORDER NO. 28**

**DISASTER DECLARATION FOR THE CITY OF EDEN**

**WHEREAS**, the North Carolina Emergency Management Act authorizes the issuance of a disaster declaration for an emergency area as defined in N.C. Gen. Stat. § 166A-19.3(7) if there is a Type I, Type II or Type III disaster as defined in N.C. Gen. Stat. § 166A-19.21(b); and

**WHEREAS**, on May 5, 2017, the City of Eden, located in Rockingham County, North Carolina, was struck by an EF-1 Tornado; and

**WHEREAS**, as a result of the tornado's severe weather impacts, the City of Eden declared a local state of emergency on May 5, 2017; and

**WHEREAS**, due to the tornado's severe impact, a joint preliminary damage assessment was completed by local, state, and federal emergency management officials on May 9, 2017; and

**WHEREAS**, I have determined that a Type I disaster, as defined in N.C. Gen. Stat. §166A-19.21(b)(1), exists in the State of North Carolina, specifically in the City of Eden; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.21(b)(1), the criteria for a Type I disaster are met if: (1) the Secretary of the Department of Public Safety ("Secretary of Public Safety") has provided a preliminary damage assessment to the Governor and the General Assembly; (2) a local state of emergency has been declared pursuant to N.C. Gen. Stat. § 166A-19.22; (3) the preliminary damage assessment meets or exceeds the State infrastructure criteria set out in N.C. Gen. Stat. § 166A-19.41(b)(2)a.; and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.41(b), if a disaster is declared, the Governor may make state funds available for emergency assistance in the form of individual assistance and public assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the emergency area.

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

**Section 1.** Pursuant to N.C. Gen. Stat. § 166A-19.21(b)(1), a Type I disaster is hereby declared for the City of Eden.

**Section 2.** I authorize state disaster assistance in the form of public assistance grants to eligible governments located within the emergency area that meet the terms and conditions under N.C. Gen. Stat. § 166A-19.41(b)(2). The public assistance grants are for the following:

- a. Debris clearance.
- b. Emergency protective measures.
- c. Roads and bridges.

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

**Section 4.** This Type I disaster declaration shall expire sixty (60) days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of thirty (30) days each, not to exceed a total of 120 days from the date of first issuance.

**IN WITNESS WHEREOF,** I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 15<sup>th</sup> day of November in the year of our Lord two thousand and seventeen.

  
\_\_\_\_\_  
Roy Cooper  
Governor

**ATTEST:**

  
\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State



**NORTH CAROLINA RATE BUREAU****PUBLIC NOTICE**

Notice is hereby given pursuant to North Carolina General Statute 58-36-120 that on November 17, 2017, the North Carolina Rate Bureau filed for an increase in rates as to Homeowners insurance policies under its jurisdiction. Public notice of the Filing is being given in two newspapers with statewide distribution, and information is being posted on the websites of the North Carolina Rate Bureau and the North Carolina Department of Insurance. The Commissioner of Insurance may or may not schedule and conduct a hearing with respect to the Filing.

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

**TITLE 04 – DEPARTMENT OF COMMERCE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of the Commissioner of Banks intends to amend the rule cited as 04 NCAC 03C .1001.*

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

**Proposed Effective Date:** April 1, 2018

**Public Hearing:**

**Date:** January 3, 2018

**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 North Carolina Office of the Commissioner of Banks (NCCOB), the Banking Commission, and stakeholders have reviewed 04 NCAC 03C .1001 Loan Documentation and have determined the rule needs to be amended to reflect current business practices, modernize language, align with federal regulations for national banks, and reduce regulatory burden.

**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](mailto:lchristopher@nccob.gov)

**Comment period ends:** February 13, 2018

**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 03 - BANKING COMMISSION**

**SUBCHAPTER 03C - BANKS**

**SECTION .1000 - LOAN ADMINISTRATION AND LEASING**

**04 NCAC 03C .1001 LOAN DOCUMENTATION**

(a) Unless otherwise provided, each bank shall establish and maintain on file the following loan documentation: documentation practices that:

- (1) enable the institution to make an informed lending decision and to assess risk, as necessary, on an ongoing basis;
- (2) identify the purpose of a loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner;
- (3) ensure that any claim against a borrower is legally enforceable;
- (4) demonstrate appropriate administration and monitoring of a loan; and
- (5) take account of the size and complexity of a loan.

Requirements for loan documentation should be applied consistently with the requirements of the Interagency Guidelines Establishing Standards for Safety and Soundness, 12 C.F.R. Appendix A, as applied by the Federal Deposit Insurance Corporation or the Federal Reserve System, which are hereby incorporated by reference including subsequent amendments or additions. This information is available at <https://www.ecfr.gov/> at no cost.

(b) Each bank shall maintain on file 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 bank; and~~
- (e) ~~include information reflecting the assets, liabilities, net worth, and income of the borrower.~~
- (2) ~~Financial Statement Exceptions. A bank 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 bank may substitute a current credit bureau report for the financial statement required by Item (1) of this Rule. A credit bureau report shall be current if not more than 18 months have passed 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 otherwise provided below, a written appraisal of personal property used to collateralize any loan shall be made or approved by the executive committee or loan committee of the bank or any branch thereof, branch, or other reliable persons familiar with the value of the property. Except as provided, all appraisals shall be renewed every 24 months.~~
  - (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 at least two persons making the appraisal;~~
    - (v) ~~a brief description of the property;~~
    - (vi) ~~the amount of any prior lien and holder of the lien, if any; and~~
    - (vii) ~~the original amount or outstanding balance of the loan which 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 bank maintaining the loan account;~~
    - (iv) ~~on loans fully secured by the cash surrender or loan value of life insurance policies;~~
    - (v) ~~on loans fully secured by bonded warehouse receipts;~~
    - (vi) ~~on floor plan loans to dealers fully secured by motor vehicles;~~
    - (vii) ~~on discounted notes for a dealer where the note is given as the purchase price of a motor vehicle or other consumer goods; or~~
    - (viii) ~~on loans fully secured by listed securities, unless such loans are within the provisions of the Securities Exchange Act of 1934 as defined by Regulation "U," as amended from time to time by the Board of Governors of the Federal Reserve System. On loans secured by such collateral, the appraisal shall be made and kept on file until the loan is paid in full.~~
  - (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 bank 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 one of the following methods:~~
- ~~(i) Two members of the executive or loan committee who are familiar with real estate values in the community where the property is located;~~
  - ~~(ii) Two bank 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;~~
  - ~~(iii) A state licensed real estate appraiser or state certified real estate appraiser, or a person certified as a real estate appraiser by an appraisal trade organization approved by the bank to perform the appraisal; or~~
  - ~~(iv) In lieu of an appraisal as provided by Sub items 4(b)(i) through (iii) of this Rule, for loans less than two hundred fifty thousand dollars (\$250,000), a bank may elect to accept a copy of the most recent real property tax notice from the tax administrator's office in the county in which the property is located provided that such notice states the assessed ad valorem tax value of the real estate, and any improvements thereon, separate from the personal property; and the loan officer shall include with the tax notice a memorandum to file that he or she has obtained the notice from the county tax administrator and is of the opinion that such notice reflects the real property values.~~
- (e) ~~Except as noted, appraisals required by Sub items (4)(b)(i), (ii), and (iii) of~~

~~this Rule shall be in writing, and signed and dated by the person or persons making the appraisal. Additionally, the appraisal shall identify the loan transaction for which it was made; identify the current balance of any prior 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 easily identifiable. If a professional appraisal form is used that does not include this information, the bank shall complete and attach to such 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 and includes subsequent amendments or additions. This information is available at the U.S. Printing Office website at [http://www.ecfr.gov/cgi-bin/text-idx?SID=cb59b820da3e668ebb333139d429ee0e&node=pt12.5.323&rgn=d\\_iv5](http://www.ecfr.gov/cgi-bin/text-idx?SID=cb59b820da3e668ebb333139d429ee0e&node=pt12.5.323&rgn=d_iv5) at no cost at the time of adoption of this Rule.~~

- (5)(1) Certificate of Title. A title opinion furnished by an attorney at law, a title report or report, a title insurance policy issued by a company licensed by the Commissioner of Insurance, or other insurance coverage that provides the bank similar protection against loss from title

defects, errors or omissions at closing, or ~~other loan-related~~ 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)~~ one hundred thousand dollars (\$100,000) 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 endorsed and witnessed in ink, 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 bank written authority from the collateral owner permitting the hypothecation of the collateral.~~
- (7)(2) 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)(3) 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)(4) 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)(5) ~~Unlisted Securities. Securities Held as Collateral.~~ Full credit information on all unlisted securities, now owned or hereafter acquired, shall be kept on file in the bank.

Authority G.S. 53C-6-1; 53C-8-1.

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

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Department of Health and Human Services/Director Division of Health Service Regulation intends to amend the rule cited as 10A NCAC 14F .1401, readopt with substantive changes the rules cited as 10A NCAC 14F .1203, .1301, .1802, .1903, .2101 and readopt without substantive changes the rule cited as 10A NCAC 14F .1901.*

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

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

**Proposed Effective Date:** June 1, 2018

**Public Hearing:**

**Date:** January 2, 2018

**Time:** 11:00 a.m.

**Location:** Dorothea Dix Park, Brown Building, Room 104, 801 Biggs Drive, Raleigh, NC 27603

**Reason for Proposed Action:** Pursuant to G.S. 150-B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. As a result of the periodic review of Subchapter 10A NCAC 14F, Certification of Cardiac Rehabilitation Programs, six rules were determined as "Necessary With Substantive Public Interest," thus requiring readoption. With input from stakeholders, substantive changes have been made to five of these rules (Rule .1203, .1301, .1802, .1903, and .2101) to provide clarity, remove ambiguity, and implement technical changes in the areas of annual certificate renewal, staff responsibilities and requirements, criteria for exercise therapy programs, exercise drills and documentation and standards for cleaning facilities, equipment and furnishings. References to General Statutes have been added in the rules where appropriate. In addition, Rule .1401 is proposed for amendment to update which State office's telephone number is provided to patients by the program for lodging complaints. These proposed rule revisions reflect current industry standards of practice.

**Comments may be submitted to:** Nadine Pfeiffer, 809 Ruggles Drive, 2701 Mail Service Center, Raleigh, NC 27699-2701; [DHSR.RulesCoordinator@dhhs.nc.gov](mailto:DHSR.RulesCoordinator@dhhs.nc.gov)

**Comment period ends:** February 13, 2018

**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 14 - DIRECTOR, DIVISION OF HEALTH  
SERVICE REGULATION**

**SUBCHAPTER 14F - CERTIFICATION OF CARDIAC  
REHABILITATION PROGRAMS**

**SECTION .1200 - CRITERIA AND STANDARDS FOR  
INTENSIVE CARE SERVICES**

**10A NCAC 14F .1203 CERTIFICATE RENEWAL**

(a) A certificate issued pursuant to ~~the Article G.S. 131E-167~~ and this Subchapter shall expire ~~two years~~ one year after the effective date ~~of the certificate~~, but ~~can~~ may be renewed upon the ~~successful~~ re-evaluation of the program. To initiate the renewal process, an application for certification shall be filed ~~with the Department by the owner of the program~~ in accordance with Rule .1202 of this Subchapter.

(b) Determination of compliance with the provisions of ~~the Article G.S. 131E-167~~ and this Subchapter for purposes of certificate renewal ~~may, at the discretion of the Department, may~~ be based upon an inspection or upon review of requested information submitted by a program to the ~~Department~~ Department in accordance with Rule .1205 of this Subchapter.

*Authority G.S. 131E-167; 131E-169.*

**SECTION .1300 – ADMINISTRATION**

**10A NCAC 14F .1301 STAFF REQUIREMENTS AND RESPONSIBILITIES**

(a) Each program shall be conducted utilizing an interdisciplinary team composed of a program director, medical director, nurse, exercise specialist, mental health professional, dietician or nutritionist, supervising physician, physician assistant or nurse practitioner, and a DVRS or other vocational rehabilitation counselor. The program may ~~employ~~ employ full-time or part-time, (full-time or part-time), or contract for the services of team members. Program staff shall be available to patients ~~as needed~~ to perform initial assessments and to implement each patient's cardiac rehabilitation care plan.

(b) Individuals may perform multiple team functions, if ~~qualified for each function, as stated in this Rule~~ within their scope of practice as determined by their respective occupational licensing board:

- (1) Program Director - supervises program staff and directs all facets of the program.
- (2) Medical ~~Director~~ Director - physician who provides medical assessments and is responsible for supervising all clinical aspects

of the program and for assuring the ~~adequacy~~ availability of emergency ~~procedures and procedures~~, equipment, testing equipment, and personnel.

- (3) Nurse - provides nursing assessments and services.
- (4) Exercise ~~Specialist~~ Specialist - provides an exercise assessment, ~~in consultation with the medical director~~, plans and evaluates exercise ~~therapies~~ therapies in consultation with the medical director.
- (5) Mental Health Professional - ~~provides directly~~ directly provides or assists program staff in completion of the mental health screening and referral, if ~~indicated~~, for further mental health ~~services~~ services are necessary.
- (6) Dietitian or Nutritionist - ~~provides directly~~ directly provides or assists program staff in completion of the nutrition assessment and referral, if ~~indicated~~, for further nutrition ~~services~~ services are necessary.
- (7) Supervising Physician, Physician Assistant, or Nurse Practitioner - medical person who is on-site during the hours of operation of programs that are not located within a hospital.
- (8) DVRS or other Vocational Rehabilitation Counselor - screens patients who may be eligible for and interested in vocational rehabilitation services, develops assessment and intervention strategies, and provides other services ~~as needed~~ to meet the vocational goal(s) of ~~patients who may be eligible for and interested in services~~ those patients.

*Authority G.S. 131E-169.*

**SECTION .1400 – PATIENT RIGHTS**

**10A NCAC 14F .1401 PATIENT RIGHTS**

(a) Prior to or at the time of admission, the program shall provide each patient with a written notice of the patient's rights and responsibilities. The program shall maintain documentation at least five years showing that ~~all~~ patients have been informed of their rights and responsibilities.

(b) Each patient's rights and responsibilities shall ~~include, at a minimum~~ include the right to:

- (1) be informed ~~of~~ and participate in developing the patient's plan of care;
- (2) ~~voice grievances~~ file a grievance about the care provided, and not be subjected to discrimination or reprisal for doing so;
- (3) ~~confidentiality of the patient's records~~ have his or her records kept confidential;
- (4) be informed with notice of the patient's liability for payment for services;
- (5) be informed of the process for acceptance and continuation of service and eligibility determination;
- (6) accept or refuse services; and

(7) be advised of the program's procedures for discharge.

(c) The program shall provide all patients with a telephone number for information, ~~questions~~ questions, or complaints about services provided by the program. The program shall also provide the ~~Division Complaints Hotline number or the Department of Health and Human Services Carline number or both.~~ telephone number for the Complaint Intake of the Division: 1-800-624-3004 and 919-855-4500 (within North Carolina).

(d) The program shall ~~investigate, within seven days, investigate~~ complaints within seven days of receipt by ~~made to the program by from~~ the patient, the patient's family, or ~~significant other, domestic partner, and must shall~~ document both the existence of the ~~complaint~~ complaint, and the resolution of the ~~complaint~~ complaint, and retain documents in the records for five years from date of resolution.

*Authority G.S. 131E-169.*

## **SECTION .1800 – PROVISION OF SERVICES**

### **10A NCAC 14F .1802 EXERCISE THERAPY**

(a) The medical director, in consultation with program staff, shall establish staff to patient ratios for exercise therapy sessions based on medical acuity, utilizing an acceptable risk stratification model.

(b) ~~If any patient has not had a graded exercise test prior to the first exercise session, the~~ The patient's first exercise session must shall include objective an objective initial assessment of hemodynamic data, ECG, and symptom response data.

(c) ~~Unless contraindicated by medical and laboratory assessments or the cardiac rehabilitation care plan, each patient's exercise therapy shall include:~~ The patients exercise therapy shall be developed based on needs identified by the initial assessment. Guidelines regarding exercise testing and prescription for exercise therapy are identified in the American College of Sports Medicine 10<sup>th</sup> edition, incorporated herein by reference including subsequent changes and editions. Copies of the American College of Sports Medicine guidelines are available from <http://www.acsmstore.org/ProductDetails.asp?ProductCode=9781496339072> at a cost of forty seven dollars and ninety nine cents (\$47.99). The following Chapters of these guidelines apply to the cardiac rehabilitation program:

- (1) Chapters 3 through 7 that describe the "Pre-exercise Evaluation," "Health-Related Physical Fitness Testing and Interpretation," "Clinical Exercise Testing and Interpretation," "General Principles of Exercise Prescription," and "Exercise Prescription for Healthy Populations with Special Considerations;" and
- (2) Chapter 9 that describes "Exercise Prescription for Patients with Cardiac, Peripheral, Cerebrovascular and Pulmonary Disease."
- (1) ~~mode of exercise therapy including, but not limited to: walk/jog, aquatic activity, cycle ergometry, arm ergometry, resistance training, stair climbing, rowing, aerobics;~~
- (2) ~~intensity;~~

(A) ~~up to 85 percent of symptom limited heart rate reserve;~~

(B) ~~up to 80 percent of measured maximal oxygen consumption;~~

(C) ~~rating of perceived exertion (RPE) of 11 to 13 if a graded exercise test is not performed; or~~

(D) ~~for myocardial infarction patients: heart rate not to exceed 20 beats per minute above standing resting heart rate if a graded exercise test is not performed; and for post coronary artery bypass graft patients: heart rate not to exceed 30 beats per minute above standing resting heart rate if a graded exercise test is not performed;~~

(3) ~~duration: up to 60 minutes, as tolerated, including a minimum of five minutes each for warm up and cool down; and~~

(4) ~~frequency: minimum of three days per week.~~

(d) The patient shall be monitored through the use of electrocardiography during each exercise therapy session. The frequency of the monitoring ~~continuous~~ continuous, or intermittent, shall be based on medical acuity and risk stratification.

(e) At two week intervals, the patient's adherence to the cardiac rehabilitation care plan and progress toward goals shall be monitored by an examination of exercise therapy records and ~~documented.~~ documented by the exercise specialist in accordance with hospital or Cardiac Rehabilitation Program policy.

(f) The exercise specialist shall be responsible for consultation with the medical director or the patient's personal physician concerning changes in the ~~exercise therapy, results of graded exercise tests, as needed or anticipated (e.g. regular follow up intervals, graded exercise test conducted, or medication changes)~~ patient's treatment plan. Feedback concerning changes in the ~~exercise therapy~~ patient's treatment plan shall be discussed with the patient and documented.

(g) Diabetic patients who are taking insulin or oral hypoglycemic agents for control of diabetes shall have blood sugars monitored for at least the first week of cardiac therapy sessions in order to establish the patient's level of control and subsequent response to exercise. Cardiac rehabilitation staff shall record blood sugar measurements pre- and post-exercise. Patients whose blood sugar values are considered abnormal ~~for the particular patient per~~ hospital or Cardiac Rehabilitation Program policy shall be monitored. A carbohydrate food source ~~or serving~~ shall be available. Snacks shall be available in case of a hypoglycemic response.

*Authority G.S. 131E-169.*

## **SECTION .1900 – EMERGENCIES**

### **10A NCAC 14F .1901 EMERGENCY PLAN (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 14F .1903 EMERGENCY DRILLS**

- (a) ~~At least six Quarterly~~ patient emergency drills shall be conducted by the Cardiac Rehabilitation Program each year when patients are on-site and shall be ~~documented~~ documented by the program director or designee.
- (b) Drill sites shall be rotated through all locations used by patients while participating in program activities.
- (c) The drill documentation and ~~effectiveness~~ results of emergency drills shall be ~~reviewed and signed~~ reviewed, signed, and dated by the medical director or supervising ~~physician~~ physician in accordance with hospital or Cardiac Rehabilitation Program policy.

Authority G.S. 131E-169.

**SECTION .2100 – FACILITIES AND EQUIPMENT**

**10A NCAC 14F .2101 PHYSICAL ENVIRONMENT AND EQUIPMENT**

- (a) The program shall provide a clean and safe environment. For the purposes of this Rule, "clean and safe" means visibly free of soil, and other debris, and maintained in an orderly condition where there are no obstacles that would present risks to the patient.
- (b) Equipment and furnishings shall be cleaned ~~not less than weekly~~ between patients in accordance with manufacturer's instructions and the cardiac rehabilitation program's procedures for infection control and universal precautions.
- (c) All areas of the facility shall be ~~orderly and~~ free of ~~debris~~ debris, and with clear traffic areas.
- (d) A written and documented preventative maintenance program shall be established to ensure that all equipment is calibrated and maintained in safe and proper working order in accordance with manufacturers' recommendations.
- (e) There shall be emergency access to all areas a patient may enter, and floor space ~~must~~ shall allow easy access of personnel and equipment.
- (f) Exit signs and an evacuation plan shall be posted and clearly ~~visible~~ visible to program patients, staff, and visitors. The evacuation plan shall detail evacuation routes for patients, staff, and visitors in case of fire or other emergency.
- (g) No smoking shall be permitted ~~in patient care or treatment areas~~ in the facility.

Authority G.S. 131E-169.

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rule cited as 10A NCAC 43D .0708.*

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

**Proposed Effective Date:** April 1, 2018

**Public Hearing:**

**Date:** January 31, 2018

**Time:** 10:00 a.m.

**Location:** Cardinal Room, located at: 5605 Six Forks Road, Raleigh, NC

**Reason for Proposed Action:** *This amendment corrects an error in the recently adopted rule. The minimum inventory for skim milk should be six not four gallons as was originally noticed but not carried forward to the codified version approved by the Rules Review Commission.*

**Comments may be submitted to:** Chris Hoke, JD, 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:** February 13, 2018

**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 .0700 - WIC PROGRAM FOOD DELIVERY SYSTEM**

**10A NCAC 43D .0708 AUTHORIZED VENDORS**

By signing the WIC Vendor Agreement, the vendor agrees to:

- (1) Process WIC Program food instruments and cash-value vouchers in accordance with the terms of the WIC Vendor Agreement and 42 U.S.C. 1786, 7 C.F.R. 246.1-246.28, and the rules of this Subchapter;
- (2) Accept WIC Program food instruments and cash-value vouchers in exchange for WIC supplemental foods. Supplemental foods are

- those foods that satisfy the requirements of 10A NCAC 43D .0501;
- (3) Provide only the authorized supplemental foods listed on the printed food instrument, or authorized fruits and vegetables with a printed cash-value voucher. Determine the charges to the WIC Program and complete the "Pay Exactly" box on the printed food 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, 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 provided and shall not charge or collect sales taxes for the supplemental food 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 within that vendor's peer group. The maximum price for each supplemental food 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 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 nutritionals purchased only from the sources specified in Item (3) of Rule .0707 of this Section. Providing infant formula, exempt infant formula, or WIC eligible 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 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 food instruments and cash-value vouchers only on or between the "First Date to Spend" and the "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. 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;
  - (16) Refuse to transact any food instrument or cash-value voucher that has been altered;
  - (17) Not transact food instruments or cash-value vouchers in whole or in part for cash, credit, unauthorized foods, or non-food items;
  - (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

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| <p>(19) original authorized supplemental food obtained and returned by the WIC customer;<br/>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 WIC Program's editing process;</p> <p>(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 on the printed food instrument or cash-value voucher;</p> <p>(21) Deposit WIC program printed food instruments and cash-value vouchers in the vendor's bank. All North Carolina WIC program printed food instruments and cash-value vouchers must be deposited in the vendor's bank within 60 days of the "First Date to Spend" on the printed food instrument or cash-value voucher;</p> <p>(22) Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner</p> | <p>(23) authorized by the Agreement and be responsible for the unauthorized use of the authorized WIC vendor stamp;<br/>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;</p> <p>(24) Notify the local WIC agency of misuse (attempted or actual) of WIC Program food instruments or cash-value vouchers;</p> <p>(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), vendors in Vendor Peer Groups I through IV of Item (2), and vendors in Vendor Peer Group IV of Item (3) of Rule .0706 of this Section:</p> |
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Food Item	Type of Inventory	Quantities Required
Milk	Whole fluid: gallon -and- Skim/lowfat fluid: gallon	2 gallons  4-6 gallons
Cheese	1 pound package	2 packages
Cereals	2 types: whole grain (minimum package size 12 ounce)	6 packages total
Eggs	Grade A, large, white: 1 dozen size carton	2 dozen
Juices	Single strength: 48 ounce container 64 ounce container	4 containers 4 containers
Dried Peas and Beans	1 pound package	2 packages
Peanut Butter	16 to 18 ounce container	2 containers
Tuna	5 to 6 ounce can	6 cans
Bread/Tortillas	16 ounce loaf of bread or package of tortillas	2 loaves or 2 packages OR 1 loaf and 1 package
Rice	14 to 16 ounce package	2 packages
Infant Cereal	8 ounce box	6 boxes
Infant Fruits and Vegetables	3.5 to 4 ounce container 1 type of fruit and 1 type of vegetable	64 ounces
Infant Formula	milk-based powder; 11.0 to 14.0 ounce -and-	8 cans
	soy-based powder; 11.0 to 14.0 ounce Brands must be the primary contract infant formulas	4 cans

Fruits	14 to 16 ounce can: 2 varieties	10 cans total
Vegetables (Excludes foods in Dried Peas and Beans category)	14 to 16 ounce can: 2 varieties	10 cans total

All vendors in Vendor Peer Groups I through III of Item (1), Peer Groups I through IV of Item (2), and Vendor 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;

- (26) Ensure that all supplemental foods in the store for purchase are within the manufacturer's expiration date;
- (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 according to criteria established 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 Program 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 State Rules, 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 on WIC EBT procedures. The vendor shall ensure that all cashiers and staff are fully trained on WIC EBT requirements, including training in the acceptance and processing of WIC EBT transactions;
- (h) Require the WIC customer to approve the WIC transaction. Vendors shall ensure that the vendor's 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 of the WIC customer's account;
- (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;



- (1) 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.
- (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;
- (30) Inform and train vendor's cashiers and other staff on WIC Program requirements;
- (31) Be accountable for the actions of its owners, officers, managers, agents, and employees who commit vendor violations;
- (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 .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 .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;
- (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;
- (34) Submit a current 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 two weeks of any written request by the State or local WIC agency;
- (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);
- (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;
- (37) Not contact a WIC customer outside the store regarding the transaction or redemption of WIC food instruments or cash-value vouchers;
- (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;

- (39) Return the authorized WIC vendor stamp to the local WIC agency upon termination of the WIC Vendor Agreement or disqualification from the WIC Program;
- (40) Not discriminate on the basis of WIC participation, such as failing to offer WIC customers the same courtesies, as set forth in 7 C.F.R. 246.12(g)(3)(iii), offered to other customers or requiring separate WIC lines;
- (41) Reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store 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 of this Section; and
- (42) Comply with all the requirements for vendor applicants of Items (3), (4), and (7) through (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), (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), (15), (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 12 – DEPARTMENT OF JUSTICE

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to amend the rules cited as 12 NCAC 09B .0101, .0104, .0106, .0203-.0205, .0209; 09C .0306; 09E .0106; 09F .0105, .0106; 09G .0204 and .0414.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://ncdoj.gov/getdoc/82ec95af-b758-4888-b831-8fdd5cc9beb4/Public-Hearing-02-14-17.aspx>

**Proposed Effective Date:** April 1, 2018

**Public Hearing:**

**Date:** February 14, 2018

**Time:** 10:30 a.m.

**Location:** Wake Technical Community College-Public Safety Training Center, 321 Chapanoke Rd, Raleigh, NC 27603

**Reason for Proposed Action:** *To specify medical professionals who are approved to administer physical examinations. To provide clarity regarding high school diploma earned through correspondence. To specify training topics and minimum number of training hours to be completed. To provide specifics regarding Conceal Carry Instructors responsibilities. To provide clarity regarding qualification of newly issued handguns.*

**Comments may be submitted to:** Charminique Williams, PO Drawer 149, Raleigh, NC 27602; phone (919) 779-8206; fax (919) 779-8210; email [cdwilliams@ncdoj.gov](mailto:cdwilliams@ncdoj.gov).

**Comment period ends:** February 14, 2018, 10:30 a.m.

**Procedure for Subjecting a Proposed Rule to Legislative Review:**

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

**Fiscal impact (check all that apply).**

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

## CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

### SUBCHAPTER 09B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION: AND TRAINING

#### SECTION .0100 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT

**12 NCAC 09B .0101 MINIMUM STANDARDS FOR CRIMINAL JUSTICE OFFICERS**

Every criminal justice officer employed by an agency in North Carolina shall:

- (1) be a citizen of the United States;
- (2) be at least 20 years of age;
- (3) be of good moral character pursuant to G.S. 17C-10 and as evidenced by the following:
  - (a) not having been convicted of a felony;
  - (b) not having been convicted of a misdemeanor as defined in 12 NCAC 09B .0111(1) for five years or the completion of any corrections supervision imposed by the courts, whichever is later;
  - (c) not having been convicted of an offense that, under 18 U.S.C. 922, incorporated by reference with subsequent amendments and editions (found at no cost at (<http://www.gpo.gov/fdsys/pkg/USC-ODE-2011-title18-part1-chap44-sec922.pdf>), would prohibit the possession of a firearm or ammunition;
  - (d) having submitted to and produced a negative result on a drug test within 60 days of employment or any in-service drug screening required by the appointing agency that meets the certification standards of the Department of Health and Human Services for Federal Workplace Drug Testing Programs. A list of certified drug testing labs that meet this requirement may be obtained, at no cost, at (<https://www.samhsa.gov/programs-campaigns/drug-free-workplace/guidelines-resources/drug-testing/certified-lab-list>);
  - (e) submitting to a background investigation consisting of the verification of age and education and a criminal history check of local, state, and national files;
  - (f) being truthful in providing information to the appointing agency and to the Standards Division for the purpose of obtaining probationary or general certification;
  - (g) not having pending or outstanding felony charges that, if convicted of such charges, would disqualify the applicant from holding such certification, pursuant to North Carolina General Statute 17C-13; and
  - (h) not engage in any conduct that brings into question the truthfulness or

credibility of the officer, or involves "moral turpitude." "Moral Turpitude" is conduct that is contrary to justice, honesty, or morality, including conduct as defined in: re Willis, 299 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (1975); in re State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); in re Legg, 325 N.C. 658, 386 S.E. 2d 174(1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); in re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and later court decisions that cite these cases as authority.

- (4) have been fingerprinted and a search made of local, state, and national files to disclose any criminal record;
- (5) have been examined and certified by a licensed ~~physician or surgeon~~ surgeon, physician, physician assistant, nurse practitioner to meet physical requirements necessary to properly fulfill the officer's particular responsibilities and shall have produced a negative result on a drug screen administered according to the following specifications:
  - (a) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other reliable initial and confirmatory tests as may, from time to time, be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs;
  - (b) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen;
  - (c) the drug screen shall test for the presence of at least cannabis, cocaine, phencyclidine (PCP), opiates, and amphetamines or their metabolites;
  - (d) the test threshold values meet the requirements established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs, as found in 82 FR 7920 (2017) incorporated by reference, including later amendments and editions (found at no cost at <https://www.federalregister.gov/documents/2017/01/23/2017-00979/mandatory-guidelines-for-federal-workplace-drug-testing-programs>);

- (e) the test conducted shall be not more than 60 days old, calculated from the time when the laboratory reports the results to the date of employment;
- (f) the laboratory conducting the test shall be certified for federal workplace drug testing programs, and shall adhere to applicable federal rules, regulations, and guidelines pertaining to the handling, testing, storage, and preservation of samples;
- (6) have been administered a psychological screening examination by a clinical psychologist or psychiatrist licensed to practice in North Carolina or by a clinical psychologist or psychiatrist authorized to practice in accordance with the rules and regulations of the United States Armed Forces within one year prior to employment by the employing agency to determine the officer's mental and emotional suitability to properly fulfill the responsibilities of the position;
- (7) have been interviewed personally by the Department head or his representative or representatives to determine such things as the applicant's appearance, demeanor, attitude, and ability to communicate;
- (8) notify the Standards Division of all criminal offenses that the officer is arrested for or charged with, pleads no contest to, pleads guilty to or is found guilty of as well as Domestic Violence Orders (50B) that are issued by a judicial official. This shall include all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under The Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for purposes of this Subparagraph, as an offense for which the maximum punishment allowable by law is 60 days or less. Other offenses under Chapter 20 (Motor Vehicles) of the General Statutes of North Carolina or similar laws of other jurisdictions which shall be reported to the Standards Division expressly include G.S. 20-139 (persons under influence of drugs), G.S. 20-28(b)(driving while license permanently revoked or permanently suspended), and G.S. 20-166 (duty to stop in event of accident). The notifications required under this Subparagraph shall be in writing and shall specify the nature of the offense, the court in which the case was handled, the date of the arrest or criminal charge, the final disposition, and the date thereof. The notifications required under this Subparagraph shall be received by the Standards Division within 30 days of the date of arrest or charge and of case disposition. The requirements of this Subparagraph shall be applicable at all times during which the officer

is certified by the Commission and shall also apply to all applicants for certification. Officers required to notify the Standards Division under this Subparagraph shall also make the same notification to their employing or appointing executive officer within 20 days of the date the case was disposed of in court. The executive officer, provided he has knowledge of the officer's arrests or criminal charges and final dispositions, shall also notify the Standards Division of all arrests or criminal charges and final dispositions within 30 days of the date the case was disposed of in court. Receipt by the Standards Division of a single notification, from either the officer or the executive officer, shall be sufficient notice for compliance with this Subparagraph.

*Authority G.S. 17C-6; 17C-10.*

#### **12 NCAC 09B .0104 MEDICAL EXAMINATION**

(a) Each applicant for employment as a criminal justice officer shall complete the Commission's Medical History Statement Form within one year prior to employment by the employing agency and shall be examined by either a ~~physician or surgeon~~ surgeon, physician, physician assistant, nurse practitioner licensed to practice medicine in North Carolina or by a ~~physician or surgeon~~ surgeon, physician, physician assistant, nurse practitioner authorized to practice medicine in accordance with the rules and regulations of the United States Armed Forces to help determine the applicant's fitness in carrying out the physical requirements of the criminal justice officer position.

(b) The examining ~~physician~~ surgeon, physician, physician assistant, nurse practitioner shall record the results of the examination on the Commission's Medical Examination Report Form and shall record any evidence of past or present defects, diseases, injuries, operations.

(c) An applicant for employment as a law enforcement officer seeking general certification may not be employed or placed in a sworn law enforcement position prior to the date on which the employing agency receives the report of the results of the medical examination unless all of the following requirements are met:

- (1) The applicant has completed and signed the applicant's certificate (Section A) of the Commission's Report of Appointment, wherein the applicant's temporary employment and probationary law enforcement officer certification is acknowledged to be contingent on a report to the Commission of the completion of the drug screening of the individual being issued general certification.
- (2) The requirements of this Paragraph shall be met within 60-days of the law enforcement officer being issued general certification.

*Authority G.S. 17C-6; 17C-10.*

**12 NCAC 09B .0106 DOCUMENTATION OF EDUCATIONAL REQUIREMENTS**

(a) Each applicant for employment as a criminal justice officer shall furnish to the employing agency documentary evidence that the applicant has met the educational requirements for the criminal justice field of expected employment.

(b) Documentary evidence of educational requirements shall consist of official transcripts of courses completed or diplomas received from a school which meets the approval guidelines of either the North Carolina Department of Public Instruction, the Division of Non-Public Instruction, or a comparable out-of-state agency. Documentary evidence of college or university graduation consists of diplomas or transcripts from colleges or universities accredited by the Department of Education of the state in which the institution is located, from an accredited body recognized by either the U.S. Department of Education or the Council for Higher Education Accreditation, or from the state university of the state in which the institution is located. High school diplomas earned through correspondence ~~enrollment~~ enrollment, from an entity that charges a fee and requires the individual to complete little or no education or coursework to obtain a high school diploma, are not recognized toward these minimum educational requirements.

(c) Documentary evidence of having received a high school equivalency credential from the issuing state shall be satisfied by a certified copy of a high school equivalency credential from the issuing state.

*Authority G.S. 17C-6; 17C-10.*

**SECTION .0200 – MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOLS AND CRIMINAL JUSTICE TRAINING PROGRAMS OR COURSES OF INSTRUCTION**

**12 NCAC 09B .0203 ADMISSION OF TRAINEES**

(a) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who is not a citizen of the United States.

(b) The school shall not admit any individual younger than 20 years of age as a trainee in any non-academic basic criminal justice training course. Individuals under 20 years of age may be granted authorization for early enrollment as trainees in a presentation of the Basic Law Enforcement Training Course with prior written approval from the Director of the Standards Division. The Director shall approve early enrollment if the individual will be 20 years of age prior to the date of the State Comprehensive Examination for the course.

(c) The school shall give priority admission in certified criminal justice training courses to individuals holding full-time employment with criminal justice agencies.

(d) The school shall not admit any individual as a trainee in a presentation of the "Criminal Justice Instructor Training Course" who does not meet the education and experience requirements for instructor certification under Rule .0302 of this Subchapter within 60 days of successful completion of the Instructor Training State Comprehensive Examination.

(e) The school shall not admit an individual, including partial or limited enrollees, as a trainee in a presentation of the Basic Law

Enforcement Training Course unless the individual, within one year prior to admission to the Basic Law Enforcement Training Course, places into course DRE 098 or above at a North Carolina Community College as a result of taking the Reading and English component of the North Carolina Diagnostic Assessment and Placement test as approved by the State Board of Community Colleges on October 17, 2014, (<http://www.nccommunitycolleges.edu/state-board-community-colleges/meetings/october-17-2014>), or has taken the reading component of a nationally standardized test within one year prior to admission to Basic Law Enforcement Training and has scored at or above the tenth grade level or the equivalent. For the purposes of this Rule:

- (1) Partial or limited enrollee does not include enrollees who hold, or have held within 12 months prior to the date of enrollment, general certification pursuant to 12 NCAC 09C .0304.
- (2) A "nationally standardized test" means a test that:
  - (A) reports scores as national percentiles, stanines, or grade equivalents; and
  - (B) compares student test results to a national norm.

(f) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual has provided to the School Director a medical examination report, completed by a physician licensed to practice medicine in North Carolina, a physician's assistant, or a nurse practitioner, to determine the individual's fitness to perform the essential job functions of a criminal justice officer. The Director of the Standards Division shall grant an exception to this standard for a period of time not to exceed the commencement of the physical fitness topical area when failure to receive the medical examination report is not due to neglect on the part of the trainee.

(g) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual is a high school, college, or university graduate or has received a high school equivalency credential recognized by the issuing state. High school diplomas earned through correspondence ~~enrollment~~ enrollment, from an entity that charges a fee and requires the individual to complete little or no education or coursework to obtain a high school diploma, are not recognized toward the educational requirements.

(h) The school shall not admit any individual trainee in a presentation of the Basic Law Enforcement Training Course unless the individual has provided the School Director a certified criminal record check for local and state records for the time period since the trainee has become an adult and from all locations where the trainee has resided since becoming an adult. An Administrative Office of the Courts criminal record check or a comparable out-of-state criminal record check shall satisfy this requirement.

(i) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who has been convicted of the following:

- (1) a felony;
- (2) a crime for which the punishment could have been imprisonment for more than two years;

- (3) a crime or unlawful act defined as a Class B Misdemeanor within the five year period prior to the date of application for employment, unless the individual intends to seek certification through the North Carolina Sheriffs' Education and Training Standards Commission;
- (4) four or more crimes or unlawful acts defined as Class B Misdemeanors, regardless of the date of conviction;
- (5) four or more crimes or unlawful acts defined as Class A Misdemeanors, except the trainee may be enrolled if the last conviction date occurred more than two years prior to the date of enrollment;
- (6) a combination of four or more Class A Misdemeanors or Class B Misdemeanors regardless of the date of conviction, unless the individual intends to seek certification through the North Carolina Criminal Justice Education and Training Standards Commission.

(j) Individuals charged with crimes specified in Paragraph (i) of this Rule may be admitted into the Basic Law Enforcement Training Course if such offenses were dismissed or the person was found not guilty, but completion of the Basic Law Enforcement Training Course does not ensure that certification as a law enforcement officer or justice officer through the North Carolina Criminal Justice Education and Training Standards Commission will be issued. Every individual who is admitted as a trainee in a presentation of the Basic Law Enforcement Training Course shall notify the School Director of all criminal offenses the trainee is arrested for or charged with, pleads no contest to, pleads guilty to, or is found guilty of, and of all Domestic Violence Orders (G.S. 50B) that are issued by a judicial official after a hearing that provides an opportunity for both parties to be present. This includes all criminal offenses except minor traffic offenses and includes any offense of Driving Under the Influence (DUI) or Driving While Impaired (DWI). A "minor traffic offense" is defined, for the purposes of this Paragraph, as an offense where the maximum punishment allowable by law is 60 days or fewer. Other offenses under G.S. 20 (Motor Vehicles) or similar laws of other jurisdictions that shall be reported to the School Director are G.S. 20-138.1 (driving while under the influence), G.S. 20-28 (driving while license permanently revoked or permanently suspended), G.S. 20-30(5)(fictitious name or address in

application for license or learner's permit), G.S. 20-37.8 (fraudulent use of a fictitious name for a special identification card), G.S. 20-102.1 (false report of theft or conversion of a motor vehicle), G.S. 20-111(5)(fictitious name or address in application for registration), G.S. 20-130.1 (unlawful use of red or blue lights), G.S. 20-137.2 (operation of vehicles resembling law enforcement vehicles), G.S. 20-141.3 (unlawful racing on streets and highways), G.S. 20-141.5 (speeding to elude arrest), and G.S. 20-166 (duty to stop in event of accident). The notifications required under this Paragraph shall be in writing and specify the nature of the offense, the court in which the case was handled, the date of the arrest or criminal charge, the date of issuance of the Domestic Violence Order (G.S. 50B), and the final disposition and the date thereof. The notifications required under this Paragraph shall be received by the School Director within 30 days of the date the case was disposed of in court. The requirements of this Paragraph are applicable at all times during which the trainee is enrolled in a Basic Law Enforcement Training Course. The requirements of this Paragraph are in addition to the notifications required under 12 NCAC 10B .0301 and 12 NCAC 09B .0101(8).

*Authority G.S. 17C-6; 17C-10.*

#### **12 NCAC 09B .0204 TRAINING COURSE ENROLLMENT**

- (a) Any school offering a Basic Law Enforcement Training Course shall have enrolled 10 trainees in the offering.
- (b) Any school may make written request to the Director of the Standards Division to deliver the Basic Law Enforcement Training Course with no fewer than eight enrolled trainees. The Director shall approve the request if it includes a summary of the efforts the school has made to notify its respective community of the availability of the course and the reasons supporting the school's need to enroll fewer than 10 trainees.
- (c) The school may not enroll any trainee later than the initial day of delivery of a certified training course unless the trainee's enrollment is pursuant to an authorization of limited enrollment in a subsequent course pursuant to Rule .0405 of this Subchapter or pursuant to prescribed supplementary or remedial training required pursuant to Rule .0402 of this Subchapter.
- (d) The school may not enroll more than ~~46~~ 18 trainees in a presentation of the "Criminal Justice Instructor Training Course" as constituted under Rule .0209 of this Section.

*Authority G.S. 17C-6.*

#### **12 NCAC 09B .0205 BASIC LAW ENFORCEMENT TRAINING**

- (a) The basic training course for law enforcement officers shall consist of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function in law enforcement.
- (b) The course entitled "Basic Law Enforcement Training" shall consist of a minimum of 632 hours of instruction and shall include the following identified topical areas and minimum instructional hours for each:

(1)	LEGAL UNIT	
(A)	Motor Vehicle Laws	20 Hours
(B)	<del>Preparing for Court and Testifying in Court</del> <u>Controlled Substance</u>	12 Hours
(C)	Elements of Criminal Law	24 Hours
(D)	Juvenile Laws and Procedures	8 Hours
(E)	Arrest, Search and Seizure/Constitutional Law	28 Hours
(F)	Alcohol Beverage Control (ABC)Laws and Procedures	4 Hours
	UNIT TOTAL	96 Hours

(2)	PATROL DUTIES UNIT	
(A)	Techniques of Traffic Law Enforcement	24 Hours
(B)	Explosives and Hazardous Materials Emergencies	12 Hours
(C)	Traffic Crash Investigation	20 Hours
(D)	In-Custody Transportation	8 Hours
(E)	Crowd Management	12 Hours
(F)	Patrol Techniques	28 Hours
(G)	Law Enforcement Communication and Information Systems	8 Hours
(H)	Anti-Terrorism	4 Hours
(I)	Rapid Deployment	8 Hours
	UNIT TOTAL	124 Hours
(3)	LAW ENFORCEMENT COMMUNICATION UNIT	
(A)	Responding to Victims and the Public	10 Hours
(B)	Domestic Violence Response	12 Hours
(C)	Ethics for Professional Law Enforcement	4 Hours
(D)	Individuals with Mental Illness and Developmental Disabilities	24 Hours
(E)	Crime Prevention Techniques	6 Hours
(F)	Communication Skills for Law Enforcement Officers	8 Hours
(G)	Preparing for Court and Testifying in Court	12 hours
	UNIT TOTAL	<del>64</del> 76 Hours
(4)	INVESTIGATION UNIT	
(A)	Fingerprinting and Photographing Arrestee	6 Hours
(B)	Field Note-taking and Report Writing	12 Hours
(C)	Criminal Investigation	34 Hours
(D)	Interviews	16 Hours
<del>(E)</del>	<del>Controlled Substances</del>	<del>12 Hours</del>
<del>(F)</del> (E)	Human Trafficking	2 Hours
	UNIT TOTAL	<del>82</del> 70 Hours
(5)	PRACTICAL APPLICATION UNIT	
(A)	First Responder	32 Hours
(B)	Firearms	48 Hours
(C)	Law Enforcement Driver Training	40 Hours
(D)	Physical Fitness (classroom instruction)	8 Hours
(E)	Fitness Assessment and Testing	12 Hours
(F)	Physical Exercise 1 hour daily, 3 days a week	34 Hours
(G)	Subject Control Arrest Techniques	40 Hours
	UNIT TOTAL	214 Hours
(6)	SHERIFF-SPECIFIC UNIT	
(A)	Civil Process	24 Hours
(B)	Sheriffs' Responsibilities: Detention Duties	4 Hours
(C)	Sheriffs' Responsibilities: Court Duties	6 Hours
	UNIT TOTAL	34 Hours
(7)	COURSE ORIENTATION	2 Hours
(8)	TESTING	16 Hours
	TOTAL COURSE HOURS	632 Hours

(c) The "Basic Law Enforcement Training Manual" published by the North Carolina Justice Academy shall be used as the curriculum for this training course. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
1700 Tryon Park Drive  
Post Office Drawer 149  
Raleigh, North Carolina 27602

and may be obtained at the cost of printing and postage from the North Carolina Justice Academy at the following address:

North Carolina Justice Academy

Post Office Drawer 99  
Salemberg, North Carolina 28385

(d) The "Basic Law Enforcement Training Course Management Guide" published by the North Carolina Justice Academy shall be used by school directors in planning, implementing, and delivering basic training courses. Copies of this guide may be obtained at the cost of printing and postage from the Justice Academy.

*Authority G.S. 17C-6; 17C-10.*

**12 NCAC 09B .0209 CRIMINAL JUSTICE INSTRUCTOR TRAINING**

(a) The instructor training course required for general instructor certification shall consist of a minimum of 78 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice instructor.

(c) Each instructor training course shall include the following identified topic areas and minimum instructional hours for each area:

- |      |  |                       |
|------|--|-----------------------|
| (1)  | Orientation and Pre-Test   | 3 Hours               |
| (2)  | Instructional Systems Design (ISD)   | 6 Hours               |
| (3)  | Law Enforcement Instructor Liabilities and Legal Responsibilities  | 3 Hours               |
| (4)  | <del>Instructional Leadership</del> <u>Criminal Justice Instructional Leadership</u>                       | 4 Hours               |
| (5)  | Lesson Plan Preparation: Professional Resources  | 3 Hours               |
| (6)  | <del>Lesson Plan Development: Format and Objectives</del><br><u>Lesson Plan Development and Formatting</u> | 4 Hours               |
| (7)  | Adult Learning   | <del>4</del> 6 Hours  |
| (8)  | Instructional Styles and Platform Skills   | <del>4</del> 5 Hours  |
| (9)  | Classroom Management   | <del>4</del> 5 Hours  |
| (10) | Active Learning: Demonstration and Practical Exercises   | 6 Hours               |
| (11) | The Evaluation of Learning   | 4 Hours               |
| (12) | <del>Principles of Instruction: Audio-Visual Aids</del> <u>Audio Visual Aids</u>                           | 4 Hours               |
| (13) | Student 8-Minute Talk and Video Critique   | <del>6</del> 5 Hours  |
| (14) | Student Performance: First 30-Minute Presentation  | 5 Hours               |
|      | Second 30-Minute Presentation  | 5 Hours               |
|      | Final 70-Minute Presentation and Review  | <del>12</del> 8 Hours |
| (15) | <del>Course Closing</del> <u>Course Closing and Post-test</u>  | <del>12</del> Hour    |

(d) The "Instructor Training" manual published by the North Carolina Justice Academy shall be the curriculum for instructor training courses. Copies of this publication may be inspected at the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
1700 Tryon Park Drive  
Post Office Drawer 149  
Raleigh, North Carolina 27602

and may be purchased at the cost of printing and postage from the Academy at the following address:

North Carolina Justice Academy  
Post Office Drawer 99  
Salemberg, North Carolina 28385

*Authority G.S. 17C-6.*

**SUBCHAPTER 09C - ADMINISTRATION OF CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS**

**SECTION .0300 - CERTIFICATION OF CRIMINAL JUSTICE OFFICERS**

**12 NCAC 09C .0306 LATERAL TRANSFER OF LAW ENFORCEMENT OFFICERS**

(a) A law enforcement officer with general certification from either the Criminal Justice Education and Training Standards Commission or the Sheriffs' Education and Training Standards Commission may transfer from one law enforcement agency to another law enforcement agency with less than a 12 month break in law enforcement service. Prior to employing the officer, the employing agency shall:

- (1) verify the certification of the officer with the Criminal Justice Standards Division or the Sheriffs' Standards Division;
- (2) submit a new fingerprint check to the North Carolina State Bureau of Investigation, in compliance with the requirements set forth in 12 NCAC 09B .0103(a) and (b), in the same manner as prescribed for non-certified new applicants. No certification shall be transferred if the holder has been convicted since initial certification of any offense for which revocation or suspension of certification is authorized;
- (3) advise the officer that he will be serving under a probationary appointment with the agency for one year; and
- (4) notify the Commission by submitting a Report of Appointment that the officer is being employed and stating the date on which employment will commence.

(b) Prior to transfer of certification, the law enforcement officer shall:

- (1) complete a Medical History Statement Form within one year prior to the transfer to the employing agency;
- (2) submit to examination by a ~~physician~~ surgeon, physician, physician assistant, nurse practitioner licensed to practice medicine in North Carolina in the same manner prescribed for non-certified new applicants in 12 NCAC 09B .0104 within one year prior to the transfer to the employing agency;



- (3) submit results of the physical examination to the employing agency for placement in the officer's permanent personnel file;
- (4) produce a negative result on a drug screen administered according to the specifications outlined in 12 NCAC 09B .0101(5); and
- (5) either:
  - (A) submit a copy of the Commission's annual in-service training report form to the employing agency for placement in the officer's permanent personnel file when the duty and off duty weapons remain the same as those previously used to qualify. Such in-service training compliance shall have occurred within the 12 month period preceding transfer; or
  - (B) satisfactorily complete the employing agency's in-service firearms training program as prescribed in 12 NCAC 09E .0105 and .0106.

(c) Officers previously certified who were not previously required to meet the educational or basic training requirements shall not be required to meet such requirements when laterally transferring to another agency with less than a 12-month break in law enforcement service.

(d) For currently certified full time officers with no break in service, upon written request from the department head of the hiring agency, the Division shall waive for a period of no more than 60-days from the receipt of the Report of Appointment by the Standards Division the requirements of Subparagraphs of (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) of this Rule. The Report of Appointment Form is located on the agency's website: [http://www.ncdoj.gov/getdoc/64d263a3-a598-4c45-9541-04ef088cf288/F-5A-\(DJJD\)-6-11.aspx](http://www.ncdoj.gov/getdoc/64d263a3-a598-4c45-9541-04ef088cf288/F-5A-(DJJD)-6-11.aspx).

*Authority G.S. 17C-6; 17C-10.*

## **SUBCHAPTER 09E - IN-SERVICE TRAINING PROGRAMS**

### **SECTION .0100 - LAW ENFORCEMENT OFFICER'S IN-SERVICE TRAINING PROGRAM**

Note: The text in italics was approved by the RRC September 2017 with an effective date of January 1, 2019.

#### **12 NCAC 09E .0106 ANNUAL IN-SERVICE FIREARMS QUALIFICATION SPECIFICATIONS**

(a) All certified law enforcement officers shall qualify for both day and night use with their individual and department-approved service ~~handgun(s)~~ handguns at least once each calendar year. For the purpose of this specification, service handgun shall include any semi-automatic pistol or revolver. In addition to the requirements specified in Rule ~~09E~~ .0105 of this Subchapter, the course of fire shall not be less stringent than the "Basic Training Law Enforcement Officers" course requirements for firearms qualification.

(b) If an officer's duty handgun is replaced due to administrative or evidentiary issues or an issue of weapon maintenance or malfunction, the officer must qualify both day and night with the new handgun within 15 days of issuance.

~~(b)(c)~~ All certified law enforcement officers who are issued or authorized to use a shotgun, ~~rifle~~ rifle, or automatic weapon shall qualify with each weapon respectively *for both day and night use* at least once each calendar year.

~~(e)(d)~~ The qualifications required by Paragraphs (a) and ~~(b)(c)~~ of this Rule shall be completed with duty equipment and duty ammunition or ~~ballistic-equivalent~~ ballistic-equivalent ammunition ~~ammunition~~, ~~to include~~ including lead-free ammunition that meets the same point of aim, point of impact, and felt recoil of the duty ~~ammunition~~, ammunition for all weapons.

~~(d)(e)~~ All certified law enforcement officers who are authorized to carry ~~an off-duty handgun(s)~~ off-duty handguns shall qualify with each such handgun consistent with the specifications as outlined in Rules .0105(1) and .0106(a) and ~~(g)(h)~~ of this Section. ~~(e)(f)~~ To satisfy the training requirements for all in-service firearms qualifications, an officer shall attain at least 70 percent accuracy with each weapon.

~~(f)(g)~~ The qualifications required by Paragraphs (a) and ~~(b)(c)~~ of this Rule ~~must~~ shall be achieved at least once in a single day in no more than three attempts in a single day for each course of fire and for each weapon for which qualification is required. Individuals not qualifying in a single day for each course of fire or for a certain weapon for which qualification is required shall be deemed as having failed and ~~12 NCAC 09E .0103(4) and (5) shall apply.~~ Rule .0103(4) and (5) of this Section shall apply.

~~(g)(h)~~ The In-Service Firearms Qualification Manual as published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms qualification. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
~~114 West Edenton Street~~  
~~Old Education Building~~  
1700 Tryon Park Drive  
Post Office Drawer 149

Raleigh, North Carolina ~~27602~~ 27610

and may be viewed and downloaded at no cost from the Academy's website at the following address:

<http://www.jus.state.nc.us/NCJA>

*Authority G.S. 17C-6; 17C-10.*

## **SUBCHAPTER 09F - CONCEALED HANDGUN TRAINING**

### **SECTION .0100 - CONCEALED HANDGUN TRAINING PROGRAM**

#### **12 NCAC 09F .0105 INSTRUCTOR RESPONSIBILITIES**

In delivering the "Concealed Carry Handgun Training" course the instructor shall:

- (1) Have a valid Concealed Carry Handgun instructor certification issued by the Criminal Justice Standards Division;
- ~~(1)~~(2) file a copy of the proposed firearms course description, outline, and proof of instructor certification along with a written request to conduct the "Concealed Carry Handgun Training" course for approval by the Commission prior to delivery of any instruction under G.S. 14-415.12;
- ~~(2)~~(3) file a copy of any modification(s);
- ~~(3)~~(4) be issued by Commission staff a quantity of certificates as requested by the instructor for course participants which shall bear the instructor's name, the instructor's assigned number, be sequentially numbered, and bear the raised seal by the Commission;
- ~~(4)~~(5) affix the student's name to one certificate and issue that certificate to the student who successfully completes the "Concealed Carry Handgun Training" course;
- ~~(5)~~(6) conduct the training consistent with the guidelines as established in 12 NCAC 09F .0102;
- ~~(6)~~(7) administer a written examination to the student on the legal issues block of instruction to demonstrate that the student is knowledgeable in the laws of this State governing the carrying of a concealed handgun and the use of deadly force; and
- ~~(7)~~(8) administer a proficiency examination which shall demonstrate that the student is competent in the actual firing and safe handling of a handgun. Such examination shall include the following:
  - (a) The student shall fire 30 rounds of ammunition at a bulls-eye or silhouette target from three, five and seven yard distances;
  - (b) At each yard distance the student shall fire ten rounds;
  - (c) 21 of the 30 rounds fired by the student must hit the target.

*Authority G.S. 14-415.12; 14-415.13.*

#### **12 NCAC 09F .0106 SANCTIONS**

- (a) The Commission shall suspend an approved course when the Commission finds that the course has failed to meet or maintain the required standards for approval, pursuant to Rule .0103 of this Section.
- (b) The Commission, through the Standards Division, shall randomly conduct unannounced audits of a Concealed Carry Handgun course taught by a certified Concealed Carry Handgun instructor for compliance with the requirements of this Subchapter.
- (c) The Commission shall deny, suspend, or revoke the certification of instructor status when the Commission finds that the instructor:

- (1) failed to meet or maintain the required course and instruction standards approved by the Commission as set forth in 12 NCAC 09F .0102 or 12 NCAC 09F .0105;
- (2) failed to submit modification of courses or change in instructor status;
- (3) submitted any non-sufficient funds check;
- (4) falsified any record of completion with a passing score of an approved course;
- (5) distributed any certificate provided by the Commission without the named permittee undertaking the approved course from that instructor;
- (6) taught any Concealed Carry Handgun course or approved certification while the instructor's certification was suspended by the Commission; or
- (7) is ineligible to receive and possess a firearm under federal or North Carolina state law.
- (8) instruct a class without having a valid Concealed Carry Handgun Instructor Certification as established in 12 NCAC 09F .0104

(d) Instructors who have lost certified status pursuant to Subparagraphs (1), (2), or (3) of Paragraph (c) of this Rule may reapply for certification upon documentation of compliance after one year has elapsed from the date of suspension of the instructor's certification by the Commission. Instructors who have lost certified status pursuant to Subparagraphs (4), (5), (6), or (7) of Paragraph (c) of this Rule shall have their certification suspended or permanently revoked by the Commission.

*Authority G.S. 14-415.12; 14-415.13.*

### **SUBCHAPTER 09G - STANDARDS FOR CORRECTIONS EMPLOYMENT, TRAINING, AND CERTIFICATION**

#### **SECTION .0200 - MINIMUM STANDARDS FOR CERTIFICATION OF CORRECTIONAL OFFICERS, PROBATION/PAROLE OFFICERS, AND PROBATION/PAROLE OFFICERS-SURVEILLANCE**

#### **12 NCAC 09G .0204 EDUCATION**

- (a) Every person employed as a correctional officer by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice shall be a high school, college, or university graduate or have received a high school equivalency credential as recognized by the issuing state.
- (b) Every person employed as a probation and parole officer by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice shall be a graduate of a regionally accredited college or university and have attained the baccalaureate degree.
- (c) Each applicant for employment as a corrections officer shall furnish to the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice documentary evidence that the applicant has met the educational requirements for the corrections field of expected employment.

- (1) Documentary evidence of educational requirements shall consist of official transcripts of courses completed or diplomas received from a school that meets the requirements of the Division of Non-Public Instruction of the North Carolina Department of Public Instruction, a comparable out-of-state agency, or is a regionally accredited college or university. High school diplomas earned through correspondence ~~enrollment~~ enrollment, from an entity that charges a fee and requires the individual to complete little or no education or coursework to obtain a high school diploma, are not recognized toward these minimum educational requirements.
- (2) Documentary evidence of high school equivalency shall be satisfied by a certified copy of a high school equivalency credential as recognized by the issuing state.

*Authority G.S. 17C-6; 17C-10.*

## **12 NCAC 09G .0414 INSTRUCTOR TRAINING**

- (a) The instructor training course required for general instructor certification shall consist of a minimum of 78 hours of instruction presented during a continuous period of not more than two weeks.
- (b) Each instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice instructor.
- (c) Each instructor training course shall include as a minimum the following identified topic areas and minimum instructional hours for each area:

- |      |  |                  |
|------|--|------------------|
| (1)  | Orientation and Pretest;   | 3 hours          |
| (2)  | Instructional Systems Design (ISD);  | 6 hours          |
| (3)  | Law Enforcement Instructor Liabilities and Legal Responsibilities;                   | 3 hours          |
| (4)  | <del>Instructional Leadership</del> <u>Criminal Justice Instructional Leadership</u> | 4 hours          |
| (5)  | Lesson Plan Preparation: Professional Resources;                                     | 3 hours          |
| (6)  | Lesson Plan Development: <del>Format and Objective</del> <u>and Formatting</u>       | 4 hours          |
| (7)  | Adult Learning;  | 4 <u>6</u> hours |
| (8)  | Instructional Style and Platform Skills;   | 4 <u>5</u> hours |
| (9)  | Classroom Management;  | 4 <u>5</u> hours |
| (10) | Active Learning: Demonstration and Practical Exercises;                              | 6 hours          |
| (11) | The Evaluation Process of Learning;  | 4 hours          |
| (12) | Principles of Instruction: Audio-Visual Aids;  | 4 hours          |
| (13) | Student 8-Minute Talk and Video Critique; and  | 6 <u>5</u> hours |
| (14) | Student Performance: First 30-Minute Presentation;                                   | 5 hours          |
|      | Second 30-Minute Presentation; and   | 5 hours          |
|      | Final 70-Minute Presentation and Review;   | 4 <u>8</u> hours |
| (15) | Course Closing <u>and Post Test</u>  | 4 <u>2</u> hours |

- (d) The "Instructor Training Manual" published by the North Carolina Justice Academy shall be applied as the basic curriculum for instructor training courses. Copies of this publication may be inspected at the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice

1700 Tryon Park Drive Post Office Drawer 149  
Raleigh, North Carolina 27602

and may be purchased at the cost of printing and postage from the North Carolina Justice Academy at the following address:

North Carolina Justice Academy  
Post Office Drawer 99  
Salemberg, North Carolina 28385

*Authority G.S. 17C-6.*

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Alarm Systems Licensing Board intends to and readopt without substantive changes the rules cited as 14B NCAC 17 .0101-.0108, .0201-.0210, .0301-.0307, .0401-.0403, .0501-.0506.*

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

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://www.ncdps.gov/DPS-Services/Permits-Licenses/Alarm-System-Licensing-Board>

**Proposed Effective Date:** May 1, 2018

**Public Hearing:**  
**Date:** January 30, 2018  
**Time:** 2:00 p.m.

## **TITLE 14B – DEPARTMENT OF PUBLIC SAFETY**

**Location:** Alarm Systems Licensing Board Office, 3101 Industrial Drive, Suite 104, Raleigh, NC 27609

**Reason for Proposed Action:** *These rules have completed the review process and are required to be readopted prior to April of 2019.*

**Comments may be submitted to:** Phil Stephenson, 3101 Industrial Drive, Suite 104, Raleigh, NC 27609; phone (919) 788-5320; fax (919) 788-5365; email [phillip.stephenson@ncdps.gov](mailto:phillip.stephenson@ncdps.gov)

**Comment period ends:** February 13, 2018

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

**Fiscal impact (check all that apply).**

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

## CHAPTER 17 - ALARMS SYSTEMS LICENSING BOARD

### SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS

**14B NCAC 17 .0101 PURPOSE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 17 .0102 LOCATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 17 .0103 DEFINITIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 17 .0104 DISCIPLINARY ACTIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 17 .0105 PROHIBITED ACTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 17 .0106 DETERMINATION OF EXPERIENCE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 17 .0107 RULEMAKING AND ADMINISTRATIVE HEARING PROCEDURES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 17 .0108 CONSUMER CONTRACT AND DISCLOSURE REQUIREMENTS FOR ALARM SERVICES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

### SECTION .0200 – PROVISIONS FOR LICENSEES

**14B NCAC 17 .0201 APPLICATION FOR LICENSE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 17 .0202 EXPERIENCE REQUIREMENTS FOR LICENSE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 17 .0203 FEES FOR LICENSES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 17 .0204 RENEWAL OR RE-ISSUE OF LICENSE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 17 .0205 IDENTIFICATION CARDS OF LICENSEES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 17 .0206 RECORDS INSPECTION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 17 .0207 LICENSE REQUIREMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 17 .0208 TRAINING REQUIREMENTS FOR ALARM LICENSEES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 17 .0209 COMPANY BUSINESS LICENSE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 17 .0210 ELECTRICAL CONTRACTING LICENSE REQUIREMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

### SECTION .0300 – PROVISIONS FOR REGISTRANTS

**14B NCAC 17 .0301 APPLICATION FOR REGISTRATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**14B NCAC 17 .0302 FEES FOR REGISTRATION  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)****14B NCAC 17 .0303 MINIMUM STANDARDS FOR  
REGISTRATION (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)****14B NCAC 17 .0304 INVESTIGATION FOR  
REGISTRATION (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)****14B NCAC 17 .0305 REGISTRATION  
IDENTIFICATION CARDS (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)****14B NCAC 17 .0306 RENEWAL OR  
REREGISTRATION OF REGISTRATION  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)****14B NCAC 17 .0307 SUSPENSION OF AUTHORITY  
TO EXPEND FUNDS (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)****SECTION .0400 - RECOVERY FUND****14B NCAC 17 .0401 DEFINITIONS (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)****14B NCAC 17 .0402 PETITION FOR  
HEARING/APPLICATION FOR RELIEF (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)****14B NCAC 17 .0403 PROCESSING APPLICATIONS  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)****SECTION .0500 - CONTINUING EDUCATION FOR  
LICENSEES****14B NCAC 17 .0501 DEFINITIONS (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)****14B NCAC 17 .0502 REQUIRED CONTINUING  
EDUCATION HOURS (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)****14B NCAC 17 .0503 ACCREDITATION STANDARDS  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)****14B NCAC 17 .0504 NON-RESIDENT LICENSEE OR  
REGISTRANT CONTINUING EDUCATION CREDITS  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)****14B NCAC 17 .0505 RECORDING AND REPORTING  
CONTINUING EDUCATION CREDITS (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)****14B NCAC 17 .0506 NON-COMPLIANCE  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

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**TITLE 15A – DEPARTMENT OF ENVIRONMENTAL  
QUALITY**

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Environmental Management Commission intends to readopt with substantive changes the rules cited as 15A NCAC 02D .1002, .1210 and readopt without substantive changes the rules cited as 15A NCAC 02D .1001, .1003, .1005, .1006 and .1008.*

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

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

**Proposed Effective Date:** *July 1, 2018*

**Public Hearing:**

**Date:** *January 16, 2018*

**Time:** *6:00 p.m.*

**Location:** *DEQ Green Square Office Building, 1<sup>st</sup> Floor Training Room (#1210), 217 West Jones Street, Raleigh, NC 27603*

**Reason for Proposed Action:**

***Hearing 1:** To receive comments on proposed amendments to Rule 15A NCAC 02D .1002 to comply with the requirements of North Carolina Session Law 2017-10. Also, to receive comments on the proposed readoption of Rules 15A NCAC 02D .1001, .1002, .1003, .1005, .1006, and .1008 under North Carolina General Statute (NCGS) 150B-21.3A, Periodic Review and Expiration of Existing Rules.*

*Currently, annual emission inspections are required in 48 counties for motor vehicles that meet the following criteria: (1) a 1996 or later model and older than the three most recent model years or (2) a 1996 or later model and has 70,000 miles or more on its odometer. North Carolina Session Law 2017-10, Section 3.5(a) reduced the number of counties subject to annual emissions inspections from 48 to 22. Also, Section 3.5(b) changed the vehicle coverage in the 22 remaining counties to only those vehicles within 20 model years of the current model year, excluding the three most recent model years with less than 70,000 miles. These changes to the statewide applicability of the annual emission inspections require changes to Rule 15A NCAC 02D .1002 and updates to the North Carolina State Implementation Plan. NCGS 150B-21.3A mandates that the Division of Air Quality conduct a review of all existing agency rules at least once every 10 years and to readopt those rules deemed to be necessary.*

*15A NCAC 02D .1001, Purpose, is proposed for readoption without substantive change to update formatting consistent with the North Carolina Administrative Procedures Act (APA).*

**15A NCAC 02D .1002, Applicability**, is proposed for amendment and readoption with substantive change in response to Session Law 2017-10, Section 3.5(b), which changes the vehicle coverage as follows: (1) a vehicle with a model year within 20 years of the current year and older than the three most recent model years or (2) a vehicle with a model year within 20 years of the current year and has 70,000 miles or more on its odometer. The DAQ is proposing to revise 15A NCAC 02D .1002 to comply with Session Law 2017-10.

**15A NCAC 02D .1003, Definitions**, is proposed for readoption without substantive change to update the format of references.

**15A NCAC 02D .1005, On-Board Diagnostic Standards**, is proposed for readoption without substantive change to update the format of references.

**15A NCAC 02D .1006 Sale and Service of Analyzers**, is proposed for readoption without substantive change to update other administrative language consistent with APA.

**15A NCAC 02D .1008, Heavy Duty Diesel Engine Requirements**, is proposed for readoption without change.

**Hearing 2:** To receive comments on proposed amendment and readoption with substantive change of rule 15A NCAC 02D .1210, Commercial and Industrial Solid Waste Incineration Units. Rule 15A NCAC 02D .1210 is proposed for readoption with substantive changes pursuant to NCGS 150B-21.3A and for amendment to incorporate the changes to federal emissions guidelines and standards outlined in 40 CFR 60 Subpart DDDD and 40 CFR 241, which were finalized by the U.S. Environmental Protection Agency (EPA) on June 23, 2016 and February 7, 2013, respectively.

**15A NCAC 02D .1210** has been updated to reflect EPA's revised emissions guidelines including 1) revised emissions limits, operational standards, and monitoring recordkeeping and reporting requirements, 2) the new definition of solid waste, and 3) the applicability of the rule to additional combustion sources burning solid waste.

Pursuant to NCGS 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 is available on the DAQ website: <http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process>.

**Comments may be submitted to:** Joelle Burleson, 1641 Mail Service Center, Raleigh, NC 27699-1641; phone (919) 707-8720; fax (919) 707-8720; email [daq.publiccomments@ncdenr.gov](mailto:daq.publiccomments@ncdenr.gov) (Please type "01-16-18 Hearings" in subject line)

**Comment period ends:** February 13, 2018

**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** 15A NCAC 02D .1002, .1210
- ☐ **Environmental permitting of DOT affected**
- ☐ **Analysis submitted to Board of Transportation**
- ☒ **Local funds affected** 15A NCAC 02D .1002
- ☒ **Substantial economic impact (≥\$1,000,000)** 15A NCAC 02D .1002
- ☒ **Approved by OSBM** 15A NCAC 02D .1001, .1002, .1003, .1005, .1006, .1008, .1210
- ☐ **No fiscal note required by G.S. 150B-21.4**
- ☐ **No fiscal note required by G.S. 150B-21.3A(d)(2)**

**CHAPTER 02 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS**

**SECTION .1000 - MOTOR VEHICLE EMISSION CONTROL STANDARD**

**15A NCAC 02D .1001 PURPOSE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .1002 APPLICABILITY**

(a) Until the events described in Paragraph (b) of this Rule occur, 15A NCAC 02D Rules .1002 through .1006 of this Section are applicable to all light-duty gasoline vehicles for model years 1996 or more recent model years, excluding the three most recent model years with less than 70,000 miles on their odometers current model year, and applies to all vehicles that are:

- (1) required to be registered by the North Carolina Division of Motor Vehicles in the counties identified in Paragraph (d) of this Rule;
- (2) part of a fleet primarily operated within the counties identified in Paragraph (d) of this Rule; or
- (3) ~~operated on a federal installation located in a county identified in Paragraph (d) of this Rule and that meet the requirements of 40 CFR 51.356(a)(4); or~~
- (4)(3) otherwise required under G.S. 20-183.2(b)(5).

(b) ~~The first day of a month that is 30 days after the U.S. Environmental Protection Agency approves the State Implementation Plan revision and the replacement of the Motor Vehicle Inspection and Law Enforcement System being certified by the Commissioner of Motor Vehicles, whichever occurs later,~~

On the first day of the month that is 60 days after the Secretary of the Department of Environmental Quality certifies to the Revisor of Statutes that the United States Environmental Protection Agency has approved an amendment to the North Carolina State Implementation Plan, 15A NCAC 02D Rules .1002 through .1006 of this Section shall apply to 1996 or more recent model for motor vehicles under Paragraph (a) of this Rule, excluding the three most recent model years with less than 70,000 miles on their odometers all light-duty gasoline vehicles that are a model year within 20 years of the current year, excluding the three most recent model years with less than 70,000 miles on their odometers, and to all vehicles that are:

- (1) required to be registered by the North Carolina Division of Motor Vehicles in the counties identified in Paragraph (d) of this Rule;
- (2) part of a fleet primarily operated within the counties identified in Paragraph (d) of this Rule; or
- (3) otherwise required under G.S. 20-183.2(b)(5).

(c) ~~Rules 15A NCAC 02D .1002 through .1006 of this Section~~ shall not apply to motorcycles, plug-in electric vehicles or fuel cell electric vehicles as specified in G.S. 20-183.2(b).

(d) The emission control standards of this Section shall become effective in the counties identified in G.S. 143-215.107A.

*Authority G.S. 20-128.2(a); 20-183.2; 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(6); 143-215.107(a)(7); 143-215.107A.*

#### **15A NCAC 02D .1003 DEFINITIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

#### **15A NCAC 02D .1005 ON-BOARD DIAGNOSTIC STANDARDS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

#### **15A NCAC 02D .1006 SALE AND SERVICE OF ANALYZERS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

#### **15A NCAC 02D .1008 HEAVY DUTY DIESEL ENGINE REQUIREMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

### **SECTION .1200 - CONTROL OF EMISSIONS FROM INCINERATORS**

#### **15A NCAC 02D .1210 COMMERCIAL AND INDUSTRIAL SOLID WASTE INCINERATION UNITS**

(a) Applicability. ~~With the exceptions~~ Unless exempt as described in Paragraph (b) of this Rule, this Rule applies to the existing commercial and industrial solid waste incinerators (CISWI); incineration (CISWI) units, including energy recovery units, kilns, small remote incinerators and air curtain incinerators that burn solid waste, pursuant to 40 CFR 60.2550 and as defined in 40 CFR 60.2875. An existing CISWI unit is a unit that commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010 but no later than August 7, 2013.

(b) Exemptions. The following types of ~~incineration~~ combustion units are exempted from this Rule:

- (1) ~~incineration units subject to covered under Rules 15A NCAC 02D .1203 through 15A NCAC 02D .1206 of this Section; and 15A NCAC 02D .1212;~~
- (2) pathological waste incineration units ~~units~~, burning 90 percent or more by weight on a calendar-quarter basis, excluding the weight of auxiliary fuel and combustion air, of ~~agricultural waste~~, pathological waste, low-level radioactive waste, or chemotherapeutic waste as defined in 40 CFR 60.2875, ~~waste~~, if the owner or operator of the unit:
  - (A) notifies the Director that the unit qualifies for this exemption; and
  - (B) keeps records on a calendar-quarter basis of the weight of ~~agricultural waste~~, pathological waste, ~~low-level~~ low-level radioactive waste, or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit;
- (3) small power production or cogeneration units if;
  - (A) the unit qualifies as a small power-production facility ~~under pursuant to~~ pursuant to Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)) or as a cogeneration facility ~~under pursuant to~~ pursuant to ~~Section section~~ 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B));
  - (B) the unit burns homogeneous waste (not including refuse-derived fuel) to produce ~~electricity; and electricity,~~ steam or other forms of energy used for industrial, commercial, heating, or cooling purposes;
  - (C) the owner or operator of the unit notifies the Director that the unit qualifies for this exemption; and
  - (D) the owner or operator of the unit maintains the records specified in 40 CFR 60.2740(v) for a small power-production facility or 40 CFR 60.2740(w) for a cogeneration facility;
- (4) units that combust waste for the primary purpose of recovering metals;
- (5) cyclonic barrel burners;
- (6) rack, part, and drum reclamation units that burn the coatings off racks used to hold small items for application of a coating;
- ~~(7) cement kilns;~~
- ~~(8)(7)~~ chemical recovery units burning materials to recover chemical constituents or to produce chemical compounds ~~as listed pursuant to the definition of "chemical recovery unit" in 40 CFR 60.2555(n)(1) through (7); 60.2875;~~

- ~~(9)~~(8) laboratory analysis units that burn samples of materials for the purpose of chemical or physical analysis;
- ~~(10)~~(9) air curtain burners covered under Rule .1904 of this Subchapter; incinerators that burn only the materials listed in Parts (A) through (C) of this Subparagraph shall meet the requirements specified in 15A NCAC 02D .1904:
  - (A) 100 percent wood waste;
  - (B) 100 percent clean lumber; and
  - (C) 100 percent mixture of only wood waste, clean lumber, and/or yard waste;
- (10) sewage treatment plants that are subject to 40 CFR 60 Subpart O Standards of Performance for Sewage Treatment Plants;
- (11) space heaters that meet the requirements of 40 CFR 279.23;
- (12) soil treatment units that thermally treat petroleum contaminated soils for the sole purpose of site remediation; and
- (13) the owner or operator of a combustion unit that is subject to this Rule may petition for an exemption to this Rule by obtaining a determination that the material being combusted is one of the following:
  - (A) not a solid waste pursuant to the legitimacy criteria of 40 CFR 241.3(b)(1);
  - (B) a non-waste pursuant to the petition process submitted pursuant to 40 CFR 241.3(c); or
  - (C) a fuel that has been processed from a discarded non-hazardous secondary material pursuant to 40 CFR 241.3(b)(4).

~~(e) The owner or operator of a chemical recovery unit not listed under 40 CFR 60.2555(n) may petition the Director to be exempted. The petition shall include all the information specified under 40 CFR 60.2559(a). The Director shall approve the exemption if he finds that all the requirements of 40 CFR 60.2555(n) are satisfied and that the unit burns materials to recover chemical constituents or to produce chemical compounds where there is an existing market for such recovered chemical constituents or compounds.~~

~~(4)(c) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.2875 apply in addition to the definitions in Rule .1202 of this Section.~~ 15A NCAC 02D .1202. Solid waste is defined under 40 CFR 60.2875 and 40 CFR Part 241 Standards for Combustion of Non-Hazardous Secondary Materials (NHSM).

(d) Compliance Schedule. All CISWI units subject to this Rule shall be in compliance with this Rule no later than February 7, 2018.

(e) Emission Standards. The emission standards in this Rule apply to all CISWI units incinerators subject to this Rule except where Rules 15A NCAC 02D .0524, .1110, or .1111 of this Subchapter applies. When Subparagraphs (12) or (13) Subparagraph (4) of this Paragraph and Rules 15A NCAC 02D

.0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant applies, notwithstanding provisions of Rules 15A NCAC 02D .0524, .1110, or .1111 of this Subchapter to the contrary.

- (1) CISWI units subject to this Rule, including any bypass stack or vent, must meet the emissions limits specified in Tables 6 through 9 of 40 CFR 60 Subpart DDDD. The emission limitations apply at all times the unit is operating including and not limited to startup, shutdown, or malfunction.
- (2) Units that do not use wet scrubbers must maintain opacity to less than or equal to 10 percent opacity using an averaging time of three 1-hour blocks consisting of ten 6-minute average opacity values as measured by 40 CFR 60 Appendix A-4 Test Method 9 pursuant to Table 2 of 40 CFR 60 Subpart DDDD.
- (1) ~~Particulate Matter. Emissions of particulate matter from a CISWI unit shall not exceed 70 milligrams per dry standard cubic meter corrected to seven percent oxygen (dry basis).~~
- (2) ~~Opacity. Visible emissions from the stack of a CISWI unit shall not exceed 10 percent opacity (6 minute block average).~~
- (3) ~~Sulfur Dioxide. Emissions of sulfur dioxide from a CISWI unit shall not exceed 20 parts per million by volume corrected to seven percent oxygen (dry basis).~~
- (4) ~~Nitrogen Oxides. Emissions of nitrogen oxides from a CISWI unit shall not exceed 368 parts per million by volume corrected to seven percent oxygen (dry basis).~~
- (5) ~~Carbon Monoxide. Emissions of carbon monoxide from a CIWI unit shall not exceed 157 parts per million by volume, corrected to seven percent oxygen (dry basis).~~
- ~~(6)~~(3) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule 15A NCAC 02D .1806 of this Subchapter for the control of odorous emissions.
- (7) ~~Hydrogen Chloride. Emissions of hydrogen chloride from a CISWI unit shall not exceed 62 parts per million by volume, corrected to seven percent oxygen (dry basis).~~
- (8) ~~Mercury Emissions. Emissions of mercury from a CISWI unit shall not exceed 0.47 milligrams per dry standard cubic meter, corrected to seven percent oxygen.~~
- (9) ~~Lead Emissions. Emissions of lead from a CISWI unit shall not exceed 0.04 milligrams per dry standard cubic meter, corrected to seven percent oxygen.~~
- (10) ~~Cadmium Emissions. Emissions of cadmium from a CISWI unit shall not exceed 0.004 milligrams per dry standard cubic meter, corrected to seven percent oxygen.~~
- (11) ~~Dioxins and Furans. Emissions of dioxins and furans from a CISWI unit shall not exceed 0.41~~



nanograms per dry standard cubic meter (toxic equivalency basis), corrected to seven percent oxygen. Toxic equivalency is given in Table 4 of 40 CFR part 60, Subpart DDDD.

- (12)(4) Toxic Emissions. The owner or operator of any CISWI unit incinerator subject to this Rule shall demonstrate compliance with Section 15A NCAC 02D .1100 of this Subchapter according to 15A NCAC 02Q .0700.

- (13) ~~Ambient Standards.~~

(A) ~~In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, apply aggregately to all incinerators at a facility subject to this Rule:~~

- (i) ~~arsenic and its compounds~~  
 ~~$2.3 \times 10^{-7}$~~
- (ii) ~~beryllium and its compounds~~  
 ~~$4.1 \times 10^{-6}$~~
- (iii) ~~cadmium and its compounds~~  
 ~~$5.5 \times 10^{-6}$~~
- (iv) ~~chromium (VI) and its compounds~~  
 ~~$8.3 \times 10^{-8}$~~

(B) ~~The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.~~

(C) ~~The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators as their allowable emission limits unless Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.~~

- (f) Operational Standards.

- (1) The operational standards in this Rule do not apply to any ~~incinerator~~ CISWI unit subject to this Rule when applicable operational standards in Rules 15A NCAC 02D .0524, .1110, or .1111 of this Subchapter apply.
- (2) The owner or operator of any CISWI unit subject to this Rule shall operate the CISWI unit according to the provisions in 40 CFR 60.2675.

~~If a wet scrubber is used to comply with emission limitations:~~

- (A) ~~operating limits for the following operating parameters shall be established:~~

- (i) ~~maximum charge rate, which shall be measured continuously, recorded every hour, and calculated using one of the following procedures:~~

- (I) ~~for continuous and intermittent units, the maximum charge rate is 110 percent of the average charge rate measured during the most recent compliance test demonstrating compliance with all applicable emission limitations; or~~
- (II) ~~for batch units, the maximum charge rate is 110 percent of the daily charge rate measured during the most recent compliance test demonstrating compliance with all applicable emission limitations;~~

- (ii) ~~minimum pressure drop across the wet scrubber, which shall be measured continuously, recorded every 15 minutes, and calculated as 90 percent of:~~

- (I) ~~the average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations, or~~
- (II) ~~the average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter~~

- emission  
limitations;
- (iii) ~~minimum scrubber liquor flow rate, which shall be measured continuously, recorded every 15 minutes, and calculated as 90 percent of the average liquor flow rate at the inlet to the wet scrubber measured during the most recent compliance test demonstrating compliance with all applicable emission limitations; and~~
  - (iv) ~~minimum scrubber liquor pH, which shall be measured continuously, recorded every 15 minutes, and calculated as 90 percent of the average liquor pH at the inlet to the wet scrubber measured during the most recent compliance test demonstrating compliance with all applicable emission limitations.~~
- (B) ~~A three hour rolling average shall be used to determine if operating parameters in Subparts (A)(i) through (A)(iv) of this Subparagraph have been met.~~
  - (C) ~~The owner or operator of the CISWI unit shall meet the operating limits established during the initial performance test on the date the initial performance test is required or completed.~~
- (3) ~~If a fabric filter is used to comply with the emission limitations, then it shall be operated as specified in 40 CFR 60.2675(e); an air pollution control device other than a wet scrubber, activated carbon sorbent injection, selective noncatalytic reduction, fabric filter, electrostatic precipitator, or dry scrubber is used to comply with this Rule or if emissions are limited in some other manner, including mass balances, to comply with the emission standards of Subparagraph (e)(1) of this Rule, the owner or operator shall petition the Director for specific operating limits that shall be established during the initial performance test and continuously monitored thereafter.~~
- (A) ~~The initial performance test shall not be conducted until after the Director approves the petition.~~
  - (B) ~~All the provisions of 40 CFR 60.2680 shall apply to the petition.~~
  - (C) ~~The Director shall approve the petition upon finding that the requirements of~~
- 40 CFR 60.2680 have been satisfied and that the proposed operating limits will ensure compliance with the emission standards in Subparagraph (e)(1) of this Rule.
- (4) ~~If an air pollution control device other than a wet scrubber is used or if emissions are limited in some other manner to comply with the emission standards of Paragraph (e) of this Rule, the owner or operator shall petition the Director for specific operating limits that shall be established during the initial performance test and continuously monitored thereafter. The initial performance test shall not be conducted until after the Director approves the petition. The petition shall include:~~
- (A) ~~identification of the specific parameters to be used as additional operating limits;~~
  - (B) ~~explanation of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will serve to limit emissions of regulated pollutants;~~
  - (C) ~~explanation of establishing the upper and lower limits for these parameters, which will establish the operating limits on these parameters;~~
  - (D) ~~explanation of the methods and instruments used to measure and monitor these parameters, as well as the relative accuracy and precision of these methods and instruments;~~
  - (E) ~~identification of the frequency and methods for recalibrating the instruments used for monitoring these parameters.~~
- ~~The Director shall approve the petition if he finds that the requirements of this Subparagraph have been satisfied and that the proposed operating limits will ensure compliance with the emission standards in Paragraph (e) of this Rule.~~
- (g) Test Methods and Procedures.
- (1) For the purposes of this Paragraph, "Administrator" in 40 CFR 60.8 means "Director".
  - (2) The test methods and procedures described in ~~Section 15A NCAC 02D .2600, .2600 of this Subchapter, in Tables 6 through 9 of 40 CFR 60 Subpart DDDD, Part 60 Appendix A, 40 CFR Part 61 Appendix B, in 40 CFR 60.2670(b) and 40 CFR 60.2690 shall be used to determine compliance with emission standards in Paragraph (e)(1) of this Rule. Method 29 of 40~~

~~CFR Part 60 shall be used to determine emission standards for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.~~

- (3) ~~Compliance with the opacity limit in Paragraph (e)(2) of this rule shall be determined using 40 CFR 60 Appendix A-4 Test Method 9. All performance tests shall consist of a minimum of three test runs conducted under conditions representative of normal operations. Compliance with emissions standards under Subparagraph (e)(1), (3) through (5), and (7) through (11) of this Rule shall be determined by averaging three one hour emission tests. These tests shall be conducted within 12 months following the initial performance test and within every twelve month following the previous annual performance test after that.~~

(h) Initial Compliance Requirements.

- (1) The owner or operator of a CISWI unit subject to this Rule shall demonstrate initial compliance with the emission limits in Subparagraph (e)(1) of this Rule and establish the operating standards in Paragraph (f) of this Rule according to the provisions in 40 CFR 60.2700 through 40 CFR 60.2706. If an owner or operator commences or recommences combusting a solid waste at an existing combustion unit at any commercial or industrial facility, the owner or operator shall comply with the requirements of this Paragraph.
- ~~(4)(2)~~ The owner or operator of a CISWI unit subject to this Rule shall conduct an initial performance test as specified in 40 CFR 60.8 pursuant to 40 CFR 60.2670, 40 CFR 60.2690 and Subparagraph (g) of this Rule, to determine compliance with the emission standards in Paragraph (e) of this Rule and to establish operating standards using the procedure in Paragraph (f) of this Rule. The initial performance test must be conducted no later than 180 days after February 7, 2018 or according to 40 CFR 60.2705(b) or (c). The use of the bypass stack during a performance test shall invalidate the performance test. The initial performance test shall be used to:
- (A) determine compliance with the emission standards in Subparagraph (e)(1) of this Rule;
- (B) establish compliance with any opacity operating limits in 40 CFR 60.2675(h);
- (C) establish the kiln-specific emission limit in 40 CFR 60.2710(y), as applicable; and
- (D) establish operating limits using the procedures in 40 CFR 60.2675 or 40

CFR 60.2680 and in Paragraph (f) of this Rule.

- (3) The owner or operator of a CISWI unit subject to this Rule shall also conduct:

- (A) a performance evaluation of each continuous emissions monitoring system (CEMS) or continuous monitoring system within 60 days of installation of the monitoring system; and
- (B) an initial air pollution control device inspection no later than 180 days after February 7, 2018 pursuant to 40 CFR 60.2706.

(i) Continuous Compliance Requirements.

- (1) The owner or operator of a CISWI unit subject to this Rule shall demonstrate continuous compliance with the emission limits in Subparagraph (e)(1) of this Rule and the operating standards in Paragraph (f) of this Rule according to the provisions in 40 CFR 60.2710 through 40 CFR 60.2725.
- (2) If an existing CISWI unit that combusted a fuel or non-waste material commences or recommences combustion of solid waste, the owner or operator:
- (A) is subject to the provisions of 40 CFR 60 Subpart DDDD as of the first day solid waste is introduced or reintroduced into the combustion chamber and this date constitutes the effective date of the fuel-to-waste switch;
- (B) shall complete all initial compliance demonstrations for any Section 112 standards that are applicable to the facility before commencing or recommencing combustion of solid waste; and
- (C) shall provide 30 days prior notice of the effective date of the waste-to-fuel switch identifying the parameters listed in 40 CFR 60.2710(a)(4)(i) through (v).
- (3) Pursuant to 40 CFR 60.2710(v), the use of a bypass stack at any time is an emissions standards deviation for particulate matter, hydrogen chloride, lead, cadmium, mercury, nitrogen oxides, sulfur dioxide, and dioxin/furans.
- ~~(5)(4)~~ The owner or operator of the a CISWI unit subject to this Rule shall conduct an annual performance test for the pollutants listed in Subparagraph (e)(1) of this Rule, including opacity and fugitive ash, particulate matter, hydrogen chloride, and opacity as specified in 40 CFR 60.8 to determine compliance with the emission standards given in 40 CFR 60 Subpart DDDD Tables 6 through 9, for the pollutants in

- ~~Paragraph (e) of this Rule. The annual performance test must be conducted according to the provisions in Paragraph (g) of this Rule. Annual performance tests are not required if CEMS or continuous opacity monitoring systems are used to determine compliance.~~
- (5) The owner or operator shall continuously monitor the operating parameters established in Paragraph (f) of this Rule, and as specified in 40 CFR 60.2710(c) and in 40 CFR 60.2735.
- (6) The owner or operator of an energy recovery unit subject to this Rule shall only burn the same types of waste and fuels used to establish applicability to this Rule and to establish operating limits during the performance test.
- (7) The owner or operator shall comply with the monitoring system-specific, unit-specific and pollutant-specific provisions pursuant to 40 CFR 60.2710(e) through (j), (m) through (u), and (w) through (y).
- (8) The owner or operator shall conduct an annual inspection of any air pollution control device used to meet the emission limitations in this Rule as specified in 40 CFR 60.2710(k).
- (9) The owner or operator shall develop and submit to the Director for approval a site-specific monitoring plan according to the requirements in 40 CFR 60.2710(l). This plan must be submitted at least 60 days before the initial performance evaluation of any continuous monitoring system. The owner or operator shall conduct a performance evaluation of each continuous monitoring system in accordance with the site-specific monitoring plan. The owner or operator shall operate and maintain the continuous monitoring system in continuous operation according to the site-specific monitoring plan.
- (10) The owner or operator shall meet any applicable monitoring system requirements specified in 40 CFR 60.2710(m) through (u) and (w) through (y).
- (6) ~~If the owner or operator of CISWI unit has shown, using performance tests, compliance with particulate matter, hydrogen chloride, and opacity for three consecutive years, the Director shall allow the owner or operator of CISWI unit to conduct performance tests for these three pollutants every third year. However, each test shall be within 36 months of the previous performance test. If the CISWI unit continues to meet the emission standards for these three pollutants the Director shall allow the owner or operator of CISWI unit to continue to conduct performance tests for these three pollutants every three years.~~
- (7) ~~If a performance test shows a deviation from the emission standards for particulate matter, hydrogen chloride, or opacity, the owner or~~
- ~~operator of the CISWI unit shall conduct annual performance tests for these three pollutants until all performance tests for three consecutive years show compliance for particulate matter, hydrogen chloride, or opacity.~~
- (8) ~~The owner or operator of CISWI unit may conduct a repeat performance test at any time to establish new values for the operating limits.~~
- (9) ~~The owner or operator of the CISWI unit shall repeat the performance test if the feed stream is different than the feed streams used during any performance test used to demonstrate compliance.~~
- (10) ~~If the Director has evidence that an incinerator is violating a standard in Paragraph (e) or (f) of this Rule or that the feed stream or other operating conditions have changed since the last performance test, the Director may require the owner or operator to test the incinerator to demonstrate compliance with the emission standards listed in Paragraph (e) of this Rule at any time.~~
- ~~(h)(j) Monitoring.~~
- (1) ~~The owner or operator of an incinerator a CISWI unit subject to the requirements of this Rule shall comply with the monitoring monitoring, recordkeeping, and reporting requirements in Section 15A NCAC 02D .0600 of this Subchapter, and 40 CFR 60.2730 through 40 CFR 60.2735.~~
- (2) For each continuous monitoring system required or optionally allowed pursuant to 40 CFR 60.2730, the owner or operator shall monitor and collect data according to 40 CFR 60.2735.
- ~~(2)(3)~~ (3) The owner or operator of an incinerator a CISWI unit subject to the requirements of this Rule shall establish, install, calibrate to manufacturers specifications, maintain, and operate:
- (A) ~~devices or methods for continuous temperature monitoring and recording for the primary chamber and, where there is a secondary chamber, for the secondary chamber;~~
- (B)(A) devices or methods for monitoring the value of the operating parameters used to determine compliance with the operating parameters established under Paragraph (f)(2) of this Rule; Rule as specified in 40 CFR 60.2730;
- (C) a bag leak detection system that meets the requirements of 40 CFR 60.2730(b) if a fabric filter is used to comply with the requirements of the emission standards in Paragraph (e) of this Rule; and

- ~~(D)~~(B) equipment devices or methods necessary to monitor compliance with the site-specific operating parameters established under pursuant to Paragraph ~~(f)~~(4)(f)(3) of this Rule-Rule as specified by 40 CFR 60.2730(c).
- (3) ~~The Director shall require the owner or operator of a CISWI unit with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the CISWI unit.~~
- (4) To demonstrate continuous compliance with an emissions limit, a facility may substitute use of a CEMS, a continuous automated sampling system, or other device specified by 40 CFR 60.2730 for conducting the annual emissions performance test and for monitoring compliance with operating parameters as specified by 40 CFR 60.2730. The Director shall require the owner or operator of a CISWI unit with a permitted charge rate of 750 pounds per hour or less to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both if necessary to determine proper operation of the CISWI unit.
- (5) The owner or operator of a CISWI unit subject to this rule with a bypass stack shall install, calibrate (to manufacturers' specifications), maintain and operate a device or method for measuring the use of the bypass stack, including date, time and duration.
- ~~(5)~~(6) The owner or operator of the a CISWI unit subject to this Rule shall conduct all monitoring at all times the CISWI unit is operating, except; except for:
- (A) monitoring system malfunctions and associated repairs; repairs as specified in 40 CFR 60.2735;
- (B) monitoring system out-of-control periods as specified in 40 CFR 60.2770(o);
- ~~(B)~~(C) required monitoring system quality assurance or quality control activities including calibrations checks and required zero and span adjustments of the monitoring system- system; and
- (D) any scheduled maintenance as defined in the site-specific monitoring plan pursuant to Subparagraph (i)(9) of this Rule.
- ~~(6)~~(7) The data recorded during monitoring malfunctions, out of control periods, associated repairs, and repairs associated with malfunctions or out of control periods, required quality assurance or quality control activities, and site-specific scheduled maintenance shall not be used in assessing compliance with the
- operating standards in Paragraph (f) of this Rule. Owners and operators of a CISWI unit subject to this Rule must use all the data collected during all other periods, including data normalized for above scale readings, in assessing the operation of the control device and associated control system.
- (8) Owners or operators of a CISWI unit subject to this Rule are required to effect monitoring system repairs in response to monitoring system malfunctions or out-of-control periods and to return the monitoring system to operation as expeditiously as practicable.
- (9) Except for periods of monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods, and required monitoring system quality assurance or quality control activities including, as applicable, calibration checks and required zero and span adjustments, failure to collect required monitoring data is a deviation of the monitoring requirements.
- (k) Deviations, Malfunctions, and Out of Control Periods.
- (1) Owners and operators of a CISWI unit subject to this Rule shall report any deviations as defined in 40 CFR 60.2875, including, but not limited to, the instances listed in Parts (A) through (D) of this Subparagraph.
- (A) Deviation from operating limits in Table 3 of 40 CFR 60 Subpart DDDD or a deviation from other operating limits established pursuant to Paragraph (f) of this Rule, 40 CFR 60.2675(c) through (g) or 40 CFR 60.2680 including, but not limited to, any recorded 3-hour average parameter level is above the established maximum operating limit or below the established minimum operating limit;
- (B) Deviation from the emission limitations established pursuant to Tables 6 through 9 of 40 CFR 60 Subpart DDDD detected through monitoring or during a performance test;
- (C) Deviation from the CISWI operator qualification and accessibility requirements established pursuant to 40 CFR 60.2635; or
- (D) Deviation from any term or condition included in the operating permit of the CISWI unit.
- (2) Owners and operators of a CISWI unit subject to this Rule shall submit any required deviation reports as specified by Paragraph (l) of this Rule. The deviation report shall be submitted by August 1 of the year for data collected during

the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data collected during the second half of the calendar year (July 1 to December 31). In addition, the owner and operator shall report the deviation in the annual report as specified by Paragraph (l) of this Rule.

(3) Owners and operators of a CISWI unit subject to this Rule shall report any malfunctions, as defined in 40 CFR 60.2875, in the annual report as specified by Paragraph (j) and Paragraph (l) of this Rule.

(4) Owners and operators of a CISWI unit subject to this Rule shall report any periods during which any continuous monitoring system, including a CEMS, was out of control in the annual report as specified by Paragraph (j) and Paragraph (l) of this Rule.

~~(i)(1)~~ Recordkeeping, Recordkeeping and Reporting.

(1) The owner or operator of a CISWI unit subject to this Rule shall maintain records required by this Rule on site in either paper copy or electronic format that can be printed upon request for a period of five ~~years~~ years, unless an alternate format has been approved by the Director.

(2) Combustion units that are exempt units pursuant to Paragraph (b) of this Rule are subject to the recordkeeping and reporting requirements in 40 CFR 60.2740(u) through 40 CFR 60.2740(w).

~~(2)(3)~~ The owner or operator of a CISWI unit subject to this rule shall maintain all records required under by 40 CFR ~~60.2740-60.2740~~ through 40 CFR 60.2800.

~~(3)(4)~~ The owner or operator of a CISWI unit subject to this Rule shall submit the following reports with the required information and by the required due dates as specified in Table 5 of 40 CFR 60, Subpart ~~DDDD~~ the following reports: DDDD:

(A) Waste Management Plan; waste management plan as specified in 40 CFR 60.2755;

(B) initial test ~~report~~, report as specified in 40 CFR 60.2760;

(C) annual report as specified in 40 CFR ~~60.2770~~; 60.2765 and 40 CFR 60.2770;

(D) emission limitation or operating limit deviation report as specified in 40 CFR 60.2775 and 40 CFR 60.2780;

(E) qualified operator deviation notification as specified in 40 CFR 60.2785(a)(1);

(F) qualified operator deviation status report, as specified in 40 CFR 60.2785(a)(2);

(G) qualified operator deviation notification of resuming operation as specified in 40 CFR 60.2785(b).

(4) The owner or operator of the CISWI unit shall submit a deviation report if:

(A) ~~any recorded three hour average parameter level is above the maximum operating limit or below the minimum operating limit established under Paragraph (f) of this Rule;~~

(B) ~~the bag leak detection system alarm sounds for more than five percent of the operating time for the six month reporting period; or~~

(C) ~~a performance test was conducted that deviated from any emission standards in Paragraph (e) of this Rule.~~

The deviation report shall be submitted by August 1 of the year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data collected during the second half of the calendar year (July 1 to December 31).

(5) The owner or operator shall maintain CISWI unit operator records as specified by 40 CFR 60.2740(g) through (i), 40 CFR 60.2660 and 40 CFR 60.2665. If the CISWI unit has been shut down by the Director pursuant to 40 CFR 60.2665(b)(2), due to failure to provide an accessible qualified operator, the owner or operator shall notify the Director that the operations are resumed once a qualified operator is accessible.

~~(5)(6)~~ The owner or operator of the a CISWI unit subject to this Rule may request changing semiannual or annual reporting dates as specified in this Paragraph, and the Director may approve the request change using the procedures specified in 40 CFR 60.19(c).

~~(6)(7)~~ Reports required under this Rule shall be submitted electronically or in paper format, postmarked on or before the submittal due dates, shall be submitted to US EPA as specified in 40 CFR 60.2795.

(A) The owner or operator of the CISWI unit shall submit initial, annual and deviation reports electronically on or before the submittal due dates as specified in 40 CFR 60.2795(a). Submit the reports to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI) which can be accessed through the EPA's Central Data Exchange (CDX)(<https://cdx.epa.gov/>). Reports required under this Rule shall be submitted electronically or in paper format, postmarked on or before the submittal due dates.

(B) The owner or operator shall submit results of each performance test and CEMS performance evaluation within 60 days of the test or evaluation following the procedure specified in 40 CFR 60.2795(b).

(i) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT Web site ([https://www3.epa.gov/ttn/chief/ert/ert\\_info.html](https://www3.epa.gov/ttn/chief/ert/ert_info.html)) at the time of the test, the owner or operator must submit the results of the performance test to the EPA via the CEDRI.

(ii) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the test, the owner or operator shall submit the results of the performance test to the Director.

(7) ~~If the CISWI unit has been shut down by the Director under the provisions of 40 CFR 60.2665(b)(2), due to failure to provide an accessible qualified operator, the owner or operator shall notify the Director that the operations are resumed once a qualified operator is accessible.~~

~~(j) Excess Emissions and Start up and Shut down. All incinerators subject to this Rule shall comply with 15A NCAC 2D .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.~~

~~(k)(m)~~ Operator Training and Certification.

(1) The owner or operator of the CISWI unit subject to this Rule shall not allow the CISWI unit to operate at any time unless a fully trained and qualified CISWI unit operator is accessible, either at the facility or ~~available~~ can be at the facility within one hour. The trained and qualified CISWI unit operator may operate the CISWI unit directly or be the direct supervisor of one or more ~~CISWI unit operators~~ plant personnel who operate the unit.

(2) Operator training and qualification shall be obtained by completing the requirements of 40 CFR 60.2635(c) by the later of:

(A) six month after CISWI unit startup; ~~or~~  
 (B) six month after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit; ~~unit~~ or

(C) February 7, 2018.

(3) Operator qualification is valid from the date on which the training course is completed and the operator passes the examination required in 40 CFR 60.2635(c)(2).

(4) Operator qualification shall be maintained by completing an annual review or refresher course ~~covering~~ covering, at a minimum, the topics specified in 40 CFR 60.2650(a) through (e).

~~(A) update of regulations;~~

~~(B) incinerator operation, including startup and shutdown procedures, waste charging, and ash handling;~~

~~(C) inspection and maintenance;~~

~~(D) responses to malfunctions or conditions that may lead to malfunction;~~

~~(E) discussion of operating problems encountered by attendees.~~

(5) Lapsed operator qualification shall be renewed by:

(A) completing a standard annual refresher course as specified in Subparagraph (4) of this Paragraph for a lapse less than three years, ~~and or~~

(B) repeating the initial qualification requirements as specified in Subparagraph (2) of this Paragraph for a lapse of three years or more.

(6) The owner or operator of the ~~a CISWI~~ CISWI unit subject to this Rule shall:

(A) have documentation specified in 40 CFR 60.2660(a)(1) through (10) and (c)(1) through (c)(3) available at the facility and accessible for all CISWI unit operators and are suitable for inspection upon request;

(B) establish a program for reviewing the documentation specified in Part (A) of this Subparagraph with each CISWI unit ~~operator~~ operator such that the initial review of the documentation specified in Part (A) of this Subparagraph shall be conducted no later than February 7, 2018 or no later than six months after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit.

(C) Subsequent annual reviews of the documentation specified in Part (A) of this Subparagraph shall be conducted no later than 12 months following the previous review.

~~(i) the initial review of the documentation specified in Part (A) of this Subparagraph~~

~~shall be conducted by the  
later of the two dates:~~

- ~~(I) six month after  
CISWI unit startup;  
or~~
- ~~(II) six month after an  
employee assumes  
responsibility for  
operating the  
CISWI unit or  
assumes  
responsibility for  
supervising the  
operation of the  
CISWI unit; and~~

- ~~(ii) subsequent annual reviews of  
the documentation specified  
in Part (A) of this  
Subparagraph shall be  
conducted no later than  
twelve month following the  
previous review.~~

- (7) The owner or operator of ~~the a~~ CISWI unit subject to this Rule shall meet one of the two criteria specified in 40 CFR 60.2665(a) and (b), depending on the length of time, if all qualified operators are temporarily not at the facility and not able to be at the facility within one hour.

~~(4)(n)~~ Prohibited waste. The owner or operator of a CISIW subject to this Rule shall not incinerate any of the wastes listed in G.S. 130A-309.10(f1).

~~(m)(o)~~ Waste Management Plan.

- (1) The owner or operator of ~~the a~~ CISWI unit subject to this Rule shall submit a waste management plan to the Director that identifies in writing the feasibility and the methods used to reduce or separate components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste.
- (2) The waste management plan shall include:
  - (A) consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; and the use of recyclable materials;
  - (B) a description of how the materials listed in G.S. 130A-309.10(f1) are to be segregated from the waste stream for recycling or proper disposal;
  - (C) identification of any additional waste management measures; and
  - (D) implementation of those measures considered practical and feasible, based on the effectiveness of waste management measures already in place, the costs of additional measures and the emissions reductions expected to be achieved and the environmental

or energy impacts that the measures may have.

~~(n) The final control plan shall contain the information specified in 40 CFR 60.2600(a)(1) through (5), and a copy shall be maintained on site.~~

*Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(4),(5); 40 CFR 60.215(a)(4).*

## TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

### CHAPTER 16 – BOARD OF DENTAL EXAMINERS

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Dental Examiners intends to amend the rules cited as 21 NCAC 16G .0101 and .0103 with changes from the proposed text noticed in the Register, Volume 32, Issue 02, pages 70-72.*

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

**Proposed Effective Date:** April 1, 2018

**Public Hearing:**

**Date:** January 18, 2018

**Time:** 6:30 p.m.

**Location:** 2000 Perimeter Park Drive, Suite 160, Morrisville, NC 27560

**Reason for Proposed Action:** *The North Carolina State Board of Dental Examiners published proposed amendments to the text of 21 NCAC 16G .0101 and .0103 in Volume 32, Issue 02 of the North Carolina Register. Among other changes, the proposed amendments would have prohibited a dental hygienist from applying silver diamine fluoride. During the comment period, the North Carolina State Board of Dental Examiners received several comments advocating that dental hygienists be permitted to perform such function. The North Carolina State Board of Dental Examiners is republishing the proposed amendments to 21 NCAC 16G .0101 and .0103 to permit delegation of that function to a dental hygienist under the supervision of a licensed dentist. Specifically, "applying silver diamine fluoride" has been added as Item (11) in 21 NCAC 16G .0101 and eliminated as Item (25) in 16G .0103. All other proposed amendments are the same as those published in Volume 32, Issue 02 of the North Carolina Register.*

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

**Comment period ends:** February 13, 2018

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



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

**Fiscal impact (check all that apply).**

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

**SUBCHAPTER 16G - DENTAL HYGIENISTS**

**SECTION .0100 - FUNCTIONS THAT MAY BE DELEGATED**

**21 NCAC 16G .0101 FUNCTIONS THAT MAY BE DELEGATED**

A dental hygienist may be delegated functions to be performed under the control and supervision of a dentist who shall be responsible for any and all consequences or results arising from performance of such acts and functions. In addition to the functions set out in G.S. 90-221(a) and 21 NCAC 16H .0203, functions that may be delegated to a dental hygienist provided that a the dentist has first examined the patient and prescribed the procedure include:

- ~~(1) Taking impressions for study models and opposing casts that may be used for the construction of temporary or permanent dental appliances, adjustable orthodontic appliances, nightguards, and the repair of dentures or partials;~~
- ~~(2) Applying sealants to teeth that do not require mechanical alteration prior to the application of such sealants;~~
- ~~(3) Inserting matrix bands and wedges;~~
- ~~(4) Placing cavity bases and liners;~~
- ~~(5) Placing and removing rubber dams;~~
- ~~(6) Cementing temporary restorations using temporary cement;~~
- ~~(7) Applying acid etch materials and rinses;~~
- ~~(8) Applying bonding agents;~~
- ~~(9) Removing periodontal dressings;~~
- ~~(10) Removing sutures;~~
- ~~(11) Placing and removing gingival retraction cord;~~
- ~~(12) Removing excess cement;~~
- ~~(13) Flushing, drying, and temporarily closing root canals;~~
- ~~(14) Placing and removing temporary restorations;~~

- ~~(15) Placing and tying in or untying and removing orthodontic arch wires;~~
- ~~(16) Inserting interdental spacers;~~
- ~~(17) Fitting (sizing) orthodontic bands or brackets;~~
- ~~(18) Applying dentin desensitizing solutions;~~
- ~~(19)(1) performing Performing periodontal screening;~~
- ~~(20)(2) performing Performing periodontal probing;~~
- ~~(21)(3) performing Performing subgingival exploration for or removal of hard or soft deposits;~~
- ~~(22)(4) performing Performing sulcular irrigation;~~
- ~~(23)(5) applying Applying resorbable sulcular antimicrobial or antibiotic agents;~~
- ~~(24) Performing extra-oral adjustments that affect function, fit, or occlusion of any temporary restoration or appliance; and~~
- ~~(25) Initially forming and sizing orthodontic arch wires and placing arch wires after final adjustment and approval by the dentist.~~
- (6) using ultrasonic scalers for prophylaxis;
- (7) performing scaling and root planning;
- (8) applying oral cancer screening products in preparation for the dentist's examination and diagnosis of oral cancer;
- (9) using laser fluorescence detectors in preparation for the dentist's examination and diagnosis of cavities;
- (10) applying resin infiltration treatment for incipient smooth surface lesions, following the dentist's diagnosis that the lesion is non-penetrable; or
- (11) applying silver diamine fluoride.

Authority G.S. 90-41; 90-221; 90-223(b); 90-233.

**21 NCAC 16G .0103 PROCEDURES PROHIBITED**

Those procedures that require the professional education and skill of a dentist and may not be delegated to a dental hygienist shall include:

- (1) performing comprehensive Comprehensive examination, diagnosis, and treatment planning;
- (2) performing surgical Surgical or cutting procedures on hard or soft tissues, including laser, air abrasion, or micro-abrasion procedures;
- (3) placing Placement or removing removal of therapeutic sulcular nonresorbable agents;
- (4) issuing The issuance of prescription drugs, medications, or work authorizations;
- (5) performing the final Final placement or intraoral adjustment of a fixed or removable appliance;
- (6) performing intraoral Intraoral occlusal adjustments which that affect function, fit, or occlusion of any temporary or permanent restoration or appliance;
- ~~(7) Extra-oral occlusal adjustments which affect function, fit, or occlusion of any permanent restoration or appliance;~~

- ~~(8)~~(7) performing Performance of direct pulp capping or pulpotomy;
- ~~(9)~~(8) placing Placement of sutures;
- ~~(10)~~(9) performing final Final placement or cementation of orthodontic bands or brackets;
- ~~(11)~~(10) performing the placement Placement or cementation of final restorations;
- ~~(12)~~(11) administering Administration of any anesthetic by any route except administering the administration of topically-applied agents intended to anesthetize only cutaneous tissue; and
- ~~(13)~~(12) using Intraoral use of a high-speed handpiece -handpiece intraorally;
- (13) performing cementation of endodontic posts;
- (14) condensing Amalgam;
- (15) using a transcutaneous electrical nerve stimulation (TENS) unit;
- (16) applying formocresol;
- (17) placing stainless steel crown on permanent or primary teeth;
- (18) performing pulp vitality testing;
- (19) performing curettage;
- (20) placing periodontal or surgical dressing;
- (21) performing oral brush biopsy;
- (22) taking bite registration or Elastometrics;
- (23) placing eugenol wick in dry socket;
- (24) fabricating or delivering sleep apnea appliance; and
- (25) removing, replacing, or torquing either impression or prosthetic implant abutments.

further define reporting criteria for the DHHS for opioid poisoning where the prescriber authorized more than 30 tablets of an opioid to the decedent and the prescriptions were written within 60 days of the patient deaths.

**21 NCAC 32M .0118** - is being adopted to clearly define consultation between a nurse practitioner and a supervising physician. This rule is intended to provide guidance in order to comply with the STOP act of 2017.

**21 NCAC 32S .0225** – is being adopted to clearly define consultation between a physician assistant and a supervising physician. This rule is intended to provide guidance in order to comply with the STOP Act of 2017.

**21 NCAC 32S .0212** – is being amended to clarify the obligation for physician assistants to follow all federal and state regulations with regard to refills for controlled substances.

**21 NCAC 32R .0103** – is being amended to clarify the Board's controlled substance continuing medical education requirements.

**Comments may be submitted to:** Wanda Long, NC Medical Board, PO Box 20007, Raleigh, NC 27619-0007; email [rules@ncmedboard.org](mailto:rules@ncmedboard.org)

**Comment period ends:** February 13, 2018

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

**Fiscal impact (check all that apply).**

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

## SUBCHAPTER 32M - APPROVAL OF NURSE PRACTITIONERS

### 21 NCAC 32M .0117 REPORTING CRITERIA

(a) The Department of Health and Human Services ("Department") may report to the North Carolina Board of Nursing ("Board of Nursing") information regarding the prescribing practices of those nurse practitioners ("prescribers") whose prescribing:

Authority G.S. 90-221(a); 90-223(b).

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## CHAPTER 32 – MEDICAL BOARD

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the Medical Board intends to adopt the rules cited as 21 NCAC 32M .0118; 32S .0225 and amend the rules cited as 21 NCAC 32M .0117; 32R .0103; 32S .0212.

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://www.ncmedboard.org/about-the-board/latest-board-activity/rule-change-tracker>

**Proposed Effective Date:** April 1, 2018

**Public Hearing:**

**Date:** February 13, 2018

**Time:** 10:00 a.m.

**Location:** NC Medical Board, 1203 Front Street, Raleigh, NC 27604

**Reason for Proposed Action:**

**21 NCAC 32M .0117** – Amendment increases the reporting criteria of data from the Controlled Substance Reporting System from one percent to two percent. In addition, the amendments

- (1) falls within the top ~~one~~ two percent of those prescribing 100 ~~milligrams~~ milligram equivalents ("MME") per patient per day; or
- (2) falls within the top ~~one~~ two percent of those prescribing 100 MME's per patient per day in combination with any benzodiazepine and who are within the top one percent of all controlled substance prescribers by volume.

(b) In addition, the Department may report to the Board of Nursing information regarding prescribers who have had two or more patient deaths in the preceding 12 months due to opioid ~~poisoning~~, poisoning where the prescribers authorized more than 30 tablets of an opioid to the decedent and the prescriptions were written within 60 days of the patient deaths.

(c) The Department may submit these reports to the Board of Nursing upon request and may include the information described in G.S. 90-113.73(b).

(d) The reports and communications between the Department and the Board of Nursing shall remain confidential pursuant to G.S. 90-16 and G.S. 90-113.74.

*Authority G.S. 90-18.2; 90-113.74.*

## **21 NCAC 32M .0118 DEFINITION OF CONSULTATION FOR PRESCRIBING CONTROLLED SUBSTANCES**

For purposes of G.S. 90-18.2(b), the term "consult" shall mean a meaningful communication, either in person or electronically, between the nurse practitioner and a supervising physician that is documented in the patient medical record. For the purposes of this Rule, "meaningful" shall mean an exchange of information sufficient for the supervising physician to make a determination that the prescription is medically indicated.

*Authority G.S. 90-18.2.*

## **SUBCHAPTER 32R – CONTINUING MEDICAL EDUCATION (CME) REQUIREMENTS**

### **SECTION .0100 – CONTINUING MEDICAL EDUCATION (CME) REQUIREMENTS**

#### **21 NCAC 32R .0103 EXCEPTIONS**

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

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

(b) A physician who obtains initial certification from an ABMS, AOA or RCPSC specialty board shall be deemed to have satisfied his or her entire CME requirement for the three year cycle in which the physician obtains board certification. However, if the physician prescribes controlled substances, then the physician shall complete at least three hours of CME that is designed specifically to address controlled substance prescribing practices as required in 21 NCAC 32R .0101 during that three year cycle. If the physician completed CME as part of their initial certification that specifically satisfies the requirement in 21 NCAC 32R .0101, then the physician is not required to take controlled-substance prescribing CME beyond that included in their initial certification process.

(c) A physician who attests that he or she is continuously engaged in a program of recertification, or maintenance of certification, from an ABMS, AOA or RCPSC specialty board shall be deemed to have satisfied his or her entire CME requirement for that three year cycle. However, if the physician prescribes controlled substances, then the physician shall complete at least three hours of CME that is designed specifically to address controlled substance prescribing practices as required in 21 NCAC 32R .0101 during that three year cycle. If the physician completed CME as part of their program for recertification or maintenance of certification process that specifically satisfies the requirement in 21 NCAC 32R .0101, then the physician is not required to take controlled-substance prescribing CME beyond that included in their recertification or maintenance of certification process.

*Authority G.S. 90-14(a)(15); 90B-15.*

## **SUBCHAPTER 32S - PHYSICIAN ASSISTANTS**

### **SECTION .0200 – PHYSICIAN ASSISTANT REGISTRATION**

#### **21 NCAC 32S .0212 PRESCRIPTIVE AUTHORITY**

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

- (1) The physician assistant complies with all state and federal laws regarding prescribing, including G.S. 90-18.1(b);
- (2) Each supervising physician and physician assistant incorporates within his or her written supervisory arrangements, as defined in Rule .0201(9) of this Subchapter, instructions for prescribing, ordering, and administering drugs and medical devices and a policy for periodic review by the physician of these instructions and policy;
- (3) In order to compound and dispense drugs, the physician assistant complies with G.S. 90-18.1(c);
- (4) In order to prescribe controlled substances,
  - (a) the physician assistant must have a valid Drug Enforcement Administration (DEA) registration and prescribe in accordance with DEA rules;

- (b) ~~all prescriptions for substances falling within schedules II, IIN, III, and IIN, as defined in the federal Controlled Substances Act, 21 U.S.C. 812, which is hereby incorporated by reference, including all subsequent amendments or editions, shall not exceed a legitimate 30 day supply. 21 U.S.C. 812 may be accessed at <http://www.deadiversion.usdoj.gov/21cfr/21usc/812.htm> free of charge; refills may be issued consistent with Controlled Substance Law and regulations; and~~
- (c) the supervising physician shall possess at least the same schedule(s) of controlled substances as the physician assistant's DEA registration;
- (5) Each prescription issued by the physician assistant contains, in addition to other information required by law, the following:
  - (a) the physician assistant's name, practice address, and telephone number;
  - (b) the physician assistant's license number and, if applicable, the physician assistant's DEA number for controlled substances prescriptions; and
  - (c) the authorizing supervising physician's, either primary or back-up, name and telephone number;
- (6) The physician assistant documents prescriptions in writing on the patient's record, including the medication name and dosage, amount prescribed, directions for use, and number of refills;
- (7) A physician assistant who requests, receives, and dispenses medication samples to patients complies with all applicable state and federal regulations; and
- (8) A physician assistant shall not prescribe controlled substances, as defined by the state and federal controlled substances acts, for:
  - (a) the physician assistant's own use;
  - (b) the use of the physician assistant's supervising physician;
  - (c) the use of the physician assistant's immediate family;
  - (d) the use of any person living in the same residence as the physician assistant; or
  - (e) the use of any anyone with whom the physician assistant is having a sexual relationship.

As used in this Item, "immediate family" means a spouse, parent, child, sibling, parent-in-law, son-in-law or daughter-in-law, brother-in-law or sister-in-law, step-parent, step-child, or step-sibling.

*Authority G.S. 90-18.2; 90-18(c)(13).*

## **21 NCAC 32S .0225 DEFINITION OF CONSULTATION FOR PRESCRIBING CONTROLLED SUBSTANCES**

For purposes of G.S. 90-18.1(b), the term "consult" shall mean a meaningful communication, either in person or electronically, between the physician assistant and a supervising physician that is documented in the patient medical record. For the purposes of this Rule, "meaningful" shall mean an exchange of information sufficient for the supervising physician to make a determination that the prescription is medically indicated.

*Authority G.S. 90-18.1.*

\* \* \* \* \*

## **CHAPTER 34 – BOARD OF FUNERAL SERVICE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Funeral Service intends to repeal the rules cited as 21 NCAC 34A .0122, .0127; 34B .0120, .0208, .0211, .0510, and .0610.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** <https://ncbfs.org/>

**Proposed Effective Date:** April 1, 2018

**Public Hearing:**

**Date:** January 10, 2018

**Time:** 10:00 a.m.

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

**Reason for Proposed Action:** *The North Carolina Board of Funeral Service does not need the rules proposed for repeal to accomplish the agency's purposes, as authorized by Articles 13A, 13D, 13E, and 13F for Chapter 90 of the North Carolina General Statutes. The agency has identified the rules as those that should be repealed pursuant to G.S. 150B-19.1(b).*

**Comments may be submitted to:** Catherine E. Lee, 1033 Wade Avenue, Suite 108, Raleigh, NC 27605; phone (919) 715-0901; fax (919) 733-8271; email [clee@ncbfs.org](mailto:clee@ncbfs.org)

**Comment period ends:** February 13, 2018

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

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

**Fiscal impact (check all that apply).**

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

**SUBCHAPTER 34A - BOARD FUNCTIONS**

**SECTION .0100 - GENERAL PROVISIONS**

**21 NCAC 34A .0122 CHARACTER AFFIDAVIT FORM**

~~Affidavits of good moral character shall be furnished on forms provided by the Board. The affiant shall furnish the name and address of the affiant, the name of the applicant, the length of time the affiant has been acquainted with the applicant, an affirmation of the good moral character of the applicant, certification by a notary public, and other information the Board deems necessary as required by law.~~

*Authority G.S. 90-210.23(a); 90-210.26.*

**21 NCAC 34A .0127 FILING OF DOCUMENTS**

~~Any document that does not require a fingerprint card or the payment of a fee, or that does not pertain to elections to the N.C. Crematory Authority or to a resident traineeship, may be filed with the Board by U.S. mail, private courier service, facsimile, or hand delivery. All other documents must be filed by U.S. mail, private courier service, or hand delivery. Documents shall be considered filed on the date of receipt or, if sent by U.S. mail or private courier service, on the date of postmark or date stamp used by the private courier respectively.~~

*Authority G.S. 90-210.23(a).*

**SUBCHAPTER 34B - FUNERAL SERVICE**

**SECTION .0100 - RESIDENT TRAINEES**

**21 NCAC 34B .0120 TRAINEE FINAL AFFIDAVIT FORM**

~~Upon the conclusion of a resident traineeship with a licensed supervisor, the supervisor shall submit an affidavit to certify that the trainee has served and performed certain work under him as required by G.S. 90-210.25(a)(4). The affidavit shall be submitted within 30 days on forms provided by the Board and require the affiant to furnish the names of the licensee and the trainee; dates and place of service; the number of funerals, preneed funeral contracts and embalmings that the trainee has assisted in during~~

~~traineeship; and any other information the Board deems necessary as required by law.~~

*Authority G.S. 90-210.23(a),(d),(f); 90-210.25(a)(4)f.; 90-210.67(a); 90-210.69(a).*

**SECTION .0200 - EXAMINATIONS**

**21 NCAC 34B .0208 PASSING SCORE**

~~The passing score on all examinations administered by the Board shall be such passing score that is established by the International Conference of Funeral Service Examining Boards, Inc. and in effect at the time such examinations are administered by the Board.~~

*Authority G.S. 90-210.23(a); 90-210.25(a)(1),(2),(3).*

**21 NCAC 34B .0211 NATIONAL BOARD CERTIFICATE**

~~The Board shall accept a "National Board Certificate," certifying the successful completion of the National Board Examination of the International Conference of Funeral Service Examining Boards Inc., as the equivalent of that portion of the Board's examination which deals with basic health sciences, funeral service sciences, and funeral service administration. National Board Certificates shall be accepted for five years from the date of issue for licenses issued under G.S. 90-210.25(a)(1), (2), or (3).~~

*Authority G.S. 190-210.23(a); 90-210.25(a)(5).*

**SECTION .0500 - OUT-OF-STATE LICENSEES**

**21 NCAC 34B .0510 COURTESY CARD RENEWAL FORM**

~~Applications for annual renewal of a courtesy card shall be made on forms provided by the Board. The form shall require the applicant to furnish the type of license privileges sought, changes to the applicant's name, address, telephone, place of employment, license expiration date, the signature of the applicant, affirmation that the applicant will abide by North Carolina law, verification, and any other information the Board deems necessary as required by law.~~

*Authority G.S. 90-210.23(a); 90-210.25(b)(3).*

**SECTION .0600 - FUNERAL ESTABLISHMENTS**

**21 NCAC 34B .0610 FUNERAL ESTABLISHMENT PERMIT RENEWAL FORM**

~~All funeral establishments holding a funeral establishment permit shall annually submit a renewal application on forms provided by the Board. The applicant shall furnish the name and address of the establishment; ownership of the establishment; license numbers of any owner, partner, officers of the business entity owning establishment; licensees employed by the funeral establishment; name and license number of the manager of the funeral establishment; and any other information the Board deems necessary as required by law. The form must be filed no later than February 1 of each year.~~

Authority G.S. 90-210.23(a); 90-210.25(d)(3).

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## CHAPTER 36 – BOARD OF NURSING

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Nursing intends to adopt the rule cited as 21 NCAC 36 .0816 and amend the rule cited as 21 NCAC 36 .0815.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
www.ncbon.com

**Proposed Effective Date:** April 1, 2018

**Public Hearing:**

**Date:** January 19, 2018

**Time:** 1:00 p.m.

**Location:** NC Board of Nursing, 4516 Lake Boone Trail, Raleigh, NC 27607

**Reason for Proposed Action:**

**21 NCAC 36 .0815 Reporting Criteria** – Amendment increases the reporting criteria of data from the Controlled Substance Reporting System from one percent to two percent. In addition, the amendments further define reporting criteria for the Department of Health and Human Services for opioid poisoning where the prescriber authorized more than 30 tablets of an opioid to the decedent and the prescriptions were written within 60 days of the patient deaths.

**21 NCAC 36 .0816 Definition of Consultation for Prescribing Controlled Substances** – Adoption of this Rule is in response to the STOP Act signed into law on June 29, 2017. In accordance with the Act, Nurse Practitioners who prescribe targeted controlled substances are required to personally consult with the supervising physician when the patient is treated at a facility prescribing narcotic medication or advertises pain management services and the prescription will exceed a 30- day supply. In addition, Nurse Practitioners who prescribe to the same patient continuously are required to consult with a supervising physician at least once every 90 days to verify the prescription remains medically appropriate. This Rule defines consultation between the Nurse Practitioner and a Supervising Physician.

**Comments may be submitted to:** Angela Ellis, NC Board of Nursing, PO Box 2129, Raleigh, NC 27602-2129; phone (919) 782-3211 Ext. 259; fax (919) 781-9461; email angela@ncbon.com

**Comment period ends:** February 13, 2018

**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 .0800 - APPROVAL AND PRACTICE PARAMETERS FOR NURSE PRACTITIONERS

### 21 NCAC 36 .0815 REPORTING CRITERIA

(a) The Department of Health and Human Services ("Department") may report to the North Carolina Board of Nursing ("Board") information regarding the prescribing practices of those nurse practitioners ("prescribers") whose prescribing:

- (1) falls within the top ~~one~~ two percent of those prescribing 100 ~~morphine milligrams~~ milligram of morphine equivalents ("MME") per patient per day; or
- (2) falls within the top ~~one~~ two percent of those prescribing 100 MMEs per patient per day in combination with any benzodiazepine and who are within the top one percent of all controlled substance prescribers by volume.

(b) In addition, the Department may report to the Board information regarding prescribers who have had two or more patient deaths in the preceding 12 months due to opioid ~~poisoning~~, poisoning where the prescribers authorized more than 30 tablets of an opioid to the decedent and the prescriptions were written within 60 days of the patient deaths.

(c) The Department may submit these reports to the Board upon request and may include the information described in G.S. 90-113.73(b).

(d) The reports and communications between the Department and the Board shall remain confidential pursuant to G.S. 90-113.74.

Authority G.S. 90-113.74.

### 21 NCAC 36 .0816 DEFINITION OF CONSULTATION FOR PRESCRIBING CONTROLLED SUBSTANCES

For purposes of G.S. 90-18.2(b), the term "consult" shall mean a meaningful communication, either in person or electronically, between the nurse practitioner and a supervising physician that is documented in the patient medical record. For purposes of this Rule, "meaningful" shall mean an exchange of information

sufficient for the supervising physician to make a determination that the prescription is medically indicated.

Authority G.S. 90-18.2; 90-171.23(b)(3).

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## CHAPTER 61 – RESPIRATORY CARE BOARD

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the Respiratory Care Board intends to adopt the rules cited as 21 NCAC 61 .0104, .0801 and amend the rules cited as 21 NCAC 61 .0103, .0301, and .0307.

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

**Proposed Effective Date:** April 1, 2018

**Public Hearing:**

**Date:** January 4, 2018

**Time:** 9:00 a.m.-11:00 a.m.

**Location:** 125 Edinburgh South Drive, Suite 100, Cary, NC 27511

**Reason for Proposed Action:** The North Carolina Respiratory Care Board determined a need to clarify existing language in the rule 21 NCAC 61 .0103 DEFINITIONS to meet the required format after reviewing the rules. The North Carolina Respiratory Care Board also determined additional terms identified in the statute not previously defined. Pursuant to G.S. 90-652(2), the North Carolina Respiratory Care Board is adding definitions to existing rules for clarity. The North Carolina Respiratory Care Board previously adopted and published Code of Ethics on the website in 2002.

Upon review of rules, the North Carolina Respiratory Care Board determined pursuant to G.S. 90-652(3) that the Code of Ethics be adopted by rule as submitted in 21 NCAC 61 .0104.

A request was made to consider changing the requirements for license display in 21 NCAC 61 .0301 to include the website publication of the licensee information. The proposed amendment for 21 NCAC 61 .0301 makes the website display sufficient as an electronic format display necessary to meet this requirement in lieu of the paper copy. Pursuant to G.S. 90-658(b), the North Carolina Respiratory Care Board considered the request and concluded that a paper copy would no longer be required.

North Carolina Respiratory Board determined a need to clarify existing language in the rule 21 NCAC 61 .0307 as well as meet the required formatting for this entire section. The North Carolina Respiratory Care Board determined a need to more clear and accurate in this Section by stating that the behaviors and conduct that may constitute unprofessional conduct pursuant to G.S. 90-647 and be grounds for license denial or disciplinary action by the Board pursuant to G.S. 90-659(a) and (b), G.S. 90-652(4). In addition, the North Carolina Respiratory Care Board considered a request regarding concurrent therapy for clarification. For this reason, North Carolina Respiratory Care Board determined adding language is necessary to identify performing co-treatment, concurrent, group, or individual

therapy that is not in accordance with protocol established by the health care organization employing the licensee as behaviors and conduct that may constitute unprofessional conduct pursuant to G.S. 90-647.

The General Assembly is poised to require that Occupational Licensing Boards adopt rules for receiving and processing complaints. The North Carolina Respiratory Care Board publishes these as policies located at www.ncrcb.org in a manual titled, Disciplinary Manual. The North Carolina Respiratory Care Board considered the proposed legislation and elected to take steps proactively for complete public transparency pursuant to G.S. 90-652(2) and (5) and adopted the rule 21 NCAC 61 .0801.

**Comments may be submitted to:** William Croft, Ed.D., Ph.D., RRT, RCP, 125 Edinburgh South Drive, Suite 100, Cary, NC 27511; phone (919) 878-5595; fax (919) 878-5565; email bcroft@ncrcb.org

**Comment period ends:** February 13, 2018

**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 - ORGANIZATION AND GENERAL PROVISIONS

### 21 NCAC 61 .0103 DEFINITIONS

The definitions of terms contained in G.S. 90-648 apply to the rules in this Chapter. In addition, the following definitions apply with regard to these Rules: to the rules in this Chapter:

- (1) Assessment means a clinical evaluation of the an individual patient and by a Respiratory Care Practitioner (RCP) or other licensed health care provider within their scope of practice to determine the ability and efficacy of a respiratory care procedure procedure, protocol

- or treatment, including an assessment of the suitability and efficacy of equipment for the an individual patient if equipment is to be used in the procedure or treatment. Assessment can be performed by physician, Respiratory Care Practitioner (RCP) or other licensed health care provider within their scope of practice.
- (2) Respiratory care includes any means acts, tests, procedures, treatments or modalities that are routinely the health care discipline that specializes in the promotion of optimum cardiopulmonary function and health and wellness using scientific principles to identify, treat and prevent acute or chronic dysfunction of the cardiopulmonary system pursuant to G.S. 90-648(11) that is taught in accredited educational programs pursuant to G.S. 90-653(3) or in approved continuing education programs pursuant to the rules of this Chapter for respiratory care practitioners and within the guidelines established by the American Association for Respiratory Care that are routinely performed in respiratory care practice settings, pursuant to G.S. 90-648(10)(f) which is incorporated by reference including subsequent amendments and editions;
- (3) The practice of respiratory care includes means the application performance of a range of evaluation assessments and diagnostic tests, and implementation of treatment procedures and protocols related to the observing and monitoring of signs and symptoms, general behavior, and general physical response to respiratory care treatment and diagnostic testing, including the determination of whether such signs, symptoms, reactions, behavior, or general response exhibit abnormal characteristics. In addition to the general activities identified in G.S. 90-648(10), each of the following specific activities constitutes the practice of Respiratory care: the general activities the cardiopulmonary system identified in pursuant to G.S. 90-648(10) and the activities defined by the American Association of Respiratory Care clinical guidelines pursuant to G.S. 90-648(10)(f) which is incorporated by reference including subsequent amendments and editions;
- (a) the performance of performing pulmonary diagnostic and sleep related testing;
  - (b) the administration of pharmacologic agents related to respiratory care procedures;
  - (c) establishment and maintenance of arterial lines for hemodynamic monitoring;
  - (d) therapeutic evaluation and assessment relating to mechanical or
- physiological—ventilatory—support, including positive pressure support apparatus;
  - (e) airway clearance techniques, postural drainage and chest percussion;
  - (f) assistance with bronchoscopy;
  - (g) asthma and respiratory disease management;
  - (h) cardiopulmonary rehabilitation;
  - (i) alleviating respiratory impairment and functional limitation by designing, implementing, and modifying therapeutic care plans; plans using evidenced-based protocols;
  - (j) patient instruction in respiratory care, functional training in self care and home respiratory care management, and the promotion promoting and maintenance of respiratory care fitness, health, and quality of life;
  - (k) those advanced practice procedures that are recognized by the Board in declaratory rulings as being within the scope of respiratory care, when performed by an RCP with appropriate training; and
  - (l) managing the clinical delivery of respiratory care services through the on going supervision, teaching and evaluation of respiratory care.
- (4) Medical gases mean those inhaled gases used in the treatment of cardiopulmonary disease.
- (5) Humidity means adding heat or moisture to an inhaled medical gas.
- (6) Aerosols mean the suspension of particles dispersed in air or gas to deliver medication or humidity to the airways.
- (7) Pharmacologic agent means a medication or medical gas delivered during a respiratory care procedure for the treatment of cardiopulmonary disease.
- (8) Hyperbaric oxygen therapy means inhalation of high concentrations of oxygen at increased levels of atmospheric pressures within a total body chamber for the treatment of cardiopulmonary disorders or wound management.
- (9) Mechanical or physiological ventilatory support means the provision of an apparatus to support gas exchange issues associated with cardiopulmonary dysfunction.
- (10) Hemodynamic monitoring means a procedure required to monitor blood pressure invasively or noninvasively.
- (11) Diagnostic testing means a procedure for assessing the function of the cardiopulmonary system and diagnosing cardiopulmonary disease or sleep related disorders.



- (12) Therapeutic application means utilizing evidenced-based protocols, procedures, treatments or modalities defined in this Chapter to maintain cardiopulmonary health or treat cardiopulmonary disease.
- (13) Active status means a license issued to an individual after meeting the requirements pursuant to G.S. 90-653.
- (14) Individual therapy means the provision of therapy services by one licensee to one patient at a time.
- (15) Concurrent therapy means the provision of therapy services by one licensee treating two patients at the same time.
- (16) Group therapy means the provision of therapy services by one licensee treating three to six patients at the same time.
- (17) Co-treatment therapy means the provision of therapy services by more than one licensee from different therapy disciplines to one patient at the same time.
- (18) Endorsement means a license issued by the Board recognizing the person named on the certificate as having met the requirements to perform respiratory care procedures pursuant to the rules of this Chapter.

*Authority G.S. 90-652; 90-648(2),(10), and (11); 90-660.*

## **21 NCAC 61 .0104 CODE OF ETHICS**

(a) The North Carolina Respiratory Care Board has adopted the American Association of Respiratory Care (AARC) Code of Ethics that are hereby incorporated by reference, including subsequent amendments and editions. A free copy may be obtained from the American Association of Respiratory Care online at [www.aarc.org](http://www.aarc.org).

*Authority G.S. 90-652(3).*

## **SECTION .0300 – LICENSING**

### **21 NCAC 61 .0301 LICENSE NUMBER: DISPLAY OF LICENSE**

(a) Each license issued by the Board shall be valid for a period of one year, except as otherwise provided in the Rules in this Section. G.S. 90-654 and G.S. 93B-15.1.

(b) Each individual who is issued a license shall be issued a license number that shall be displayed on the Board's website. Should that number be retired for any reason (such as death, failure to renew the license, or any other reason) that number will shall not be reissued. A web-based license verification card showing displaying the status, credentials, degree level, dates for registration, renewal, and expiration date must shall be filed or on display accessible at by the licensee's licensee in their principal place of business so as to be available for inspection. inspection in a printed or electronic format. Each licensee also shall keep a copy of the license wallet card available for inspection to anyone on request in the course of delivering services.

(c) In accordance with the provisions of G.S. 90-640, whenever a licensee is providing respiratory care to a patient, the licensee shall wear a badge or nameplate identification that displays, in easily readily visible type, the licensee's name followed by a comma and the designation "RCP," that is an abbreviation for respiratory care practitioner. "RCP". Provisional license holders shall wear a badge or nameplate identification which that displays, in easily readily visible type, the licensee's name name, and the designation "RCP Provisional." "RCP-Provisional". RCP students shall wear a badge or nameplate that displays, in easily visible type, the student's name, the designation "RCP Student" and the name of the school the student is attending. A licensee shall ensure any person working under his or her supervision, who is exempted by G.S. 90-664(2) and (4), is properly identified by wearing identification that designates the person's affiliation and position in readily visible type.

*Authority G.S. 90-652(2),(4); 90-658(b); 90-640.*

### **21 NCAC 61 .0307 GROUNDS FOR LICENSE DENIAL OR DISCIPLINE**

In addition to the conduct set forth in G.S. 90-659, the Board may deny, suspend, or revoke a license, or issue a letter of reprimand to a licensee, upon any of the following grounds: Behaviors and conduct that may constitute unprofessional conduct by persons licensed pursuant to G.S. 90-647 and may be grounds for license denial or disciplinary action by the Board pursuant to G.S. 90-659(a) and (b), G.S. 90-652(4);

- (1) ~~Failure~~ failing to meet minimum licensure requirements set by statute Article 38 of G.S. 90 or rule, rules of this Chapter;
- (2) ~~Procuring~~, attempting to procure, or renewing a license as provided by this part Chapter by bribery, by fraudulent misrepresentation, or by knowingly perpetuating an error of the Board. Board;
- (3) ~~Violation of any~~ violating a rule adopted by the Board or of a lawful order of the Board. Board including violations of the Code of Ethics pursuant to 21 NCAC 61 .0104;
- (4) ~~Engaging~~ engaging in the delivery of respiratory care with a revoked, suspended, or inactive license. license;
- (5) ~~Failing~~ failing to perform any a statutory or legal obligation placed upon a respiratory care practitioner licensed pursuant to this part. Chapter;
- (6) ~~Failing~~ failing to properly make the disclosures required by 21 NCAC 61 .0308. 21 NCAC 61 .0308;
- (7) ~~Permitting~~, permitting, aiding, assisting, procuring, or advising any a person to violate any a rule of the Board or provision of the Respiratory Care Practice Act, including engaging in the practice of respiratory care without a license. license;
- (8) ~~Having~~ having licensure, certification, registration, or other authority, by whatever name known, to deliver respiratory care

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| <p>revoked, suspended, or otherwise acted against, including the denial of licensure, certification, registration, or other authority to deliver respiratory care by the licensing authority of another state, territory, or <del>country</del>. <u>country</u>;</p> <p>(9) <del>Willfully</del> <u>willfully</u> failing to report <del>any</del> a violation of these <del>rules</del>. <u>rules</u>;</p> <p>(10) <del>Unprofessional</del> <u>engaging in unprofessional</u> conduct related to the delivery of respiratory care, <del>which includes, but is not limited to, engaging including in any an</del> act or practice that is hazardous to public health, safety or <del>welfare</del>. <u>welfare</u>;</p> <p>(11) <del>Performing</del> <u>performing</u> professional services <del>which that</del> have not been duly ordered by a physician licensed pursuant to G.S. 90, Article 1 and <del>which that</del> are not in accordance with protocols established by the hospital, other health care provider, or the <del>Board</del>. <u>Board</u>;</p> <p>(12) <del>Accepting</del> <u>accepting</u> and performing professional responsibilities <del>which that</del> the licensee knows, or has reason to know, he <u>or she</u> is not competent to <del>perform</del>. <u>perform</u>;</p> <p>(13) <del>Delegating</del> <u>delegating</u> professional responsibilities to a person when the licensee delegating such responsibilities knows, or has reason to know, that such person is not qualified by training, experience, or licensure to <del>perform</del>. <u>perform</u>;</p> <p>(14) <del>Being</del> <u>being</u> unable to deliver respiratory care services with reasonable skill and safety to patients by reason of incapacitating illness or use of alcohol, drugs, narcotics, chemicals, or <del>any other type of material</del>. <u>material</u>; <del>In enforcing this Paragraph, the Board shall, upon probable cause, have authority to compel a respiratory care practitioner to submit to a mental or physical examination by physicians designated by the Board. The cost of examination shall be borne by the licensee being examined. The failure of a respiratory care practitioner to submit to such an examination when so directed constitutes an admission that the licensee is unable to deliver respiratory care services with reasonable skill and safety, upon which a default and a final order may be entered without the taking of testimony or presentation of evidence, unless the failure was due to circumstances beyond his control. A respiratory care practitioner affected under this Paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent delivery of respiratory care with reasonable skill and safety to his patients. Neither the record of the proceedings nor any order of the Board based solely on a licensee's failure to submit to an examination shall be deemed by the Board to constitute a conclusive</del></p> | <p><del>determination that licensee engaged in any conduct.</del></p> <p>(15) <del>Failing</del> <u>failing</u> to create and maintain respiratory care records documenting the assessment and treatment provided to each <del>patient</del>. <u>patient</u>;</p> <p>(16) <del>Discontinuing</del> <u>discontinuing</u> professional services unless services have been completed, the client requests the discontinuation, alternative or replacement services are arranged, or the client is given reasonable opportunity to arrange alternative or replacement <del>services</del>. <u>services</u>;</p> <p>(17) <del>Exercising influence within a respiratory care relationship for the purpose of engaging or attempting to engage a patient in a sexual activity. relationship; A patient is presumed to be incapable of giving free, full, and informed consent to sexual activity with the patient's respiratory care practitioner.</del></p> <p>(18) <del>Exercising influence on the patient for the financial gain of the licensee or a third party by promoting or selling services, goods, appliances, or drugs that are not medically indicated or necessary. necessary to a patient;</del></p> <p>(19) <del>Making</del> <u>making</u> deceptive, untrue, or fraudulent representations in the delivery of respiratory care or employing a trick or scheme in the delivery of respiratory <del>care</del>. <u>care</u>;</p> <p>(20) <del>Circulating false, misleading, or intentionally communicating deceptive advertising information to a patient;</del></p> <p>(21) <del>Paying</del> <u>paying</u> or receiving any commission, bonus, kickback, or rebate to or from, or engaging in any fee-splitting arrangement in any form whatsoever with, a person, organization, or agency, either directly or indirectly, for goods or services rendered to patients referred by or to providers of health care goods and services, <u>including, including</u> <del>but not limited to,</del> hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, <del>or and</del> <u>and</u> pharmacies. The provisions of this paragraph shall not be construed to prevent the licensee from receiving a fee for professional consultation <del>services</del>. <u>services</u>;</p> <p>(22) <del>Soliciting</del> <u>soliciting</u> patients, either personally or through an <del>agent, agent through the use of fraud, deception, or otherwise misleading statements or through the exercise by means of intimidation or undue influence. influence;</del></p> <p>(23) <del>Willfully</del> <u>willfully</u> making or filing a false report or record, <del>or willfully failing to file a report or record required by state or federal law, or willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records include only those reports or records which that</del> require the signature of a</p> |
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- ~~respiratory care practitioner or a respiratory therapist licensed pursuant to this part. licensee:~~
- (24) ~~Being~~ being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction ~~which~~ that directly relates to a licensee's competence or ability to provide respiratory ~~care.~~ care;
- (25) ~~Engaging or attempting to engage in the possession, sale, or distribution of controlled substances, as set forth by law, for any purpose other than a lawful purpose.~~
- (26)(25) ~~Failing~~ failing to comply with a court order for child support or failing to comply with a

subpoena issued pursuant to child support or paternity establishment proceedings as defined in G.S. 110-142.1. In revoking or reinstating a license under this provision, the Board shall follow the procedures outlined in ~~G.S. 93B-13.~~ G.S. 93B-13; or

- ~~(27)~~(26) performing co-treatment, concurrent, group, or individual therapy that is not in accordance with protocols established by the health care organization employing the licensee.

Authority G.S. 90-652(2),(4); 90-647; 90-659(a),(b); 90-652 (1),(2),(4); 150B-3.

**Note from the Codifier:** The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270<sup>th</sup> day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270<sup>th</sup> day.  
This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

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

Authority G.S. 131E-76; 131E-79; S.L. 2017-174.

**SECTION .6100 - GENERAL REQUIREMENTS**

**Rule-making Agency:** Medical Care Commission

**Rule Citation:** 10A NCAC 13B .6003, .6105, .6228

**Effective Date:** December 1, 2017

**Date Approved by the Rules Review Commission:** November 16, 2017

**Reason for Action:** The effective date of a recent act of the General Assembly. The proposed temporary adoptions for the rules in 10A NCAC 13B Licensing of Hospitals are in response to a recent act of the General Assembly, Session Law 2017-174, "An Act Directing the Medical Care Commission to Adopt the Recommendations of the American Society of Healthcare Engineering's Facility Guidelines Institute" that became effective on July 21, 2017. Section 1.(c) of this Act, Implementation and Rule-Making Authority, requires the NC Medical Care Commission to repeal the existing hospital facilities rules in 10A NCAC 13B and adopt, with means of temporary rules, the recommendations of the American Society of Healthcare Engineering's Facility Guidelines Institute (FGI) for hospital facilities. The proposed temporary rules replace the Hospital Facility Rules being repealed and incorporate by reference all applicable rules, standards and requirements of the FGI.

**CHAPTER 13 – NC MEDICAL CARE COMMISSION**

**SUBCHAPTER 13B – LICENSING OF HOSPITALS**

**SECTION .6000 - PHYSICAL PLANT**

**10A NCAC 13B .6003 DEFINITIONS**

In addition to the definitions set forth in G.S. 131E-76, the following definitions shall apply in Sections .6000 through .6200 of this Subchapter:

- (1) "Construction documents" means final building plans and specifications for the construction of a facility that a governing body submits to the Construction Section for approval as specified in Rule .3102 of this Subchapter.
- (2) "Construction Section" means the Construction Section of the Division of Health Service Regulation.
- (3) "Division" means the Division of Health Service Regulation of the North Carolina Department of Health and Human Services.
- (3) "Facility" means a hospital as defined in G.S. 131E-76.

**10A NCAC 13B .6105 INCORPORATION BY REFERENCE AND APPLICATION OF THE REQUIREMENTS OF THE GUIDELINES**

(a) The Guidelines for the Design and Construction of Hospitals and Outpatient Facilities are incorporated herein by reference, including all subsequent amendments and editions; however, the following chapters of the Guidelines shall not be incorporated herein by reference:

- (1) Chapter 2.6;
- (2) Chapter 3.1;
- (3) Chapter 3.2;
- (4) Chapter 3.3;
- (5) Chapter 3.4;
- (6) Chapter 3.5;
- (7) Chapter 3.6;
- (8) Chapter 3.7;
- (9) Chapter 3.8;
- (10) Chapter 3.9;
- (11) Chapter 3.10;
- (12) Chapter 3.11;
- (13) Chapter 3.12; and
- (14) Chapter 3.14.

(b) The Guidelines for the Design and Construction of Hospitals and Outpatient Facilities incorporated by this Rule may be purchased from the Facility Guidelines Institute online at <https://www.fgiguilines.org/guidelines-main/purchase/> at a cost of two hundred dollars (\$200.00) or accessed electronically free of charge at <https://www.fgiguilines.org/guidelines/2014-hospital-outpatient/read-only-copy/>.

(c) A new facility or any additions or alterations to an existing facility whose construction documents were approved by the Construction Section on or after January 1, 2018 shall meet the standards established in ~~Sections .6000 through .6200 of this Subchapter in:~~

- (1) Sections .6000 through .6200 of this Subchapter; and
- (2) the edition of the Guidelines for the Design and Construction of Hospitals and Outpatient Facilities that was in effect at the time the construction documents were approved by the Construction Section.

(d) An existing facility whose construction documents were approved by the Construction Section prior to January 1, 2018 shall meet those standards established in Sections .6000 through .6200 of this Subchapter that were in effect at the time the construction documents were approved by the Construction Section.

(e) Any existing building converted from another use to a new facility shall meet the requirements of Paragraph (c) of this Rule.

*Authority G.S. 131E-79; S.L. 2017-174.*

## **SECTION .6200 - CONSTRUCTION REQUIREMENTS**

### **10A NCAC 13B .6228 NEONATAL LEVEL I, II, III, AND IV NURSERIES**

A facility that provides neonatal services as specified in Rule .4305 of this Subchapter shall meet the requirements of the Guidelines for the Design and Construction of Hospitals and Outpatient Facilities, as incorporated by reference in Rule .6105 of this Subchapter, as follows:

- (1) a Neonatal Level I nursery shall comply with the requirements of Section 2.2- 2.12;
- (2) a Neonatal Level II nursery shall comply with the requirements of Sections 2.2-2.12 and 2.2- 2.12.3.3;
- (3) a Neonatal Level III nursery shall comply with the requirements of Section 2.2- 2.10; and
- (4) a Neonatal Level IV nursery shall comply with the requirements of Section 2.2- 2.10.

*Authority G.S. 131E-79; S.L. 2017-174.*

## **TITLE 14B - DEPARTMENT OF PUBLIC SAFETY**

**Rule-making Agency:** *Alcoholic Beverage Control Commission*

**Rule Citation:** *14B NCAC 15B .0217, .0220; 15C .0302-.0304, .0307-.0308, .0403*

**Effective Date:** *November 28, 2017*

**Date Approved by the Rules Review Commission:** *November 16, 2017*

**Reason for Action:** *The General Assembly amended the law regulating the sale of malt beverages and wine in containers filled by retail establishments holding certain ABC permits. Section 5(b) of S.L. 2017-87 directed the ABC Commission to adopt rules to implement the provisions of Section 5 no later than 120 days after the act became law, which occurred on June 30, 2017. Section 5(b) says that the ABC Commission may adopt temporary rules to comply with the deadline set forth in this subsection. The temporary rules being proposed for adoption are required to comply with Section 5(b) of S.L. 2017-87.*

## **CHAPTER 15 - ALCOHOLIC BEVERAGE CONTROL COMMISSION**

### **SUBCHAPTER 15B - RETAIL BEER: WINE: MIXED BEVERAGES: BROWNBAGGING: ADVERTISING: SPECIAL PERMITS**

#### **SECTION .0200 - GENERAL RULES AFFECTING RETAILERS AND BROWNBAGGING PERMITTEES**

#### **14B NCAC 15B .0217 FILL OR REFILL ORIGINAL CONTAINERS**

No permittee ~~except a bottler or manufacturer~~ shall fill or refill in whole or in part any original container of alcoholic beverages with the same or any other kind of alcoholic ~~beverage~~. beverage, except a bottler, manufacturer, or permittee authorized pursuant to G.S. 18B-1001(1), (2), (3), (4), or (16).

*Authority G.S. 18B-206(a); 18B-207; 18B-1001.*

#### **14B NCAC 15B .0220 DISPENSING ALCOHOLIC BEVERAGES: PRODUCT IDENTIFICATION**

(a) Malt Beverages, On-Premises. Malt beverages may be sold by persons holding on-premise permits in the original containers, by the glass, by the mug, by the ~~pitcher~~ pitcher, or a single-service and single-use container as defined by FDA Food Code 2009, 1-201.10(B). The brand name of draught malt beverages dispensed in retail outlets shall be shown on the knobs of draught faucets.

Covers for these faucets bearing a brand name may be used if the brand name appearing on the cover corresponds with the brand name on the knob of the faucets that are to be used for that brand.

(b) Malt Beverages, Off-Premises. Malt beverages may be sold by persons holding a ~~retail~~ an off-premise permit only in the unopened original container that was filled by the product ~~manufacturer~~. manufacturer, except as permitted pursuant to G.S. 18B-1001.

(c) Wine, On-Premises. A person holding an on-premises wine permit may sell wine in the unopened original container, by the carafe, by the ~~glass~~ glass, or a single-service and single-use container. A person holding an on-premises wine permit may sell wine mixed with non-alcoholic beverages by the carafe, by the ~~glass~~ glass, or a single-service and single-use container. Wine served in carafes, by the ~~glass~~ glass, or single-service and single-use containers may be dispensed under pressure from nitrogen from sealed bulk containers provided the containers and dispensing systems have been approved by the Commission and the Commission for Public Health. The vintner, ~~brand~~ brand, and type of wine dispensed by the carafe, ~~glass~~ glass, or single-service and single-use container, except for the house wine, shall appear on the wine list. Where the wine is dispensed from bulk containers, the vintner, ~~brand~~ brand, and type shall be shown on the knobs of draught faucets.

(d) Use of Siphons. The use of siphons or pressurized dispensers is allowed if the malt beverage or wine contents are dispensed directly from the original containers.

(e) Mixed Beverages. A person holding a mixed beverages permit may sell mixed beverages in a glass, in a ~~pitcher~~ pitcher, or in a single-service and single-use container.

(f) Multi-Use Containers. All multi-use containers used by permittees to serve any alcoholic beverages shall meet the requirements as referenced by FDA Food Code 2009, 3-304.11(a). Multi-use containers include glassware, mugs, ~~pitchers~~ pitchers, and carafes.

~~(g) Incorporated Incorporation by Reference. The sections of the FDA Food Code 2009 referenced in this Chapter are to the 2009 Food Code, not including subsequent amendments and editions, established by the U.S. Department of Health and Human Services, Food and Drug Administration (hereinafter referred to~~

as the "Food Code") and are incorporated by reference. The Food Code may be accessed from the internet at [www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/default.htm](http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/default.htm), or a copy can be obtained by contacting the U.S. Department of Commerce, National Technical Information Service, at (703) 605-6040, and is also available for inspection at the Division of Public Health, N.C. Department of Health and Human Services. The 2009 FDA Food Code, as established by the U.S. Department of Health and Human Services, Food and Drug Administration, is hereby incorporated by reference, excluding subsequent amendments and editions, and may be accessed at no cost at <https://www.fda.gov/food/guidanceregulation/retailfoodprotection/foodcode/ucm2019396.htm>.

Authority G.S. 18B-100; 18B-206; 18B-207; 18B-1001; 130A-248(a).

**SUBCHAPTER 15C - INDUSTRY MEMBERS:  
RETAIL/INDUSTRY MEMBER RELATIONSHIPS: SHIP  
CHANDLERS: AIR CARRIERS: FUEL ALCOHOL**

**SECTION .0300 - PACKAGING AND LABELING OF  
MALT BEVERAGES AND WINE**

**14B NCAC 15C .0302 LABELS TO BE SUBMITTED TO COMMISSION**

- (a) All labels for malt beverage and wine products shall be submitted in duplicate to the Commission on an "Application for Label Approval Form." [Form] [Form," as required by Rule .0201 or .0202 of this Subchapter.
- (b) Each person requesting label approval shall furnish, in the application for label approval, the names and addresses of the manufacturer, bottler, and importer of the product.
- (c) Notwithstanding Paragraphs (a) and (b) of this Rule, holders of retail permits pursuant to G.S. 18B-1001(1), (2), (3), (4), or (16) that fill or refill growlers on demand ~~are not shall not be~~ required to submit the labels required by ~~Rule Rules~~ .0303(b) or [ (e),] (c) or [Rules] .0304(d) or (e), of this Section.

Authority G.S. 18B-100; 18B-206(a); 18B-207; 18B-1001.

**14B NCAC 15C .0303 LABEL CONTENTS: MALT BEVERAGES**

- (a) Containers that are prefilled by the manufacturer shall be affixed with malt beverage labels that shall contain the following information in a legible form:
- (1) brand name of product;
  - (2) name and address of brewer or bottler;
  - (3) class of product (e.g., beer, ale, porter, lager, bock, stout, or other brewed or fermented beverage);
  - (4) net contents;
  - (5) if the malt beverage is fortified with any stimulants, the amount of each (milligrams) per container; and
  - (6) the alcoholic beverage health warning statement as required by the Federal Alcohol

Administration Act, 27 C.F.R. Sections 16.20 through 16.22.

- (b) Growlers that are filled or refilled on demand with malt beverages pursuant to Rule .0308 of this ~~Subchapter~~ Section shall be affixed with a label or a tag that shall contain the following information in type not smaller than 3 millimeters in height and not more than 12 characters per inch:

- (1) brand name of the product dispensed;
- (2) name of brewer or bottler;
- (3) class of product (e.g., beer, ale, porter, lager, bock, stout, or other brewed or fermented beverage);
- (4) net contents;
- (5) if the malt beverage is fortified with any stimulants from the original manufacturer, the amount of each (milligrams) per container;
- (6) name and address of business that filled or refilled the growler;
- (7) date of fill or refill;
- (8) if the malt beverage is more than six percent alcohol by volume, the amount of alcohol by volume pursuant to G.S. 18B-101(9); and
- (9) the following statement: "This product may be unfiltered and unpasteurized. Keep refrigerated at all times."

- (c) Growlers that are filled or refilled on demand pursuant to Rule .0308 of this Section shall be affixed with the alcoholic beverage health warning statement as required by the Federal Alcohol Administration Act, 27 C.F.R. Sections 16.20 through 16.22. The provisions of 27 C.F.R. Sections 16.20 through 16.22 referenced in this Section are hereby incorporated by [reference. Copies of these regulations are available for inspection and copying as provided in Rule .0401 of this Subchapter.] reference, including subsequent amendments and editions, and may be accessed for free at <https://www.gpo.gov>.

Authority G.S. 18B-100; 18B-101(9); 18B-206(a); 18B-207; 18B-1001.

**14B NCAC 15C .0304 LABEL CONTENTS: WINE**

- (a) All wine labels shall contain the following information, in a ~~legible form:~~ form legible to the consumer:
- (1) brand name of product;
  - (2) class and type, in conformity with Section .0400 of this Subchapter;
  - (3) name and address of manufacturer, or bottler, except as otherwise provided in these Rules;
  - (4) on blends consisting of foreign and domestic wine, if any reference is made to the presence of foreign wine, the exact percentage by volume the foreign wine; and
  - (5) net contents (unless blown or otherwise permanently inscribed in the container).
- (b) Exception for Retailer's Private Brand. In the case of wine bottles packaged for a retailer or other person under ~~his the~~ the person's private brand, the name and address of the bottler ~~need not be stated on the brand label but~~ may be stated on another label affixed to the container, if the name and address of the person for whom the wine was bottled or packed appears on the label. The

net contents shall be stated on the brand label or on a separate label affixed ~~in immediate proximity~~ thereto on the same side of the container in ~~readily~~ legible form, unless blown or otherwise permanently inscribed in the container.

(c) Imported Wines. The name and address of the importer of a foreign wine need not be stated on the brand label if it is stated upon another label affixed to the container.

(d) Growlers that are filled or refilled on demand with unfortified wine pursuant to Rule .0308 of this Section shall be affixed with a label or a tag containing the following information in type not smaller than 3 millimeters in height and not more than 12 characters per inch:

- (1) brand name of the product dispensed;
- (2) name of manufacturer or bottler;
- (3) class and type of product;
- (4) net contents;
- (5) name and address of business that filled or refilled the growler;
- (6) date of fill or refill; and
- (7) the following statement: "This product may be unfiltered and unpasteurized. Keep refrigerated at all times."

(e) Growlers that are filled or refilled on demand pursuant to Rule .0308 of this Section shall be affixed with the alcoholic beverage health warning statement as required by the Federal Alcohol Administration Act, 27 C.F.R. Sections 16.20 through 16.22.

*Authority G.S. 18B-206(a); 18A-207; 18B-1001.*

#### **14B NCAC 15C .0307 GROWLERS**

(a) As used in this ~~Rule, Section~~, a "growler" is a ~~refillable~~ rigid glass, ceramic, plastic, aluminum, or stainless steel container with a ~~flip-top or screw-on lid closure or cap with a secure sealing that~~ is no larger than 2 liters (0.5283 gallons) into which a malt beverage ~~or unfortified wine~~ is prefilled, filled, or refilled for off-premises consumption.

(b) Malt beverages may be sold in growlers as follows:

- (1) Holders of only a brewery permit may sell, deliver, and ship growlers prefilled with the brewery's malt beverage for off-premises consumption provided a label is affixed to the growler that accurately provides the information as required by Rules .0303(a) and .0305 of this Section.
- ~~(e)(2)~~ Holders of retail permits pursuant to G.S. 18B-1001(1), (2), or (16) who do not hold a brewery permit shall not prefill growlers with malt beverage.
- ~~(d)(3)~~ Holders of a brewery permit who also have retail permits pursuant to G.S. 18B-1001(1) may fill or refill growlers on demand with the brewery's malt beverage for off-premises consumption, provided the label as required by Rules .0303(b) and ~~(e)(c)~~, and ~~.0305 Rule .0305~~ of this Section is affixed to the growler.
- ~~(e)(4)~~ Holders of retail permits pursuant to G.S. 18B-1001(1), (2), or (16) may fill or refill growlers on demand with draft malt beverage for off-premises consumption, provided the label as

required by Rules .0303(b) and (c) and .0305 of this Section is affixed to the growler.

(c) Unfortified wine may be sold in growlers as follows:

- (1) Holders of only an unfortified winery permit may sell, deliver, and ship growlers prefilled with the winery's unfortified wine for off-premises consumption provided a label is affixed to the growler that provides the information as required by Rules .0304(a), (b) and (c), and Rule .0305 of this Section.
- (2) Holders of retail permits pursuant to G.S. 18B-1001(3), (4), or (16) who do not hold an unfortified winery permit shall not prefill growlers with unfortified wine.
- (3) Holders of an unfortified winery permit who also have retail permits pursuant to G.S. 18B-1001(3) may fill or refill growlers on demand with the winery's unfortified wine for off-premises consumption, provided the label as required by Rules .0304(d) and (e) and .0305 of this Section is affixed to the growler.
- (4) Holders of retail permits pursuant to G.S. 18B-1001(3), (4), or (16) may fill or refill growlers on demand with unfortified wine for off-premises consumption, provided the label as required by Rules .0304(d) and (e) and .0305 of this Section is affixed to the growler.

~~(d)~~ Holders of retail permits pursuant to G.S. 18B-1001(1), (2), (3), (4), or (16) shall affix a label as required by Rules .0303(b) and (c), Rules .0304(d) and (e), and Rule .0305 of this Section to the growler when filling or refilling a growler.

~~(e)~~ Holders of retail permits pursuant to G.S. 18B-1001(1), (2), (3), (4), or (16), may, in their discretion, refuse to fill or refill a growler, except in matters of discrimination pursuant to G.S. 18B-305(c).

*Authority G.S. 18B-100; 18B-206(a); 18B-207; 18B-305; 18B-1001.*

#### **14B NCAC 15C .0308 GROWLERS: CLEANING, SANITIZING, FILLING AND SEALING**

(a) ~~Filling~~ Except as permitted pursuant to Rule .0307(b) and (c) of this Section, filling and refilling growlers shall only occur on demand by a ~~customer~~ consumer.

(b) Growlers shall only be filled or refilled by a permittee or the permittee's employee.

(c) Prior to filling or refilling a growler, the growler and its cap shall be cleaned and sanitized by the permittee or the permittee's employee using one of the following methods:

- (1) Manual washing in a three compartment sink:
  - (A) ~~Prior~~ prior to starting, clean sinks and work area to remove any chemicals, oils, or grease from other cleaning activities;
  - (B) ~~Empty~~ empty residual liquid from the growler to a drain. Growlers shall not be emptied into the cleaning water;
  - (C) ~~Clean~~ clean the growler and cap in water and detergent. Water

temperature shall be at a minimum 110°F or the temperature specified on the cleaning agent manufacturer's label instructions. Detergent shall not be fat or oil based;

(D) ~~Remove~~ remove any residues on the interior and exterior of the growler and cap;

(E) ~~Rinse~~ rinse the growler and cap in the middle compartment with water. Rinsing may be from the spigot with a spray arm, from a spigot, or from the tub as long as the water for rinsing ~~shall is not be stagnant but shall be and~~ continually refreshed;

(F) ~~Sanitize~~ sanitize the growler and cap in the third compartment. Chemical sanitizer shall be used in accordance with the EPA-registered label use instructions and shall meet the minimum water temperature requirements of that chemical; and

(G) ~~A~~ a test kit or other device that accurately measures the concentration in mg/L of chemical sanitizing solutions shall be provided and be ~~readily~~ accessible for use; or

(2) Mechanical washing and sanitizing machine:

(A) ~~Mechanical~~ mechanical washing and sanitizing machines shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer and shall be used according to the machine's design and operation specifications;

(B) ~~Mechanical~~ mechanical washing and sanitizing machines shall be equipped with chemical or hot water sanitization;

(C) ~~Concentration~~ concentration of the sanitizing solution or the water temperature shall be accurately determined by using a test kit or other device; and

(D) ~~The~~ the machine shall be regularly serviced based upon the manufacturer's or installer's guidelines.

(d) Notwithstanding Paragraph (c) of this Rule, a growler may be filled or refilled without cleaning and sanitizing the growler as follows:

(1) Filling or refilling a growler with a tube as referenced by Paragraph (e) of this Rule:

(A) ~~Food~~ food grade sanitizer shall be used in accordance with the EPA-registered label use instructions;

(B) ~~A~~ a container of liquid food grade sanitizer shall be maintained for no more than 10 malt beverage taps that

will be used for filling and refilling growlers;

(C) ~~Each~~ each container shall contain no fewer than five tubes that will be used only for filling and refilling growlers;

(D) ~~The~~ the growler is inspected visually for contamination;

(E) ~~The growler is filled or refilled with a tube as described in Paragraph (e) of this Rule;~~

~~(F)~~ After ~~after~~ each filling or refilling of a growler, the tube shall be immersed in the container with the liquid food grade sanitizer; and

~~(G)~~ (F) ~~A~~ a different tube from the container shall be used for each fill or refill of a growler; or

(2) Filling a growler with a contamination-free process:

(A) ~~The~~ the growler shall be inspected visually for contamination; ~~and~~

(B) ~~Shall for growlers that can be refilled, the process shall~~ be otherwise in compliance with the FDA Food Code 2009, ~~Section 3-304.17(e), Section 3-304.17(C); and~~

(C) for growlers that are for single use, the process shall be otherwise in compliance with the FDA Food Code 2009, Sections 4-903.11 and 4-903.12.

(e) Growlers shall be filled or refilled from the bottom of the growler to the top with a tube that is attached to the malt beverage or unfortified wine faucet and extends to the bottom of the growler or with a commercial filling machine.

(f) When not in use, tubes to fill or refill growlers shall be immersed and stored in a container with liquid food grade sanitizer.

(g) After filling or refilling a growler, the growler shall be sealed with a closure or cap.

*Authority G.S. 18B-100; 18B-206(a); 18B-207; 18B-1001.*

## SECTION .0400 - STANDARDS OF IDENTITY FOR WINE: CONTAINERS

### 14B NCAC 15C .0403 CONTAINERS

(a) Unsealed Container Prohibited. ~~The~~ Except as permitted by Rule .0307 of this Subchapter, the sale of wine in any unsealed ~~container or container,~~ any container originally designed for a product other than ~~wine~~ wine, or in any container the design or shape of which would tend to mislead the consumer as to the nature of the contents is prohibited. ~~All wine containers shall be made of glass or other nonmetallic materials except for bulk on-premises containers approved by the Commission.~~

(b) Distinguishing Mark Different from Retailer. The sale of wine in containers that have the blown, ~~branded~~ branded, or burned name or other distinguishing mark of any person engaged in business as a wine producer, importer, ~~wholesaler~~ wholesaler, or bottler or any other person different from the person whose name



is required to appear on the brand label by Rule .0304 of this Subchapter is prohibited.

*Authority G.S. 18B-206; 18B-207; 18B-1001.*

## **TITLE 19A – DEPARTMENT OF TRANSPORTATION**

**Rule-making Agency:** *Department of Transportation/Division of Motor Vehicles*

**Rule Citation:** *19A NCAC 03K .0101-.0102*

**Effective Date:** *January 1, 2018*

**Date Approved by the Rules Review Commission:** *November 16, 2017*

**Reason for Action:** *The effective date of a recent act of the General Assembly. Section 34.32.(c) The Division of Motor Vehicles may adopt temporary rules to implement the provisions of Section 34.9 of S.L. 2014-100, as amended by Section 29.30A of S.L. 2015-241 and subsection (a) of this section. Temporary rules adopted in accordance with this section shall remain in effect until permanent rules that replace the temporary rules become effective.*

*Section 34.32.(d) Subsection (b) of this section becomes effective January 1, 2018, and applies to administrative hearings requested on or after that date. The remainder of this section is effective when it becomes law.*

*On June 28, 2017 the North Carolina General Assembly approved Session Law 2017-57 "Appropriations Act of 2017" for the 2016/2017 fiscal year. In Section 34.32(b) the agency is directed to begin collecting fees for administrative hearings beginning January 1, 2018. In Section 34.32.(c), the Division of Motor Vehicles is authorized to adopt temporary rules to implement the provisions.*

*In order to be able to establish the fee rates, set up the system for collecting the fees per the established rates, and notify individuals requesting administrative hearings after January 1, 2018 that there will be a fee for scheduling the hearing, the agency needs to utilized the option for adopting temporary rules.*

### **SUBCHAPTER 03K – DIVISION HEARING FEES**

#### **19A NCAC 03K .0101 ASSESSMENT OF ADMINISTRATIVE HEARING FEES**

(a) The Division shall provide notice to the applicant of a right to an administrative hearing, the procedure for requesting a hearing, the applicable fee for a hearing, notice on how to proceed as an indigent, and the statutory deadline, if any, to timely request a hearing.

(b) The fee for each type of hearing provided by the Division shall be set forth in 19A NCAC 03K .0102.

(c) A hearing request shall be submitted in writing and shall include the applicable fee listed in the Division's notice to the ~~applicant~~ applicant, as ~~listed~~ provided in Paragraph (a) of this Rule. A request for hearing ~~will~~ shall neither be accepted by the Division nor be considered received within any required deadline

noticed to the applicant under Paragraph (a) of this Rule if the hearing request is not completed or the hearing request does not include the applicable hearing fee, except as provided under Paragraph (j) of this Rule. A written hearing request sent via U.S. Mail shall be deemed timely only if this request is postmarked prior to the statutory deadline, if any as provided in Paragraph (a) of this Rule.

(d) The Division shall take no action on ~~the~~ a request or hearing until the required fee is paid in full, except for the following hearings scheduled by the Division due to the nature of the alleged offense, charge, or violation:

- (1) ~~A~~ a hearing conducted to review an applicant's compliance with the requirements and obligations of the Ignition Interlock Program ~~when if~~ the applicant is licensed pursuant to a conditional restoration agreement with the ~~Division.~~ Division;
- (2) ~~A~~ a hearing conducted to determine the applicant's compliance with the requirements and obligations of the applicant's probation or conditional restoration agreement with the ~~Division.~~ Division; or
- ~~(3) Hearings related to violations of an alcohol concentration restriction conducted if the alleged violation was received on a report from an ignition interlock service provider.~~
- ~~(3)(4) Motor~~ a hearing related to motor vehicle dealer license or sales representative license ~~hearings~~ conducted pursuant to G.S. 20-296 for hearings related to a previously-issued license.

If the Division takes no adverse action at a hearing listed in this Paragraph, the Division shall not charge a hearing fee to the applicant. If adverse action is taken by the Division following the hearing, the applicant shall pay the required hearing fee set forth in 19A NCAC 03K .0102. This hearing fee shall be paid no later than 30 calendar days after the date the hearing is held or the decision is issued by the Division, whichever is later. An applicant who fails to pay the hearing fee within the required 30 calendar day period shall be considered past due and subject to the provisions of ~~Article 6B of Chapter 147.~~ G.S. 147, Article 6B.

(e) Upon receipt of a written hearing request and the full payment for the required hearing fee, within any deadline, if applicable, ~~any,~~ noticed under Paragraph (a) of this Rule, the Division shall send the applicant written notice of the scheduled hearing, including the time, date, and location of the hearing and notice of the time period for an applicant to cancel a hearing request in order to receive a partial refund under Paragraph (g) of this Rule.

~~(f) The Division shall cancel any hearing upon notification that a hearing fee payment has been returned to the Division due to insufficient funds from the applicant's financial institution. A notice of the hearing cancellation shall be sent to the applicant. Upon cancellation, any pending adverse action against the applicant previously stayed as part of the hearing process shall be placed into effect by the Division five days after date of notice is mailed per G.S. 20-48. Upon notification that a hearing fee payment has been returned to the Division due to insufficient funds from the applicant's financial institution, the Division shall notify the applicant of the insufficient funds and that failure to pay~~

the hearing fee constitutes a waiver of the hearing. This notification shall include:

- (1) the amount of the hearing fee owed by the applicant to proceed with the requested hearing;
- (2) a date upon which the applicant shall submit the required hearing fee to the Division (noticed date), which shall not be less than 10 calendar days from the date of the notification;
- (3) the type of money payment accepted by the Division, including certified check, money order, or other secured methods of payment accepted by the Division;
- (4) notice that if the hearing fee is not received by the Division by the noticed date, the written request for hearing pursuant to Paragraph (c) of this Rule will be considered withdrawn; and
- (5) notice that any pending action by the Division upon which the applicant requested a hearing shall be placed into effect if such hearing fee is not paid by the noticed date.

An applicant's failure to pay the hearing fee by the date contained in the notification letter shall be considered a withdrawal of the request for a hearing. A hearing fee paid via U.S. Mail shall be deemed timely only if the payment is postmarked prior to the noticed date.

(g) A hearing fee shall be non-refundable unless the Division receives a written notice from the applicant seeking to cancel the hearing postmarked at least 10 business days prior to the scheduled hearing date, except as listed in Paragraph (h) of this Rule and as described in this Paragraph. The hearing fee, less a processing fee listed in Paragraph (m) of this Rule, will shall be refunded. If on the date the written hearing request is postmarked or received by the Division, whichever occurs first, the applicant is not eligible pursuant to G.S. 20 for the hearing requested, the applicant shall be entitled to a refund of the hearing only if a written request to cancel the hearing is postmarked at least three calendar days prior to the scheduled hearing date. If the applicant is eligible for a hearing when the hearing request is post-marked or received by the Division, whichever occurs first, and the applicant later becomes ineligible for the requested hearing prior to the actual hearing, the applicant shall be entitled to a refund only if the Division receives a written notice from the applicant seeking to cancel the hearing postmarked at least 10 business days prior to the scheduled hearing date. The processing fee listed in Paragraph (m) of this Rule shall be deducted by the Division from any refunded hearing fee. An applicant's notice to cancel a hearing shall be mailed to: Division of Motor Vehicles, Attn: Administrative Support Unit, 3118 Mail Service Center, Raleigh, NC 27699-3118. Any notice to cancel a hearing postmarked less than 10 business days prior the hearing shall cancel the previously scheduled hearing hearing, and the applicant shall not be eligible for a refund of the hearing fee.

(h) A hearing fee paid pursuant to 19A NCAC 03K .0102(a)(17) shall be non-refundable.

(i) The Division may waive the administrative a hearing fee when an applicant is indigent. An applicant seeking relief as indigent from an administrative hearing fee shall submit a completed and notarized Affidavit of Indigence as prescribed by the Division. The applicant may obtain a copy of the Affidavit of Indigence

from the Division's website (www.ncdot.gov/dmv/). The Affidavit of Indigence shall be posted by the Division in English and Spanish. A written hearing request that includes a completed and affirmed Affidavit of Indigence that is received by the Division within the deadline noticed under Paragraph (a) of this Rule is shall be considered a timely request for hearing. An applicant may face criminal and/or and civil penalties for submitting a false affidavit.

(j) Upon receipt of the Affidavit of Indigence, the Division shall determine whether the applicant is eligible for a waiver of the hearing fee required under Paragraph (c) of this Rule.

(k) Criteria the In evaluating the Affidavit of Indigence, the Division shall utilize apply the current Federal Poverty Level Guidelines, Guidelines to qualify an applicant's eligibility for waiver of the hearing fee. The Federal Poverty Guidelines issued by the U.S. Department of Health and Human Services and published in the Federal Register are incorporated by reference including subsequent amendments and editions. A copy may be obtained at no cost at <https://www.federalregister.gov/>. The applicant with income below 150 percent of the Federal Poverty Level shall receive a waiver of the hearing fee under Paragraph (c) of this Rule. The terms "household size," "size" and "household income," "income" are defined with reference by the Federal Income Tax Code (U.S. Code Title 26) and U.S. Treasury Regulations. The Federal Tax Code and U.S. Treasury Regulations published by the U.S. Internal Revenue Service are incorporated by reference including subsequent amendments and editions. A copy may be obtained at no cost at: <https://www.irs.gov/>. The waiver criteria are:

- (1) household size; and
- (2) household income.

The Division may request documentation from the applicant if such is necessary for the Division to qualify the applicant's eligibility for a waiver of the hearing fee. The applicant has five calendar days to shall comply with the a request for additional documentation. documentation within 10 calendar days. Failure to comply with the a request for additional documentation will shall result in a denial for of the applicant's request for a waiver on of the hearing fees.

(l) After the Division's review of an applicant's Affidavit of Indigence, the Division shall proceed as follows:

- (1) If the Division finds the applicant is qualified for a waiver of the hearing fee pursuant to the Affidavit of Indigence, the Division shall proceed with the hearing as if the required hearing fee had been paid. The Division shall send the notice listed in Paragraph (e) of this Rule.
- (2) If the Division finds the applicant is not qualified for a waiver of the hearing fee, the Division shall notify the applicant of this determination. This notification shall also include:
  - (A) Notice notice of the amount of the hearing fee owed by the applicant to proceed with the requested hearing;
  - (B) A a date upon which the applicant shall submit the required hearing fee to the Division noticed date, and such

~~date~~ which shall not be less than 10 calendar days from the date of the notification;

- (C) ~~Notice~~ notice that if ~~such~~ the hearing fee is not received by the Division by the noticed date, the written request for hearing pursuant to Paragraph (c) of this Rule will be considered withdrawn; and
- (D) ~~Notice~~ notice that any pending action by the Division upon which the applicant requested a hearing shall be placed into effect if such hearing fee is not paid by the noticed date.

An applicant's failure to pay the hearing fee by the date contained in the notification letter ~~will~~ shall be considered a withdrawal of the request for a hearing. A hearing fee paid via U.S. Mail shall be deemed timely only if such payment is postmarked prior to the noticed date.

(m) The Division shall retain a sum of fifty dollars (\$50.00) to process all hearing requests set forth in 19A NCAC 03K .0102, except for hearings listed under 19A NCAC 03K .0102(a)(2) and (a)(16), for which the Division shall retain twenty dollars (\$20.00).

*History Note:* Authority G.S. 20-16; 20-17; 20-31; S.L. 2014-100, s. 34.9, S.L. 2015-241, s. 29.30A; S.L. 2017-57, s.

4.32(a),(b),(c),(d);

Temporary Adoption Eff. January 1, 2018. (Codifier's Note: This Rule shall remain in effect until the permanent rule that replaces the temporary rule becomes effective. See S.L. 2017-57, s. 34.32(c)).

#### **19A NCAC 03K .0102 ADMINISTRATIVE HEARING FEE SCHEDULE**

(a) The Division shall assess the following administrative hearing fees, pursuant to Rule .0101 of this Subchapter:

- (1) sixty dollars (\$60.00) for a hearing related to a lapse in financial responsibility conducted pursuant G.S. 20-316;
- (2) forty dollars (\$40.00) for a conference to determine the applicant's eligibility to attend drive improvement clinic as provided by G.S. 20-16;
- (3) seventy-five dollars (\$75.00) for an ignition interlock mouth contaminant review to determine compliance with the requirements of the Ignition Interlock Program and of a conditional restoration agreement with the Division;
- (4) seventy dollars (\$70.00) for ignition interlock medical accommodation reviews;
- (5) one hundred dollars (\$100.00) for all other license suspension or revocation hearings not listed in Subparagraphs (6) through (12) of this Paragraph ~~to include~~ including hearings held pursuant to G.S. 20-13 and 20-16;
- (6) four hundred fifty dollars (\$450.00) for hearings conducted for violations of an alcohol

concentration restriction (ACR), violation of an ignition interlock device restriction, or refusal to submit to a chemical analysis;

- (7) two hundred dollars (\$200.00) for a financial responsibility hearing conducted pursuant to the provisions of the Motor Vehicle Safety-Responsibility Act of 1953;
- (8) two hundred dollars (\$200.00) for a hearing related to a commercial driver license (CDL) disqualification;
- (9) two hundred dollars (\$200.00) for a restoration hearing related to a license suspension due to driving while license revoked or moving violation;
- (10) two hundred twenty-five dollars (\$225.00) for an interview held prior to a license restoration hearing in situations involving alcohol-related convictions, suspensions, or revocations;
- (11) four hundred twenty-five dollars (\$425.00) for a license restoration hearing related to driving while impaired (DWI) conducted pursuant to G.S. 20-19;
- (12) two hundred twenty dollars (\$220.00) for hearings conducted to determine compliance with the requirements of probation or restoration agreement with the Division;
- (13) two hundred dollars (\$200.00) for a motor vehicle dealer license or salesman license hearing conducted pursuant to G.S. 20-295 and 20-296;
- (14) two hundred dollars (\$200.00) for a mechanic license or inspection station license hearing conducted pursuant to G.S. 20-183.8G;
- (15) two hundred dollars (\$200.00) for a commercial driver training school hearing;
- (16) fifty dollars (\$50.00) for a hearing related to the denial of a service offered by the Division; and
- (17) ~~one thousand two hundred dollars (\$1,200.00)~~ six hundred dollars (\$600.00) shall be due ~~from the~~ from a party initiating an action ~~which that~~ that must be filed with the Commissioner of Motor Vehicles pursuant to G.S. 20-308.1. In addition to the filing fee, ~~each~~ a party that files a motion in the case shall be assessed a fee of six hundred dollars (\$600.00) per motion that shall be payable at the time the motion is filed.

(b) No fees shall be charged for medical evaluation hearings or competency hearings conducted pursuant to G.S. 20-9(g)(4) or G.S. 20-17.1.

*History Note:* Authority S.L. 2015-241, s. 29.30A; S.L. 2014-100, s. 34.9; S.L. 2017-57, s. 34.32(a),(b),(c),(d);

Temporary Adoption Eff. January 1, 2018. (Codifier's Note: This Rule shall remain in effect until the permanent rule that replaces the temporary rule becomes effective. See S.L. 2017-57, s. 34.32(c)).

*This Section contains information for the meeting of the Rules Review Commission November 16, 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)  
Andrew P. Atkins  
Anna Baird Choi  
Paul Powell  
Jeanette Doran (2<sup>nd</sup> Vice Chair)

**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**

January 18, 2018                      February 15, 2018  
March 15, 2018                      April 19, 2018

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**RULES REVIEW COMMISSION MEETING  
MINUTES*****November 16, 2017***

The Rules Review Commission met on Thursday, November 16, 2017, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Andrew P. Atkins, Anna Baird Choi, Margaret Currin, Garth Dunklin, Jay Hemphill, Jeff Hyde, Jeff Poley, and Paul Powell.

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

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

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

**APPROVAL OF MINUTES**

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the October 19, 2017 meeting. There were none and the minutes were approved as distributed.

**FOLLOW UP MATTERS****Commission for Mental Health, Developmental Disabilities and Substance Abuse Services**

10A NCAC 27H .0205 and .0206 - The agency is addressing the objections from the September meeting. No action was required by the Commission.

**LOG OF FILINGS (PERMANENT RULES)*****Pre-Reviewed Rules*****Board of Refrigeration Examiners**

All rules were unanimously approved with the following exception:

21 NCAC 60 .0106 was withdrawn at the request of the agency.

**Non Pre-Reviewed Rules****Code Officials Qualification Board**

All rules were unanimously approved.

**Department of Insurance**

All rules were unanimously approved.

The Commission received over 10 letters of objection in accordance with G.S. 150B-21.3(b2), requesting a delayed effective date and legislative review of Rules 11 NCAC 20 .0301 and .0302.

**Alarm Systems Licensing Board**

All rules were unanimously approved.

**Midwifery Joint Committee**

21 NCAC 33 .0110 was unanimously approved.

Prior to the review of the rule from the Midwifery Joint Committee, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rule because her law firm represents the Board of Nursing. The Board of Nursing provides administrative support to the Midwifery Joint Committee.

**Board of Nursing**

21 NCAC 36 .0815 was withdrawn at the request of the agency. No action was required by the Commission.

**Building Code Council**

All rules were unanimously approved.

**LOG OF RULES (TEMPORARY RULES)*****Pre-Reviewed Rules*****Medical Care Commission**

All rules were unanimously approved.

Prior to the review of the temporary rules from the Medical Care Commission, Commissioner Atkins recused himself and did not participate in any discussion or vote concerning the rules because of a conflict.

Prior to the review of the temporary rules from the Medical Care Commission, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the rules because his law firm is legal counsel for the Medical Care Commission.

**Alcoholic Beverage Control Commission**

All rules were unanimously approved.

Prior to the review of the temporary rules from the Alcoholic Beverage Control Commission, Commissioner Powell recused himself and did not participate in any discussion or vote concerning the report because of a conflict of interest.

**Department of Transportation/Division of Motor Vehicles**

Both rules were approved contingent upon the agency making technical changes to 19A NCAC 03K .0101, with Commissioner Powell voting against.

The agency submitted the rule with the requested technical changes on November 16, 2017.

Prior to the review of the temporary rules from the Department of Transportation/Division of Motor Vehicles, Commissioner Atkins recused himself and did not participate in any discussion or vote concerning the rules because of a conflict.

John Policastro, General Counsel with the North Carolina Automobile Dealers Association, addressed the Commission.

David Ferrell, representing Independent Garage Owners of North Carolina and the Carolina Lubes, Inc., addressed the Commission.

Chris Brooks, with the Attorney General's Office and representing the agency, addressed the Commission.

Helen Landi, the rulemaking coordinator with the agency, addressed the Commission.

**EXISTING RULES REVIEW**

**Department of Health and Human Services**

10A NCAC 14A .0100 – The Commission unanimously approved the report as submitted by the agency.

Commissioner Poley was not present during the vote or discussion concerning the report.

**Medical Care Commission**

10A NCAC 14A .0300 – The Commission unanimously approved the report as submitted by the agency.

Prior to the review of the report from the Medical Care Commission, Commissioner Atkins recused himself and did not participate in any discussion or vote concerning the report because of a conflict.

Commissioner Poley was not present during the vote or discussion concerning the report.

**DHHS, Director, Division of Health Service Regulation**

10A NCAC 14G – The Commission unanimously approved the report as submitted by the agency.

10A NCAC 14H – The Commission unanimously approved the report as submitted by the agency.

Commissioner Poley was not present during the vote or discussion concerning the reports.

**Department of Insurance**

11 NCAC 08 .0200, .0400 and .1500 - The Commission unanimously approved the report as submitted by the agency.

Commissioner Poley was not present during the vote or discussion concerning the report.

**Code Officials Qualification Board**

11 NCAC 08 .0500 - .0800 – The Commission unanimously approved the report as submitted by the agency.

Commissioner Poley was not present during the vote or discussion concerning the report.

**Manufactured Housing Board**

11 NCAC 08 .0900 and .1400 – The Commission unanimously approved the report as submitted by the agency.

Commissioner Poley was not present during the vote or discussion concerning the report.

**Home Inspector Licensure Board**

11 NCAC 08 .1000 - .1300 – The Commission unanimously approved the report as submitted by the agency.

Commissioner Poley was not present during the vote or discussion concerning the report.

**Public Safety/Division of Victim Services**

14B NCAC 09 .0100 and .0200 – The Commission unanimously approved the report as submitted by the agency.

Wil Polk, the rulemaking coordinator for the agency, addressed the Commission.

Commissioner Poley was not present during the vote or discussion concerning the report.

**Victims Compensation Commission**

14B NCAC 09 .0300 – The Commission unanimously approved the report as submitted by the agency.

Commissioner Poley was not present during the vote or discussion concerning the report.

**Department of Public Safety/Boxing Authority**

14B NCAC 10 – The Commission unanimously approved the report as submitted by the agency.

Commissioner Poley was not present during the vote or discussion concerning the report.

**Department of Public Safety**

14B NCAC 11 – The Commission unanimously approved the report as submitted by the agency.

14B NCAC 12 – The Commission unanimously approved the report as submitted by the agency.

14B NCAC 13 – The Commission unanimously approved the report as submitted by the agency.

Commissioner Poley was not present during the vote or discussion concerning the reports.

**Board of Dental Examiners**

21 NCAC 16 - The Commission unanimously approved the report as submitted by the agency.

**Midwifery Joint Committee**

21 NCAC 33 – The Commission unanimously approved the report as submitted by the agency.

Prior to the review of the report from the Midwifery Joint Committee, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the report because her law firm represents the Board of Nursing. The Board of Nursing provides administrative support to the Midwifery Joint Committee.

**Board of Nursing**

21 NCAC 36 – The Commission unanimously approved the report as submitted by the agency.

Prior to the review of the report from the Board of Nursing, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the report because her law firm represents the Board of Nursing.

Prior to the review of the report from the Board of Nursing, Commissioner Hemphill recused himself and did not participate in any discussion or vote concerning the report because of the appearance of a conflict of interest with his employer.

**Onsite Wastewater Contractors and Inspectors Certification Board**

21 NCAC 39 – The Commission unanimously approved the report as submitted by the agency.

Prior to the review of the report from the Onsite Wastewater Contractors and Inspectors Certification Board, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the report because her law firm represents the Onsite Wastewater Contractors.

**Veterinary Medical Board**

21 NCAC 66 – The Commission unanimously approved the report as submitted by the agency.

**COMMISSION BUSINESS**

The Commission amended Rule 26 NCAC 05 .0211 to reflect changes in the periodic review schedule.

At 11:43 a.m., Chairman Dunklin ended the public meeting of the Rules Review Commission and called the meeting into closed session pursuant to G.S. 143-318.11(a)(3) to discuss the lawsuit filed by the State Board of Education against the Rules Review Commission.

The Commission came out of closed session and reconvened at 12:25 p.m.

The meeting adjourned at 12:25 p.m.

The next regularly scheduled meeting of the Commission is Thursday, December 14<sup>th</sup> at 10:00 a.m.

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Alexander Burgos, Paralegal

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Minutes approved by the Rules Review Commission:  
Garth Dunklin, Chair

**November 16, 2017**

Rules Review Commission  
Meeting  
Please **Print** Legibly

Name	Agency
Jennifer Haleyford	NC DOJ / OSFM
Mike Hegdick	NC DOJ HILB & COOB
Kathy Williams	NC DOJ / OSFM
Chris Brooks	NC DOJ / NC DMV
BARBY GUPTON	NC DOJ / NC BCC
Loretta Bunch	<del>NC DOJ</del> NC DOJ
Doug Bracker	NC Board of Dental Examiners
Nadine Pfeiffer	NC DHHS / DHSR
Chris Evans	BCBSNC
BOBBY D WHITE	NC DENTAL BOARD
John Policastro	NC Automobile Dealers Association
David Ferrell	IGONE / Carolina Library, Inc.
T J Shuler	NCUMB
Carey Gunkel	DHSR
Meredith Parris	BON
Ann Fitchugh	NCBON
Angela Ellis	NCBON
Bobby Coon	NC DOT
Heather Freeman	NC DOT
Jamie Keith	DMV
Hope Mozengo	DMV



[illegible]

**LIST OF APPROVED PERMANENT RULES**  
**November 16, 2017 Meeting**

**CODE OFFICIALS QUALIFICATION BOARD**

<u>Nature of Probationary Certificate</u>	11 NCAC 08	.0602
<u>Certificate</u>	11 NCAC 08	.0708

**INSURANCE, DEPARTMENT OF**

<u>Filing Requirements</u>	11 NCAC 18	.0103
<u>Changes Requiring Approval</u>	11 NCAC 20	.0203
<u>Provider Availability Standards</u>	11 NCAC 20	.0301
<u>Provider Accessibility Standards</u>	11 NCAC 20	.0302
<u>Application</u>	11 NCAC 20	.0404
<u>Delegation of Credential Verification Activities</u>	11 NCAC 20	.0410
<u>Applications for Modifications to Service Areas or Produc...</u>	11 NCAC 20	.0601
<u>Payment of Claims</u>	11 NCAC 21	.0106

**ALARM SYSTEMS LICENSING BOARD**

<u>Purpose</u>	14B NCAC 17	.0101
<u>Location</u>	14B NCAC 17	.0102
<u>Application for License</u>	14B NCAC 17	.0201
<u>Experience Requirements for License</u>	14B NCAC 17	.0202
<u>Application for Registration</u>	14B NCAC 17	.0301

**MIDWIFERY JOINT COMMITTEE**

<u>Reporting Criteria</u>	21 NCAC 33	.0110
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**REFRIGERATION EXAMINERS, BOARD OF**

<u>Office of the Board</u>	21 NCAC 60	.0102
<u>Rule-making and Administrative Hearing Procedures</u>	21 NCAC 60	.0103
<u>Examination Application Duly Filed</u>	21 NCAC 60	.0206
<u>Requirements for Examination Applicants</u>	21 NCAC 60	.0207
<u>Fees</u>	21 NCAC 60	.0209
<u>Qualifying Examinations</u>	21 NCAC 60	.0212
<u>Examinations</u>	21 NCAC 60	.0213

**BUILDING CODE COUNCIL**

<u>2014 NC Electrical Code/Conductors</u>	300.3
<u>2014 NC Electrical Code/Frames of Ranges and Clothes Dryers</u>	250.140
<u>2014 NC Electrical Code/Use of Grounded Circuit Conductor...</u>	250.142
<u>2014 NC Electrical Code/Supplemental Electrode Required</u>	250.53(A)(2)
<u>2014 NC Electrical Code/Raceways in Wet Locations Above Grad</u>	300.9
<u>2012 NC Fire Prevention Code/Scope</u>	901.1

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**LIST OF APPROVED TEMPORARY RULES**

**November 16, 2017 Meeting**

**MEDICAL CARE COMMISSION**

<u>Definitions</u>	10A NCAC 13B .6003
<u>Incorporation by Reference and Application of the Require...</u>	10A NCAC 13B .6105
<u>Neonatal Level I, II, III, and IV Nurseries</u>	10A NCAC 13B .6228

**ALCOHOLIC BEVERAGE CONTROL COMMISSION**

<u>Fill Or Refill Original Containers</u>	14B NCAC 15B .0217
<u>Dispensing Alcoholic Beverages: Production Identification</u>	14B NCAC 15B .0220
<u>Labels To Be Submitted To Commission</u>	14B NCAC 15C .0302
<u>Labels Contents: Malt Beverages</u>	14B NCAC 15C .0303
<u>Label Contents: Wine</u>	14B NCAC 15C .0304
<u>Growlers</u>	14B NCAC 15C .0307
<u>Growlers: Cleaning, Sanitizing, Filling and Sealing</u>	14B NCAC 15C .0308
<u>Containers</u>	14B NCAC 15C .0403

**DEPARTMENT OF TRANSPORTATION/DIVISION OF MOTOR VEHICLES**

<u>Assessment of Administrative Hearing Fees</u>	19A NCAC 03K .0101
<u>Administrative Hearing Fee Schedule</u>	19A NCAC 03K .0102

**RRC Determination  
Periodic Rule Review  
November 16, 2017  
Necessary with substantive public interest**

<b>Health and Human Services, Department of</b>	<u>11 NCAC 08 .0714</u>	<u>14B NCAC 09 .0304</u> <u>14B NCAC 09 .0305</u>
<u>10A NCAC 14A .0101</u>	<b>Home Inspector Licensure Board</b>	<b>Dental Examiners, Board of</b>
<u>10A NCAC 14A .0102</u>	<u>11 NCAC 08 .1101</u>	<u>21 NCAC 16H .0207</u>
<u>10A NCAC 14A .0103</u>	<u>11 NCAC 08 .1102</u>	<u>21 NCAC 16P .0105</u>
<b>Medical Care Commission</b>	<u>11 NCAC 08 .1103</u>	<u>21 NCAC 16Q .0402</u>
<u>10A NCAC 14A .0301</u>	<u>11 NCAC 08 .1104</u>	<u>21 NCAC 16T .0101</u>
<u>10A NCAC 14A .0302</u>	<u>11 NCAC 08 .1105</u>	<b>Midwifery Joint Committee</b>
<u>10A NCAC 14A .0303</u>	<u>11 NCAC 08 .1106</u>	<u>21 NCAC 33 .0101</u>
<b>HHS - Health Service Regulation, Division of</b>	<u>11 NCAC 08 .1107</u>	<u>21 NCAC 33 .0102</u>
<u>10A NCAC 14G .0101</u>	<u>11 NCAC 08 .1108</u>	<u>21 NCAC 33 .0103</u>
<u>10A NCAC 14G .0102</u>	<u>11 NCAC 08 .1109</u>	<u>21 NCAC 33 .0104</u>
<u>10A NCAC 14G .0103</u>	<u>11 NCAC 08 .1110</u>	<u>21 NCAC 33 .0105</u>
<u>10A NCAC 14G .0104</u>	<u>11 NCAC 08 .1111</u>	<u>21 NCAC 33 .0110</u>
<b>Insurance, Department of</b>	<u>11 NCAC 08 .1112</u>	<u>21 NCAC 33 .0111</u>
<u>11 NCAC 08 .0203</u>	<u>11 NCAC 08 .1113</u>	<b>Nursing, Board of</b>
<b>Code Officials Qualification Board</b>	<u>11 NCAC 08 .1114</u>	<u>21 NCAC 36 .0109</u>
<u>11 NCAC 08 .0602</u>	<u>11 NCAC 08 .1115</u>	<u>21 NCAC 36 .0112</u>
<u>11 NCAC 08 .0707</u>	<u>11 NCAC 08 .1116</u>	<u>21 NCAC 36 .0113</u>
<u>11 NCAC 08 .0708</u>	<u>11 NCAC 08 .1302</u>	<u>21 NCAC 36 .0202</u>
<b>Victims Compensation Commission</b>	<u>14B NCAC 09 .0301</u>	<u>21 NCAC 36 .0203</u>
<u>14B NCAC 09 .0302</u>	<u>14B NCAC 09 .0303</u>	<u>21 NCAC 36 .0211</u>
		<u>21 NCAC 36 .0213</u>

<u>21 NCAC 36 .0218</u>	<u>21 NCAC 36 .0317</u>	<u>21 NCAC 36 .0805</u>
<u>21 NCAC 36 .0219</u>	<u>21 NCAC 36 .0318</u>	<u>21 NCAC 36 .0806</u>
<u>21 NCAC 36 .0220</u>	<u>21 NCAC 36 .0320</u>	<u>21 NCAC 36 .0807</u>
<u>21 NCAC 36 .0221</u>	<u>21 NCAC 36 .0321</u>	<u>21 NCAC 36 .0808</u>
<u>21 NCAC 36 .0223</u>	<u>21 NCAC 36 .0322</u>	<u>21 NCAC 36 .0809</u>
<u>21 NCAC 36 .0224</u>	<u>21 NCAC 36 .0323</u>	<u>21 NCAC 36 .0810</u>
<u>21 NCAC 36 .0225</u>	<u>21 NCAC 36 .0403</u>	<u>21 NCAC 36 .0811</u>
<u>21 NCAC 36 .0226</u>	<u>21 NCAC 36 .0404</u>	<u>21 NCAC 36 .0812</u>
<u>21 NCAC 36 .0228</u>	<u>21 NCAC 36 .0405</u>	<u>21 NCAC 36 .0813</u>
<u>21 NCAC 36 .0232</u>	<u>21 NCAC 36 .0406</u>	<u>21 NCAC 36 .0814</u>
<u>21 NCAC 36 .0233</u>	<u>21 NCAC 36 .0801</u>	<u>21 NCAC 36 .0815</u>
<u>21 NCAC 36 .0302</u>	<u>21 NCAC 36 .0802</u>	
<u>21 NCAC 36 .0303</u>	<u>21 NCAC 36 .0803</u>	
<u>21 NCAC 36 .0309</u>	<u>21 NCAC 36 .0804</u>	

**RRC Determination  
Periodic Rule Review  
November 16, 2017  
Necessary without substantive public interest**

**HHS - Health Service Regulation,  
Division of**  
10A NCAC 14H .0101  
10A NCAC 14H .0102  
10A NCAC 14H .0103  
10A NCAC 14H .0104  
10A NCAC 14H .0105  
10A NCAC 14H .0106  
10A NCAC 14H .0107  
10A NCAC 14H .0108

**Insurance, Department of**  
11 NCAC 08 .0201  
11 NCAC 08 .0202  
11 NCAC 08 .0401  
11 NCAC 08 .0402  
11 NCAC 08 .0403  
11 NCAC 08 .0404  
11 NCAC 08 .0405  
11 NCAC 08 .0406

**Code Officials Qualification  
Board**  
11 NCAC 08 .0502  
11 NCAC 08 .0503  
11 NCAC 08 .0504  
11 NCAC 08 .0505  
11 NCAC 08 .0506  
11 NCAC 08 .0507  
11 NCAC 08 .0508  
11 NCAC 08 .0603  
11 NCAC 08 .0604  
11 NCAC 08 .0605  
11 NCAC 08 .0606  
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11 NCAC 08 .0702  
11 NCAC 08 .0703  
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11 NCAC 08 .0836

**Manufactured Housing Board**  
11 NCAC 08 .0901  
11 NCAC 08 .0902  
11 NCAC 08 .0903  
11 NCAC 08 .0904  
11 NCAC 08 .0905  
11 NCAC 08 .0906  
11 NCAC 08 .0907  
11 NCAC 08 .0908  
11 NCAC 08 .0909  
11 NCAC 08 .0910  
11 NCAC 08 .0911  
11 NCAC 08 .0912

**Home Inspector Licensure Board**  
11 NCAC 08 .1001  
11 NCAC 08 .1003  
11 NCAC 08 .1004  
11 NCAC 08 .1005  
11 NCAC 08 .1006  
11 NCAC 08 .1007  
11 NCAC 08 .1008  
11 NCAC 08 .1009  
11 NCAC 08 .1010  
11 NCAC 08 .1011  
11 NCAC 08 .1012  
11 NCAC 08 .1020  
11 NCAC 08 .1021

11 NCAC 08 .1022  
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11 NCAC 08 .1351

**Manufactured Housing Board**

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11 NCAC 08 .1402  
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11 NCAC 08 .1433

**Insurance, Department of**

11 NCAC 08 .1501  
11 NCAC 08 .1502  
11 NCAC 08 .1503  
11 NCAC 08 .1504  
11 NCAC 08 .1505

**Public Safety, Department of -  
Boxing Authority**

14B NCAC 10 .0101  
14B NCAC 10 .0102  
14B NCAC 10 .0103  
14B NCAC 10 .0201  
14B NCAC 10 .0301  
14B NCAC 10 .0401  
14B NCAC 10 .0402  
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14B NCAC 10 .0802  
14B NCAC 10 .0803  
14B NCAC 10 .0804  
14B NCAC 10 .0805  
14B NCAC 10 .0806  
14B NCAC 10 .0807  
14B NCAC 10 .0808  
14B NCAC 10 .0809  
14B NCAC 10 .0810  
14B NCAC 10 .0811

**Public Safety, Department of**

14B NCAC 11A .0101  
14B NCAC 11A .0201  
14B NCAC 11A .0202  
14B NCAC 11A .0203  
14B NCAC 11A .0204  
14B NCAC 11A .0301  
14B NCAC 11A .0302  
14B NCAC 11B .0101  
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14B NCAC 11B .0202  
14B NCAC 11B .0203  
14B NCAC 11B .0204  
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14B NCAC 13 .0202

**Dental Examiners, Board of**

21 NCAC 16A .0101  
21 NCAC 16B .0101  
21 NCAC 16B .0201  
21 NCAC 16B .0202  
21 NCAC 16B .0301  
21 NCAC 16B .0302  
21 NCAC 16B .0303  
21 NCAC 16B .0317  
21 NCAC 16B .0501  
21 NCAC 16B .0601  
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21 NCAC 16B .0901  
21 NCAC 16B .0902  
21 NCAC 16B .1001  
21 NCAC 16B .1002  
21 NCAC 16B .1101  
21 NCAC 16C .0101  
21 NCAC 16C .0202  
21 NCAC 16C .0301  
21 NCAC 16C .0302  
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21 NCAC 16C .0311  
21 NCAC 16C .0501  
21 NCAC 16C .0601  
21 NCAC 16D .0101  
21 NCAC 16D .0102

21 NCAC 16D .0104  
21 NCAC 16E .0102  
21 NCAC 16E .0103  
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21 NCAC 16F .0103  
21 NCAC 16F .0104  
21 NCAC 16F .0105  
21 NCAC 16F .0107  
21 NCAC 16F .0110  
21 NCAC 16G .0101  
21 NCAC 16G .0103  
21 NCAC 16G .0106  
21 NCAC 16G .0107  
21 NCAC 16G .0108  
21 NCAC 16H .0101  
21 NCAC 16H .0102  
21 NCAC 16H .0103  
21 NCAC 16H .0104  
21 NCAC 16H .0201  
21 NCAC 16H .0203  
21 NCAC 16H .0205  
21 NCAC 16H .0206  
21 NCAC 16I .0101  
21 NCAC 16I .0102  
21 NCAC 16I .0103  
21 NCAC 16I .0104  
21 NCAC 16I .0105  
21 NCAC 16I .0106  
21 NCAC 16I .0107  
21 NCAC 16I .0108  
21 NCAC 16I .0109  
21 NCAC 16I .0110  
21 NCAC 16I .0111  
21 NCAC 16J .0101  
21 NCAC 16J .0103  
21 NCAC 16K .0103  
21 NCAC 16K .0104  
21 NCAC 16K .0106  
21 NCAC 16L .0101  
21 NCAC 16L .0102  
21 NCAC 16L .0104  
21 NCAC 16M .0101  
21 NCAC 16M .0102  
21 NCAC 16M .0103  
21 NCAC 16N .0101  
21 NCAC 16N .0102  
21 NCAC 16N .0103  
21 NCAC 16N .0202  
21 NCAC 16N .0302  
21 NCAC 16N .0304  
21 NCAC 16N .0305  
21 NCAC 16N .0307  
21 NCAC 16N .0402  
21 NCAC 16N .0403  
21 NCAC 16N .0404  
21 NCAC 16N .0501  
21 NCAC 16N .0502  
21 NCAC 16N .0503

21 NCAC 16N .0504  
21 NCAC 16N .0505  
21 NCAC 16N .0506  
21 NCAC 16N .0507  
21 NCAC 16N .0508  
21 NCAC 16N .0602  
21 NCAC 16N .0603  
21 NCAC 16N .0604  
21 NCAC 16N .0605  
21 NCAC 16N .0606  
21 NCAC 16O .0301  
21 NCAC 16O .0302  
21 NCAC 16O .0401  
21 NCAC 16O .0402  
21 NCAC 16P .0101  
21 NCAC 16P .0102  
21 NCAC 16P .0103  
21 NCAC 16P .0104  
21 NCAC 16Q .0101  
21 NCAC 16Q .0201  
21 NCAC 16Q .0202  
21 NCAC 16Q .0204  
21 NCAC 16Q .0301  
21 NCAC 16Q .0302  
21 NCAC 16Q .0304  
21 NCAC 16Q .0306  
21 NCAC 16Q .0401  
21 NCAC 16Q .0408  
21 NCAC 16Q .0501  
21 NCAC 16Q .0502  
21 NCAC 16Q .0503  
21 NCAC 16Q .0701  
21 NCAC 16Q .0703  
21 NCAC 16R .0101  
21 NCAC 16R .0102  
21 NCAC 16R .0108  
21 NCAC 16R .0110  
21 NCAC 16R .0201  
21 NCAC 16R .0202  
21 NCAC 16R .0203  
21 NCAC 16R .0204  
21 NCAC 16R .0205  
21 NCAC 16S .0101  
21 NCAC 16S .0102  
21 NCAC 16S .0201  
21 NCAC 16S .0202  
21 NCAC 16S .0203  
21 NCAC 16S .0204  
21 NCAC 16S .0205  
21 NCAC 16T .0102  
21 NCAC 16U .0101  
21 NCAC 16U .0102  
21 NCAC 16U .0103  
21 NCAC 16U .0201  
21 NCAC 16U .0202  
21 NCAC 16U .0203  
21 NCAC 16U .0204  
21 NCAC 16V .0101  
21 NCAC 16V .0102

21 NCAC 16W .0101  
21 NCAC 16W .0102  
21 NCAC 16W .0103  
21 NCAC 16X .0101  
21 NCAC 16Y .0101  
21 NCAC 16Y .0102  
21 NCAC 16Y .0103  
21 NCAC 16Y .0104  
21 NCAC 16Y .0105  
21 NCAC 16Z .0101  
21 NCAC 16Z .0102  
21 NCAC 16Z .0103

**Midwifery Joint Committee**

21 NCAC 33 .0108

**Nursing, Board of**

21 NCAC 36 .0119  
21 NCAC 36 .0120  
21 NCAC 36 .0201  
21 NCAC 36 .0207  
21 NCAC 36 .0208  
21 NCAC 36 .0217  
21 NCAC 36 .0231  
21 NCAC 36 .0401  
21 NCAC 36 .0402  
21 NCAC 36 .0501  
21 NCAC 36 .0502  
21 NCAC 36 .0503  
21 NCAC 36 .0504  
21 NCAC 36 .0505  
21 NCAC 36 .0506  
21 NCAC 36 .0507  
21 NCAC 36 .0601  
21 NCAC 36 .0602  
21 NCAC 36 .0603  
21 NCAC 36 .0604  
21 NCAC 36 .0605  
21 NCAC 36 .0701  
21 NCAC 36 .0702  
21 NCAC 36 .0703

21 NCAC 36 .0704  
21 NCAC 36 .0705

**Onsite Wastewater Contractors  
and Inspectors Certification  
Board**

21 NCAC 39 .0101  
21 NCAC 39 .0102  
21 NCAC 39 .0201  
21 NCAC 39 .0202  
21 NCAC 39 .0301  
21 NCAC 39 .0401  
21 NCAC 39 .0402  
21 NCAC 39 .0403  
21 NCAC 39 .0404  
21 NCAC 39 .0405  
21 NCAC 39 .0501  
21 NCAC 39 .0601  
21 NCAC 39 .0602  
21 NCAC 39 .0603  
21 NCAC 39 .0604  
21 NCAC 39 .0605  
21 NCAC 39 .0701  
21 NCAC 39 .0702  
21 NCAC 39 .0703  
21 NCAC 39 .0801  
21 NCAC 39 .1001  
21 NCAC 39 .1002  
21 NCAC 39 .1004  
21 NCAC 39 .1005  
21 NCAC 39 .1006

**Veterinary Medical Board**

21 NCAC 66 .0101  
21 NCAC 66 .0102  
21 NCAC 66 .0105  
21 NCAC 66 .0106  
21 NCAC 66 .0108  
21 NCAC 66 .0201  
21 NCAC 66 .0202  
21 NCAC 66 .0203

21 NCAC 66 .0205  
21 NCAC 66 .0206  
21 NCAC 66 .0207  
21 NCAC 66 .0208  
21 NCAC 66 .0209  
21 NCAC 66 .0210  
21 NCAC 66 .0301  
21 NCAC 66 .0303  
21 NCAC 66 .0304  
21 NCAC 66 .0305  
21 NCAC 66 .0306  
21 NCAC 66 .0307  
21 NCAC 66 .0308  
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21 NCAC 66 .0501  
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21 NCAC 66 .0605  
21 NCAC 66 .0606  
21 NCAC 66 .0607  
21 NCAC 66 .0608  
21 NCAC 66 .0609  
21 NCAC 66 .0610  
21 NCAC 66 .0701  
21 NCAC 66 .0702  
21 NCAC 66 .0703  
21 NCAC 66 .0704  
21 NCAC 66 .0705

**RRC Determination  
Periodic Rule Review  
November 16, 2017  
Unnecessary**

**Medical Care Commission**

10A NCAC 14A .0304  
10A NCAC 14A .0305  
10A NCAC 14A .0306

**Public Safety, Department of -  
Division of Victim Services**

14B NCAC 09 .0101  
14B NCAC 09 .0102  
14B NCAC 09 .0103  
14B NCAC 09 .0104

14B NCAC 09 .0105  
14B NCAC 09 .0106  
14B NCAC 09 .0201  
14B NCAC 09 .0202  
14B NCAC 09 .0203  
14B NCAC 09 .0204  
14B NCAC 09 .0205  
14B NCAC 09 .0206  
14B NCAC 09 .0207  
14B NCAC 09 .0208  
14B NCAC 09 .0209

14B NCAC 09 .0210  
14B NCAC 09 .0211  
14B NCAC 09 .0212  
14B NCAC 09 .0213  
14B NCAC 09 .0214  
14B NCAC 09 .0215  
14B NCAC 09 .0216

**Public Safety, Department of**

14B NCAC 12A .0101  
14B NCAC 12A .0102

14B NCAC 12B .0102  
14B NCAC 12B .0103  
14B NCAC 12B .0104  
14B NCAC 12B .0202  
14B NCAC 12D .0201  
14B NCAC 12D .0202  
14B NCAC 12D .0301  
14B NCAC 12E .0101  
14B NCAC 12E .0102  
14B NCAC 12F .0101  
14B NCAC 12G .0101

14B NCAC 12H .0101  
14B NCAC 12H .0102  
14B NCAC 12H .0201  
14B NCAC 12H .0301  
14B NCAC 12H .0401

**Dental Examiners, Board of**

21 NCAC 16B .0102  
21 NCAC 16C .0102  
21 NCAC 16D .0105  
21 NCAC 16F .0108

21 NCAC 16N .0203

**Nursing, Board of**

21 NCAC 36 .0110  
21 NCAC 36 .0209  
21 NCAC 36 .0216

**Veterinary Medical Board**

21 NCAC 66 .0107



*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.*

**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 Malherbe  
J. Randolph Ward  
Stacey Bawtinheimer

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
				<b><u>PUBLISHED</u></b>			
17	DHR	00755	9/14/2017	Tonya Staton	v.	North Carolina Department of Health and Human Services Division of Child Development	Culpepper
17	DHR	01778	9/18/2017	Raintree Healthcare of Wilkesboro LLC DBA Wilkes County Adult Care	v.	Division of Health Service Regulation NC Department of Health and Human Services	Malherbe
17	DHR	02429	9/28/2017	Coby Crandall The Pro Se Reentry Recovery SVCS	v.	NC Department of Health and Human Services	Overby
17	DHR	04335	9/5/2017	Angela and Timothy Munson	v.	The Mecklenburg County Health Department and Health Director Anthony Trotman	Malherbe
17	DHR	04749	9/14/2017	Appletree Day Care, Inc. and Carolyn Driggers	v.	NC Department of Health and Human Services, Nutrition Services, Child & Adult Care Food Program	Overby
17	DOJ	02257	9/11/2017	Antoine Joseph Singleton	v.	NC Criminal Justice Education and Training Standards Commission	Bawtinheimer
17	DOJ	02976	9/12/2017	Kevin Robert Bray	v.	NC Private Protective Services Board	Malherbe
17	DOJ	05556	9/28/2017	Stanley Lewis Huffstetler IV	v.	North Carolina Alarm Systems Licensing Board	Overby
16	OSP	10621	9/26/2017	Dontravis Swain	v.	North Carolina Department of Public Safety	Ward
16	OSP	10948	9/22/2017	Sharon Renea Blackmon	v.	NC DHHS	May
17	OSP	01770	9/7/2017	Bernard Robinson	v.	NCDPS Lumberton Correctional	Overby

**CONTESTED CASE DECISIONS**

				<b><u>UNPUBLISHED</u></b>			
17	ABC	03322	9/7/2017	Reginald Hilton Belton, Owner Robbin Heights Mini Market	v.	NC Alcoholic Beverage Control Commission	Ward
17	CSE	02642	9/6/2017	Terry R Locklear	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	May
17	CSE	04856	9/20/2017	Ned Burgess Jr	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
17	CSE	04917	9/21/2017	Thomas Yu	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
16	DHR	09945	9/22/2017	Green Acres Family Care Home #2 Latrishia Green	v.	Adult Care Licensure Megan Lamphere MSW Chief	Ward
17	DHR	02847	9/12/2017	Adam E Smith	v.	NC Dept. of Health and Human Services	Bawtinhimer
17	DHR	04173	9/14/2017	A+ Williamson Care Network	v.	NC Department of Health and Human Services, Division of Medical Assistance	Mann
17	DHR	05044	9/19/2017	Barbara Stocks Barbara Stocks Daycare	v.	Division of Child Development and Early Education	May
17	DOJ	02731	9/5/2017	Terry Teray Arrington	v.	NC Criminal Justice Education and Training Standards Commission	Lassiter
17	DOJ	04249	9/22/2017	Eddricco Lishaun Brown-Bey	v.	The State of North Carolina Attorney General Office Et Al	May
17	DOT	03280	9/22/2017	Brandon Roshon McClendon	v.	State of North Carolina Department of Transportation	Mann
17	DOT	05492	9/29/2017	William Delmar Covington	v.	North Caorlina Highway Patrol Office and North Caorlina Department of Transportation	Overby
17	EDC	05343	9/28/2017	Teshia McLean	v.	NC Department of Public Instruction	Overby
17	INS	01662	9/1/2017	Cynthia Martin	v.	North Carolina State Health Plan	Ward
17	INS	02291	9/5/2017	Michelle Jernigan	v.	State Health Plan	Overby
17	INS	02679	9/13/2017	Kendra Matthews	v.	State Health Plan	May
16	OSP	05955	9/14/2017	Eric Rice	v.	NC State University	Culpepper
17	OSP	04383	9/8/2017	Walle Laniyan	v.	Durham Co Govt	Bawtinhimer